


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 824

# RULE REVIEW CHECKLIST

DATE RULE RECEIVED 6-25-82
DATE FOR REVIEW 7-6-82
DATE DUE 7-15-82

Adopted w/a hearing ✓
Adopted w/o hearing _____
Temporary rule _____

Approved _____ Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 6/24/82
disapproved _____

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✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 6.25.82 Date

_____ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
3.26.82 date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency ? variation see my comment

✓ Affidavit of Mailing Notice or rulemaking
2.22.82 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate

✓ Publication in State Register
2.22.82 At least 30/~~20~~ days prior to hearing/~~adoption~~

✓ Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
✓ 5.19.82 Approving H.E.'s Report
✓ 6.23.82 Approving agency action

✓ Agency's Findings of Fact + initial order Adopting

_____ LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference 1/28/82

✓ Statement of Need and Reasonableness + addition

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

# Office Memorandum

TO : LOIS E. MIZUNO
Executive Secretary, Bd. of Psychology

DATE: 7/15/82

ATTN: TERRY P. O'BRIEN, Spec. Ass't. Atty. Gen.

FROM : TED A. MARTINEZ
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed New Rules Relating to Rules of Conduct, General Waivers, and Variances and Amendments Reltaing to Application for Licensure, Requirements for Professional Experience, Waivers for Examination, and Collaboration

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. Please 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 stamps of the Attorney General and Secretary of State;

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

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

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

TAM:drw
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Health

# Office Memorandum

TO : Judith Wehrwein
204 Administration Building

DATE: June 25, 1982

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

PHONE: 341-7272

SUBJECT: In the Matter of Proposed New Rules Relating to Rules of Conduct, General Waivers, and Variances, and Amendments Relating to Application for Licensure, Requirements for Professional Experience, Waivers for Examination, and Collaboration

Pursuant to 1 MCAR § 1.202, I am submitting for your review the following documents in support of the above-referenced rules:

1) An original and three copies of the rules as adopted, at least one of which reflects changes made in the rules from that as originally published in the State Register;

2) Two copies of the Order adopting the rule;

3) The Certificate of the Board's Resolution Adopting the rules;

4) The Order for Hearing;

5) The Certificate of the Board's Authorizing Resolution;

6) The Notice of Hearing;

7) The Affidavit of the mailing of the Notice;

8) The mailing list Certificate;

9) The rules as proposed;

10) The Report of the Hearing Examiner;

11) The Chief Hearing Exmainer's Report;

12) The Board of Psychology's Findings of Fact and Conclusions;

13) The Statement of the Revisor of Statutes permitting incorporation by reference;

14) The Statement of Need and Reasonableness and the Supplemental Response submitted by the Board;

15) The record;

16) The Certificate of Compliance with Rule Making Procedures;

17) The Affidavit of Mailing of the Notice of Submission to the Attorney General and the accompanying Notice of Submission.

If you have any questions concerning these documents, please don't hesitate to contact us. Thank you.

TPO:cs
Enclosures

.001

AG copy.

Board of Psychology

Adopted Rules Relating to Rules of Conduct and Licensure of Psychologists

Rules as Adopted

7 MCAR S 10.001 Licensure of psychologists; general definitions. For the purposes of 6 7 MCAR SS 10.001-10.009, the following terms have the meanings given them.

A. Board. "Board" means the Minnesota Board of Psychology.

B. Collaboration, collaborative contact. "Collaboration" or "collaborative contact" means consultation at least once each year between a licensed psychologist and a licensed consulting psychologist with regard to any issues arising in the practice of psychology. "Collaboration" or "collaborative contact" does not mean supervision and does not involve the supervisory responsibilities defined in I.

C. Area of competence. "Area of competence" means a specific psychological service, technique, method, or procedure in which the psychologist through education, training, or experience has gained sufficient proficiency to be able to provide it to the public with little or no supervision.

D. Informed written consent. "Informed written consent" means a written statement signed by the person making the statement which authorizes a psychologist to engage in activity which directly affects the person signing the statement. The statement must include a declaration that the person signing the statement has been told of and understands the purpose of the authorized activity.

E. Licensee. "Licensee of the board" or "licensee" means either a licensed psychologist or a licensed consulting psychologist.

F. Private information. "Private information" means any information, including client records, revealed during a professional relationship between a psychologist and a client.

G. Professional relationship. "Professional relationship"

means the association between a psychologist and a person or entity ~~for whom psychological services are sought~~ HE 21 which exists when the psychologist performs for that person or entity any of the functions described in Minn. Stat. S 148.89, subd. 1.

H. Psychologist. "Psychologist" means a licensee of the board.

I. Supervision. "Supervision" means taking full professional responsibility for training, work experience, and performance in the practice of psychology of a supervisee, including planning for and evaluation of the work product of the supervisee, and including face-to-face contact between the supervisor and ~~supervisee~~ supervisees FoF 4 in at least ten separate hourly sessions per quarter.

J. Test. "Test" means any instrument, device, survey, questionnaire, technique, scale, inventory, or other process which is designed or constructed for the purpose of measuring, evaluating, assessing or describing personality, behavior, traits, ~~intelligence~~ cognitive functioning HE 27 FoF 5, aptitudes, attitudes, skills, values, interests, ability, or other psychological or emotional characteristics of individuals.

K. Variance. "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

L. Waiver. "Waiver" means board authorized permission not to comply with a rule.

7 MCAR S 10.002 General requirements for licensure.

A. Licensure process. The process of licensure by the board is divided into two separate parts:

1. admission to examination; and

2. admission to licensure.

B. Requirements for admission to examination. In order to be admitted to examination an applicant must:

1. file with the board a completed notarized application for admission to examination which includes an affirmation that the statements made on the application are true and correct to the best of the knowledge and belief of the applicant, and which

is accompanied by the current nonrefundable examination application fee;

2. provide for transcripts of all graduate work, including verification of the degree granted, to be certified directly to the board from the institution granting the degree; and

3. for an application based upon the equivalent of a master of arts or science degree in a doctoral program, provide for that equivalency to be verified in writing directly to the board by an official of the institution attended.

C. Admission to examination. An applicant shall be admitted to the first regularly scheduled objective part of the examination occurring 40 days or more after the applicant has met the requirements of B., unless admission is denied under D.

D. Denial of admission to examination. Admission to examination shall be denied to an applicant who has not met the education requirements in 7 MCAR S 10.003. An applicant who is denied admission to examination shall be informed in writing of the denial and the reasons for it. An application submitted after denial is a new application which must be accompanied by the current examination application fee.

E. Requirements for licensure. To be eligible for licensure the applicant must meet the following requirements in addition to those in B.:

1. file with the board a notarized application for licensure, which includes an affirmation that the statements made in the application are true and correct to the best knowledge and belief of the applicant and which is accompanied by the current licensure application fee;

2. have completed two years of post degree employment as stated in G. and 7 MCAR S 10.0004;

~~3. state at least one area of competence and have written endorsements from at least two qualified persons, as stated in H., for each area of competence stated;~~ HE 30-32 CHE 5/19

~~4.~~ have performed satisfactorily on both parts of the examination listed in 7 MCAR S 10.005;

~~5. be of good moral character~~ 4. provide evidence of having met the requirements of Minn. Stat. S 148.91, subd. 4, cl. (2) and of not ~~have~~ having engaged in conduct prohibited by 7 MCAR S 10.008, by means of endorsements from at least two people with the qualifications stated in H.; and

~~6.~~ 5. for an application for licensure as a licensed psychologist, file an agreement to collaborate signed by a licensed consulting psychologist.

F. Concurrent applications. An applicant may file both the application for admission to examination and the application for licensure at the same time if the employment requirements in G. and 7 MCAR S 10.004 have been met.

G. Supervised employment. The application for licensure shall include the setting, nature and extent of the supervised employment, the time period involved, the number of hours per week engaged in professional duties, ~~and~~ the name and qualifications of each supervisor, and the areas of competence in which proficiency has been gained. The application may include areas of competence in which proficiency has been gained through experience, such as internships or practica, which is not counted toward the employment requirement of Minn. Stat. S 148.91, subds. 4 and 5.

H. Requirements for endorsement. To qualify as an endorser a person listed on the application for licensure must be a licensee of the board, a person who is licensed to practice psychology by another state whose licensure standards are similar to the standards of this state, or a person whose education and experience meet the licensure standards of Minn. Stat. S 148.91 and 7 MCAR SS 10.001-10.009. An employee of an applicant may not be an endorser of that applicant. ~~An endorser must have firsthand knowledge of the area of competency endorsed~~ A person who has not observed the work of the applicant in the professional environment of the applicant may not be an endorser of the applicant. A current member of the board may not be an endorser.

An applicant who has not received sufficient endorsements

~~on a stated area of competence~~ may submit the names of additional endorsers ~~or an amended application with the area of competence deleted~~.

I. Adding areas of competence. At any time, a licensee may add an area of competence ~~at any time if the added area of competence is documented as required in the application for licensure~~ in which proficiency has been gained by submitting to the board a written statement of the area of competence which is accompanied by a notarized affirmation that the statement is true and correct to the best knowledge and belief of the licensee.

HE 3- FofF

J. Inquiries regarding applicants. The board may make inquiries when there is a question as to whether an applicant meets the requirement of E.54.

K. Denial of licensure. An applicant who fails to meet all the requirements in E. shall be denied licensure. An applicant who is denied licensure shall be informed in writing of the denial and the reason for it. An application submitted following denial is a new application which must be accompanied by the current licensure application fee.

7 MCAR S 10.003 Educational requirements for licensure.

A. Educational requirement for licensed consulting psychologists. The educational requirement for licensure as a licensed consulting psychologist is a doctorate obtained in an institution accredited by a regional accrediting association to grant a doctorate~~, offered through~~ with a major in psychology. The major must be:

1. offered through a department of psychology; ~~or~~

2. ~~an academic department or unit other than a department of psychology, with~~ be a major ~~such as~~ in educational psychology, child psychology, counseling psychology, or industrial psychology~~.~~

HE 44 see also CHE 5/19

? are these the only types of psych offered by depts. of Psych.

~~B. Other doctorates accepted. The board shall accept a doctorate other than those listed in A. if:~~

~~1. the doctorate is obtained from an institution accredited by a regional accrediting association to grant the~~

~~doctorate~~; or

~~2.~~ 3. if the major is offered through an academic department or unit other than a department of psychology and its title is not listed in 2., the dissertation for the degree ~~is~~ must be psychological in topic and method according to the ~~following~~ criteria in a. and b., and the coursework leading to the degree must meet the criteria in c.:

a. The topic ~~shall~~ must fall within the list of psychological topics included in the table of contents of all editions of the "Annual Review of Psychology," up to and including the 1981 edition, and ~~shall~~ must have the potential to directly impact upon the body of knowledge in the field of psychology~~;~~ ~~and~~.

b. The method shall include at least one of the following: experimental manipulation of psychological variables; correlational or statistical method, using data collected by observations made by oneself or other persons; case study; creation of theory based on analysis of data obtained by oneself or other persons, including conceptual analysis; introspection; or psychohistory~~;~~ ~~and~~.

~~3.~~ c. For a person seeking licensure on the basis of a doctorate earned before January 1, 1984, at least half of the number of credits completed for the degree, excluding dissertation credits, must have been successfully earned in graduate courses which are predominantly psychological in content. For any other person, at least two-thirds of the number of credits completed for the degree, excluding dissertation credits, must have been successfuly earned in graduate courses which are predominantly psychological in content. Credits for postdoctoral course work earned within five years after receiving the doctorate may be used in part to meet ~~the requirements in~~ 3 this requirement.

~~c.~~ B. Educational requirement for licensed psychologists. The educational requirement for licensure as a licensed psychologist is a master of arts or science degree, including a master equivalent in a doctoral program, obtained in an

institution accredited by a regional accrediting association to grant a doctorate or a master of arts or science degree~~, offered through~~ with a major in psychology. The major must be:

1. offered through a department of psychology; ~~or~~

2. ~~an academic department or unit other than a department of psychology, with~~ be a major ~~such as~~ in educational psychology, child psychology, counseling psychology or industrial psychology~~.~~; or

~~D. Other degrees accepted. The board shall accept a master of arts or science degree other than those listed in C. if:~~

~~1. the degree is obtained from an institution accredited by a regional accrediting association to grant a doctorate or a master of arts or science degree;~~

~~2.~~ 3. if the major is offered through a department or unit other than a department of psychology and its title is not listed in 2., the thesis, if it is a degree requirement, ~~is~~ must be psychological in topic and method according to the criteria listed in ~~B.2.~~ A.3.a. and A.3.b.; and

~~3.~~ at least two-thirds of the number of credits required for the degree, excluding thesis credits, must have been successfully earned in graduate courses which are predominantly psychological in content. Credits for post-master course work earned within five years after receiving the degree may be used in part to meet ~~the requirements in~~ 3 this requirement.

~~E.~~ C. Accreditation. For a degree to meet the standards for licensure, the institution must be accredited at the time the degree is granted.

~~F.~~ D. Degrees from foreign institutions. A degree from a foreign institution shall be accepted if the institution meets standards required for accreditation of a domestic institution.

7 MCAR S 10.004 Professional employment.

A. Employment requirements. To meet the requirements for professional employment, the employment of the applicant, which may include voluntary service, must:

1. involve the application of psychological principles in the description, prediction and modification of human behavior

and emotional adjustment, including but not restricted to such practices as: psychological assessment, including such functions as intelligence, personality, aptitude, and attitude appraisal; psychological treatment of persons who have adjustment problems; psychological counseling and guidance; conducting behavioral research; and teaching of psychology;

2. be under the supervision of a licensee of the board or a person whose education and experience meet the standards for licensure imposed by Minn. Stat. S 148.91 and 7 MCAR SS 10.001-10.009 and who ~~shall be~~ is competent in the areas of practice in which supervision is provided. The private practice of psychology for a fee in this state is not allowed prior to licensure and shall not be credited, except that a licensed psychologist seeking licensure as a licensed consulting psychologist may engage in the private practice of psychology for a fee and need not require supervision ~~unless the licensee is gaining competence in an area other than those already documented~~. The private practice of psychology in another state shall be credited only if engaged in after licensure by that state; and

FofF 12

3. be performed competently as judged by the supervisor.

B. Employment criterion. Employment shall include tasks and judgments which depend upon the application of skill or knowledge acquired during formal education in psychology.

C. Delegation of training. The supervisor may not transfer supervisory responsibility. The supervisor may delegate training in specific skills to specialists who need not be psychologists.

D. Degree requirement experiences. Experiences which are required as preparation for the master or doctoral degree, such as ~~pre-degree~~ internships, assistantships, associateships, clerkships and practica, may not be offered to satisfy the employment requirement for either level of licensure.

HE 48

E. Completion of degree requirements. Professional experience acquired by the applicant between the time all requirements for the degree were met and the time of conferral

of the degree may be credited toward the employment requirements for licensure if the date of completion of all degree requirements is verified directly to the board in writing by a responsible academic or administrative official.

F. Time requirement. To meet employment requirements, the applicant shall have completed 24 months of full-time employment, or their equivalent in part-time employment, under supervision as described in A., with regularly scheduled vacation periods and holidays considered as days worked. Full-time employment consists of at least 1800 hours during a 12-month period.

G. Part-time employment credited. Part-time employment shall be credited by the board on a pro-rated basis, if the part-time employment consists of at least ~~a three-month, quarter-time~~ ten hours per week for a period of 12 consecutive weeks at ~~any particular~~ the same agency or facility.

7 MCAR S 10.005 Examinations.

A. Announcement of examination. The date of the written, objective part of the examination shall be announced by the board. The announcement shall establish time, place, the amount of the examination application fee and the date by which documentation for the application for admission to examination must be completed to qualify for the announced examination.

B. Two parts to examination. The examination is composed of two parts:

1. a written, objective part designed and scored by a professional examination service; and

2. an oral part conducted by members of the board or its duly authorized representatives after the application for licensure has been accepted by the board.

C. Notification to admitted applicants. The board shall notify in writing each applicant who has been admitted to either part of the examination. The notice shall state the date and time the applicant is scheduled to be examined. An applicant who fails to appear at that time shall forfeit the application fee unless within 15 days after that date the applicant submits

a written request for a waiver.

D. Satisfactory performance on examination. In order to qualify for licensure, the applicant must perform satisfactorily on both parts of the examination.

1. An applicant who has performed satisfactorily with respect to the level of licensure sought on the objective part of the examination, either in another state or for another level of licensure, shall be considered as having met the requirements of this rule with respect to the objective part of the examination.

2. An applicant who has performed satisfactorily on the oral part of the examination for another level of licensure shall be considered as having met the requirements of this rule with respect to the oral part of the examination.

E. Reexamination permitted. An applicant determined not to have performed satisfactorily on a part of the examination may reapply and, upon payment of the current applicable fee, be reexamined on the part for which performance was not satisfactory.

7 MCAR S 10.006 Licenses, license renewal.

A. Display of license. A license shall be displayed on the premises of the primary location of the professional practice of the licensee.

B. Term of license. A license is valid for the period beginning with the date on which the license is granted or reissued after suspension and ending two years later on the last day of the month in which the license is granted or reissued. Thereafter the license is renewable for periods of two years, ending with the last day of the month in which the license is granted or reissued.

C. Notice of renewal. At least one month before the renewal date, a renewal notice identifying the amount of the current renewal fee shall be sent to each licensee to the last known address of the licensee in the file of the board. Failure to receive the notice shall not relieve the licensee of the obligation to pay the renewal fee according to D.

.007

D. Renewal deadline. The biennial renewal fee shall be remitted to the board postmarked on or before the last day of the last month during which the license is valid. The renewal fee shall accompany a completed notarized renewal application including an affirmation that the statements on the renewal application are true and correct to the best knowledge and belief of the licensee.

E. Late fee. An applicant for renewal shall pay the current late fee as well as the current renewal fee if the application for renewal is postmarked after the last day of the last month during which the license is valid.

F. Grounds for suspension of license. Failure to pay the renewal fee and late fee within 60 days after the last day of the last month during which the license is valid is a sufficient reason to suspend the license to engage in the private practice of psychology in this state. A license may be reissued following suspension only upon payment of the full biennial renewal fee and full biennial late fee for each biennium or portion of a biennium following expiration of the license.

G. Voluntary termination. A licensee may terminate the license by notifying the board in writing. The notification must be received by the board prior to suspension of the license for failure to renew. A former licensee may be licensed again only after complying with all laws and rules required of applicants for examination and licensure.

H. Time limit on license of nonresident. The board shall not renew the license of a licensee who has neither lived nor practiced within the state for a period of more than ten years.

7 MCAR S 10.007 Collaboration.

A. Collaborator provided with summary. An applicant for licensure as a licensed psychologist shall provide the collaborator with a brief summary of the training, experience, and stated areas of professional competence of the applicant.

B. Collaboration report. The nature and frequency of collaborative contacts shall be mutually determined by the collaborators. At the time of license renewal a licensed

psychologist who is or has been engaged in the private practice of psychology since licensure or previous renewal shall report on the nature and frequency of collaborative contacts during the preceding two years.

C. Collaboration report not required in certain cases. A licensed psychologist who has not engaged in the private practice of psychology since licensure or previous renewal may meet the requirement in B. by stating that fact on the renewal form.

D. Consultation required. Formal collaboration is required only of licensed psychologists. Consultation is required of all licensees as indicated in 7 MCAR S 10.008 B.3. and E.9.

7 MCAR S 10.008 Rules of conduct.

A. Scope and purpose.

1. The rules of conduct constitute the code of ethics as required by Minn. Stat. S 148.98 and apply to the conduct of all licensees and applicants, including conduct during the period of education, training and employment which is required for licensure.

2. The rules of conduct constitute the standards against which the professional conduct of a psychologist is measured.

3. A violation of the rules of conduct constitutes unprofessional or unethical conduct and is a sufficient reason for disciplinary action or denial of licensure.

4. ~~The rules of conduct are not all-inclusive and do not specify all grounds for disciplinary action or denial of licensure.~~ The 1981 revision of 'The Ethical Principles of Psychologists' published by the American Psychological Association ~~may~~ shall be used as an aid in resolving any ambiguity which may arise in the interpretation of the rules of conduct. However, in a conflict between the rules of conduct and the ethical principles, the rules of conduct shall prevail.

B. Competence.

1. A psychologist shall limit practice to the areas of competence ~~for~~ in which proficiency has been gained through education and training or experience ~~have been gained~~ and which

have been stated in writing to the board by the psychologist ~~and accepted by the board as stated in 7 MCAR § 10.002 E.3.~~ HE 32 + 68

2. A psychologist shall accurately represent areas of competence, education, training, experience, and professional affiliations of the psychologist to the board, the public and colleagues.

3. In cases in which a new service, technique, or specialty is developing ~~and in which supervision is not available~~, a psychologist shall engage in ongoing consultation with other psychologists or similar professionals as skills are developed in the new area and shall seek continuing education which corresponds to the new area. A client whose treatment involves the use of a newly developing service, technique, or specialty shall be informed of its innovative nature and of known risks associated with it. HE 69

4. A psychologist shall recognize ~~the~~ that there are other professional, technical, and administrative resources available to ~~the client~~ clients and ~~refer the client to them~~ make referrals to those resources when it is in the best interests of ~~the client~~ clients to be provided with alternative or complementary services. HE 71

C. Protecting the privacy of clients.

1. A psychologist shall safeguard the private information obtained in the course of practice, teaching, or research. With the exceptions listed in 2., 3., 4., 5., and 10., private information is disclosed to others only with the informed written consent of the client.

2. Private information may be disclosed without the informed written consent of the client when the psychologist determines that disclosure is necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on the client or another person. In such case the private information is to be disclosed only to appropriate professional workers, public authorities, the potential victim or the family of the client.

3. In any situation in which ~~a person requests that the~~ HE 73

services of a psychologist ~~be provided to a third~~ are requested by one party for another party, the psychologist shall inform both the requester and the ~~third party~~ receiver of the services of the responsibility of the psychologist regarding the privacy of any information gained in the course of rendering the services. HE 73

4. At the beginning of a professional relationship, a psychologist shall inform a client who is a minor ~~shall be informed at the beginning of the professional relationship concerning~~ of the ~~limitation~~ limit the law imposes on the right of privacy of a minor with respect to communications of a minor with a psychologist. HE 74

5. A psychologist shall limit access to client records and shall inform every person associated with the agency or facility of the psychologist, such as a staff member, student, volunteer, or community aide, that access to client records shall be limited only to the psychologist with whom the client has a professional relationship, a person associated with the agency or facility whose duties require access, and a person authorized to have access by the informed written consent of the client.

6. A psychologist shall instruct the staff to inquire of clients and to comply with the ~~request~~ wishes of a ~~client~~ clients regarding ~~the individual~~ to whom and where statements for services are to be sent. HE 75

7. Case reports or other clinical materials used in teaching, professional meetings or publications shall be disguised so that no identification of the individual occurs.

8. Diagnostic interviews or therapeutic sessions with a client may be observed or electronically recorded only with the informed written consent of the client.

9. A psychologist shall continue to maintain as private information the records of a client ~~as private information~~ after the professional relationship between the psychologist and the client has ceased.

10. A psychologist may release private information upon

court order or to conform with state or federal law, rule or regulation.

11. In the course of professional practice, a psychologist shall not violate any law~~, the violation of which involves the practice of psychology,~~ concerning the reporting of abuse of children and vulnerable adults.

D. Impaired objectivity.

1. A psychologist ~~may~~ must not undertake or continue a professional relationship with a client in which the objectivity of the psychologist ~~may~~ is or would be impaired ~~because of an interpersonal relationship such~~ as due to a familial, social, emotional, economic, supervisory, or political interpersonal relationship. A psychologist whose objectivity becomes impaired because of the development of ~~an~~ a listed interpersonal relationship during a professional relationship with a client shall notify the client orally and in writing that the psychologist shall no longer see the client professionally, ~~take steps to terminate~~ begin termination of the professional relationship, and assist the client in obtaining services from another professional.

2. A psychologist ~~may~~ must not undertake or continue a professional relationship with a client in which objectivity or effectiveness is or would be impaired ~~because of a personal problem of the psychologist such~~ as due to the divorce, grief reaction, severe health problem, or chemical abuse or dependency of the psychologist. A psychologist whose objectivity or effectiveness becomes impaired during a professional relationship with a client because of such a personal problem shall notify the client orally and in writing that the psychologist shall no longer see the client professionally, ~~take steps to terminate~~ begin termination of the relationship, and assist the client in obtaining services from another professional.

3. A psychologist shall neither request nor authorize a client to solicit other business on behalf of the psychologist.

E. Client welfare.

HE 76

HE 77

HE 78

HE 78

This seems very limiting. List of problems is the list exclusive of others?

HE 79

1. A client has the right to have and a psychologist has the responsibility to provide, on request, a nontechnical explanation of the nature and purpose of the psychological procedures to be used and the results of tests administered to the client. The psychologist shall establish procedures to be followed if the explanation is to be provided by another person under the direction of the psychologist.

2. A psychologist shall display prominently on the premises ~~of the primary location~~ of the professional practice or make available as a handout the statement of areas of competence submitted to the board and the bill of rights of clients, including a statement that consumers of psychological services offered by psychologists licensed by the State of Minnesota have the right:

a. to expect that a psychologist has met the minimal qualifications of training and experience required by state law;

b. to examine public records maintained by the board of psychology which contain the credentials of a psychologist;

c. to obtain a copy of the rules of conduct from the ~~Document Section~~ State Register and Public Documents Division of the Department of Administration, 117 University Avenue, St. Paul, MN 55155;

d. to report complaints to the board of psychology, 717 Delaware Street, S.E., Room 343, Minneapolis, MN 55414;

e. to be informed of the cost of professional services before receiving the services;

f. to privacy as defined by rule and law;

g. to be free from being the object of discrimination on the basis of race, religion, gender or other unlawful category while receiving psychological services.

3. A psychologist shall consider the client as an individual and shall not impose on the client any stereotypes of behavior, values or roles related to age, gender, religion, race, disability, nationality or sexual preference which would interfere with the objective provision of psychological services to the client.

4. A psychologist shall disclose to the client ~~value~~ preferences of the psychologist for choice of treatment or outcome and shall present other ~~available~~ options for the consideration or choice of the client.

5. A psychologist who becomes aware of ~~such~~ a divergence of interests, values, attitudes or biases between a client and the psychologist ~~that~~ sufficient to impair their professional relationship ~~may be impaired~~ shall so inform the client ~~and shall have the right to~~. Either the client or the psychologist may terminate the relationship.

6. A psychologist shall ~~inform in writing~~ terminate a professional relationship with a client ~~who~~ when the client is not ~~benefiting~~ likely to benefit from continued professional services~~, take steps to terminate the professional relationship~~ or the services are unneeded. The psychologist shall inform the client orally and in writing of the termination and assist the client in obtaining services from another professional.

7. ~~When requested by a client,~~ A psychologist shall make a prompt and appropriate referral of the client to another professional when requested to do so by the client.

8. A psychologist shall not engage in sexual intercourse or other physical intimacies with a client, nor in any verbal or physical behavior which is sexually seductive or sexually demeaning to ~~a~~ the client. Physical intimacies include handling of the breasts or genital areas of either sex by either the psychologist or the client.

9. A psychologist shall ~~make an attempt to determine~~ ask a client whether ~~a~~ the client has had or continues to have a professional relationship with another ~~psychologist~~ mental health professional. If it is determined that the client had or has a professional relationship with another ~~psychologist~~ mental health professional, the psychologist shall ~~attempt~~, to the extent possible and consistent with the wishes and best interests of the client, ~~to~~ coordinate ~~psychological~~ services for that client with the other ~~psychologist~~ mental health professional.

10. A psychologist shall file a complaint with the board when the psychologist has reason to believe that another psychologist is or has been engaged in conduct which violates C.11., failure to report suspected abuse of children or vulnerable adults, or E.8., sexual contact with a client. This ~~rule shall~~ requirement to file a complaint does not apply when the belief is based on information obtained in the course of a professional relationship with a client who is the other psychologist. Nothing in this rule relieves a psychologist from the duty to file a report as required by Minn. Stat. S 626.556 or 626.557, reporting abuse of children and vulnerable adults. HE 96

11. A psychologist informed of conduct of another psychologist which appears to be in violation of any rule of conduct other than those listed in 10. may directly communicate with or seek to counsel the other psychologist or may file a complaint directly with the board.

12. A psychologist shall, upon request, provide information regarding the procedure for filing a complaint with the board and may, upon request, assist with filing a complaint.

F. Tests.

1. A test or automated test interpretation service offered for use by qualified professionals shall be accompanied by a manual or other readily available published information which fully describes the development of the test or service, the rationale, evidence of validity and reliability and characteristics of the normative population. The psychologist shall explicitly state the purposes and application for which the test is recommended and identify special qualifications required to administer and interpret it properly. The psychologist shall ensure that the advertisements for the test are factual, descriptive, and not evaluative.

2. A psychologist ~~may~~ must not offer psychological tests for commercial publication ~~only~~ to publishers who have presented tests in ~~a professional~~ an unprofessional manner and who have distributed them ~~only~~ to other than qualified professional users. HE 98

3. A report of the results of a test shall include ~~any~~

relevant reservations or qualifications regarding validity or reliability which a psychologist may have because of the testing circumstances or any deficiencies of the test norms for the individual tested, and how the psychologist has applied those reservations and qualifications to the score of the individual. HE 99

4. A test result or interpretation regarding an individual is private information.

G. Public announcement of services.

1. Public statements shall not include false or misleading information. They may describe fees, professional qualifications and services provided, but they may not evaluate services as to their quality or uniqueness and may not contain testimonials by quotation or implication.

2. A psychologist may not misrepresent directly or by implication professional qualifications such as education, experience or areas of competence. A psychologist may not misrepresent directly or by implication affiliations, purposes and characteristics of institutions and organizations with which the psychologist is associated.

H. Fees and statements.

1. ~~A client has the right to ask about and be informed by a psychologist about the cost of professional services before the services are provided~~ A psychologist shall, when asked by a client about the cost of professional services, disclose the cost of services provided. HE 101

2. A psychologist shall itemize fees for all services for which the client or a third party is billed and make the itemized statement available to the client. The statement shall identify at least the date on which the service was provided, the nature of the service, the name of the person providing the service, and the name of the person who is professionally responsible for the service.

3. A psychologist shall not directly or by implication misrepresent to the client or to a third party billed for services the nature of the services, the extent to which the psychologist has provided the services, or the person who is

professionally responsible for ~~directing~~ the services provided ~~by the psychologist~~.

4. A psychologist shall not claim a fee for services unless the psychologist is either the direct provider of the services or the person who is professionally responsible for the provision of the services and under whose direction the ~~psychologist provides the~~ services were provided.

5. No commission, rebate, or other form of remuneration may be given or received by a psychologist for the referral of clients for psychological services.

6. Except as provided by law relating to business organizations, a psychologist may not divide fees with another professional without the informed consent of the client and unless the division is in direct proportion to the services performed and the responsibility assumed by each professional.

I. Practicing without a license. A psychologist shall not aid or abet an unlicensed person in engaging in the private practice of psychology. A psychologist who supervises a person preparing for the professional practice of psychology according to Minn. Stat. S 148.97, subd. 3, clause (2), is not ~~aiding or abetting an unlicensed~~ in violation of this rule if the person ~~in~~ is not engaging in the private practice of psychology.

J. Welfare of students and research subjects. A psychologist shall protect the welfare of psychology students and research subjects and shall accord the students and human research subjects the client rights listed in C. and E., except for C.4., C.6., E.4., E.6., and E.9.

K. Violation of law. A psychologist shall not violate any law in which the facts giving rise to the violation involve the provision of psychological services. In determining whether a violation involves the provision of psychological services the board shall consider:

1. the nature and seriousness of the violation the psychologist is alleged to have committed;

2. the relationship of the alleged violation to the purposes of regulating the practice of psychology; and

3. the relationship of the violation to the ability, capacity, fitness or integrity of the psychologist in rendering psychological services.

In any board proceeding alleging a violation of this rule the proof of a conviction of a crime shall constitute proof of the underlying factual elements ~~needed to constitute a violation of this rule~~ necessarily underlying that conviction.

7 MCAR S 10.009 Waivers and variances.

A. Waivers; application. A licensee or applicant for licensure may apply to the board for a time-limited waiver of any rule except for any part of a rule which incorporates a statutory requirement. The waiver ~~may~~ shall be granted if ~~the licensee or applicant provides evidence that~~:

1. the rule in question does not address a problem of significance to the public in relation to the practice of the licensee or application of the applicant;

2. adherence to the rule would impose an undue burden on the licensee or applicant; and

3. the granting of a waiver will not adversely affect the public welfare.

B. Waivers; renewal, reporting and revocation. A waiver ~~may~~ shall be renewed upon reapplication according to the procedure described in A. if the circumstances justifying its granting continue to exist. Any licensee who is granted a waiver shall immediately notify the board in writing of any material change in the circumstances which justify its granting. A waiver ~~may~~ shall be revoked if a material change in the circumstances which justify its granting occurs.

C. Variances; application. A licensee or applicant may apply to the board for a time-limited variance from any rule except for any part of a rule which incorporates a statutory requirement. A variance ~~may~~ shall be granted if the licensee or applicant specifies alternative practices or measures equivalent to or superior to those prescribed in the rule in question and provides evidence that:

1. the rationale for the rule in question can be met or

exceeded by the specified alternative practices or measures;

2. adherence to the rule would impose an undue burden on the licensee or applicant; and

3. the granting of the variance will not adversely affect the public welfare.

D. Variances; compliance. Any licensee or applicant who is granted a variance shall comply with the alternative practices or measures specified in the application for the variance.

E. Variance; renewal, reporting, and revocation. A variance ~~may~~ shall be renewed upon reapplication according to the procedure described in C. if the circumstances justifying its granting continue to exist. Any licensee or applicant who has been granted a variance shall immediately notify the board of any material change in circumstances which justify the granting of the variance. A variance ~~may~~ shall be revoked if a material change in the circumstances which justify its granting occurs.

HE 112

HE 112

F. Burden of proof. The burden of proof is upon the licensee or applicant to demonstrate to the board that the requirements cited in A. and C. have been met.

G. Statement of reasons. The minutes of any meeting at which a waiver or variance is granted, denied, renewed or revoked shall include the reason for the action.

HE 110

Repealer. Rules Psych 2, Psych 5, Psych 8, Psych 10, Psych 11, Psych 12, and Psych 13 are repealed.

OFFICE OF THE REVISOR OF STATUTES

AR0150
6/24/82

## Certificate of Approval of Adopted Rules

Agency: Board of Psychology

Rule Numbers: 7 MCAR SS 10.001-10.009

Rule Title: Adopted Rules Relating to Rules of Conduct and Licensure of Psychologists

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:
None except those permitted under statute

The attached rules are approved as to form, subject to the following editorial changes:

7 MCAR S 10.003 A., introductory paragraph, page 5, line 27: Remove "be" between "must" and ":" and insert in page 5, line 28, between "1." and "offered".

7 MCAR S 10.003 B., page 7, line 3: Remove "be" between "must" and ":" and insert in page 7, line 4, between "1." and "offered".

APPROVED AS TO LEGALITY
July 15 1982
WARREN SPANNAUS, ATTORNEY GENERAL
BY Ted R. Mondale
SPECIAL ASSISTANT ATTORNEY GENERAL

Steven C. Cross
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Roger J. Helder, Jr.

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STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 16 1982
2:57 P.M.
Joan Anderson Growe
Secretary of State

Rules as Proposed

Psych 1 7 MCAR S 10.001 General definitions.

~~(a) "Law" means Minnesota Statutes 1973, Sections 148.88 through 148.99, creating a Board to license and regulate the private practice of psychology and the use of the title "psychologist". For the purposes of 7 MCAR SS 10.001-10.009, the following terms have the meanings given them.~~

~~(b)~~ A. Board. "Board" means the Minnesota ~~State~~ Board of ~~Examiners of Psychologists~~ Psychology.

~~(c) Licenses Issued. Licensed Psychologist and Licensed Consulting Psychologist.~~

~~(d) "Original license", when used relative to renewal of lapsed license, shall mean the license which has lapsed.~~

~~(e) "Year", when used in connection with fees for initial license, means the period between the issuance of the initial license and the last day of the twelfth calendar month subsequent to the date of issuance.~~

~~(f) "Waiver" is the granting of a license without examination, conditions for which are defined in the Law.~~

B. Collaboration, collaborative contact. "Collaboration" or "collaborative contact" means consultation at least once each year between a licensed psychologist and a licensed consulting psychologist with regard to any issues arising in the practice of psychology. "Collaboration" or "collaborative contact" does not mean supervision and does not involve the supervisory responsibilities defined in I.

C. Area of competence. "Area of competence" means a specific psychological service, technique, method, or procedure in which the psychologist through education, training, or experience has gained sufficient proficiency to be able to provide it to the public with little or no supervision.

D. Informed written consent. "Informed written consent" means a written statement signed by the person making the statement which authorizes a psychologist to engage in activity which directly affects the person signing the statement. The

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statement must include a declaration that the person signing the statement has been told of and understands the purpose of the authorized activity.

E. Licensee. "Licensee of the board" or "licensee" means either a licensed psychologist or a licensed consulting psychologist.

F. Private information. "Private information" means any information, including client records, revealed during a professional relationship between a psychologist and a client.

G. Professional relationship. "Professional relationship" means the association between a psychologist and a person or entity for whom psychological services are sought which exists when the psychologist performs for that person or entity any of the functions described in Minn. Stat. S 148.89, subd. 1.

H. Psychologist. "Psychologist" means a licensee of the board.

I. Supervision. "Supervision" means taking full professional responsibility for training, work experience, and performance in the practice of psychology of a supervisee, including planning for and evaluation of the work product of the supervisee, and including face-to-face contact between the supervisor and supervisee in at least ten separate hourly sessions per quarter.

J. Test. "Test" means any instrument, device, survey, questionnaire, technique, scale, inventory, or other process which is designed or constructed for the purpose of measuring, evaluating, assessing or describing personality, behavior, traits, intelligence, aptitudes, attitudes, skills, values, interests, ability, or other psychological or emotional characteristics of individuals.

K. Variance. "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

L. Waiver. "Waiver" means board authorized permission not to comply with a rule.

7 MCAR S 10.002 General requirements for licensure.

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A. Licensure process. The process of licensure by the board is divided into two separate parts:

1. admission to examination; and

2. admission to licensure.

B. Requirements for admission to examination. In order to be admitted to examination an applicant must:

1. file with the board a completed notarized application for admission to examination which includes an affirmation that the statements made on the application are true and correct to the best of the knowledge and belief of the applicant, and which is accompanied by the current nonrefundable examination application fee;

2. provide for transcripts of all graduate work, including verification of the degree granted, to be certified directly to the board from the institution granting the degree; and

3. for an application based upon the equivalent of a master of arts or science degree in a doctoral program, provide for that equivalency to be verified in writing directly to the board by an official of the institution attended.

C. Admission to examination. An applicant shall be admitted to the first regularly scheduled objective part of the examination occurring 40 days or more after the applicant has met the requirements of B., unless admission is denied under D.

D. Denial of admission to examination. Admission to examination shall be denied to an applicant who has not met the education requirements in 7 MCAR S 10.003. An applicant who is denied admission to examination shall be informed in writing of the denial and the reasons for it. An application submitted after denial is a new application which must be accompanied by the current examination application fee.

E. Requirements for licensure. To be eligible for licensure the applicant must meet the following requirements in addition to those in B.:

1. file with the board a notarized application for licensure, which includes an affirmation that the statements

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made in the application are true and correct to the best knowledge and belief of the applicant and which is accompanied by the current licensure application fee;

2. have completed two years of post degree employment as stated in G. and 7 MCAR S 10.0004;

3. state at least one area of competence and have written endorsements from at least two qualified persons, as stated in H., for each area of competence stated;

4. have performed satisfactorily on both parts of the examination listed in 7 MCAR S 10.005;

5. be of good moral character and not have engaged in conduct prohibited by 7 MCAR S 10.008; and

6. for an application for licensure as a licensed psychologist, file an agreement to collaborate signed by a licensed consulting psychologist.

F. Concurrent applications. An applicant may file both the application for admission to examination and the application for licensure at the same time if the employment requirements in G. and 7 MCAR S 10.004 have been met.

G. Supervised employment. The application for licensure shall include the setting, nature and extent of the supervised employment, the time period involved, the number of hours per week engaged in professional duties, and the name and qualifications of each supervisor.

H. Requirements for endorsement. To qualify as an endorser a person listed on the application for licensure must be a licensee of the board, a person who is licensed to practice psychology by another state whose licensure standards are similar to the standards of this state, or a person whose education and experience meet the licensure standards of Minn. Stat. S 148.91 and 7 MCAR SS 10.001-10.009. An employee of an applicant may not be an endorser of that applicant. An endorser must have firsthand knowledge of the area of competency endorsed. A current member of the board may not be an endorser.

An applicant who has not received sufficient endorsements on a stated area of competence may submit the names of additional

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endorsers or an amended application with the area of competence deleted.

I. Adding areas of competence. A licensee may add an area of competence at any time if the added area of competence is documented as required in the application for licensure.

J. Inquiries regarding applicants. The board may make inquiries when there is a question as to whether an applicant meets the requirement of E.5.

K. Denial of licensure. An applicant who fails to meet all the requirements in E. shall be denied licensure. An applicant who is denied licensure shall be informed in writing of the denial and the reason for it. An application submitted following denial is a new application which must be accompanied by the current licensure application fee.

~~Psych 3~~ 7 MCAR S 10.003 Educational ~~Qualifications~~ requirements for ~~Licensing~~ licensure.

~~(a) The Doctorate Degree in Psychology shall mean a Doctorate Degree offered by a Department of Psychology~~ A. Educational requirement for licensed consulting psychologists. The educational requirement for licensure as a licensed consulting psychologist is a doctorate obtained in an institution accredited by a regional accrediting association to ~~offer a Doctorate Degree.~~ grant a doctorate, offered through:

1. a department of psychology; or

2. an academic department or unit other than a department of psychology, with a major such as educational psychology, child psychology, counseling psychology, or industrial psychology.

~~(b)~~ B. Other doctorates accepted. The board shall ~~consider Doctorate Degrees offered by academic units~~ accept a doctorate other than ~~a Department of Psychology provided~~ those listed in A. if:

~~(1) The aforementioned academic unit is in, or formally connected with,~~ 1. the doctorate is obtained from an institution accredited by a regional accrediting association to ~~offer the Doctorate Degree, and,~~ grant the doctorate;

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~~(2)~~ 2. the dissertation for the degree is~~, in the judgment of the Board,~~ psychological in topic and method ~~and content, and,~~ according to the following criteria:

a. the topic shall fall within the list of psychological topics included in the table of contents of all editions of the "Annual Review of Psychology," up to and including the 1981 edition, and shall have the potential to directly impact upon the body of knowledge in the field of psychology; and

b. the method shall include at least one of the following: experimental manipulation of psychological variables; correlational or statistical method, using data collected by observations made by oneself or other persons; case study; creation of theory based on analysis of data obtained by oneself or other persons, including conceptual analysis; introspection; or psychohistory; and

~~(3)~~ 3. for a person seeking licensure on the basis of a doctorate earned before January 1, 1984, at least half of the ~~course~~ number of credits ~~required~~ completed for the degree, excluding dissertation credits, have been successfully earned in graduate courses which are~~, in the judgment of the Board,~~ predominantly psychological in content.

For any other person, at least two-thirds of the number of credits completed for the degree, excluding dissertation credits, have been successfuly earned in graduate courses which are predominantly psychological in content.

~~Such~~ Credits ~~may, in part, be earned in~~ for post-doctoral course work earned within five years after receiving the doctorate may be used in part to meet the requirements in 3.

~~(c)~~ C. ~~The Master's Degree in Psychology is defined as the~~ Educational requirement for licensed psychologists. The educational requirement for licensure as a licensed psychologist is a master of arts or science ~~offered by a Department of Psychology~~ degree, including a master equivalent in a doctoral program, obtained in an institution accredited by a regional accrediting association to ~~offer the master's~~ grant a doctorate

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or a master of arts or science degree, offered through:

1. a department of psychology; or

2. an academic department or unit other than a department of psychology, with a major such as educational psychology, child psychology, counseling psychology or industrial psychology.

~~(d)~~ D. Other degrees accepted. The board shall ~~consider Master's Degrees offered by academic units~~ accept a master of arts or science degree other than a ~~Department of Psychology~~ provided those listed in C. if:

~~(1)~~ 1. the degree is obtained from an ~~academic unit in an~~ institution accredited by a regional accrediting association to ~~offer~~ grant a doctorate or a master ~~or doctoral~~ of arts or science degree ~~in psychology, or an academic unit that is similar, in the judgment of the Board, to a department of psychology with respect to its faculty, degree programs, and curriculum, provided that said academic unit is accredited by a regional accreditation association to offer the master's or doctoral degree. In either case, it shall be further required that:~~;

2. the thesis, if it is a degree requirement, is psychological in topic and method according to the criteria listed in B.2.; and

~~(2)~~ 3. at least two-thirds of the number of credits required for the degree, excluding ~~dissertation~~ thesis credits, have been successfully earned in graduate courses which are ~~in the Board's judgment,~~ predominantly psychological in content.

Credits for post master course work earned within five years after receiving the degree may be used in part to meet the requirements in 3.

~~(e) The "equivalent of a master's degree in a doctoral program with a major in psychology" shall meet the same criteria as specified in both sections (d-1) and (d-2) above.~~

~~(f) The accreditation of the institution(s) from which the applicant received his/her degree(s) shall be evaluated by the Board with respect to the time of the applicant's affiliation with such institution(s). The same~~

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~~shall apply to other institutional aspects stipulated in Section Psych 3.~~

E. Accreditation. For a degree to meet the standards for licensure, the institution must be accredited at the time the degree is granted.

~~(g)~~ F. Degrees from foreign institutions. A degree from a foreign ~~university will~~ institution shall be accepted ~~provided that, in the Board's judgment,~~ if the institution meets standards ~~equivalent to those held by~~ required for accreditation of a domestic ~~institutions accredited by a regional accreditation association, and other provisions of this section (Psych 3) are met~~ institution.

~~Psych 4~~ 7 MCAR S 10.004 Professional ~~Experience~~ employment.

~~(a)~~ A. Employment requirements. To meet the requirements for "professional ~~experience", an applicant's experience~~ employment, the employment of the applicant must:

~~(1) Have involved~~ 1. involve the application of psychological principles in the description, prediction and modification of human behavior and emotional adjustment, including but not restricted to such practices as: psychological assessment, including such functions as intelligence, personality, aptitude, and attitude appraisal; psychological treatment of persons who have adjustment problems; psychological counseling and guidance; conducting behavioral research; and teaching of psychology~~, and~~;

2. be under the supervision of a licensee of the board or a person whose education and experience meet the standards for licensure imposed by Minn. Stat. S 148.91 and 7 MCAR SS 10.001-10.009 and who shall be competent in the areas of practice in which supervision is provided. The private practice of psychology for a fee in this state is not allowed prior to licensure and shall not be credited, except that a licensed psychologist seeking licensure as a licensed consulting psychologist may engage in the private practice of psychology for a fee and need not require supervision unless the licensee

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is gaining competence in an area other than those already documented. The private practice of psychology in another state shall be credited only if engaged in after licensure by that state; and

~~(2) Have been~~ 3. be performed competently ~~at a professional level~~ as judged by the supervisor.

~~(b)~~ B. ~~As a general criterion, such experience will~~ Employment criterion. Employment shall include tasks and judgments which depend upon the application of skill ~~and/or~~ or knowledge ~~made available to the applicant~~ acquired during ~~his/her~~ formal education in psychology.

~~(c) No experience that is judged by the Board to be of a primarily clerical, routine, or repetitive nature will fulfill the general criterion specified in (b) above.~~ C. Delegation of training. The supervisor may not transfer supervisory responsibility. The supervisor may delegate training in specific skills to specialists who need not be psychologists.

~~(d) No experience which is offered to satisfy one provision of the law may be simultaneously offered to satisfy any other provisions of the law. For example, experiences~~ D. Degree requirement experiences. Experiences which are ~~part of the~~ required as preparation for the ~~Ph.D.~~ master or doctoral degree ~~will be applicable only to the "doctorate degree requirements"~~ and, such as pre-degree internships, assistantships, associateships, clerkships and practica, may not be ~~simultaneously~~ offered to satisfy the ~~"experience"~~ employment requirement for either level of licensure.

~~(e)~~ E. Completion of degree requirements. Professional experience acquired by the applicant between the time ~~he/she fulfilled~~ all requirements for ~~his/her terminal~~ the degree were met and the time of ~~the actual~~ conferral of the degree may be credited toward the ~~experience~~ employment requirements for ~~licensing, provided that~~ licensure if the date of completion of all degree requirements is verified directly to the board in writing by a responsible academic or administrative official. ~~Such verification must come directly to the Board from the~~

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~~academic official.~~

~~(f) No experience of any kind gained prior to the completion of all requirements for the Master's degree in psychology or its equivalent will apply to the provisions of the law.~~

~~(g) Pre-doctoral internship, assistantships, associateships, personal therapy, enrollment in practicum and other experiences that are primarily preparatory to the practice of psychology will not constitute "professional experience".~~

~~(h) In the event that the experience being offered can be considered the performance of some other profession and/or discipline as well as psychology, the Board will consider such experience acceptable if it meets such criteria as, but not limited to, the following:~~

~~(1) The applicant was primarily identified with the title "psychologist" or some variant while obtaining such experience, and,~~

~~(2) The applicant used knowledge and technology acquired during his/her professional education as a psychologist.~~

~~(i) "A year of professional experience" shall mean twelve months, including~~

F. Time requirement. To meet employment requirements, the applicant shall have completed 24 months of full-time employment, or their equivalent in part-time employment, under supervision as described in A., with regularly scheduled vacation periods~~, during which the applicant was employed on a full-time basis~~ and holidays considered as days worked.

~~(1) In the case of academic employment, "year" shall mean the period normally associated with the full-time employment at the employing institution.~~

~~(2)~~ Full-time employment ~~for self-employed applicants shall~~ mean consists of at least 1800 hours during a ~~twelve (12)~~ 12-month period.

~~(3)~~ G. Part-time employment credited. Part-time employment ~~experience credit~~ shall be ~~determined~~ credited by the board on a pro-rated basis, if the part-time employment consists of at



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least a three-month, quarter-time period at any particular agency or facility.

~~Psyeh 6~~ 7 MCAR S 10.005 Examinations.

~~(a) Examination dates will~~ A. Announcement of examination. The date of the written, objective part of the examination shall be announced by the board. The ~~examination schedule will~~ announcement shall establish~~:~~ time~~(s)~~, place~~(s)~~, the amount of the examination application fee, and the ~~final~~ date by which ~~the Board must receive the applicant's completed~~ documentation for the application for ~~licensure form, and other pertinent information and/or instructions~~ admission to examination must be completed to qualify for the announced examination.

B. Two parts to examination. The examination is composed of two parts:

1. a written, objective part designed and scored by a professional examination service; and

2. an oral part conducted by members of the board or its duly authorized representatives after the application for licensure has been accepted by the board.

~~(b) If an~~ C. Notification to admitted applicants. The board shall notify in writing each applicant who has been admitted to either part of the examination. The notice shall state the date and time the applicant is scheduled to be examined. An applicant who fails to appear ~~for the scheduled examination, he/she will~~ at that time shall forfeit ~~his/her~~ the application fee ~~for the examination so scheduled~~ unless ~~he/she provides the Board within fifteen (15)~~ 15 days ~~with an explanation acceptable to the Board~~ after that date the applicant submits a written request for a waiver.

~~(c) Application for any required examination will be denied or deferred if in the Board's judgment, the applicant lacks the required education and/or experience.~~

~~(1) If application for examination is denied or deferred, the applicant shall be notified in writing within thirty (30) days after the Board's action, and shall be apprised of the reasons for the Board's action.~~

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~~(d) The examination will be composed of two (2) sections:~~

~~(1) A written, objective section, and~~

~~(2) An oral examination conducted by the Board or its duly constituted representative(s).~~

~~(3)~~ D. Satisfactory performance on examination. In order to qualify for ~~licensing~~ licensure, the applicant ~~will be required to~~ must perform satisfactorily on ~~the two sections~~ both parts of the examination.

~~(e) The Board will notify the applicant in writing, as soon as possible, of the results of the examination.~~

1. An applicant who has performed satisfactorily with respect to the level of licensure sought on the objective part of the examination, either in another state or for another level of licensure, shall be considered as having met the requirements of this rule with respect to the objective part of the examination.

2. An applicant who has performed satisfactorily on the oral part of the examination for another level of licensure shall be considered as having met the requirements of this rule with respect to the oral part of the examination.

~~(f) Persons~~ E. Reexamination permitted. An applicant determined ~~by the Board~~ not to have performed satisfactorily on a part of the examination may reapply ~~for the next examination by the Board. The Board may at its discretion, require reexamination on any or all parts of the examination~~ and, upon payment of the current applicable fee, be reexamined on the part for which performance was not satisfactory.

~~Psych~~ 7 MCAR S 10.006 Licenses, license renewal.

A. Display of license. A license shall be displayed on the premises of the primary location of the professional practice of the licensee.

B. Term of license. A license is valid for the period beginning with the date on which the license is granted or reissued after suspension and ending two years later on the last day of the month in which the license is granted or reissued.

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Thereafter the license is renewable for periods of two years, ending with the last day of the month in which the license is granted or reissued.

~~A.~~ C. Notice of renewal. At least one ~~(1)~~ month before the renewal date, a renewal notice ~~will~~ identifying the amount of the current renewal fee shall be sent to each ~~license holder~~ licensee to the last known address of the licensee in the ~~Board's~~ file of the board. Failure to receive ~~such~~ the notice shall not relieve the ~~license holder~~ licensee of ~~his/her~~ the obligation to pay the renewal ~~fees in such a manner that they are received by the Board on or before the renewal date~~ fee according to D.

~~B. Renewal fees of seventy-five dollars ($75.00) (biennial)~~

D. Renewal deadline. The biennial renewal fee shall be ~~received by~~ remitted to the board postmarked on or before the ~~end~~ last day of the last month during which the license is valid. The renewal fee shall accompany a completed notarized renewal application including an affirmation that the statements on the renewal application are true and correct to the best knowledge and belief of the licensee.

~~C.~~ E. Late fee. An applicant for renewal shall pay a the current late ~~penalty~~ fee ~~of fifty dollars ($50.00)~~ as well as the current renewal fee if the application for renewal is postmarked after the last day of the last month during which the ~~original~~ license ~~or previous renewal was~~ is valid.

~~1.~~ F. Grounds for suspension of license. Failure to pay the renewal fee and late ~~penalty~~ fee within ~~sixty (60)~~ 60 days after the last day of the last month during which the ~~original~~ license ~~or previous renewal was~~ is valid ~~shall constitute grounds~~ is a sufficient reason to suspend the license to engage in the private practice of psychology in this state. A license may be reissued following suspension only upon ~~a non-prorated~~ payment of the full biennial renewal ~~fees~~ fee and full biennial late ~~penalty fees~~ fee for each biennium or portion of a biennium following expiration of the ~~original~~ license ~~or previous renewal~~.

~~D. A renewed license shall be valid for a period of only two~~



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~~years following the expiration date of the original license or previous renewal, regardless of when fees are received, unless the license is suspended. A license reissued after suspension shall be valid for a period of two years from the date of reissuance of the license.~~

~~E. Licensees~~ G. Voluntary termination. A licensee may~~,~~ ~~upon occasion of renewal of licensure, voluntarily choose to~~ terminate ~~their~~ the license by so notifying the board in writing. ~~Such~~ The notification must be received by the board prior to ~~the Board's~~ suspension of the license for failure to renew. ~~Such individuals~~ A former licensee may be licensed again only after ~~submitting an original application and~~ complying with all laws and rules required of ~~original~~ applicants for ~~initial~~ examination and licensure.

~~F.~~ H. Time limit on license of nonresident. The board ~~will~~ shall not renew the ~~licenses~~ license of ~~psychologists~~ a licensee who ~~have~~ has neither lived nor practiced within the state for a period ~~in excess~~ of more than ten ~~(10)~~ years.

~~Psych 9 7 MCAR S 10.007 Collaboration.~~

~~(a) Applicants applying for a "licensed psychologist" license must specify the person or persons with whom they intend to collaborate if and when they engage in private practice. Such intended collaborators must be persons who are (presently certified consulting psychologists under the old law in the State of Minnesota, or persons who are eligible for the) "licensed consulting psychologist" (license under the present law.) The parenthetical portions of this section expire on July 1, 1975.~~

~~(b) The applicant is responsible for seeing that the designated collaborator(s) completes the form provided for collaborators and returns that form to the Board designating his/her intent to collaborate.~~

~~(c)~~ A. Collaborator provided with summary. An applicant for licensure as a licensed psychologist shall provide the collaborator with a brief summary of the training, experience, and stated areas of professional competence of the applicant.



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B. Collaboration report. The nature and frequency of collaborative contacts shall be mutually determined by the collaborators. At the time of ~~application for~~ license renewal ~~of the license for~~ a licensed psychologist, ~~the applicant and the collaborater(s) will be required to provide the Board in writing evidence of~~ who is or has been engaged in the private practice of psychology since licensure or previous renewal shall report on the nature and ~~type~~ frequency of ~~collaboration that has taken place~~ collaborative contacts during the preceding two ~~(2) year period~~ years.

C. Collaboration report not required in certain cases. A licensed psychologist who has not engaged in the private practice of psychology since licensure or previous renewal may meet the requirement in B. by stating that fact on the renewal form.

D. Consultation required. Formal collaboration is required only of licensed psychologists. Consultation is required of all licensees as indicated in 7 MCAR S 10.008 B.3. and E.9.

7 MCAR S 10.008 Rules of conduct.

A. Scope and purpose.

1. The rules of conduct constitute the code of ethics as required by Minn. Stat. S 148.98 and apply to the conduct of all licensees and applicants, including conduct during the period of education, training and employment which is required for licensure.

2. The rules of conduct constitute the standards against which the professional conduct of a psychologist is measured.

3. A violation of the rules of conduct constitutes unprofessional or unethical conduct and is a sufficient reason for disciplinary action or denial of licensure.

4. The rules of conduct are not all-inclusive and do not specify all grounds for disciplinary action or denial of licensure. The 1981 revision of 'The Ethical Principles of Psychologists' published by the American Psychological Association may be used as an aid in resolving any ambiguity which may arise in the interpretation of the rules of conduct.

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However, in a conflict between the rules of conduct and the ethical principles, the rules of conduct shall prevail.

B. Competence.

1. A psychologist shall limit practice to the areas of competence for which education and training or experience have been gained and which have been stated by the psychologist and accepted by the board as stated in 7 MCAR S 10.002 E.3.

2. A psychologist shall accurately represent areas of competence, education, training, experience, and professional affiliations of the psychologist to the board, the public and colleagues.

3. In cases in which a new service, technique, or specialty is developing and in which supervision is not available, a psychologist shall engage in ongoing consultation with other psychologists or similar professionals as skills are developed in the new area and shall seek continuing education which corresponds to the new area. A client whose treatment involves the use of a newly developing service, technique, or specialty shall be informed of its innovative nature and of known risks associated with it.

4. A psychologist shall recognize the professional, technical, and administrative resources available to the client and refer the client to them when it is in the best interests of the client to be provided with alternative or complementary services.

C. Protecting the privacy of clients.

1. A psychologist shall safeguard the private information obtained in the course of practice, teaching, or research. With the exceptions listed in 2., 3., 4., 5., and 10., private information is disclosed to others only with the informed written consent of the client.

2. Private information may be disclosed without the informed written consent of the client when the psychologist determines that disclosure is necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on the client or another person. In



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such case the private information is to be disclosed only to appropriate professional workers, public authorities, the potential victim or the family of the client.

3. In any situation in which a person requests that the services of a psychologist be provided to a third party, the psychologist shall inform both the requester and the third party of the responsibility of the psychologist regarding the privacy of any information gained in the course of rendering the services.

4. A client who is a minor shall be informed at the beginning of the professional relationship concerning the limitation the law imposes on the right of privacy of a minor with respect to communications of a minor with a psychologist.

5. A psychologist shall limit access to client records and shall inform every person associated with the agency or facility of the psychologist, such as a staff member, student, volunteer, or community aide, that access to client records shall be limited only to the psychologist with whom the client has a professional relationship, a person associated with the agency or facility whose duties require access, and a person authorized to have access by the informed written consent of the client.

6. A psychologist shall instruct the staff to comply with the request of a client regarding the individual to whom statements for services are to be sent.

7. Case reports or other clinical materials used in teaching, professional meetings or publications shall be disguised so that no identification of the individual occurs.

8. Diagnostic interviews or therapeutic sessions with a client may be observed or electronically recorded only with the informed written consent of the client.

9. A psychologist shall continue to maintain the records of a client as private information after the professional relationship between the psychologist and the client has ceased.

10. A psychologist may release private information upon court order or to conform with state or federal law, rule or

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regulation.

11. A psychologist shall not violate any law, the violation of which involves the practice of psychology, concerning the reporting of abuse of children and vulnerable adults.

D. Impaired objectivity.

1. A psychologist may not undertake or continue a professional relationship with a client in which the objectivity of the psychologist may be impaired because of an interpersonal relationship such as familial, social, economic, supervisory, or political. A psychologist whose objectivity becomes impaired because of the development of an interpersonal relationship during a professional relationship with a client shall notify the client in writing that the psychologist shall no longer see the client professionally, take steps to terminate the professional relationship, and assist the client in obtaining services from another professional.

2. A psychologist may not undertake or continue a professional relationship with a client in which objectivity or effectiveness would be impaired because of a personal problem of the psychologist such as divorce, grief reaction, severe health problem, or chemical abuse or dependency. A psychologist whose objectivity or effectiveness becomes impaired during a professional relationship with a client because of such a problem shall notify the client in writing that the psychologist shall no longer see the client professionally, take steps to terminate the relationship, and assist the client in obtaining services from another professional.

3. A psychologist shall neither request nor authorize a client to solicit other business on behalf of the psychologist.

E. Client welfare.

1. A client has the right to have and a psychologist has the responsibility to provide a nontechnical explanation of the nature and purpose of the psychological procedures to be used and the results of tests administered to the client. The psychologist shall establish procedures to be followed if the



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explanation is to be provided by another person under the direction of the psychologist.

2. A psychologist shall display prominently on the premises of the primary location of the professional practice or make available as a handout the statement of areas of competence submitted to the board and the bill of rights of clients, including a statement that consumers of psychological services offered by psychologists licensed by the State of Minnesota have the right:

a. to expect that a psychologist has met the minimal qualifications of training and experience required by state law;

b. to examine public records which contain the credentials of a psychologist;

c. to obtain a copy of the rules of conduct from the Document Section of the Department of Administration;

d. to report complaints to the board;

e. to be informed of the cost of professional services before receiving the services;

f. to privacy as defined by rule and law;

g. to be free from being the object of discrimination on the basis of race, religion, gender or other unlawful category while receiving psychological services.

3. A psychologist shall consider the client as an individual and shall not impose on the client any stereotypes of behavior, values or roles related to age, gender, religion, race, disability, nationality or sexual preference.

4. A psychologist shall disclose to the client value preferences for choice of treatment or outcome and shall present other available options for the consideration or choice of the client.

5. A psychologist who becomes aware of such a divergence of interests, values, attitudes or biases between a client and the psychologist that their professional relationship may be impaired shall so inform the client and shall have the right to terminate the relationship.

6. A psychologist shall inform in writing a client who is

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not benefiting from professional services, take steps to terminate the professional relationship and assist the client in obtaining services from another professional.

7. When requested by a client, a psychologist shall make a prompt and appropriate referral of the client to another professional.

8. A psychologist shall not engage in sexual intercourse or other physical intimacies with a client, nor in any verbal or physical behavior which is sexually seductive or sexually demeaning to a client. Physical intimacies include handling of the breasts or genital areas of either sex by either the psychologist or the client.

9. A psychologist shall make an attempt to determine whether a client has had or continues to have a professional relationship with another psychologist. If it is determined that the client had or has a professional relationship with another psychologist, the psychologist shall attempt, consistent with the wishes of the client, to coordinate psychological services for that client with the other psychologist.

10. A psychologist shall file a complaint with the board when the psychologist has reason to believe that another psychologist is or has been engaged in conduct which violates C.11., failure to report suspected abuse of children or vulnerable adults, or E.8., sexual contact with a client. This rule shall not apply when the belief is based on information obtained in the course of a professional relationship with a client who is the other psychologist.

11. A psychologist informed of conduct of another psychologist which appears to be in violation of any rule of conduct other than those listed in 10. may directly communicate with or seek to counsel the other psychologist or may file a complaint directly with the board.

12. A psychologist shall, upon request, provide information regarding the procedure for filing a complaint with the board and may, upon request, assist with filing a complaint.

F. Tests.

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1. A test or automated test interpretation service offered for use by qualified professionals shall be accompanied by a manual or other readily available published information which fully describes the development of the test or service, the rationale, evidence of validity and reliability and characteristics of the normative population. The psychologist shall explicitly state the purposes and application for which the test is recommended and identify special qualifications required to administer and interpret it properly. The psychologist shall ensure that the advertisements for the test are factual, descriptive, and not evaluative.

2. A psychologist may offer psychological tests for commercial publication only to publishers who have presented tests in a professional manner and who have distributed them only to qualified professional users.

3. A report of the results of a test shall include any reservations or qualifications regarding validity or reliability which a psychologist may have because of the testing circumstances or any deficiencies of the test norms for the individual tested, and how the psychologist has applied those reservations and qualifications to the score of the individual.

4. A test result or interpretation regarding an individual is private information.

G. Public announcement of services.

1. Public statements shall not include false or misleading information. They may describe fees, professional qualifications and services provided, but they may not evaluate services as to their quality or uniqueness and may not contain testimonials by quotation or implication.

2. A psychologist may not misrepresent directly or by implication professional qualifications such as education, experience or areas of competence. A psychologist may not misrepresent directly or by implication affiliations, purposes and characteristics of institutions and organizations with which the psychologist is associated.

H. Fees and statements.

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1. A client has the right to ask about and be informed by a psychologist about the cost of professional services before the services are provided.

2. A psychologist shall itemize fees for all services for which the client or a third party is billed and make the itemized statement available to the client. The statement shall identify at least the date on which the service was provided, the nature of the service, the name of the person providing the service, and the name of the person who is professionally responsible for the service.

3. A psychologist shall not directly or by implication misrepresent to the client or to a third party billed for services the nature of the services, the extent to which the psychologist has provided the services, or the person who is professionally responsible for directing the services provided by the psychologist.

4. A psychologist shall not claim a fee for services unless the psychologist is either the direct provider of the services or the person who is professionally responsible for the provision of the services and under whose direction the psychologist provides the services.

5. No commission, rebate, or other form of remuneration may be given or received by a psychologist for the referral of clients for psychological services.

6. Except as provided by law relating to business organizations, a psychologist may not divide fees with another professional without the informed consent of the client and unless the division is in direct proportion to the services performed and the responsibility assumed by each professional.

I. Practicing without a license. A psychologist shall not aid or abet an unlicensed person in engaging in the private practice of psychology. A psychologist who supervises a person preparing for the professional practice of psychology according to Minn. Stat. S 148.97, subd. 3, clause (2), is not aiding or abetting an unlicensed person in engaging in the private practice of psychology.

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J. Welfare of research subjects. A psychologist shall protect the welfare of research subjects and shall accord human research subjects the client rights listed in C. and E.

K. Violation of law. A psychologist shall not violate any law in which the facts giving rise to the violation involve the provision of psychological services. In determining whether a violation involves the provision of psychological services the board shall consider:

1. the nature and seriousness of the violation the psychologist is alleged to have committed;

2. the relationship of the alleged violation to the purposes of regulating the practice of psychology; and

3. the relationship of the violation to the ability, capacity, fitness or integrity of the psychologist in rendering psychological services.

In any board proceeding the conviction of a crime shall constitute proof of the underlying factual elements needed to constitute a violation of this rule.

7 MCAR S 10.009 Waivers and variances.

A. Waivers; application. A licensee or applicant for licensure may apply to the board for a time limited waiver of any rule. The waiver may be granted if the licensee or applicant provides evidence that:

1. the rule in question does not address a problem of significance to the public in relation to the practice of the licensee or application of the applicant;

2. adherence to the rule would impose an undue burden on the licensee or applicant; and

3. the granting of a waiver will not adversely affect the public welfare.

B. Waivers; renewal, reporting and revocation. A waiver may be renewed upon reapplication according to the procedure described in A. if the circumstances justifying its granting continue to exist. Any licensee who is granted a waiver shall immediately notify the board in writing of any material change in the circumstances which justify its granting. A waiver may



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be revoked if a material change in the circumstances which justify its granting occurs.

C. Variances; application. A licensee or applicant may apply to the board for a time limited variance from any rule. A variance may be granted if the licensee or applicant specifies alternative practices or measures equivalent to or superior to those prescribed in the rule in question and provides evidence that:

1. the rationale for the rule in question can be met or exceeded by the specified alternative practices or measures;

2. adherence to the rule would impose an undue burden on the licensee or applicant; and

3. the granting of the variance will not adversely affect the public welfare.

D. Variances; compliance. Any licensee or applicant who is granted a variance shall comply with the alternative practices or measures specified in the application for the variance.

E. Variance; renewal, reporting, and revocation. A variance may be renewed upon reapplication according to the procedure described in C. if the circumstances justifying its granting continue to exist. Any licensee or applicant who has been granted a variance shall immediately notify the board of any material change in circumstances which justify the granting of the variance. A variance may be revoked if a material change in the circumstances which justify its granting occurs.

F. Burden of proof. The burden of proof is upon the licensee or applicant to demonstrate to the board that the requirements cited in A. and C. have been met.

Repealer. Rules Psych 2, Psych 5, Psych 8, Psych 10, Psych 11, Psych 12, and Psych 13 are repealed.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF PSYCHOLOGY

In the Matter of Proposed New Rules Relating to Rules of Conduct, General Waivers, and Variances, and Amendments Relating to Application for Licensure, Requirements for Professional Experience, Waivers for Examination, and Collaboration

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner George Beck on the 26th day of March, 1982, at 9:30 a.m., in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, after proper notice required by Minn. Stat. § 15.0412 was served upon all persons, associations, and other interested groups registered with the Minnesota Board of Psychology for that purpose. Notice was also served upon other persons, associations, and groups of which the Board of Psychology was aware as possibly having an interest in the above-captioned rule following publication of the rule in the State Register.

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 in and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as 7 MCAR §§ 10.001 through 10.009 are adopted this 25th day of June, 1982, pursuant to authority vested in me by Minn. Stat. §§ 148.90, subd. 2(4), 15.0412, subd. 1(a), and 148.98, and by resolution of the Minnesota Board of Psychology duly adopted at a meeting of the said Board on the 25th day of June, 1982.

STATE OF MINNESOTA

BOARD OF PSYCHOLOGY

Lois E Mizuno

LOIS E. MIZUNO
Executive Secretary

BD Exhibit No. A

File No.

Date

RECEIVED
FEB 19 1982
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY

In the Matter of Proposed New Rules Relating to Rules of Conduct, General Waivers, and Variances and Amendments Relating to Application for Licensure, Requirements for Professional Experience, Waivers From Examination, and Collaboration

ORDER FOR HEARING

To effectively implement Minn. Stat. §§ 148.98, 148.90, subd. 2(4), and 15.0412, subd. 1(a) (1980), the Minnesota Board of Psychology deems it necessary to consider adoption of the proposed new rules and amendments to existing rules captioned above pursuant to the authority vested in it by the above-referenced statutes.

NOW, THEREFORE, IT IS ORDERED this 8th day of February, 1982, 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 55414, on March 26, 1982, commencing at 9:30 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 Minnesota Board of Psychology for that purpose and to all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA
BOARD OF PSYCHOLOGY

Lois Mizuno

LOIS MIZUNO
Executive Secretary

Board Exhibit No. K
File No.
Date

RECEIVED
APR 15 1982
ADMINISTRATIVE HEARINGS

CERTIFICATE OF BOARD OF PSYCHOLOGY

AUTHORIZING RESOLUTION

I, Lois E. Mizuno, do hereby certify that I am the Executive Secretary of the Minnesota Board of Psychology, 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 12th day of September, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> RESOLVED, that Lois Mizuno, Executive Secretary of the Minnesota Board of Psychology, be and hereby is granted the authority and directed to call a hearing for the purpose of promulgating Board rules relating to Rules of Conduct and General Waivers and Variances and Amendments to Rules relating to Application for Licensure, Requirements for Professional Experience, Waivers from Examination, and Collaboration, 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 Administrative Hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 15th day of April, 1982.

STATE OF MINNESOTA

BOARD OF PSYCHOLOGY

Lois E Mizuno

LOIS E. MIZUNO
Executive Secretary

HSY-82-001-GB

Bd Exhibit No. B

File No.

Date

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FEB 19 1982
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY

In the Matter of Proposed New Rules Relating to Rules of Conduct, General Waivers, and Variances, and Amendments Relating to Application for Licensure, Requirements for Professional Experience, Waivers From Examination, and Collaboration

NOTICE OF HEARING

A public hearing concerning the proposed new rules and amendments to the rules captioned-above will be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, on March 26, 1982, commencing at 9:30 AM. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules 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 Beck, Hearing Examiner, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, telephone: (612) 341-7601, 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 to 15.0417, 15.052 (1980), and by 9 MCAR §§ 2.101 to 2.113 (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 Administrative Hearings. 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 Administrative Hearings at a minimal charge.

A copy of the proposed rules is attached hereto and made a part hereof. The statutory authority of the Minnesota Board of Psychology to adopt these rules is contained in Minn. Stat. §§ 148.98, 148.90, subd. 2(4), and 15.0412, subd. 1(a) (1980).

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.03, subd. 1 (1980) 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 (1980) 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, telelphone: (612) 296-5615.

Dated: February 8, 1982

STATE OF MINNESOTA

BOARD OF PSYCHOLOGY

Lois Mizuno

LOIS MIZUNO
Executive Secretary

FEB 16 1982
Health Division

RECEIVED
FEB 16
Division

Bd Exhibit No. H
File No.
Date

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

In the Matter of Proposed
New Rules Relating to Rules
of Conduct, General Waivers,
and Variances, and Amendments
Relating to Application for
Licensure, Requirements for
Professional Experience,
Waivers From Examination,
and Collaboration

AFFIDAVIT
OF MAILING

Lois Mizuno, being first duly sworn, deposes and says:

That on the 22nd day of February, 1982, 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 who have requested that their names be placed on file with the Minnesota Board of Psychology for the purpose of receiving notice of the proposed adoption of rules by the Minnesota Board of Psychology.

Lois Mizuno
LOIS MIZUNO

Subscribed and sworn to before me
this 25th day of February, 1982.

Beverly Conerton

BEVERLY CONERTON
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
My Comm. Expires Jan. 2, 1983

BD Exhibit No. 6
File No.
Date

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY

In the Matter of Proposed
New Rules Relating to Rules
of Conduct, General Waivers,
and Variances, and Amendments
Relating to Application for
Licensure, Requirements for
Professional Experience,
Waivers From Examination,
and Collaboration

CERTIFICATE OF
AGENCY'S MAILING LIST

I, Lois Mizuno, Executive Secretary, Minnesota Board of Psychology, hereby certify that I am responsible for maintaining the list of all persons who register with the Minnesota Board of Psychology for the purpose of receiving notice of rule hearings on proposed rules and amendments thereto on the subject captioned above pursuant to Minn. Stat. § 15.0412, subd. 2, and further certify that the list attached hereto and made a part hereof constitutes the complete list of the persons, associations, and other interested groups who as of 3:00 P M, this 22nd day of February, 1982, have so registered with the Minnesota Board of Psychology.

STATE OF MINNESOTA
BOARD OF PSYCHOLOGY

Lois Mizuno
LOIS MIZUNO
Executive Secretary

~~Sam Ruhle~~
~~Office of Administrative~~

Tony Cremers
828 Westwood Drive
Alexandria, Mn 56308

Sam Ruhle
Office of Admin. Hearings
310 So. 4th Ave., #400
Minneapolis, Mn 55415

Deborah L. Trout
Psych. Section, Psychiatry
St. Paul Ramsey Med. Center
St. Paul, Mn 55101

Jean Breitenbucher
1434 Grand Ave.
St. Paul, Mn 55105

Robert Hajek
1608 K D S Center
Minneapolis, Mn 55402

Betsy Wagschall
1112- 16th Ave. S. E.
Minneapolis, Mn 55414

John Schelichteng
D V R Box B
St. Cloud, Mn 56302

Diane Heins, Attorney
905 Soo Line Bldg.
Minneapolis, Mn 55402

Tom Hewitt
195 Northland Ave.
Stillwater, Mn 55082

Mr. Bjoraker
DPW, 444 Lafayette Rd.
P. O. Box 43208
St. Paul, Mn 55164

Center for Research Libraries
Tammy Richardson
5721 Cottage Grove Ave.
Chicago, IL 60637

Harry Kramer
Northland Mental Health Ct.
306 1st Ave. S. W.
Aitkin, Mn 56431

Anoka State Hospital
chological Services

State Dept. of Ed.
Capitol Square Bldg.
550 Cedar

Dakota Co. Mental Health
744 19th Ave. N.
S. St. Paul, Mn 55075

Anoka State Hospital
Psychological Services
Anoka, Mn 55303

Faribault State Hospital
Psychological Services
Faribault, Mn 55021

Western Human Devel. Center
1106 E. College Dr. Box 450
Marshall, Mn 56258

Willmar State Hospital
Psychological Services
Willmar, Mn 56201

State Dept. of Ed.
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550 Cedar
St. Paul, Mn 55101

Central MN Mental Health
1321 13th St. N.
St. Cloud, Mn 56301

Fergus Falls State
Hospital
Psychological Services
Fergus Falls, Mn 56537

State Dept. of Public
Welfare
Centennial Bldg.
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St. Paul-Ramsey Community
Mental Health Center
Produce Ex. Bank Bldg. 3rd. FL.
529 Jackson St.
St. Paul, Mn 55101

St. Peter State Hosp.
Psychological Services
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Freeborn-Mower Mental
Health Center
918 1st Ave. N.W.
Austin, Mn 55912

Hazelden
Box 11, Shoemaker Hall
Center City, Mn 55012

Cambridge State Hosp.
Psychological Services
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State Dept. of Public Welfare
Medical Services Div.
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Five Co. Human Devel. Program
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Rochester State Hosp.
Psychological Services
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Southwestern Mental Health
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306 N. McKenzie St., Box D.
Luverne, Mn 56156

Henn. Co. Mental Health Center
5th & Portland
Minneapolis, Mn 55415

Minn. Residential
Treatment Center
Psychological Services
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Moose Lake State Hosp.
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Psychological Services
Brainerd, Mn 56401

Northwestern Mental Health
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College Ave. P.O.Box 603
Crookston, Mn 56716

Northland Mental Health Center
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Grand Rapids, Mn 55744

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at St. Peter
Psychological Services
St. Peter, Mn 56082

West Central Community Services
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Willmar, Mn 56201

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Anoka Co. Courthouse
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Human Development Center
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Duluth, Mn 55805

Hamm Memorial Psychiatric Cl.
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St. Paul, Mn 55104

Hiawatha Valley Mental Health
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Winona, Mn 55987

Lakeland Mental Health Center
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Fergus Falls, Mn 56537

Sioux Trails Mental Health
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Mn. Valley Soc. Adaptation
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Carver Co. Mental Health Prog.
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360 Colborne
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Bloomington Public Schools
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Edina Public Schools
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5555 W. 70th St.
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Veterans Admin. Mental Hygiene
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# Board of Psychology

## Proposed Rules Relating to Rules of Conduct, General Waivers, and Variances, and Amendments Relating to Application for Licensure, Requirements for Professional Experience, Waivers From Examination, and Collaboration

### Notice of Hearing

A public hearing concerning the proposed new rules and amendments to the rules captioned-above will be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, on March 26, 1982, commencing at 9:30 a.m. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules 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 Beck, Hearing Examiner, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, telephone: (612) 341-7601, 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 to 15.0417, 15.052 (1980), and by 9 MCAR §§ 2.101 to 2.113 (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 Administrative Hearings. 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 Administrative Hearings at a minimal charge.

A copy of the proposed rules is attached hereto and made a part hereof. The statutory authority of the Minnesota Board of Psychology to adopt these rules is contained in Minn. Stat. §§ 148.98, 148.90, subd. 2(4), and 15.0412, subd. 1(a)(1980).

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.03, subd. 1 (1980) 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 (1980) 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.

February 8, 1982

Lois Mizuno, Executive Secretary
Board of Psychology

### Rules as Proposed

~~Psych 1~~ 7 MCAR § 10.001 General definitions.

~~(a) "Law" means Minnesota Statutes 1973, Sections 148.88 through 148.99, creating a Board to license and~~

~~regulate the private practice of psychology and the use of the title "psychologist".~~ For the purposes of 6 MCAR §§ 10.001-10.009, the following terms have the meanings given them.

~~(b)~~ A. Board. "Board" means the Minnesota ~~State~~ Board of ~~Examiners of Psychologists~~ Psychology.

~~(c) Licenses Issued. Licensed Psychologist and Licensed Consulting Psychologist.~~

~~(d) "Original License", when used relative to renewal of lapsed license, shall mean the license which has lapsed.~~

~~(e) "Year", when used in connection with fees for initial license, means the period between the issuance of the initial license and the last day of the twelfth calendar month subsequent to the date of issuance.~~

~~(f) "Waiver" is the granting of a license without examination, conditions for which are defined in the Law.~~

B. Collaboration, collaborative contact. "Collaboration" or "collaborative contact" means consultation at least once each year between a licensed psychologist and a licensed consulting psychologist with regard to any issues arising in the practice of psychology. "Collaboration" or "collaborative contact" does not mean supervision and does not involve the supervisory responsibilities defined in I.

C. Area of competence. "Area of competence" means a specific psychological service, technique, method, or procedure in which the psychologist through education, training, or experience has gained sufficient proficiency to be able to provide it to the public with little or no supervision.

D. Informed written consent. "Informed written consent" means a written statement signed by the person making the statement which authorizes a psychologist to engage in activity which directly affects the person signing the statement. The statement must include a declaration that the person signing the statement has been told of and understands the purpose of the authorized activity.

E. Licensee. "Licensee of the board" or "licensee" means either a licensed psychologist or a licensed consulting psychologist.

F. Private information. "Private information" means any information, including client records, revealed during a professional relationship between a psychologist and a client.

G. Professional relationship. "Professional relationship" means the association between a psychologist and a person or entity for whom psychological services are sought which exists when the psychologist performs for that person or entity any of the functions described in Minn. Stat. § 148.89, subd. 1.

H. Psychologist. "Psychologist" means a licensee of the board.

I. Supervision. "Supervision" means taking full professional responsibility for training, work experience, and performance in the practice of psychology of a supervisee, including planning for and evaluation of the work product of the supervisee, and including face-to-face contact between the supervisor and supervisee in at least ten separate hourly sessions per quarter.

J. Test. "Test" means any instrument, device, survey, questionnaire, technique, scale, inventory, or other process which is designed or constructed for the purpose of measuring, evaluating, assessing or describing personality, behavior, traits, intelligence, aptitudes, attitudes, skills, values, interests, ability, or other psychological or emotional characteristics of individuals.

K. Variance. "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

L. Waiver. "Waiver" means board authorized permission not to comply with a rule.

7 MCAR § 10.002 General requirements for licensure.

A. Licensure process. The process of licensure by the board is divided into two separate parts:

1. admission to examination; and

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

2. admission to licensure.

B. Requirements for admission to examination. In order to be admitted to examination an applicant must:

1. file with the board a completed notarized application for admission to examination which includes an affirmation that the statements made on the application are true and correct to the best of the knowledge and belief of the applicant, and which is accompanied by the current nonrefundable examination application fee;

2. provide for transcripts of all graduate work, including verification of the degree granted, to be certified directly to the board from the institution granting the degree; and

3. for an application based upon the equivalent of a master of arts or science degree in a doctoral program, provide for that equivalency to be verified in writing directly to the board by an official of the institution attended.

C. Admission to examination. An applicant shall be admitted to the first regularly scheduled objective part of the examination occurring 40 days or more after the applicant has met the requirements of B., unless admission is denied under D.

D. Denial of admission to examination. Admission to examination shall be denied to an applicant who has not met the education requirements in 7 MCAR § 10.003. An applicant who is denied admission to examination shall be informed in writing of the denial and the reasons for it. An application submitted after denial is a new application which must be accompanied by the current examination application fee.

E. Requirements for licensure. To be eligible for licensure the applicant must meet the following requirements in addition to those in B.:

1. file with the board a notarized application for licensure, which includes an affirmation that the statements made in the application are true and correct to the best knowledge and belief of the applicant and which is accompanied by the current licensure application fee;

2. have completed two years of post degree employment as stated in G. and 7 MCAR § 10.0004;

3. state at least one area of competence and have written endorsements from at least two qualified persons, as stated in H., for each area of competence stated;

4. have performed satisfactorily on both parts of the examination listed in 7 MCAR § 10.005;

5. be of good moral character and not have engaged in conduct prohibited by 7 MCAR § 10.008; and

6. for an application for licensure as a licensed psychologist, file an agreement to collaborate signed by a licensed consulting psychologist.

F. Concurrent applications. An applicant may file both the application for admission to examination and the application for licensure at the same time if the employment requirements in G. and 7 MCAR § 10.004 have been met.

G. Supervised employment. The application for licensure shall include the setting, nature and extent of the supervised employment, the time period involved, the number of hours per week engaged in professional duties, and the name and qualifications of each supervisor.

H. Requirements for endorsement. To qualify as an endorser a person listed on the application for licensure must be a licensee of the board, a person who is licensed to practice psychology by another state whose licensure standards are similar to the standards of this state, or a person whose education and experience meet the licensure standards of Minn. Stat. § 148.91 and 7 MCAR §§ 10.001-10.009. An employee of an applicant may not be an endorser of that applicant. An endorser must have firsthand knowledge of the area of competency endorsed. A current member of the board may not be an endorser.

An applicant who has not received sufficient endorsements on a stated area of competence may submit the names of additional endorsers or an amended application with the area of competence deleted.

I. Adding areas of competence. A licensee may add an area of competence at any time if the added area of competence is documented as required in the application for licensure.

J. Inquiries regarding applicants. The board may make inquiries when there is a question as to whether an applicant meets the requirement of E.5.

K. Denial of licensure. An applicant who fails to meet all the requirements in E. shall be denied licensure. An applicant who

is denied licensure shall be informed in writing of the denial and the reason for it. An application submitted following denial is a new application which must be accompanied by the current licensure application fee.

~~Psych 3~~ 7 MCAR § 10.003 Educational ~~Qualifications~~ requirements for ~~Licensing~~ licensure.

~~(a) The Doctorate Degree in Pshchology shall mean a Doctorate Degree offered by a Department of Psychology~~ A. Educational requirement for licensed consulting psychologists. The educational requirement for licensure as a licensed consulting psychologist is a doctorate obtained in an institution accredited by a regional accrediting association to ~~offer a Doctorate Degree.~~ grant a doctorate, offered through:

1. a department of psychology; or

2. an academic department or unit other than a department of psychology, with a major such as educational psychology, child psychology, counseling psychology, or industrial psychology.

~~(b)~~ B. Other doctorates accepted. The board shall ~~consider Doctorate Degrees offered by academic units~~ accept a doctorate other than ~~a Department of Psychology provided~~ those listed in A. if:

~~(1) The aforementioned academic unit is in, or formally connected with,~~ 1. the doctorate is obtained from an institution accredited by a regional accrediting association to ~~offer the Doctorate Degree, and,~~ grant the doctorate;

~~(2)~~ 2. the dissertation for the degree is~~, in the judgment of the Board,~~ psychological in topic and method ~~and content, and,~~ according to the following criteria:

a. the topic shall fall within the list of psychological topics included in the table of contents of all editions of the "Annual Review of Psychology," up to and including the 1981 edition, and shall have the potential to directly impact upon the body of knowledge in the field of psychology; and

b. the method shall include at least one of the following: experimental manipulation of psychological variables; correlational or statistical method, using data collected by observations made by oneself or other persons; case study; creation of theory based on analysis of data obtained by oneself or other persons, including conceptual analysis; introspection; or psychohistory; and

~~(3)~~ 3. for a person seeking licensure on the basis of a doctorate earned before January 1, 1984, at least half of the ~~course~~ number of credits ~~required~~ completed for the degree, excluding dissertation credits, have been successfully earned in graduate courses which are~~, in the judgment of the Board,~~ predominantly psychological in content.

For any other person, at least two-thirds of the number of credits completed for the degree, excluding dissertation credits, have been successfully earned in graduate courses which are predominantly psychological in content.

~~Such~~ Credits ~~may, in part, be earned in~~ for post-doctoral course work earned within five years after receiving the doctorate may be used in part to meet the requirements in 3.

~~(c)~~ C. ~~The Master's Degree in Psychology is defined as the~~ Educational requirement for licensed psychologists. The educational requirement for licensure as a licensed psychologist is a master of arts or science ~~offered by a Department of Psychology~~ degree, including a master equivalent in a doctoral program, obtained in an institution accredited by a regional accrediting association to ~~offer the master's~~ grant a doctorate or a master of arts or science degree, offered through:

1. a department of psychology; or

2. an academic department or unit other than a department of psychology, with a major such as educational psychology, child psychology, counseling psychology or industrial psychology.

~~(d)~~ D. Other degrees accepted. The board shall ~~consider Master's Degrees offered by academic units~~ accept a master of arts or science degree other than ~~a Department of Psychology provided~~ those listed in C. if:

~~(1)~~ 1. the degree is obtained from an ~~academic unit in an~~ institution accredited by a regional accrediting association to ~~offer~~ grant a doctorate or a master ~~or doctoral~~ of arts or science degree ~~in psychology, or an academic unit that is similar, in the~~

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~~judgment of the Board, to a department of psychology with respect to its faculty, degree programs, and curriculum, provided that said academic unit is accredited by a regional accreditation association to offer the master's or doctoral degree. In either case, it shall be further required that:~~;

2. the thesis, if it is a degree requirement, is psychological in topic and method according to the criteria listed in B.2.; and

~~(2)~~ 3. at least two-thirds of the number of credits required for the degree, excluding ~~dissertation~~ thesis credits, have been successfully earned in graduate courses which are ~~in the Board's judgment,~~ predominantly psychological in content.

Credits for post master course work earned within five years after receiving the degree may be used in part to meet the requirements in 3.

~~(c) The "equivalent of a master's degree in a doctoral program with a major in psychology" shall meet the same criteria as specified in both sections (d-1) and (d-2) above.~~

~~(f) The accreditation of the institution(s) from which the applicant received his/her degree(s) shall be evaluated by the Board with respect to the time of the applicant's affiliation with such institution(s). The same shall apply to other institutional aspects stipulated in Section Psych 3.~~

E. Accreditation. For a degree to meet the standards for licensure, the institution must be accredited at the time the degree is granted.

~~(g)~~ F. Degrees from foreign institutions. A degree from a foreign ~~university will~~ institution shall be accepted ~~provided that, in the Board's judgment,~~ if the institution meets standards ~~equivalent to those held by~~ required for accreditation of a domestic ~~institutions accredited by a regional accreditation association, and other provisions of this section (Psych 3) are met~~ institution.

~~Psych 4~~ 7 MCAR § 10.004 Professional ~~Experience~~ employment.

~~(a)~~ A. Employment requirements. To meet the requirements for "professional ~~experience",~~ ~~an applicant's experience~~ employment, the employment of the applicant must:

~~(1) Have involved~~ 1. involve the application of psychological principles in the description, prediction and modification of human behavior and emotional adjustment, including but not restricted to such practices as: psychological assessment, including such functions as intelligence, personality, aptitude, and attitude appraisal; psychological treatment of persons who have adjustment problems; psychological counseling and guidance; conducting behavioral research; and teaching of psychology~~, and,~~;

2. be under the supervision of a licensee of the board or a person whose education and experience meet the standards for licensure imposed by Minn. Stat. § 148.91 and 7 MCAR §§ 10.001-10.009 and who shall be competent in the areas of practice in which supervision is provided. The private practice of psychology for a fee in this state is not allowed prior to licensure and shall not be credited, except that a licensed psychologist seeking licensure as a licensed consulting psychologist may engage in the private practice of psychology for a fee and need not require supervision unless the licensee is gaining competence in an area other than those already documented. The private practice of psychology in another state shall be credited only if engaged in after licensure by that state; and

~~(2) Have been~~ 3. be performed competently ~~at a professional level~~ as judged by the supervisor.

~~(b)~~ B. ~~As a general criterion, such experience will~~ Employment criterion. Employment shall include tasks and judgments which depend upon the application of skill ~~and/or~~ or knowledge ~~made available to the applicant~~ acquired during ~~his/her~~ formal education in psychology.

~~(c) No experience that is judged by the Board to be of a primarily clerical, routine, or repetitive nature will fulfill the general criterion specified in (b) above.~~ C. Delegation of training. The supervisor may not transfer supervisory responsibility. The supervisor may delegate training in specific skills to specialists who need not be psychologists.

~~(d) No experience which is offered to satisfy one provision of the Law may be simultaneously offered to satisfy any other provisions of the Law. For example, experiences~~ D. Degree requirement experiences. Experiences which are ~~part of the~~ required as preparation for the ~~Ph.D.~~ master or doctoral degree ~~will be applicable only to the "doctorate degree requirements" and~~, such as pre-degree internships, assistantships, associateships, clerkships and practica, may not be ~~simultaneously~~ offered to satisfy the ~~"experience"~~ employment requirement for either level of licensure.

~~(e)~~ E. Completion of degree requirements. Professional experience acquired by the applicant between the time ~~he/she fulfilled~~ all requirements for ~~his/her terminal~~ the degree were met and the time of ~~the actual~~ conferral of the degree may be credited toward the ~~experience~~ employment requirements for ~~licensing, provided that~~ licensure if the date of completion of all

degree requirements is verified directly to the board in writing by a responsible academic or administrative official. ~~Such verification must come directly to the Board from the academic official.~~

~~(f) No experience of any kind gained prior to the completion of all requirements for the Master's degree in psychology or its equivalent will apply to the provisions of the Law.~~

~~(g) Pre-doctoral internship, assistantships, associateships, personal therapy, enrollment in practicum and other experiences that are primarily preparatory to the practice of psychology will not constitute "professional expreience".~~

~~(h) In the event that the experience being offered can be considered the performance of some other profession and/or discipline as well as psychology, the Board will consider such experience acceptable if it meets such criteria as, but not limited to, the following:~~

~~(1) The applicant was primarily identified with the title "psychologist" or some variant while obtaining such experience, and;~~

~~(2) The applicant used knowledge and technology acquired during his/her professional education as a psychologist.~~

~~(i) "A year of professional experience" shall mean twelve months, including~~

F. Time requirement. To meet employment requirements, the applicant shall have completed 24 months of full-time employment, or their equivalent in part-time employment, under supervision as described in A., with regularly scheduled vacation periods~~, during which the applicant was employed on a full-time basis~~ and holidays considered as days worked.

~~(1) In the case of academic employment, "year" shall mean the period normally associated with the full-time employment at the employing institution.~~

~~(2)~~ Full-time employment ~~for self-employed applicants shall mean~~ consists of at least 1800 hours during a ~~twelve (12)~~ 12-month period.

~~(3)~~ G. Part-time employment credited. Part-time employment ~~experience credit~~ shall be ~~determined~~ credited by the board on a pro-rated basis, if the part-time employment consists of at least a three-month, quarter-time period at any particular agency or facility.

~~Psych 6~~ 7 MCAR § 10.005 Examinations.

~~(a) Examination dates will~~ A. Announcement of examination. The date of the written, objective part of the examination shall be announced by the board. The ~~examination schedule will~~ announcement shall establish: time~~(s)~~, place~~(s)~~, the amount of the examination application fee and the ~~final~~ date by which ~~the Board must receive the applicants' completed~~ documentation for the application for ~~Licensure form, and other pertinent information and/or instructions~~ admission to examination must be completed to qualify for the announced examination.

B. Two parts to examination. The examination is composed of two parts:

1. a written, objective part designed and scored by a professional examination service; and

2. an oral part conducted by members of the board or its duly authorized representatives after the application for licensure has been accepted by the board.

~~(b) If an~~ C. Notification to admitted applicants. The board shall notify in writing each applicant who has been admitted to either part of the examination. The notice shall state the date and time the applicant is scheduled to be examined. An applicant who fails to appear ~~for the scheduled examination, he/she will~~ at that time shall forfeit ~~his/her~~ the application fee ~~for the examination so scheduled~~ unless ~~he/she provides the Board~~ within ~~fifteen (15)~~ 15 days ~~with an explanation acceptable to the Board~~ after that date the applicant submits a written request for a waiver.

~~(c) Application for any required examination will be denied or deferred if in the Board's judgment, the applicant lacks the required education and/or experience.~~

~~(1) If application for examination is denied or deferred, the applicant shall be notified in writing within thirty (30) days after the Board's action, and shall be apprised of the reasons for the Board's action.~~

~~(d) The examination will be composed of two (2) sections:~~

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~~(1) A written, objective section, and,~~

~~(2) An oral examination conducted by the Board or its duly constituted representative(s).~~

~~(3)~~ D. Satisfactory performance on examination. In order to qualify for ~~licensing~~ licensure, the applicant ~~will be required to~~ must perform satisfactorily on ~~the two sections~~ both parts of the examination.

~~(c) The Board will notify the applicant in writing, as soon as possible, of the results of the examination.~~

1. An applicant who has performed satisfactorily with respect to the level of licensure sought on the objective part of the examination, either in another state or for another level of licensure, shall be considered as having met the requirements of this rule with respect to the objective part of the examination.

2. An applicant who has performed satisfactorily on the oral part of the examination for another level of licensure shall be considered as having met the requirements of this rule with respect to the oral part of the examination.

~~(f) Persons~~ E. Reexamination permitted. An applicant determined ~~by the Board~~ not to have performed satisfactorily on a part of the examination may reapply ~~for the next examination by the Board. The Board may at its discretion, require reexamination on any or all parts of the examination~~ and, upon payment of the current applicable fee, be reexamined on the part for which performance was not satisfactory.

~~Psych 7~~ **7 MCAR § 10.006 Licenses, license renewal.**

A. Display of license. A license shall be displayed on the premises of the primary location of the professional practice of the licensee.

B. Term of license. A license is valid for the period beginning with the date on which the license is granted or reissued after suspension and ending two years later on the last day of the month in which the license is granted or reissued. Thereafter the license is renewable for periods of two years, ending with the last day of the month in which the license is granted or reissued.

~~A.~~ C. Notice of renewal. At least one ~~(1)~~ month before the renewal date, a renewal notice ~~will~~ identifying the amount of the current renewal fee shall be sent to each ~~license holder~~ licensee to the last known address of the licensee in the ~~Board's~~ file of the board. Failure to receive ~~such~~ the notice shall not relieve the ~~license holder~~ licensee of ~~his/her~~ the obligation to pay the renewal ~~fees in such a manner that they are received by the Board on or before the renewal date~~ fee according to D.

~~B. Renewal fees of seventy-five dollars ($75.00) (biennial)~~ D. Renewal deadline. The biennial renewal fee shall be ~~received by~~ remitted to the board postmarked on or before the ~~end~~ last day of the last month during which the license is valid. The renewal fee shall accompany a completed notarized renewal application including an affirmation that the statements on the renewal application are true and correct to the best knowledge and belief of the licensee.

~~C.~~ E. Late fee. An applicant for renewal shall pay ~~a~~ the current late ~~penalty~~ fee ~~of fifty dollars ($50.00)~~ as well as the current renewal fee if the application for renewal is postmarked after the last day of the last month during which the ~~original~~ license ~~or previous renewal was~~ is valid.

~~1.~~ F. Grounds for suspension of license. Failure to pay the renewal fee and late ~~penalty~~ fee within ~~sixty (60)~~ 60 days after the last day of the last month during which the ~~original~~ license ~~or previous renewal was~~ is valid ~~shall constitute~~ grounds is a sufficient reason to suspend the license to engaged in the private practice of psychology in this state. A license may be reissued following suspension only upon ~~a non-prorated~~ payment of the full biennial renewal ~~fees~~ fee and full biennial late ~~penalty fees~~ fee for each biennium or portion of a biennium following expiration of the ~~original~~ license ~~or previous renewal~~.

~~D. A renewed license shall be valid for a period of only two years following the expiration date of the original license or previous renewal, regardless of when fees are received, unless the license is suspended. A license reissued after suspension shall be valid for a period of two years from the date of reissuance of the license.~~

~~E. Licensees~~ G. Voluntary termination. A licensee may~~, upon occasion of renewal of licensure, voluntarily choose to~~ terminate ~~their~~ the license by ~~so~~ notifying the board in writing. ~~Such~~ The notification must be received by the board prior to ~~the Board's~~ suspension of the license for failure to renew. ~~Such individuals~~ A former licensee may be licensed again only after ~~submitting an original application and~~ complying with all laws and rules required of ~~original~~ applicants for ~~initial~~ examination and licensure.

~~F.~~ H. Time limit on license of nonresident. The board ~~will~~ shall not renew the ~~licenses~~ license of ~~psychologists~~ a licensee who ~~have~~ has neither lived nor practiced within the state for a period ~~in excess~~ of more than ten ~~(10)~~ years.

~~Psych 9~~ **7 MCAR § 10.007 Collaboration.**

~~(a) Applicants applying for a "licensed psychologist" license must specify the person or persons with whom they~~

~~intend to collaborate if and when they engage in private practice. Such intended collaborators must be persons who are (presently certified consulting psychologists under the old Law in the State of Minnesota, or persons who are eligible for the) "licensed consulting psychologist" (license under the present Law). The parenthetical portions of this section expire on July 1, 1975.~~

~~(b) The applicant is responsible for seeing that the designated collaborator(s) completes the form provided for collaborators and returns that form to the Board designating his/her intent to collaborate.~~

~~(c)~~ A. Collaborator provided with summary. An applicant for licensure as a licensed psychologist shall provide the collaborator with a brief summary of the training, experience, and stated areas of professional competence of the applicant.

B. Collaboration report. The nature and frequency of collaborative contacts shall be mutually determined by the collaborators. At the time of ~~application for~~ license renewal ~~of the license for~~ a licensed psychologist~~, the applicant and the collaborator(s) will be required to provide the Board in writing evidence of~~ who is or has been engaged in the private practice of psychology since licensure or previous renewal shall report on the nature and ~~type~~ frequency of ~~collaboration that has taken place~~ collaborative contacts during the preceding two ~~(2) year period~~ years.

C. Collaboration report not required in certain cases. A licensed psychologist who has not engaged in the private practice of psychology since licensure or previous renewal may meet the requirement in B. by stating that fact on the renewal form.

D. Consultation required. Formal collaboration is required only of licensed psychologists. Consultation is required of all licensees as indicated in 7 MCAR § 10.008 B.3. and E.9.

7 MCAR § 10.008 Rules of conduct.

A. Scope and purpose.

1. The rules of conduct constitute the code of ethics as required by Minn. Stat. § 148.98 and apply to the conduct of all licensees and applicants, including conduct during the period of education, training and employment which is required for licensure.

2. The rules of conduct constitute the standards against which the professional conduct of a psychologist is measured.

3. A violation of the rules of conduct constitutes unprofessional or unethical conduct and is a sufficient reason for disciplinary action or denial of licensure.

4. The rules of conduct are not all-inclusive and do not specify all grounds for disciplinary action or denial of licensure. The 1981 revision of 'The Ethical Principles of Psychologists' published by the American Psychological Association may be used as an aid in resolving any ambiguity which may arise in the interpretation of the rules of conduct. However, in a conflict between the rules of conduct and the ethical principles, the rules of conduct shall prevail.

B. Competence.

1. A psychologist shall limit practice to the areas of competence for which education and training or experience have been gained and which have been stated by the psychologist and accepted by the board as stated in 7 MCAR § 10.002 E.3.

2. A psychologist shall accurately represent areas of competence, education, training, experience, and professional affiliations of the psychologist to the board, the public and colleagues.

3. In cases in which a new service, technique, or specialty is developing and in which supervision is not available, a psychologist shall engage in ongoing consultation with other psychologists or similar professionals as skills are developed in the new area and shall seek continuing education which corresponds to the new area. A client whose treatment involves the use of a newly developing service, technique, or specialty shall be informed of its innovative nature and of known risks associated with it.

4. A psychologist shall recognize the professional, technical, and administrative resources available to the client and refer the client to them when it is in the best interests of the client to be provided with alternative or complementary services.

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C. Protecting the privacy of clients.

1. A psychologist shall safeguard the private information obtained in the course of practice, teaching, or research. With the exceptions listed in 2., 3., 4., 5., and 10., private information is disclosed to others only with the informed written consent of the client.

2. Private information may be disclosed without the informed written consent of the client when the psychologist determines that disclosure is necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on the client or another person. In such case the private information is to be disclosed only to appropriate professional workers, public authorities, the potential victim or the family of the client.

3. In any situation in which a person requests that the services of a psychologist be provided to a third party, the psychologist shall inform both the requester and the third party of the responsibility of the psychologist regarding the privacy of any information gained in the course of rendering the services.

4. A client who is a minor shall be informed at the beginning of the professional relationship concerning the limitation the law imposes on the right of privacy of a minor with respect to communications of a minor with a psychologist.

5. A psychologist shall limit access to client records and shall inform every person associated with the agency or facility of the psychologist, such as a staff member, student, volunteer, or community aide, that access to client records shall be limited only to the psychologist with whom the client has a professional relationship, a person associated with the agency or facility whose duties require access, and a person authorized to have access by the informed written consent of the client.

6. A psychologist shall instruct the staff to comply with the request of a client regarding the individual to whom statements for services are to be sent.

7. Case reports or other clinical materials used in teaching, professional meetings or publications shall be disguised so that no identification of the individual occurs.

8. Diagnostic interviews or therapeutic sessions with a client may be observed or electronically recorded only with the informed written consent of the client.

9. A psychologist shall continue to maintain the records of a client as private information after the professional relationship between the psychologist and the client has ceased.

10. A psychologist may release private information upon court order or to conform with state or federal law, rule or regulation.

11. A psychologist shall not violate any law, the violation of which involves the practice of psychology, concerning the reporting of abuse of children and vulnerable adults.

D. Impaired objectivity.

1. A psychologist may not undertake or continue a professional relationship with a client in which the objectivity of the psychologist may be impaired because of an interpersonal relationship such as familial, social, economic, supervisory, or political. A psychologist whose objectivity becomes impaired because of the development of an interpersonal relationship during a professional relationship with a client shall notify the client in writing that the psychologist shall no longer see the client professionally, take steps to terminate the professional relationship, and assist the client in obtaining services from another professional.

2. A psychologist may not undertake or continue a professional relationship with a client in which objectivity or effectiveness would be impaired because of a personal problem of the psychologist such as divorce, grief reaction, severe health problem, or chemical abuse or dependency. A psychologist whose objectivity or effectiveness becomes impaired during a professional relationship with a client because of such a problem shall notify the client in writing that the psychologist shall no longer see the client professionally, take steps to terminate the relationship, and assist the client in obtaining services from another professional.

3. A psychologist shall neither request nor authorize a client to solicit other business on behalf of the psychologist.

E. Client welfare.

1. A client has the right to have and a psychologist has the responsibility to provide a nontechnical explanation of the nature and purpose of the psychological procedures to be used and the results of tests administered to the client. The

psychologist shall establish procedures to be followed if the explanation is to be provided by another person under the direction of the psychologist.

2. A psychologist shall display prominently on the premises of the primary location of the professional practice or make available as a handout the statement of areas of competence submitted to the board and the bill of rights of clients, including a statement that consumers of psychological services offered by psychologists licensed by the State of Minnesota have the right:

a. to expect that a psychologist has met the minimal qualifications of training and experience required by state law;

b. to examine public records which contain the credentials of a psychologist;

c. to obtain a copy of the rules of conduct from the Document Section of the Department of Administration;

d. to report complaints to the board;

e. to be informed of the cost of professional services before receiving the services;

f. to privacy as defined by rule and law;

g. to be free from being the object of discrimination on the basis of race, religion, gender or other unlawful category while receiving psychological services.

3. A psychologist shall consider the client as an individual and shall not impose on the client any stereotypes of behavior, values or roles related to age, gender, religion, race, disability, nationality or sexual preference.

4. A psychologist shall disclose to the client value preferences for choice of treatment or outcome and shall present other available options for the consideration or choice of the client.

5. A psychologist who becomes aware of such a divergence of interests, values, attitudes or biases between a client and the psychologist that their professional relationship may be impaired shall so inform the client and shall have the right to terminate the relationship.

6. A psychologist shall inform in writing a client who is not benefiting from professional services, take steps to terminate the professional relationship and assist the client in obtaining services from another professional.

7. When requested by a client, a psychologist shall make a prompt and appropriate referral of the client to another professional.

8. A psychologist shall not engage in sexual intercourse or other physical intimacies with a client, nor in any verbal or physical behavior which is sexually seductive or sexually demeaning to a client. Physical intimacies include handling of the breasts or genital areas of either sex by either the psychologist or the client.

9. A psychologist shall make an attempt to determine whether a client has had or continues to have a professional relationship with another psychologist. If it is determined that the client had or has a professional relationship with another psychologist, the psychologist shall attempt, consistent with the wishes of the client, to coordinate psychological services for that client with the other psychologist.

10. A psychologist shall file a complaint with the board when the psychologist has reason to believe that another psychologist is or has been engaged in conduct which violates C.11., failure to report suspected abuse of children or vulnerable adults, or E.8., sexual contact with a client. This rule shall not apply when the belief is based on information obtained in the course of a professional relationship with a client who is the other psychologist.

11. A psychologist informed of conduct of another psychologist which appears to be in violation of any rule of conduct other than those listed in 10. may directly communicate with or seek to counsel the other psychologist or may file a complaint directly with the board.

12. A psychologist shall, upon request, provide information regarding the procedure for filing a complaint with the board and may, upon request, assist with filing a complaint.

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F. Tests.

1. A test or automated test interpretation service offered for use by qualified professionals shall be accompanied by a manual or other readily available published information which fully describes the development of the test or service, the rationale, evidence of validity and reliability and characteristics of the normative population. The psychologist shall explicitly state the purposes and application for which the test is recommended and identify special qualifications required to administer and interpret it properly. The psychologist shall ensure that the advertisements for the test are factual, descriptive, and not evaluative.

2. A psychologist may offer psychological tests for commercial publication only to publishers who have presented tests in a professional manner and who have distributed them only to qualified professional users.

3. A report of the results of a test shall include any reservations or qualifications regarding validity or reliability which a psychologist may have because of the testing circumstances or any deficiencies of the test norms for the individual tested, and how the psychologist has applied those reservations and qualifications to the score of the individual.

4. A test result or interpretation regarding an individual is private information.

G. Public announcement of services.

1. Public statements shall not include false or misleading information. They may describe fees, professional qualifications and services provided, but they may not evaluate services as to their quality or uniqueness and may not contain testimonials by quotation or implication.

2. A psychologist may not misrepresent directly or by implication professional qualifications such as education, experience or areas of competence. A psychologist may not misrepresent directly or by implication affiliations, purposes and characteristics of institutions and organizations with which the psychologist is associated.

H. Fees and statements.

1. A client has the right to ask about and be informed by a psychologist about the cost of professional services before the services are provided.

2. A psychologist shall itemize fees for all services for which the client or a third party is billed and make the itemized statement available to the client. The statement shall identify at least the date on which the service was provided, the nature of the service, the name of the person providing the service, and the name of the person who is professionally responsible for the service.

3. A psychologist shall not directly or by implication misrepresent to the client or to a third party billed for services the nature of the services, the extent to which the psychologist has provided the services, or the person who is professionally responsible for directing the services provided by the psychologist.

4. A psychologist shall not claim a fee for services unless the psychologist is either the direct provider of the services or the person who is professionally responsible for the provision of the services and under whose direction the psychologist provides the services.

5. No commission, rebate, or other form of remuneration may be given or received by a psychologist for the referral of clients for psychological services.

6. Except as provided by law relating to business organizations, a psychologist may not divide fees with another professional without the informed consent of the client and unless the division is in direct proportion to the services performed and the responsibility assumed by each professional.

I. Practicing without a license. A psychologist shall not aid or abet an unlicensed person in engaging in the private practice of psychology. A psychologist who supervises a person preparing for the professional practice of psychology according to Minn. Stat. § 148.97, subd. 3, clause (2), is not aiding or abetting an unlicensed person in engaging in the private practice of psychology.

J. Welfare of research subjects. A psychologist shall protect the welfare of research subjects and shall accord human research subjects the client rights listed in C. and E.

K. Violation of law. A psychologist shall not violate any law in which the facts giving rise to the violation involve the provision of psychological services. In determining whether a violation involves the provision of psychological services the board shall consider:

1. the nature and seriousness of the violation the psychologist is alleged to have committed;

2. the relationship of the alleged violation to the purposes of regulating the practice of psychology; and

3. the relationship of the violation to the ability, capacity, fitness or integrity of the psychologist in rendering psychological services.

In any board proceeding the conviction of a crime shall constitute proof of the underlying factual elements needed to constitute a violation of this rule.

**7 MCAR § 10.009 Waivers and variances.**

A. Waivers; application. A licensee or applicant for licensure may apply to the board for a time limited waiver of any rule. The waiver may be granted if the licensee or applicant provides evidence that:

1. the rule in question does not address a problem of significance to the public in relation to the practice of the licensee or application of the applicant;

2. adherence to the rule would impose an undue burden on the licensee or applicant; and

3. the granting of a waiver will not adversely affect the public welfare.

B. Waivers, renewal, reporting and revocation. A waiver may be renewed upon reapplication according to the procedure described in A. if the circumstances justifying its granting continue to exist. Any licensee who is granted a waiver shall immediately notify the board in writing of any material change in the circumstances which justify its granting. A waiver may be revoked if a material change in the circumstances which justify its granting occurs.

C. Variances; application. A licensee or applicant may apply to the board for a time limited variance from any rule. A variance may be granted if the licensee or applicant specifies alternative practices or measures equivalent to or superior to those prescribed in the rule in question and provides evidence that:

1. the rationale for the rule in question can be met or exceeded by the specified alternative practices or measures;

2. adherence to the rule would impose an undue burden on the licensee or applicant; and

3. the granting of the variance will not adversely affect the public welfare.

D. Variances, compliance. Any licensee or applicant who is granted a variance shall comply with the alternative practices or measures specified in the application for the variance.

E. Variance; renewal, reporting, and revocation. A variance may be renewed upon reapplication according to the procedure described in C. if the circumstances justifying its granting continue to exist. Any licensee or applicant who has been granted a variance shall immediately notify the board of any material change in circumstances which justify the granting of the variance. A variance may be revoked if a material change in the circumstances which justify its granting occurs.

F. Burden of proof. The burden of proof is upon the licensee or applicant to demonstrate to the board that the requirements cited in A. and C. have been met.

**Repealer.** Rules Psych 2, Psych 5, Psych 8, Psych 10, Psych 11, Psych 12, and Psych 13 are repealed.

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PSY-82-001-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF PSYCHOLOGY

In the Matter of Proposed New Rules Relating to Rules of Conduct, General Waivers, and Variances, and Amendments Relating to Application for Licensure Requirements for Professional Experience, Waivers from Examination, and Collaboration.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck on Friday, March 26, 1982, at 9:30 a.m. in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, in the City of Minneapolis, Minnesota.

This Report is a part of the rule hearing procedure required by Minn. Stat. §§ 15.0411 through 15.0417 and 15.052 to determine whether the proposed rules and rule amendments should be adopted by the Board of Psychology.

Members of the Agency panel appearing at the hearing included: Patricia Lilligren, Chair, Minnesota Board of Psychology; Norman L. James, Vice Chair, Minnesota Board of Psychology; Bill Madsen, Member, Minnesota Board of Psychology; Dan McInerney, Member, Minnesota Board of Psychology; Lois Mizuno, Executive Secretary, Minnesota Board of Psychology; and Terry O'Brien, Special Assistant Attorney General, representing the Board of Psychology.

Fifty-seven people signed the hearing register. Fifteen public witnesses appeared and spoke at the hearing. The Department submitted 12 written exhibits. Fifty-eight timely written exhibits were received from the public.

The Board of Psychology must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980), this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Board of actions which will correct the defects and the Board may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Board may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Board does not elect to adopt the recommendations, it may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 15.0412, subd. 4d (1980).

If the Board elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the

defects have been corrected, then the Board shall submit the rule to the Attorney General for review of form and legality. If the Board makes changes in the rule other than those recommended by the Hearing Examiner, then it shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 15.0412, subd. 4e (1980).

When the Board submits the rule to the Attorney General, it shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

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

## FINDINGS OF FACT

### Procedural Requirements

1. On February 19, 1982, the Board filed the following documents with the Chief Hearing Examiner:

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

2. On February 22, 1982, a Notice of Hearing and a copy of the proposed rules were published at 6 State Register 1480.

3. On February 22, 1982, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Board for the purpose of receiving such notice.

4. On March 1, 1982, the Board filed the following documents:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness.
(e) The names of Board personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(f) A copy of the State Register containing the proposed rules.

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

5. The record remained open through April 15, 1982, for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

6. On April 15, 1982, the Board filed an Authorizing Resolution which authorized the Executive Secretary to initiate this rule hearing procedure. (See, 9 MCAR § 2.102 B.3.).

### Nature of the Proposed Rule and Rule Amendments

7. This rule proceeding consists of both amendments to existing rules of the Board and newly proposed rules. The existing rules amended deal with definitions, requirements of licensure, educational requirements, professional

employment, examinations, licenses, and collaboration. The revision of the licensing process separates it into two parts: namely, an application for admission to examination and an application for licensure. The Board has also proposed new rules of conduct, which set out minimum ethical requirements in specific terms. The Board has also proposed a new rule dealing with waivers and variances which would permit a licensee or an applicant for licensure to apply for either a time limited waiver or a time limited variance of an individual rule provided that certain requirements are met.

Statutory Authority

8. The Board cites Minn. Stat. § 148.90, subd. 2(4) (1980) as statutory authority for the amendment of its existing rules. That subdivision states, in part, that the members of the board shall "pursuant to chapter 15, prescribe rules as may be necessary to enable it to carry into effect the provisions of Laws 1973, Chapter 685;" Laws 1973, Chapter 685 is the Minnesota licensing law for psychologists. The subdivision cited does provide authority for the amendments to existing rules.

9. The Board cites Minn. Stat. § 15.0412, subd. 1(a) (1980) as authority for the rule governing the granting of variances. That statute provides as follows:

> Unless otherwise provided by law, an agency may grant a variance to a rule. Before an agency grants a variance, it shall adopt rules setting forth procedures and standards by which variances shall be granted and denied. An agency receiving a request for a variance shall set forth in writing its reasons for granting or denying the variance. This subdivision shall not constitute authority for an agency to grant variances to statutory standards.

This statute is sufficient statutory authority for the proposed rule subsections dealing with variances.

10. As statutory authority for the proposed rule governing waivers, the Board again cites Minn. Stat. § 148.90, subd. 2(4) (1980), which is quoted above. The Board believes that a waiver rule is needed in order to assure that the rules do not inhibit appropriate changes in professional practice. The authority for the waiver rule is discussed later in this Report.

11. Finally, the Board states that the statutory authority to adopt the rules of conduct is contained in Minn. Stat. § 148.98 (1980). That statute reads as follows:

> The board shall adopt a code of ethics to govern appropriate practices or behavior, as referred to in section 148.89. The board shall file such code with the secretary of state at least 30 days prior to the effective date of such code. The code of ethics shall include, but not be limited to, the following principles:
>
> (1) The psychologist recognizes the boundaries of his competence and the limitation of his techniques and does not offer services or use techniques that fail to meet professional standards established in particular fields.
>
> (2) The psychologist who engages in practice assists his client in obtaining professional help for all important aspects of his problem that fall outside the boundaries of the psychologist's competence.

(3) A psychologist does not claim either directly or by implication professional qualifications that differ from actual qualifications, nor does he misrepresent his affiliation with any institution, organization, or individual, nor lead others to assume he has affiliations that he does not have.

The statutory authority for the rules of conduct is also discussed later in this Report.

Definitions

12. 7 MCAR § 10.001 B. defines "collaboration". The definition essentially restates the definition in the statute at Minn. Stat. § 148.89, subd. 2, and requires consultation between a licensed psychologist (LP) and a licensed consulting psychologist (LCP) "at least once each year". In order to be licensed as an LCP, an applicant must have completed a doctorate degree. An LP may be licensed with a Master's degree. The only distinction between the two levels of licensure in the statute is the requirement that the LP consult with an LCP. The statute provides that consultation on each case referred to a licensed psychologist shall not necessarily be required.

13. Several LCPs commented that unless the rule provided for a greater number of contacts that it would not be meaningful and would not protect the public from someone who was inadequately trained. (Ex. 3, p. 1; Ex. 6, Ex. 16, p. 2; Ex. 18, p. 2; Ex. 37; Ex. 26; Ex. 40, p. 2; Ex. 41, p. 1-2). The Minnesota Psychological Association (MPA) and the Minnesota Psychologists in Private Practice (MPPP) both supported a revision of the proposed rule definition which would define collaboration as "a process by which a licensed consulting psychologist maintains ongoing awareness and knowledge of the private practice of a licensed psychologist." (Ex. 8, p. 2; Ex. 15, p. 1-3, and Appendix B). The MPPP argued that the proposed definition fails to recognize the legislative directive to adopt rules to implement the statutory definition and what the MPPP believes is the two-tiered licensing scheme set out in the Minnesota licensing law for psychologists. It also suggests that the rule is not reasonable since the collaboration required is not necessarily a meaningful or substantive professional contact. Several LPs commented that collaboration was never meant by the Legislature to be supervision. They believe that the intent was to require an LP to have an LCP identified for use in times of a crisis with a client. (Ex. 5; Ex. 44, p. 2, Tr. 143; Tr. 152).

14. The Board of Psychology is required by Minn. Stat. § 15.0412, subd. 4c, to make an affirmative presentation of facts establishing the need for and reasonableness of each proposed rule. The Hearing Examiner is required by Minn. Stat. § 15.052, subd. 3, to make a judgment as to whether or not the Board has demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts. Whether or not a rule is reasonable is that a legal determination which has been long recognized in Minnesota case law. To be valid, a rule must be reasonable. Juster Bros. v. Christgau, 7 N.W.2d 501, 507 (Minn. 1943); Lee v. Delmont, 36 N.W.2d 530, 539 (Minn. 1949). An unreasonable rule has been equated with an arbitrary rule. Hurley v. Chaffee, 43 N.W.2d 281, 284 (Minn. 1950); In re Application of Byron N.

Hansen, 275 N.W.2d 790 (Minn. 1978). A rule is not unreasonable simply because a more reasonable alternative exists. Federal Security Administrator v. Quaker Oats Company, 318 U.S. 218, 233 (1943). The courts will not substitute their judgment for that of an administrative agency in promulgating rules unless the Agency's action disregards the facts and circumstances and can therefore be said to be arbitrary and unreasoning. Neither has the legislature invited or authorized the Hearing Examiner to make a judgment as to what is the wisest policy or course of action in the adoption of a rule. The question to be decided in determining reasonableness is whether or not a rational person could make the same choice made by the agency from among possible alternative standards in order to accomplish the legislative directive.

15. It is at least arguable that the Board has some latitude in adopting a rule which interprets Minn. Stat. § 148.89, subd. 2. The statute says that consultation shall be "on at least an annual basis but shall not necessarily require consultation on each case referred to a licensed psychologist." The Board states that it is merely paraphrasing the statute and argues that requiring more collaborative contacts would violate legislative intent. The Board suggests that its proposed definition is reasonable since the licensing law itself provides protection from someone inadequately trained. The Board believes that LCPs and LPs will seek that degree of collaboration which both professionals judge to be appropriate. It notes that imposing more frequent contacts will impose a financial obligation upon LPs. The Board states that it has received no complaints in the past that collaboration has been inadequate.

16. In regard to the proposed language submitted by MPPP and MPA, the Board states that this proposal would, in effect, be requiring an LP's practice to be monitored by an LCP. The Board believes that this would be an inaccurate interpretation of legislative intent in regard to the relationship between the two licenses. The Board believes that it cannot create distinctions between the two licenses that do not exist in the licensing law. Aside from the title of the license, the only distinction in the law is the requirement that the LP collaborate with an LCP. Once licensed, both LPs and LCPs may provide psychological services to the public for a fee. The Board also notes that the proposed rules do not make any change in the relationship of the two licenses from that in the present rules. To the extent that an agency is proposing amendments to existing rules, the agency need not demonstrate the need for and reasonableness of the existing rules not affected by the proposed amendments. 9 MCAR § 2.104 (1980 Ed.).

17. The Board's interpretation of the statute and its choice as to the minimum amount of contacts between LPs and an LCP are neither arbitrary nor irrational. The facts and arguments presented by the Board demonstrate the need for and reasonableness of the proposed definition. Even if it is the case that the statute would permit the Board some discretion in further specifying the nature of "collaboration", such a choice would be a matter of policy within the Board's discretion. It has been the position of the Board since the enactment of the licensing law in 1973 that LPs hold their own legally recognized license and may practice independently of any supervision by LCPs. It is generally held that a long-standing administrative interpretation of a

statute is entitled to great weight. Mankato Citizens Telephone Company v. Commissioner of Taxation, 145 N.W.2d 313, 317 (Minn. 1966).

18. 7 MCAR § 10.001 C. defines "area of competence". The definition is used later in the rules at § 10.002 E.3. which requires a license applicant to state at least one area of competence with two endorsements. Additionally, rule 10.008 D. limits a licensee's practice to the areas of competence which have been accepted by the Board. An LP commented that an area of competence cannot be determined unless specific services, techniques, methods or procedures are identified in the rule. (Ex. 44, p. 2). The LPPP also argues that the rule is vague because it does not list specific areas of competency. They believe that the lack of specificity would permit arbitrary interpretation by the Board and denial of a license if the stated area of competence is not acceptable to the Board. (Ex. 15, p. 7-8).

19. The Board stated in reply that it does not intend to require "specialties" and that a rigid list of areas of competence would be limiting and would be moving in the direction of specialties. A question presented is whether or not the rule definition is sufficiently specific so as to avoid or at least discourage arbitrary behavior on the part of the Board. Generally, a lack of standards governing the exercise of discretion by an administrative body which permits or encourages arbitrary enforcement may be illegally vague. Papachristou v. City of Jacksonville, 405 U.S. 156 (1972). Constitutional due process may also require that decisions be made in accordance with ascertainable standards. Holmes v. New York City Housing Authority, 398 F.2d 262, 265 (2nd Cir. 1968). It is concluded that the definition itself is sufficiently specific to discourage arbitrary behavior on the part of the Board. The definition does provide some direction by generally defining an area of competence as a "specific psychological service, technique, method, or procedure." Whether this definition is employed in regard to the rules of conduct or in regard to licensing, the applicant or the licensee would have access to an administrative proceeding to determine whether or not the Board was reasonably interpreting the definition.

20. 7 MCAR § 10.001 D. defines "informed written consent." The MPA suggested a revised definition which specifically allowed a legal representative to sign a consent, substituted the term "client" for "person" and stated that the licensee should use "best efforts". (Ex. 8, p. 2). The Board stated in its written reply that it believed that it was unnecessary to specifically include legal representatives since this was implicit. It also stated that the use of the word "client" would narrow the application of the definition. The rule subsection is needed and reasonable as proposed. The Board should consider whether or not the addition of language relating to a legal representative might result in a more clear rule.

no change see FoF 1

21. 7 MCAR § 10.001 G. defines "professional relationship." The MPA suggested that the phrase "for whom psychological services are sought" be deleted because it is confusing. (Ex. 8, p. 3). The Board agreed to the amendment. (Ex. L, p. 7). So amended, the proposed definition is needed and reasonable. The change does not result in a substantially different rule.

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22. 7 MCAR § 10.001 H. Public comments. The Board may wish to consider whether or not the definition as proposed presents any conflict with Minn. Stat. § 148.91, subds. 4(4), or 5(2).

no change FoF 3

23. 7 MCAR § 10.001 I. defines "supervision." The definition is utilized in § 10.004 which requires two years of post-degree employment under the supervision of a licensee of the Board. The MPA ( Ex. 8, p. 3) and several LCPs argued that supervision should only be provided by licensed consulting psychologists. (Ex. 17; Ex. 33, p. 2). One LCP stated that LCPs have had more intensive training, more comprehensive experience, and more stringent supervision themselves. (Ex. 16, p. 1). Several LPs stated that M.A. degree licensees are qualified to supervise employment, that there are not two levels of licensure in the statute, and therefore, there should not be in the rules, and that the rule, as proposed, is proper. (Ex. 25, Ex. 32, p. 1-2; Tr. 57; Tr. 142). The Board replied that permitting only LCPs to supervise those fulfilling the employment requirements would be differentiating between the two levels of licensure when there is no authority to do so in the statute. As a matter of policy, the Board argues that such a requirement would have a severe effect on those trainees seeking to work in out-state areas where there are fewer LCPs. The Board believes that an LP with ten years of experience may be more qualified to supervise than an LCP with only two years of experience.

24. A second set of objections to the definition, as proposed, relates to the requirement that supervision include "face-to-face contact between the supervisor and the supervisee in at least ten separate hourly sessions per quarter." The Chief Clinical Psychologist at the Hennepin County Medical Center felt that the rule required too much supervision for the postgraduate employment of persons holding doctorates and would be contrary to present practice. (Ex. 3, p. 1). The requirement also prompted objections from the Chief Psychologist and the Medical Director at the Minnesota Security Hospital. (Ex. 1, p. 1; Ex. 14; Ex. 9). They stated that ten hours per quarter would be unneeded and a waste of money. Such a rigid requirement ignores review of written reports and frequent less than one-hour meetings. They suggested that a supervisor in a state hospital setting be allowed to determine when face-to-face contact is necessary. The Chief Psychologist states that employees differ as to the amount of supervision needed while the ten-hour requirement is rigid and would be burdensome to institutions such as the Minnesota Security Hospital. He suggested an alternative of a minimum of ten to twenty hours of supervision per quarter, including at least two hours of individual face-to-face contact between the supervisor and the supervisee. (Ex. 14 p. 2)

25. In the Statement of Need, the Board states that a minimum amount of face-to-face contact is needed to ensure the development of the supervisee's competence and states that a weekly conference is generally considered to be necessary for such development. (Ex. I, p. 8). The Board stated in its post-hearing comments that it is reasonable to require that supervision during the two-year training be fairly frequent because the ability to practice independently after licensure depends to a large extent on the quality of that training period. The Board believes that adequate supervision is necessary if the training is to provide the foundation for a competent private practice. It notes that ten hourly sessions per quarter has a ratio of only one hour of supervision to 47 hours of work, assuming a 40-work week period. It states that the rule would not prohibit group sessions. (Ex. L, p. 9).

26. The Board's choice as to the amount and nature of contact between the supervisor and the supervisee is not unreasonable or arbitrary within the meaning of Chapter 15 or the case law cited above at Finding of Fact No. 14. The Board's argument has established that it has made a reasonable choice in determining what is required for meaningful supervision. Additionally, even if the statute can be interpreted to permit the Board to distinguish between the two levels of licensure in the manner suggested, the Board's choice not to do so is a valid policy decision. The rule is therefore needed and reasonable as proposed. The Board may, however, wish to consider whether or not all of the contact must be face-to-face or whether each session must last a full hour in order to provide an assurance of meaningful supervision.

see change and F of F. 4

27. 7 MCAR § 10.001 J. defines "test." The term is later used in the rules of conduct. The MPA suggested that the phrase " cognitive functioning" be substituted for the word "intelligence" since the latter is one part of the former. (Ex. 8, p. 3). The Board may consider this suggestion, however, the definition is needed and reasonable as proposed.

substituted #2

7 MCAR § 10.002 - General Requirements for Licensure

28. 7 MCAR § 10.002 A., B., and C. divides the licensure process into two parts, namely admission to examination and admission to licensure. It allows an applicant to be admitted to the first examination occurring 40 days or more after the application for examination has been accepted. The applicant could therefore pass the examination before completing the two-year professional employment period required for licensure. An LP with a doctorate supported the rule as proposed. (Ex. 44, p. 4). Another thought that the exam and the license should be contemporaneous. (Ex. 18, p. 3). The MPA (Ex. 8, p. 3-4) and the Minnesota School Psychologists Association (MSPA) (Ex. 48) urged that the written examination should be taken no more than six months prior to licensure. They argue that the granting of a license is a certification that, as of a certain date, the applicant was qualified. They believe that if the examination is two years before licensure, the certification is misleading. An LCP stated that an applicant should have one year experience before taking the oral part of the exam. (Ex. 26).

29. The Board replied that the written part of the examination measures what an applicant has absorbed and retained during his or her psychological education and therefore demonstrates whether the applicant has an adequate foundation in psychology on which to build a competent practice. The Board suggests that it does not measure the applicant's competence to provide psychological services in private practice since this is gained by supervised employment. The Board states that the measure of the educational foundation in psychology is valid regardless of when it is taken during the post-degree prelicensure period. (Ex. L, p. 11). The Board noted in its Statement of Need that the procedure would shorten the delay between completion of employment requirements and licensure, allow applicants who fail the objective part of the examination to retake it without paying a full fee, and spread the workload for the Board's staff evenly throughout the year. (Ex. I, p. 9). The Board has demonstrated that the proposed rule subsections are needed and reasonable.

30. 7 MCAR § 10.002 E.3. requires an applicant for licensure to state at least one area of competence and have written endorsements from at least two qualified persons for each area of competence stated. The MPPP objected to this requirement as imposing additional qualifications for licensure in order to enact a system of licensure by specialty. It argues that Minn. Stat. § 148.91, subds. 4 and 5, set forth all of the qualifications for licensure and that the Board does not have statutory authority to impose additional qualifications. (Ex. 15, pp. 6-7).

31. In support of the proposed requirement, the Board acknowledges that it would be unlawful to impose licensure by specialty because the statutes provide only for generic licensure. It argues, however, that Minn. Stat. § 148.98(1) requires that a psychologist recognize the boundaries of his competence. This requirement is elaborated upon in Rule 10.008 B. The licensure statute at Minn. Stat. § 148.91, subd. 4(2), does require that an applicant demonstrate that he is not found to be engaging in unethical practices as defined within the Code of Ethics. The Board therefore suggests that this rule subsection merely provides applicants with the means for documenting their areas of competence which they will have to observe once they become licensed. (Ex. L, p. 6).

32. The Board lacks statutory authority to add the requirement of an area of competence to the other licensing requirements set out in the statute. An administrative agency does not have authority to supply a substantive provision of law which it thinks the Legislature should have included in the first place. Wallace v. Commissioner, 184 N.W.2d 588, 594 (Minn. 1971); Holland v. State, 115 N.W.2d 161, 163-65 (Iowa, 1962). The licensing statute sets out all of the requirements for a general license to practice psychology. There is no requirement that an applicant demonstrate competence in any particular area in order to gain licensure. A rule which is contrary to legislative intent is invalid. Can Manufacturers Institute, Inc. v. State, 289 N.W.2d 416 (Minn. 1979); Buhs v. State, 306 N.W.2d 127, 131 (Minn. 1981). Although it can be argued that Minn. Stat. § 148.98(1) authorizes the Board to regulate areas of competence of a licensee, it does not provide authority to require an applicant to state an area supported by two endorsements in order to gain licensure. The requirement at Minn. Stat. § 148.91, subd. 4(2), which requires the Board to determine that the applicant has abided by the Code of Ethics would seem to require the Board only to make a judgment that the applicant has, during his prelicensure professional employment, limited his employment to the areas of competence in which his education and training have been gained. The proposed rule subsection is otherwise shown to be needed and reasonable.

33. 7 MCAR § 10.002 G. specifies what must be contained in the application regarding the applicant's supervised employment period. Cnsistent with the comments made in regard to the definition of collaboration, a number of LCPs stated that this rule subsection should require all supervisors to be LCPs. (Ex. 16, p. 1). The MPA agreed with this position. (Ex. 8, p. 4). These commenters believed that the LCPs higher level of training and expertise justify allowing only them to supervise applicants during the two years of post-degree employment. (Ex. 17). LPs again commented that they were just as

qualified to supervise employment and that since the statute did not create two levels of licensure, the rule should not either. (Ex. 25; Tr. 57). The Board repeated the comments that it made in regard to the definition of "supervision" contained in § 10.001 I. and "collaboration" at § 10.001 B. It is again concluded that the rule subsection is needed and reasonable as proposed.

34. 7 MCAR § 10.002 H. states the requirements for qualification as an endorser. Once again, a number of LCPs and the MPA stated that only LCPs should be endorsers. (Ex. 8, p. 4; Ex. 16, p. 2; Ex. 18, p. 3). Others commented that LPs were just as competent to endorse as LCPs and that a limitation to LCPs would be a hardship in rural areas. (Ex. 51, p. 2; Tr. 57; Tr. 145-6). The Board again stated that it does not have statutory authority to distinguish between the two types of licenses. The Board believes there is no rational basis to exclude LPs from acting as endorsers since they have met all of the licensure requirements.

35. Another line of comments by the MPA, an LCP (Ex. 40, p. 2) and the MSPA (Ex. 48, p. 1) supported a restriction on who can be an endorser by restricting it to licensees of the Board. They suggested that the Board would be unable to determine whether a person meets the qualifications for licensure unless that person is licensed. The MSPA suggested that an endorser should have three years of employment in the area of competency endorsed. The Board replied that such restrictions would handicap applicants training outside of Minnesota or training in public facilities where potential endorsers might not have a Minnesota license. The MPPP (Ex. 15, p. 9) suggested that other licensed professionals, such as physicians, should be permitted to be endorsers. The Board believes, however, that a non-psychiatrist medical doctor, for example, or a social worker, does not necessarily indicate competence to judge those delivering psychological services.

36. Finally, the MPPP (Ex. 15, p. 9) and an LP (Ex. 44, p. 4) suggested a clarification in the next to the last sentence of the first paragraph of the subsection. They suggested that after the word "the", the phrase "endorsees (or applicants) proficiency in the" be inserted for clarity. The Board agreed to this amendment. So amended, the subsection is needed and reasonable as proposed. The amendment is not a substantial change. The facts in the record demonstrate that the Board's policy choices are not arbitrary.

37. 7 MCAR § 10.002 I. permits a licensee to add an area of competence at any time. An LCP (Ex. 44, p. 6) asked that the language relating to documentation as required in the application for licensure be clarified since it might be misinterpreted. She stated that the rule should explicitly state that an area of competence may be added by providing "written endorsements from at least two persons meeting the qualifications for endorsers as specified in" 7 MCAR § 10.002 H. Although the subsection is needed and reasonable as proposed, the Board should consider whether the suggested amendment would be clearer since many forms of documentation are required for licensure.

7 MCAR § 10.003 - Educational Requirements for Licensure

38. A large number of comments were directed toward 7 MCAR § 10.003 B. and D. These sections specify, for both doctorates and masters' degrees, when

those degrees will be accepted by the Board even though they are not offered through a Department of Psychology. Both the MPA (Ex. 8, p. 4-5) and the MPPP (Ex. 15, p. 3-6) argue that these two subdivisions should be deleted because they are in conflict with the licensing statute. They suggest that the licensing statute requires a major in psychology while the rule permits the Board to accept degrees which are "predominantly psychological". It is, of course, true that when a rule conflicts with statute, it cannot stand. Sellner Mfg. Co. v. Commissioner of Taxation, 202 N.W.2d 886 (Minn. 1972); Guerrero v. Wagner, 246 N.W.2d 838, 841 (Minn. 1976).

39. A large number of licensees agreed with the MPA and MPPP position and stated that the rule should protect the public by licensing only those who have been explicitly trained for a career in professional psychology as evidenced by a degree from a psychology department where the courses are specifically and definably psychological in nature. (Ex. 3, p. 1; Ex. 27; Ex. 33, p. 2; Ex. 34; Ex. 36; Ex. 37; Ex. 40, p. 2; Ex. 45; Tr. 137-8; Ex. 48; Ex. 53, p. 1; Ex. 54; Ex. 57). Other licensees commented that departments other than psychology departments offer courses which are clearly psychological in nature and that individual educational credentials should be examined, as the Board has carefully done in the past. (Ex. 43; Ex. 47; Ex. 55; Ex. 56; Ex. 58). An assistant professor at the University of Minnesota stated that "related departments" such as the Department of Family Social Science, the Department of Philosophic and Psychological Foundations of Education, and the Department of Child and Family Development produce graduates with more sophisticated clinical skill than some graduates from the Department of Psychology. He stated that the majority of course work in the Department of Family Social Science is primarily psychological in nature, and a significant portion of the faculty are psychologists. (Ex. 46, p. 1-2).

40. In reply, the Board suggests that the dispute in this matter is over who is to determine what constitutes a major in psychology not whether one must have a major in psychology to be licensed. The Board believes it is responsible for reviewing an applicant's education and judging whether or not the coursework is psychological in nature rather than delegating that function to a Department of Psychology. The Board acknowledged that a clarification might be made in the headings used in the rule so as to make it clear that subsections A. and C. address applicants with majors in psychology so designated by the degree-conferring institution, while sections B. and D. address applicants with majors in psychology where the degree-conferring institution did not use the term "psychology" in its degree. (Ex. I, p. 15-17).

41. The Board also argues that its general rulemaking authority with regard to a licensing statute authorizes it to define what constitutes "a major in psychology". It argues that had the Legislature intended to restrict licensure to degrees from a Department of Psychology, it could have used that qualifier rather than the phrase "from an educational institution." As a matter of policy, the Board suggests that it would be arbitrary to deny admission to examination to those whose majors are, for example, titled education but whose coursework is educational psychology. It believes that a rigorous review of the applicant's academic program, plus satisfactory performance on the

objective and oral parts of the examination, together with supervised employment are sufficient guarantees of a competency to practice. The Board also suggests that its interpretation of what is a psychology major has been consistent since 1974 and is therefore entitled to great weight. Mattson v. Flynn, 13 N.W.2d 11 (Minn. 1944). It also believes that a delegation of its authority to a university to determine what constitutes a major in psychology may be unlawful. Wallace v. Commissioner, 184 N.W.2d 588, 591-2 (Minn. 1971). As a matter of policy, the Board argues that requiring two-thirds of coursework to be in psychology ensures that an applicant in fact has a major in psychology.

42. Although the comments raise a legtimate question as to whether or not the Board has proceeded beyond the boundaries of the statute in regard to educational requirements, it is not a matter which may properly be determined in this rule hearing proceeding. The rule which is being amended is Minn. Rule Psych 3 which was adopted in 1974. That rule already permits the Board to consider degrees offered by academic units other than a Department of Psychology if the dissertation for the degree is psychological in method and content. The Board proposes no change to that concept in this rule hearing proceeding. The only real substantive amendment proposed to the current rule is to increase from one-half to two-thirds the percentage of credits necessary for doctoral candidates to qualify after having obtained a major in psychology without the title "Psychology" being incorporated into their major. 9 MCAR § 2.104 reads in part as follows:

> To the extent that an agency is proposing amendments to existing rules, the agency need not demonstrate the need for and reasonableness of the existing rules not affected by the proposed amendments.

The purpose of this rule is to permit agencies to amend existing rules without having to rejustify the existing rules which have already proceeded through a prior rulemaking proceeding. In short, an agency need not prove the need for or reasonableness of a rule more than once. The Board's presentation has established the need for and reasonableness of the amendments which it proposes to subsections B. and D.

43. There are other remedies for persons wishing to challenge an existing rule. Minn. Stat. § 15.0415 authorizes any interested person to petition the Board requesting the repeal or amendment of any rule. The Board must make a specific and detailed reply to the request although it is not required to initiate the rule hearing procedure. The validity of any rule of the Board may also be determined by a petition for a declaratory judgment addressed to the District Court. Minn. Stat. § 15.0416. The Court is directed to declare the rule invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rulemaking procedures. Lastly, persons seeking a change in a rule may seek legislative relief to alter the statute so as to nullify the rule in question.

44. 7 MCAR § 10.003 A. and C. are the sections of the rule which make it plain that degrees offered through a department of psychology would be ac-

cepted by the Board. Additionally, a degree from a department other than psychology "with a major such as educational psychology, child psychology, counselling psychology, or industrial psychology." are acceptable. The Board states, in its Statement of Need and Reasonableness (Ex. I, p. 14), that it has consistently found that the four majors listed meet psychological course credit requirements and therefore are psychology majors in both name and requirements. The Board has demonstrated the need for and reasonableness of these proposed rule sections. However, there is a problem of legality with the words "such as" in the above quotation. These words seem to imply that the Board would be free to accept a major like the four specifically listed under subsection A without applying the requirements of subsection B. This would constitute unbridled discretion in the agency in conflict with the definition of "rule" set out in Minn. Stat. § 15.0411, subd. 3, which requires specificity. Likewise, due process requires that such determinations be made in accordance with ascertainable standards. Holmes v. New York City Housing Authority, 398 F.2d 262, 265 (2nd Cir. 1968). This defect constitutes a violation of a substantive provision of law. In order to correct the defect, the Board should change the words "such as" to "in" in both §§ 10.003 A. and C. p.5 p.7

7 MCAR § 10.004 - Professional Employment

45. 7 MCAR § 10.004 A.2. requires that an applicant's post-degree and pre-licensure employment be under the supervision of a licensee of the Board who is competent in the areas of practice in which supervision is provided. Comments were again divided as between LCPs and LPs with regard to this rule subsection. The MPA (Ex. 8, p. 5), and a number of LCPs (Ex. 16, p. 1; Ex. 17), stated that the subsection should provide that the supervision be done only by LCPs. They believe that LCPs have had more intensive training, more comprehensive experience, and more stringent supervision which would encourage acceptable levels of quality assurance in the course of supervision. LPs commented that they were just as qualified to supervise employment and that the statute does not recognize such a distinction between the two levels of licensure. (Ex. 25; Ex. 48, p. 2; Tr. 57). The MSPA commented that a supervisor should have three years' employment in the area of practice supervised. (Ex. 48, p. 2).

46. The Board again reasserted its position that the licensing statute does not permit it to make distinctions between the two levels of licensure in the manner suggested by the MPA and the LCPs who commented. It also stated that the statute at Minn. Stat. § 148.93 allows LPs to engage in "other working relationships with members of his own profession" which would presumably include a supervisory relationship. The Board also suggested that in rural settings, the only licensee available for supervision is often a licensed psychologist. The Board has demonstrated that its proposed rule is not arbitrary. While it may also be doubtful that the Board has statutory authority to distinguish between the two licenses in the manner suggested, it is clear that if they did have that authority, it would be in the policy-making discretion of the Board as to whether or not such a distinction should be made. The Board may also consider the suggestion made by the MSPA as a matter of policy.

47. 7 MCAR § 10.004 D. provides that experiences which are required as preparation for a degree may not be offered to satisfy the employment requirement. One example given in the rule is "pre-degree internships". Two licensees commented that post-degree internships which are required as a part of preparation for the applicant's degree should not count towards the employment requirement either since to do so would give preference to one set of applicants. (Ex. 19; Ex. 53, p. 2). Another LCP commented that it was not equitable to prohibit pre-degree internship if the academic program was so structured. (Tr. 138-9).

48. The Board agreed that any internship required for a degree should be excluded and agreed to delete the word "pre-degree" from the proposed rule amendment. So amended, the subsection is needed and reasonable as proposed. The amendment does not constitute a substantial change.

deleted p. 8

49. 7 MCAR § 10.004 G. deals with crediting part-time employment. An LCP suggested that the acceptable time period be stated in hours for the sake of consistency. (Ex. 18, p. 3). The Board agreed that this would be less ambiguous and suggested insertion of the phrase "ten hours per week for a period of twelve consecutive weeks" in place of "a three-month quarter-time period". So amended, the proposed subsection is needed and reasonable. The amendment is not substantially different from the proposal as published.

So amended p. 9

7 MCAR § 10.004 - Examinations

50. 7 MCAR § 10.005 D. provides that an applicant must perform satisfactorily on both parts of the examination. An LCP commented that satisfactory performance ought to be defined in the rules. (Ex. 26, p. 2). The Board noted that no passing score exists in the current rules and stated that the Board wished to retain the flexibility to determine what constitutes an acceptable minimum for licensure in light of possible changes in the examination without having to undergo rulemaking. (Ex. L, p. 26). The subsection is needed and reasonable as proposed.

7 MCAR § 10.006 - Licenses, License Renewal

51. 7 MCAR § 10.006 D. requires renewal applications to be notarized. One commenter suggested that this was unnecessary since a misrepresentation on the original application would suffice for disciplinary purposes. (Ex. 31). The Board replied that it would create much administrative difficulty if renewals would have to be checked to see if the original application contained the same information. It states that the additional processing time and added cost would make the suggestion unreasonable. The subsection is needed and reasonable as proposed.

52. 7 MCAR § 10.006 H. provides that the Board shall not renew the license of a licensee who has neither lived nor practiced within the state for a period of more than ten years. Two licensees objected to this requirement. Both live in other states and hope to return to Minnesota, one for retirement. (Ex. 4, Ex. 10). The Board acknowledged the possibility of a problem, but stated that the relicensure of a former licensee who is currently licensed in another state is a relatively simple matter. At any rate, this provision was a part of the prior rule, Minn. Rule Psych 7f, and is therefore not a

proper matter to be argued in this rule hearing proceeding. Although the Board would have discretion to amend the ten-year period requirement, it is not required to do so.

7 MCAR § 10.007 - Collaboration

53. 7 MCAR § 10.007 B. provides that the nature and frequency of the collaboration shall be mutually determined by the LP and the LCP. Both the MPA (Ex. 8, p. 6) and the MPPP (Ex. 15, pp. 1-3) objected to this rule subsection on the grounds that it did not provide any meaningful requirements and therefore failed to implement legislative intent in requiring collaboration. Both groups suggested that within two years of licensure, LPs be required to have a minimum of one collaborative contact per month and that the contacts be face-to-face and at least one hour in length. After the two-year period, they suggested a minimum of one collaborative contact per year. Other LCPs asked for an increased number of contacts. (Ex. 16, p. 2). The MSPA supported quarterly collaboration for the first two years of licensure with face-to-face contact. (Ex. 48, p. 2). An LP supported the rule as proposed. (Ex. 2)

54. The Board reiterated its position that it cannot go beyond the statute in requiring distinctions between the two levels of licensure. The Board also stated that any further specificity in regard to collaboration would be difficult because of different requirements in different areas of practice and because of individual differences in experience and training. The Board notes that other rules require consultation under certain circumstances and states that as professionals, LPs and LCPs are in the best position to determine the degree of appropriate collaboration. (Ex. L, p. 28).

55. Minn. Stat. § 148.89, subd. 2, sets out the minimum requirement which will satisfy the statute namely contact once a year. It also states that consultation on each case is not necessarily required. The Board has essentially repeated the statutory minimum in its rule. The Board has presented sufficient facts and argument to demonstrate that the proposed rule is reasonable and not arbitrary. While additional contacts, especially in the initial two-year period, may be more reasonable or better policy, that decision is within the sole discretion of the Board. The Board will, of course, further consider policy questions such as this after issuance of this Report and before adoption of a final Rule.

56. 7 MCAR § 10.007 C. provides that a colloboration report is not required when an LP has not been engaged in private practice. Consistent with their comments on the prior subsection, the MPA (Ex. 8, p. 7), and the MPPP (Ex. 15, pp. 1-3) suggested that this subsection be revised to set out the requirements for a more extensive collaboration report. They proposed that the Report include a narrative summary stating the number and nature of the contacts and the issues addressed. The Report would be signed by both collaborators. The subsection is needed and reasonable as proposed. The Board may consider the suggestions.

57. 7 MCAR § 10.007 D. distinguishes between collaboration and consultation. One LCP stated that this subsection should be stricken since it is redundant and may cause confusion. (Ex. 18, p. 3). The Board replied that the section would serve as a reminder that consultation is required of all

licensees when the need arises. It does not impose collaboration on LCPs. The subsection is needed and reasonable as proposed.

7 MCAR § 10.008 A. - Scope and Purpose of Rules of Conduct

58. 7 MCAR § 10.008 A.1. states that the rules of conduct constitute the code of ethics required by the statute and apply to all licensees and applicants. There were three sets of comments that generally apply to this subsection. First, several commenters stated that the rules of conduct, either in whole or in part, should be ethical guidelines only and not rules with the force of law. (Ex. 20, p. 1; Ex. 35, p. 1; Ex. 44, p. 7). The LPPP argued that the statutory authority to adopt a "code of ethics" does not authorize "rules of conduct". (Ex. 15, pp. 10-13). It argues that a code of ethics is a set of principles governing conduct rather than a rigid statement of required behavior. The LPPP expressed concern that these rules could eliminate the need for expert testimony in civil malpractice cases.

59. In its response, the Board pointed out that at least one dictionary definition defined "code" as a set of principles or rules of conduct. Another definition (Webster's Third New International Dictionary, 1971) defines a code as a "set of rules or standards of professional practices or behavior set up by an organized group and usually reinforced by certain police and punitive powers of the group against non-conforming members." The Board also states that to adopt rules which do not have the force of law would result in confusion. It notes that the present code of ethics is a rule having the force of law. Given the available dictionary definitions, it cannot be concluded that the Legislature meant only that a set of general principles should be adopted. Whether or not some rules would or would not have the force and effect of law is a matter within the Board's discretion.

60. A second set of concerns stated that the rules seem to be oriented towards the private practice of psychology with adults and should either explain how or should not apply to "agencies, schools, teaching, research, industrial psychology, child psychology or work with retarded adults." (Ex. 48, p. 3; Ex. 51, p. 1). The Board stated that it does not intend that the rules should be applied or enforced in situations where to do so would be absurd. It states that the waiver and variance provisions should permit flexibility to deal with this problem. The Board notes that it has the authority to adopt rules governing all psychologists. The problem would appear to be a matter of degree. If the rules apply to a particular area of the practice of psychology which would require the practitioner in that area to apply for a large number of waivers or variances in order to comply with the rules, then the rules might well be unreasonable. The Board would be obligated to draw rules with which all licensees could reasonably comply. The Board should consider this question, including any possible remedies such as a subsection explaining how certain rules apply or do not apply to particular areas such as teaching or research.

61. Finally, the MPPP (Ex. 50, p. 3), and other licensees, stated that the Board had made no affirmative presentation of facts in support of the rules of conduct. They suggested that the need for the rules should have been demonstrated by examples of abuse by psychologists. The Board stated in its

reply (Ex. L-2, p. 3), that its presentation established that a more precise standard which is more easily enforceable is necessary. Generally, an agency must make some affirmative presentation in support of each rule subsection. The facts showing need or reasonableness, however, may be adjudicative facts, legislative facts, statutory interpretation, or articulated policy preferences. 1 and 2 Davis, Administrative Law Treatise, (2nd Ed.), §§ 6.13-14, 12.3. It is not therefore required that an agency prove the need for each rule by showing that there have been several instances of abuse by psychologists in the past few years. §§ 10.008 A.1. and 2. are needed and reasonable as proposed.

62. 7 MCAR § 10.008 A.4. provides in part that "the rules of conduct are not all inclusive and do not specify all the grounds for disciplinary action or denial of licensure." The MPPP suggests that this language violates the Board's statutory authority contained at Minn. Stat. § 148.95, subd. 1, which provides for license revocation upon proof that a licensee has been "guilty of unprofessional conduct as defined by the rules established by the Board or has violated the code of ethics adopted by the Board." The MPPP also suggests that the rule is vague, fails to give notice to licensees of potential grounds for disciplinary action, and therefore, permits arbitrary action by the Board. (Ex. 15, p. 13-14)

63. The Board cites the general rule which is repeated in Thompson v. City of Minneapolis, 300 N.W.2d 763, 768 (Minn. 1980), that a rule is unconstitutionally vague if the words of the rule are not sufficiently specific to provide fair warning of the type of conduct which is punishable under that rule. The Board has also cited several cases which hold that statutory standards for license revocation such as "unprofessional conduct" are not necessarily unconstitutionally vague. See, e.g., Reyburn v. Minnesota State Board of Optometry, 78 N.W. 2d 351, 355 (Minn. 1956). The Board suggests that a disciplinary action for any unethical behavior not specifically proscribed by the rules of conduct can be proved by showing a deviation from generally accepted practice as established through evidence concerning standards of practice in a disciplinary hearing.

64. The difficulty with the subsection in question is that it does not provide even a general guide as to what might be prohibited. While vagueness may be a problem, a more serious matter is that the Legislature has not authorized the Board to enforce disciplinary action based upon an undefined standard of "unprofessional conduct". The Legislature has specifically advised the Board to define what it believes to be unprofessional conduct and unethical behavior by rule. The Legislature has, therefore, specified its preference for specific standards for disciplinary action. A rule which is contrary to the language of the statute or to legislative intent is invalid. Can Manufacturers Institute, Inc. v. State, 289 N.W.2d 416 (Minn. 1979); Buhs v. State, 306 N.W.2d 127, 131 (Minn. 1981). The first sentence of § 10.008 A.4. is therefore a substantive violation of law. In order to correct the defect, the Board should delete this sentence. deleted P. 12

65. There is one further problem of legality in the subsection. In the second sentence, the word "may" has been employed to describe when the ethical principles may be used to resolve ambiguities in interpretation of the rules

of conduct. The use of the word "may" creates an unacceptable discretion in the agency since it could use the ethical principles in one case and not in another based upon what was most favorable to the Board's position. Such a practice violates the spirit of the definition of rule at Minn. Stat. § 15.0411, subd. 3, which requires specificity in rulemaking. Additionally, the standards must accompany the exercise of discretion to discourage arbitrary enforcement. Papachristou v. City of Jacksonville, 405 U.S. 156 (1972). This is also a violation of a substantive provision of law. In order to cure the defect, the agency can change the word "may" to "shall". changed p. 12

7 MCAR § 10.008 B. - Competence Section of Rules of Conduct

66. 7 MCAR § 10.008 B.1. requires the psychologist to limit his practice to areas of competence for which education and training or experience have been gained. The MPPP (Ex. 15, pp. 6-10) included this subsection in its general objection to the Board's approach to areas of competence. Although its main objection would appear to be an objection to requiring areas of competence in order to gain licensure, the MPPP also states that the rule is vague because it does not list areas of competence and therefore, permits arbitrary action by the Board or its staff.

67. Minn. Stat. § 148.98, subd. 1, which requires a psychologist to recognize the boundaries of his competence and not offer services or use techniques which fail to meet professional standards in particular fields, is sufficient authority for this rule subsection requiring a limitation of practice. Because the licensee is the person who states the areas of competence, it cannot be argued that those governed by the rules have no indication of what is required by the rule. The record would support the conclusion that most "specific psychological services, techniques, methods or procedures" are recognized by a general concensus within the professional community. Any dispute between a licensee and the Board could, of course, be resolved through a contested case proceeding, if necessary.

68. This subsection is needed and reasonable as proposed and within the statutory of the Board except that it must be revised consistent with Finding of Fact No. 32 by deleting the reference to the rule subsection cited. The Board does have authority to require a licensee to state an area of competence upon licensure, and the Board may wish to amend this rule subsection to so provide. deleted p. 13 so required p. 12

69. 7 MCAR § 10.008 B.3. requires a psychologist to engage in ongoing consultation with other psychologists when practicing a new service technique or speciality which is developing. An LP stated that the rule would tend to preclude innovative practices unless another practitioner was already engaged in the practice. (Ex. 20, p. 2). The LPPP pointed out that if a licensee is a pioneer in the development of an area of consultation, consultation very well might not be available. They suggested insertion of language such as "to the extent feasible" in the rule subsection. One commenter (Ex. 14) suggested that the use of the word "supervision" in this section was inappropriate. The Board agreed to this last comment and suggested that the words "an in which supervision is not available," be deleted. (Ex. L, p. 33). The Board also acknowledged that consultation may not always be possible. The Board sees no deleted p. 13

harm in an amendment such as that suggested by MPPP but believes it to be unnecessary. Although the rule, as amended by the deletion, is needed and reasonable, the Board should consider an amendment to make it clear that ongoing consultation is required only where possible.

70. 7 MCAR § 10.008 B.4. requires a psychologist to recognize the professional, technical and administrative resources available to the client and to refer the client to them when appropriate. The MPA suggested that the phrase "refer the client to them" be replaced with "make referrals to those resources" to make the language clearer. (Ex. 8, p. 7). The Board agreed to this change. (Ex. L, p. 34). Other licensees commented that the rule required psychologists to be community social workers. (Ex. 49, p. 3). The MPPP states that the proposed language relating to "technical and administrative" resources is too vague and will not give any guidance to the licensee. It acknowledges that a practitioner has a duty specified in the statute to assist his client in obtaining professional help for problems which are outside the boundaries of the psychologist's competence. The LPPP also stated that the "best interest of the client" test is inconsistent with statute. (Ex. 15, pp. 14-15).

71. The Board replied that the APA standards for providers requires all providers to inform themselves about and use the network of human services and resources. The Board states that this subsection requires nothing more. As amended by the Board, the subsection is needed and reasonable. The amendment does not create a substantial change. The Board should consider whether the phrase "technical, and administrative" can be replaced by more descriptive language. The Board also might consider whether the phrase "shall recognize" can be replaced or the subsection rephrased so that the Board is not put in the position of trying to determine whether or not a licensee has "recognized" available resources.

7 MCAR § 10.008 C. - Protecting the Privacy of Clients Section of the Rules of Conduct

72. 7 MCAR § 10.008 C.2. permits the disclosure of private information without the informed written consent of the client when the psychologist determines that disclosure is necessary to protect against "a clear and substantial risk" of imminent serious harm. One LCP commented that the decision to disclose should be discussed with the client. (Ex. 18, p. 3). The Board noted that the rule permits such discussion, but states that it should not be required because the psychologist may have to act very quickly. (Ex. L, p. 35). The chief clinical psychologist at the Hennepin County Crisis Intervention Center stated that "clear and substantial risk" is too heavy a burden where there is a strong need to protect society and victims. He suggested a probable cause standard. The subsection is needed and reasonable as proposed. The Board may consider the suggestions made.

73. 7 MCAR § 10.008 C.3. requires a psychologist to advise third parties of the responsibility to safeguard privacy of information. The MPA objected to the vagueness of the subsection. It suggested alternate language. (Ex. 8, p. 7). The Board acknowledged that the rule subsection as written may be subject to some misinterpretation, but felt that the language suggested by the

MPA was no more precise. The Board suggested that it would review the language with respect to improving clarity prior to the final adoption of the rule. The subsection is needed and reasonable as proposed.

74. 7 MCAR § 10.008 C.4. requires a psychologist to inform a minor of the limitation on his right of privacy. One LCP stated that such a requirement would frighten children away from treatment and should be stricken. (Ex. 18, p. 4). The Board has concluded that the potentially greater injury is done when the minor is led to believe that a communication with a psychologist will go no further. (Ex. L, p. 35). The MPA suggested a revision which would maximize the chances of the minor to understand the information being conveyed. (Ex. 8, p. 8). The Board agreed that the wording could be clarified and stated it would reexamine the subsection before final adoption. The subsection is needed and reasonable as proposed.

75. 7 MCAR § 10.008 C.6. requires a psychologist to instruct the staff to comply with client requests regarding mailing of statements for services. A former Board member commented that the rule should instruct the staff to ask the client where the statement should be sent. (Tr. p. 151). The Board agreed that such a change would improve the subsection and agreed to review the matter prior to final adoption. (Ex. L, p. 35). The subsection is needed and reasonable as proposed.

76. 7 MCAR § 10.008 C.11. requires the psychologist to observe laws concerning the reporting of abuse of children and vulnerable adults. The MPA stated that the rule as drafted is awkward and suggested that it should read as follows:

> A psychologist, in the course of professional practice, shall not violate any law concerning the reporting of abuse of children or vulnerable adults.

(Ex. 8, p. 8). The Board agrees that the wording of the subsection can be approved and will consider doing so prior to final adoption. (Ex. L, p. 36). The subsection is needed and reasonable as proposed.

7 MCAR § 10.008 D. - Impaired Objectivity Section of the Rules of Conduct

77. 7 MCAR § 10.008 D.1. and 2. provide that a psychologist may not undertake or continue a professional relationship in which his or her objectivity or effectiveness may or would be impaired because of an interpersonal relationship or a personal problem. One commentor thought that the subsections were unnecessarily cumbersome. (Ex. 7). Another believed that a psychologist cannot recognize a loss of objectivity and that the subsection should be eliminated. (Ex. 3, p. 2). The MPPP stated that the use of the phrase "may be impaired" in section D.1. is vague and unreasonable. It suggested that the first sentence of D.1. be eliminated and that impairment "for whatever reason" should require termination of the professional relationship. (Ex. 15, p. 16). Another comment was that the written notification requirement could damage the client while adding no protection. (Ex. 49, p. 3). The MPA suggested that "emotional" be added to the list of relationships in section D.1. (Ex. 8, p. 8). The Board replied that the MPPP's suggestion is not specific enough to protect either the client or the psychologist. The Board noted that the rules do not prohibit an oral discussion of termination prior

to the written notice. It agreed that the word "emotional" could be added to the rule.

78. In regard to subsection D.1., the Board should consider changing the third word in the subsection namely "may" to the word "shall" for the sake of consistency in the rules. The use of the phrase "may be impaired" in the third line of the subsection results in the creation of a very uncertain standard for the licensee and is simply too vague to use as a standard in rules of conduct. See, Finding of Fact No. 19. The licensee would be required to essentially guess at when objectivity "may be" impaired because of the interpersonal relationships listed. Accordingly, it is a violation of a substantive provision of law. In order to correct the defect, the Board should substitute the phrase "would be or is". It is also suggested that the balance of the sentence after this phrase read "impaired due to a familial, social, economic, supervisory, political, or emotional interpersonal relationship". Such a revision will avoid a further potential legal problem; namely, the failure to list all of the relationships for which the Board intends to discipline a licensee. For purposes of clarity, in the second sentence the word "an" should be replaced by "a listed". The Board should consider as a matter of policy whether or not it ought to include an oral as well as a written notice to the client in the rule subsection so as to protect the best interests of the client. The Board may also wish to reconsider the meaning of the phrase "take steps" in the rule to see if more precise language can be drafted. Subsection D.1. has been shown to be needed and reasonable.

79. Some comments were addressed specifically to subsection D.2. One licensee stated that objectivity is always impaired to some degree by personal problems. (Ex. 26). Another stated that the rule should not require a psychologist to explicitly state personal problems to a client. (Ex. 35, p. 1). Another request was that personal problems include the filing of a formal complaint against the therapist for professional misconduct. (Ex. 41, p. 2).

80. The Board stated that psychologists are trained to recognize when personal problems reach the point of interfering with one's objectivity or effectiveness. It also noted that the rule does not require the psychologist to explain his personal problems in detail. The subsection has been shown to be needed and reasonable as proposed. The Board has established that when a psychologist loses the capacity to remain objective, the resulting treatment can be faulty. (Ex. I, p. 27). The Board should consider the same drafting suggestions which were made in regard to subsection D.1.

7 MCAR § 10.008 E. - Client Welfare Section of the Rules of Conduct

81. 7 MCAR § 10.008 E.1. requires the psychologist to explain procedures and test results to the client. The subsection attracted no comment. It is needed and reasonable as proposed. The Board should consider, however, whether or not the rule should specify at what point the explanation must be provided. The Statement of Need (Ex. I, p. 28) seems to contemplate an explanation of services before they are rendered, but the rule does not so explicitly state.

82. 7 MCAR § 10.008 E.2. sets out the client's bill of rights and requires that they and the licensees' areas of competence be displayed at his or

her primary location. One commentor suggested that the display or handout should be required at all locations. (Ex. 6). The Board agreed and proposes to delete the words "of the primary location". (Ex. L, p. 38). The MPPP commented that the bill of rights is an unreasonable interference with the therapeutic relationship and is unneeded. (Ex. 15, p. 16-17). An LCP commented that the bill of rights says little and a new one should be drawn. (Ex. 18, p. 4). The MPA recommended deletion of the bill of rights because it was inappropriate to areas such as teaching and research, conveys no direct information, and permits a licensee to suggest that the Board has endorsed a psychologist's competency in a particular area. (Ex, 8, p. 8-9). The Board replies that it believes that the bill of rights will promote rapport between the psychologist and client since it will promote trust. The Board believes that research subjects should be advised of these rights and states that any hardship can be dealt with by waiver or variance.

83. As amended by the deletion, the proposed rule subsection has been shown to be needed and reasonable. The change is not substantial. The Board should consider, however, whether a large number of waivers or variances would be required in the teaching or research area so as to justify an exemption within this rule. Since it is likely that the bill of rights may be copied from this rule subsection for use in a licensee's office, it is suggested that the bill of rights be reworded so that it becomes an effective communication to the client reading it. For example, it could advise the client where he or she might find the public records containing the psychologist's credentials, provide an explanation of what the rules of conduct are, and perhaps give the address and/or phone number of the Documents Section. Additionally, the Board may wish to consider using its full name in subsection 2.d. as suggested by one commentor (Tr. p. 148), together with its address. The Board could also consider some amendment to ensure that a licensee does not advertise his areas of competence as Board endorsed or certified.

84. 7 MCAR § 10.008 E.3. requires that a psychologist shall not impose any stereotypes on the client. One LCP commented that a complete prohibition on sterotyping is an impossibility. (Ex. 18, p. 4). Other licensees stated that stereotypes must be used to form clinical hypotheses, make prognoses or diagnoses. (Ex. 49, p. 4). IPT commented that the rule was idealistic, cannot be enforced and should not have the force of law. (Ex. 51, p. 1). The MPPP agreed that sterotyping is universal and that the rule might preclude the application of legitimate norms recognized by the profession for certain categories of clients. (Ex. 15, p. 17). The Board cites the dictionary definition of stereotype as a conventional conception of a group which allows for no individuality or critical judgment. It states that since critical judgment is involved, a licensee could classify a client based on psychological tests. The Board believes that stereotyping interferes with the objective assessment of a client's problems and may prevent the choice of an appropriate therapy period. (Ex. I, p. 29; Ex. L, p. 39). The Board has established the need for and reasonableness of the proposed rule subsection. The Board may wish to consider whether or not the subsection would be more enforceable and fairer to the licensee if it prohibited the psychologist from permitting stereotyping to interfere with an objective assessment of the client's problems.

85. 7 MCAR § 10.008 E.4. requires a psychologist to disclose to the client "value preferences for choice of treatment or outcome" and other available options. The MPA suggested that the word "value" be deleted and "the psychologist's" be inserted to clarify the meaning of the subsection. (Ex. 8, p. 9). The Board agreed. (Ex. L, p. 39). One licensee commented that the disclosure of value preferences may be detrimental to client/therapist relationship. (Ex. 20, p. 2; see also, Ex. 49, p. 4). Another objected to informing clients of alternative treatments. (Ex. 35, p. 1). The MPPP stated that the phrase "value preferences" is unreasonable and vague. It also stated that it was unclear what other "available options" must be presented. (Ex. 15, p. 18).

so clarified P.17

86. The Board states that the section only requires that the psychologist make clear his own treatment preference and acknowledge other appropriate therapeutic modalities. It believes that the client will be able to appropriately use this information and that an informed choice regarding treatment cannot be made unless other methods of treatment are discussed. (Ex. L, p. 39-40). So amended, the need for and reasonableness of the proposed rule subsection is established. The amendment does not constitute a substantial change. The subsection does not impose an unreasonable burden upon the licensee. Should the licensee be permitted to decide whether or not the client will attach significance to an alternative form of treatment, the rule would not be enforceable.

87. 7 MCAR § 10.008 E.5. requires a psychologist to inform a client of a divergence of values or biases which may impair their professtional relationship. The subsection also permits the licensee to terminate the relationship. One LCP noted that a psychologist always has the right to terminate. (Ex. 18, p. 4). The MPPP suggested that the subsection be deleted and merged with the section on impaired objectivity. The Board replied that it intends to distinguish between "impaired objectivity" and "impaired relationship". A divergence in values would not necessarily be the same as an admission of impaired objectivity. The Board agrees that it does not have to give permission to the licensee to terminate the relationship but it believes that the section advises the psychologist that he has not violating the general prohibition on abandoning a client in this instance.

88. The subsection is needed and reasonable as proposed. The Board may wish to reword the subsection as follows to avoid awkwardness:

> 5. A psychologist who becomes aware of a divergence of interests, values, attitudes or biases between a client and a psychologist sufficient to impair their professional relationship shall so inform the client. Either the psychologist or the client may then terminate the relationship.

so reworded P.17

89. 7 MCAR § 10.008 E.6. requires a licensee to terminate the relationship with a client who is not benefitting from his services and to inform the client in writing. The MPPP (Ex. 15, p. 19) and an LCP commented that plateaus occur in therapy when it is difficult to say whether the patient is benefitting. One commentor suggested that the rule referred to "unneeded services". (Ex. 3, p. 2). The MPPP favored the existing rule which requires the licensee to terminate the relationship when it is "reasonably clear" that the client is not benefitting. Another commentor stated that such a decision

should be discussed orally first with the client before it is put in writing. (Ex. 18, p. 4). The Board acknowledges that plateaus do occur. It seeks to prevent the situation where a client is maintained as a source of income even though the psychologist is not helping the client. The Board expressed a willingness to reword the section to more precisely accomplish this goal. (Ex. L, p. 40-41).

90. Although the subsection is needed and reasonable as proposed, the Board should consider revising the language to require an oral statement to the client regarding the termination, to define the meaning of "take steps" and to clarify when a client is "not benefitting" from professional services. A possible revision is as follows:

> 6. A psychologist shall terminate a professional relationship with a client when the client is not benefitting from the services or the services are unneeded. The psychologist shall inform the client of the termination orally and in writing. The psychologist shall then assist the client to obtain services from another professional.

Similar new wording p. 17

91. 7 MCAR § 10.008 E.7. requires a psychologist to refer the client to another professional when requested. An LCP commented that the subsection should not prevent an industrial psychologist from trying to sell his services to a client. (Ex. 18, p. 4). The Board states that this section does not preclude discussion of the request prior to referral, but requires referral if the client persists. (Ex. L, p. 41). The Board expressed a willingness to rewrite the subsection to clarify the intent. The subsection is needed and reasonable as proposed. As a part of the revision, the Board should consider placing the initial clause at the end of the sentence.

so placed p. 17

92. 7 MCAR § 10.008 E.8. requires that a psychologist shall not engage in sexual intercourse or other physical intimacies with a client. The MPPP asked for a definition of "client" and stated that the prohibition against "verbal or physical behavior which is sexually seductive or sexually demeaning" should be deleted because it is too vague. (Ex. 15, p. 19-20). The MPA asked that the phrase "but are not limited to" be included with the examples of physical intimacies. (Ex. 8, p. 9). Two comments supported a prohibition on a sexual relationship between therapist and client for six months after the termination of their professional relationship. (Ex. 27; Ex. 40, p. 20).

93. The Board replied that the "sexually seductive or demeaning" language is necessary to include all harmful sexually oriented behavior. The phrases are sufficiently specific to provide notice to a licensee. The Board believes that the MPA's suggestion is unnecessary since the word "include" does not exclude anything. The Board believes that it does not have authority to regulate the personal relationships of licensees conducted outside of professional relationships. (Ex. L, p. 41-42). The subsection is needed and reasonable as proposed.

94. 7 MCAR § 10.008 E.9. requires a psychologist to determine whether a client has had or continues to have a professional relationship with another psychologist. The Board states that the existence of another professional relationship might create a problem if the two psychologists use techniques which are greatly dissimilar or make diagnoses which do not match. (Ex. I, p. 31). The MPPP and other commentors agreed on two comments. First, that other

therapists should be included in the rule and secondly, that the rule should not include past professional relationships since this would be counter-productive and unnecessarily burdensome. (Ex. 15, p. 20; Ex. 18, p. 5; Ex. 49, p. 4).

95. The Board agreed in its written comments that other treatment relationships should be included in the rule and stated that it would do so in the final rules as adopted. The Board also stated that awareness of past therapy can also be important in providing the best possible care for a given client. With the proposed amendment, the subsection has been shown to be needed and reasonable as proposed. The Board might consider whether the phrases "make an attempt to determine" and "attempt . . . to coordinate" can be made more specific to promote better notice and perhaps to make clear what is expected of the licensee.

96. 7 MCAR § 10.008 E.10. requires a licensee to file a complaint with the Board when he believes that a colleague has failed to report suspected abuse or has had sexual contact with a client. Four licensees stated that the subsection requires a violation of the privacy of an individual who is in therapy. (Ex. 49, p. 4). The MPPP suggested that the following language be inserted: "Nothing in this rule shall be construed to relieve a psychologist of his duty to file a report pursuant to Minn. Stat. § 626.556 or § 626.557." (Ex. 15, p. 20). One licensee thought the last sentence, which exempts the filing of a complaint where one licensee has a professional relationship with another, inappropriately protected psychologists. (Ex. 35, p. 1). The Board stated that the last sentence makes the rule consistent with the privacy provisions of 8.c. The Board was favorable towards the suggestion made by the MPPP and will consider adding it. (Ex. L, p. 42). So amended, the proposed rule subsection is needed and reasonable. The addition is not a substantial change.

97. 7 MCAR § 10.008 E.11. allows a licensee to counsel with any other licensee who is in violation of the rules of conduct or to file a complaint with the Board. One comment suggested that this section be deleted as unnecessary. (Ex. 35, p. 1). The Board stated that the provision is included so that suspected minor violations can be handled informally. The existing rules have a similar requirement. (Ex. L, p. 43). The subsection is needed and reasonable as proposed.

7 MCAR § 10.008 F. - Tests Section of the Rules of Conduct

98. 7 MCAR § 10.008 F.2. prohibits a psychologist from offering psychological tests for commercial publication except to publishers who have presented tests in a professional manner and distributed them only to qualified professional users. One commentor observed that the rules should not limit publishing to a publisher who has already published professional tests. (Tr. p. 139-40). The MPPP stated that private publication of tests should not be prohibited by the rule and suggested that "may offer" be replaced by "who offers" and that after "publication" the words "may offer them" be inserted. (Ex. 15, p. 21). The Board stated that it did not intend to prohibit private publication and will amend the rule accordingly. So amended, the proposed subsection is needed and reasonable. The change is not substantial. The

Board should also consider whether limiting publication to current publishers can be avoided.

99. 7 MCAR § 10.008 F.3. describes the contents of a report of the test results prepared by the psychologist. One licensee stated that the requirements of the rule are a matter of clinical judgment and not ethics. (Ex. 3, p. 2). Another stated that the rule might require volumes of material in a report. The MPPP agreed and stated that the requirement of reservations and qualifications is an unreasonable burden. (Ex. 15, p. 21). Another licensee suggested insertion of the word "relevant" before the word "reservations" and that the last clause of the subsection be deleted. It was stated that since there are, for example, no norms for Indian clients, it is impossible to specifically apply reservations to actual test scores. (Ex. 33, p. 1).

100. The Board believes that there is a potential for harm to clients from reports that are not carefully drafted. The Board expressed a willingness to consider the addition of the word "relevant" or a similar limiting word. (Ex. L, p. 43). So amended, the proposed rule subsection is needed and reasonable. The change is not substantial. Where norms are not available, it would appear that the rule would permit the licensee to so state.

added p. 19

7 MCAR § 10.008 H. - Fees and Statements Section of Rules of Conduct

101. 7 MCAR § 10.008 H.1. requires a psychologist to inform the client of the cost of professional services but only if the client first asks. One comment stated that the psychologist should simply be required to state the charge. The Board expressed their willingness to consider such an amendment. It stated, however, that mandatory fee discussion may adversely affect an initial consultation and such a change might be a substantial one. (Ex. L, p. 44). The subsection is needed and reasonable as proposed. The change suggested might well create a substantially different rule since a mandatory fee discussion would likely be fundamentally different from a requirement that the licensee discussed the matter if asked. It is suggested that the board reword the subsection to more directly state that a licensee is required to discuss the cost of professional services when asked by the client to do so.

so reworded p. 19

102. 7 MCAR § 10.008 H.2. requires a licensee to itemize services. The itemized statement must include the name of the person providing the service. A number of licensees commented on the proposed rule subsection. It was stated that it is now a fairly common practice for an LCP to submit claims to third-party carriers on behalf of an LP who provided the services. They believe that once the LP is identified as the provider, the insurance companies will deny payment. They state that this could serve to decrease competition and increase the cost of services to the public. It would also give the insurance company authority to decide who is competent. (Ex. 35, p. 2; Ex. 42; Ex. 49, p. 2; Tr. p. 62-66). It was suggested that the provider psychologist simply be required to sign the insurance form (Ex. 6) or that the LCP be simply prohibited from profiting on the services of an LP. Another suggestion was to delete the words "or a third party". (Ex. 49, p. 3). It was stated that the Board has not presented reasons for including third parties in this subsection. The Board stated that the purpose of the section is to prevent

"signing off" by LCPs who are not in any way responsible for the services provided to the client. The Board states that it is willing to consider alternative wording that accomplishes this goal. Although the subsection is needed and reasonable as proposed, the Board is encouraged to consider the suggestions made to see if the objections can be accommodated while preserving the intent of the rule.

no change p.19

103. 7 MCAR § 10.008 H.4. prohibits a licensee from claiming a fee unless the licensee is the direct provider or professionally responsible for the services. The MPA suggested that the last five words be replaced with "the services were provided" in order to clarify the subsection. Blue Cross and Blue Shield of Minnesota made a similar suggestion. (Ex. 21). The Board concurred in the change. So amended, the subsection is needed and reasonable. The amendment is not a substantial change.

so amended p.20

104. 7 MCAR § 10.008 H.6. prohibits fee splitting unless in direct proportion to services performed. The MPPP suggested that the rule should allow division of fees for professional corporations and rule 29 clinics. (Ex. 15, p. 21). The Board stated that it believes that the term "business organizations" would include the organizations cited by MPPP. The subsection is needed and reasonable as proposed.

7 MCAR § 10.008 I. - Practicing Without a License Section of the Rules of Conduct

105. This section prohibits a licensee from aiding an unlicensed person in engaging in the private practice of psychology. The MPA suggested a revision of the last sentence to read as follows:

> A psychologist who supervises a person preparing for the profession of psychology pursuant to Minn. Stat. § 148.91, subd. 3(2) is not in violation of this rule so long as the unlicensed supervisee is not engaging in the private practice of psychology.

Similar wording p.20

(Ex. 8, p. 10). The Board had no objection to the amendment. (Ex. L, p. 45). The MA program within the Department of Public Welfare questioned whether the rule permitted a psychologist from submitting claims for services provided by unlicensed persons who were not being supervised. (Ex. 22). The Board replied that it is not attempting to establish in its rules who is qualified to receive government reimbursement and believes that this should be determined by other units of government who must determine eligiblity. (Ex. L, p. 45). As amended, the proposed subsection is needed and reasonable. The change is not a substantial one.

7 MCAR § 10.008 J. - Welfare of Research Subjects Section of Rules of Conduct

106. This section accords human research subjects the privacy rights and the client bill of rights set out in the rules of conduct. The MPPP stated that this is unreasonble since the client rights are designed for professional relationships in the clinical context. It stated that requiring the psychologist to divulge his treatment preferences would contaminate the research. It suggested that the existing rule was adequate and that checklists and consent forms could also reach the same goal. (Ex. 15, p. 21-22; see also, Ex. 20).

107. The Board has stated that many of the client rights such as the right to privacy and the right not to be stereotyped should apply to research subjects. It acknowledges that some rights may not apply, but suggests that the rule will not be enforced or that the waiver and variance provision will provide relief. It is not reasonable to include all of the bill of rights and privacy rights to apply in a blanket fashion to research subjects. Rules should not be promulgated which require the Board to ignore enforcement or to require massive waiver or variance orders. In order to correct this defect, the Board should review all of the provisions of sections C. and E., determine which of those appropriately apply only to private clinical practice and list those as exceptions to section J. so listed p.20

7 MCAR § 10.008 K. - Violation of Law Section of the Rules of Conduct

108. There were no public comments concerning this rule subsection. The Board may wish to consider rewording the final paragraph as follows in order to promote clarity:

> In any board proceeding alleging a violation of this rule the proof of a conviction of a crime shall constitute proof of the factual elements necessarily underlying that conviction.

so reworded p.21

7 MCAR § 10.009 - Waivers and Variances Section of Rules of Conduct

109. 7 MCAR § 10.009 A. and B. permit application to the Board for a time limited waiver of any rule. Section A. contains specific criteria to guide the Board and deciding whether or not to issue a waiver. Sections C. through E. set up a similar procedure for the granting of a variance. The MPPP suggested that there is no statutory authority for a rule allowing the Board to grant waivers such as there is for variances. (Ex. 50, p. 2-3). It also suggested that certain statutory requirements embodied in rules 3, 4, 5 and 7 cannot be waived. An LCP also suggested that a waiver or variance of rules 2 through 4 or 7 through 9 would be inappropriate. (Ex. 40, p. 3). MPPP opposed permitting an applicant to seek a time limited variance in order to qualify for licensure. (Ex. 50, p. 3). One LCP stated that the rule gave the Board too much discretion in setting the rules aside and thought firmer guidelines and a requirement for the reporting of the Board's actions were necessary. (Ex. 18, p. 5).

110. The Board agreed that it does not have authority to grant waivers or variances from the statutory requirements. It expressed a willingness to add language to that effect in section 10.009, but thought it might be superfluous. Although it is clear that an agency may not grant a waiver or variance from a statute, it is suggested that the Board indicate in section 10.009 which portions of the rules embody statutory provisions and therefore cannot be the subject of a waiver or a variance. This would result in a clearer rule and may avoid some requests for waivers or variances. It is concluded that the Board has provided adequate criteria for the granting of both waivers and variances. The criteria is sufficient to avoid arbitrary actions. The Board has stated that its actions and justifications in regard to waivers and variances is made in public at Board meetings and is available in the minutes of the Board which are a public record. The Board should consider the adoption

so added p.21

of a provision that the Board's determination and its reasons therefor should be placed in writing in the case of a denial or a revocation of a waiver or variance. Presumably, this could be done by announcing the reasons at a Board meeting and recording them in the minutes. Such a procedure would be a further guarantee against arbitrary action. In the case of variances, Minn. Stat. § 15.0412, subd. 1(a) requires the Board to set forth in writing its reasons for granting or denying a variance. This statutory requirement should be reflected in the proposed rules.

See added S - p. 22

111. Minn. Stat. § 15.0412, subd. 1(a) specifically authorizes an agency to adopt a variance provision in its rules. The Board suggests, however, that it is not the exclusive method for agencies to relieve unforeseen hardships which rules may cause. It also suggests that a time limited waiver is in effect only a more precise type of variance which is authorized specifically by statute. (Ex. L-3). According to the definitions section, a waiver means that the grantee need not comply with a rule while a variance means that the grantee can comply with a rule in a different manner. The Legislature has obviously indicated a recognition that there are some situations in which rules cannot be fully complied with and an agency should have a procedure with detailed standards to deal with the situation. Many state rules contain a waiver provision. The power to adopt rules is generally thought to include the power to waive those rules where the agency adopts specific criteria to be considered in granting a waiver so as to avoid arbitrary enforcement. It is concluded that the Board does possess statutory authority for adoption of a waiver provision in its rules.

112. One problem of legality appears in the rule. The word "may" is used at six points in the rules where its use allows the Board illegal discretion in the granting of a waiver or variance. The word is used at the following places: Page 23, lines 22, 31 and 36; Page 24, lines 5, 19 and 24. The rule must be constructed so that if an applicant meets the criteria in question the Board is then required to grant a waiver or variance. See, Finding of Fact No. 19. This use of the word "may" is a violation of a substantive provision of law. In order to correct the defect, the Board should change the word "may" to "shall". The rule is otherwise needed and reasonable as proposed.

not changed p. 21

General Support

113. A number of comments submitted in the rule hearing proceeding expressed general support for all of the rules as proposed. (Exs. 12, 13, 24, 27, 29, 30 and 39).

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

CONCLUSIONS

1. That the Board of Psychology gave proper notice of the hearing in this matter.

2. That the Board of Psychology has fulfilled the procedural requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) and all other procedural requirements of law or rule, except as noted at Finding of Fact No. 6. That violation prejudiced no person and requires no corrective action.

3. That the Board of Psychology has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 3(4)(i) and (ii) (1980), except as noted at Finding of Fact Nos. 32, 44, 64, 65, 78 and 112.

4. That the Board of Psychology has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980), except as noted at Finding of Fact No. 107.

5. That the amendments and additions to the proposed rules which were suggested by the Board of Psychology after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 15.0412, subd. 4d (1980) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusions Nos. 3 and 4 as noted at Findings of Fact Nos. 32, 44, 64, 65, 78, 107 and 112.

7. That due to Conclusions Nos. 3 and 4, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 15.0412, subd. 4d (1980).

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Board of Psychology from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

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

## RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated: May 13, 1982.

GEORGE A. BECK
State Hearing Examiner

PSY-82-001-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF PSYCHOLOGY

IN THE MATTER OF PROPOSED NEW RULES RELATING TO RULES OF CONDUCT, GENERAL WAIVERS, AND VARIANCES, AND AMENDMENTS RELATING TO APPLICATION FOR LICENSURE REQUIREMENTS FOR PROFESSIONAL EXPERIENCE, WAIVERS FROM EXAMINATION, AND COLLABORATION.

ORDER OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980) which provides in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of section 15.0412, subdivisions 4 through 4f, it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to subdivision 4, clause (c), and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects and specifically as to any finding of substantial change or of failure to comply with Minn. Stat. § 15.0412, subd. 4-4f (1980) or of failure to establish need for and reasonableness of the proposed rule, except as hereinafter noted.

Finding 32 (7 MCAR § 10.002 E.3.). The examiner has found that the Board lacks statutory authority to add the requirement of an area of competence to the statutory licensing requirment. The proposed rule, in its prefatory language, states that an applicant "must meet the following requirements...." The section in question is not a statutory requirement to be met but requires the applicant to "state at least one area of competence...." (emphasis added). In its Statement of Need and Reasonableness, the Board has not indicated that this provision adds anything to the law but simply is included to aid the Board in enforcing other requirements of law and rule which require licensees to recognize and stay within their own areas of competence in treating patients.

While on its face the provision appears harmless in that it does not really require anything more than a statement by the applicant, when read in conjunction with 7 MCAR § 10.008 B.1., it becomes a more stringent requirement in that the areas of competence must be "accepted by the board...." Further, unlike present rule PSYCH 2, the endorsers are certifying to a specific area of competence rather than the statutory requirements for licensure.

The Board's purpose for requiring some sort of identification from the applicant of the areas in which the applicant claims to have competence, is not improper. However, when the applicant must have written endorsements and when the Board must "accept" the areas of competence, the examiner's analysis is correct. At Finding number 68, the examiner states: "The Board does have statutory authority to require a licensee to state an area of competence...." I agree.

In order to cure this defect, the Board shall either withdraw § 10.002 E.3. and amend § 10.008 B.1. accordingly, or it may modify the rule as follows:

1. Delete § 10.002 E.3. and renumber the remaining subparts; deleted p. 3
2. Add a new subpart 6 which requires that each application be accompanied by the endorsements as are required under the existing PSYCH 2, certifying to the same items listed in that existing rule;
3. Add a new subpart 7 which requires an applicant to enclose a statement by the applicant as to the areas of competence but which does not require a certification by any endorsers; and
4. Amend § 10.008 B.1. by placing a period after the word "psychologist" in line 6, page 7 of the proposed rule, deleting the rest of the sentence.

See addition to G. p. 4

It should also be pointed out that the Board may wish to examine the language in § 10.002 I. to determine whether it remains appropriate given the foregoing discussion.

Finding 44 (7 MCAR § 10.003 A. and C. The examiner would require that the word "such as" be deleted and the word "in" inserted. I agree with the examiner's finding and his suggestion to cure the defect. However, the Chief Hearing Examiner would point out that the change would limit the majors which would be recognized to those listed in the rule. The Chief Hearing Examiner is also without knowledge or expertise with respect to the number or titles of degrees which are acceptable to the Board. In the event the Board, in curing this defect, desires to increase the number of degree programs listed in the rule, the Board must address, in its Order Adopting Rules, its reasons or arguments on the question of whether the additions would constitute a "substantial change" in the rules. No determination on that question can be made by the Chief Hearing Examiner until the rules are submitted for review. (In view of the language contained in §§ 10.003 B. and D., the Board may not have to list additional degree programs. It is the Board's option on how most properly to proceed.)

See pages 5-7

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defect in

regard to substantial change and the requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) have been corrected.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: May 19, 1982.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

PSY-82-001-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF PSYCHOLOGY

IN THE MATTER OF THE PROPOSED NEW RULES RELATING TO RULES OF CONDUCT, GENERAL WAIVERS, AND VARIANCES, AND AMENDMENTS RELATING TO APPLICATION FOR LICENSURE REQUIREMENTS FOR PROFESSIONAL EXPERIENCE, WAIVERS FROM EXAMINATION, AND COLLABORATION.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on March 26, 1982, before George A. Beck, a Hearing Examiner of the State Office of Administrative Hearings, on the above-entitled matter in compliance with Minn. Stat. § 15.0412; and

WHEREAS, the Hearing Examiner issued a report on May 13, 1982, and the Chief Hearing Examiner issued his Order on May 19, 1982, which provided that prior to adoption of the rules, certain defects in the rules would have to be corrected; and

WHEREAS, on June 18, 1982, the Board of Psychology, by and through its Executive Secretary, submitted Proposed Findings, Conclusions and Order Adopting Rules to the Chief Hearing Examiner for review pursuant to the provisions of Minn. Stat. § 15.0412, subds. 4d and 4e; and

WHEREAS, the Chief Hearing Examiner, having reviewed the files, records and proceedings herein, finds and concludes that the Board has corrected the defects previously found in the rules, that the modifications to the rules do not constitute substantial changes to the rules, and that the Board has complied with all substantive and procedural requirements imposed on the Board by law or rule.

NOW, THEREFORE, if the Board of Psychology adopts the Findings, Conclusions and Order submitted to the Chief Hearing Examiner on June 18, 1982, the Board may proceed to adopt the rules by filing with the Revisor of Statutes and the Attorney General as required by law and rule.

Dated: June 23, 1982.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF PSYCHOLOGY

In the Matter of Proposed New Rules Relating to Rules of Conduct, General Waivers, and Variances, and Amendments Relating to Application for Licensure, Requirements for Professional Experience, Waivers for Examination, and Collaboration

FINDINGS, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for hearing before George Beck, Hearing Examiner, Office of Administrative Hearings, on the 26th day of March, 1982, at 9:30 AM, in Room 105, of the Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, after proper notice required by Minn. Stat. § 15.0412 was served upon all persons, associations, and other interested groups registered with the Board of Psychology (hereinafter "Board") for that purpose. Notice was also served upon other persons, associations, and groups at which the Board was aware as possibly having an interest in the above-captioned rules following publication of the rules in the State Register.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, having heard and considered all of the testimony and evidence adduced in and upon the records, files, and proceedings herein and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above-captioned rules, the Board makes and enters the following:

## FINDINGS OF FACT

The Findings of Fact portion of the Report of the Hearing Examiner (hereinafter "Report") dated May 13, 1982, is hereby adopted and made a part hereof except as noted in the following paragraphs:

1. 7 MCAR § 10.001D, which defines "informed written consent," has not been revised since it was proposed. The hearing examiner found in Finding 20 at page 6 that the rule was needed and reasonable as proposed. The Board considered including a provision which would specifically permit a person's legal representative to sign an authorization to disclose private information. The Board concluded, however, that this provision would not necessarily increase clarity and that individuals have the right to delegate authority to their legal representatives to sign for them regardless of Board rule;

2. In 7 MCAR § 10.001G, the Board agrees with the position of the Minnesota Psychological Association set forth in Public Exhibit 8 of the record and Finding 21 at page 6 of the Report. With this deletion, the rule now reads:

> G. Professional relationship. "Professional relationship" means the association between a psychologist and a person or entity ~~for whom psychological services are sought~~ which exists when the psychologist performs for that person or entity any of the functions described in Minn. Stat. § 148.89, subd. 1.

3. 7 MCAR § 10.001H is adopted as originally proposed. In Finding 22 at page 6 of the Report the hearing examiner addressed whether the definition of "psychologist" in the rule may cause confusion inasmuch as that term is used in Minn. Stat. § 148.91, subds. 4(4) or 5(2). The Board considered the meaning of this term in statute and rule and concluded that the Board should define the word

consistent with the use of the title "psychologist" as used in Minn. Stat. § 148.96. The use of the term psychologist in Minn. Stat. § 148.91, subds. 4(4) and 5(2) are inconsistent with statutory references in the practice act as a whole and with those requirements which must be met in order to call oneself a "psychologist."

Furthermore, the definition applies only to the rules of conduct and not to the statutes. 7 MCAR § 10.008A.1 specifically covers conduct engaged in by those persons who are preparing for licensure, the situation presented when the word "psychologist" is used in Minn. Stat. § 148.91, subds. 4(4) or 5(2);

4. 7 MCAR § 10.001 I has been revised by changing the singular "supervisee" to the plural "supervisees" to clarify that face-to-face contact between a supervisor and supervisees may include more than one supervisee, that is, to recognize group supervisory sessions as complying with the rule.

The Board considered whether all supervisory contact should be face-to-face and at least one hour long and concluded that such contacts need not be one-on-one, but that they should be face-to-face. The reasons for this were established in the Board's Statement of Need and Reasonableness, Exhibit I at page 8, and the Supplemental Response, Exhibit L. The Board attempted to reword the "ten separate hourly sessions" provision to permit some sessions to be less than one hour long, but could think of no satisfactory amendment which would not allow, for example, nine one-minute sessions and one of nine hours and fifty-one minutes. The Board finds that supervision should occur regularly throughout the training period to provide continuity and periodic monitoring of progress so as to assure properly prepared candidates for licensure. The rule as amended would read as follows:

I. Supervision. "Supervision" means taking full professional responsibility for training, work experience, and

performance in the practice of psychology of a supervisee, including planning for and evaluation of the work product of the supervisee, and including face-to-face contact between the supervisor and ~~supervisee~~ supervisees in at least ten separate hourly sessions per quarter.

5. 7 MCAR § 10.001J has been amended to clarify the rule and to incorporate the change recommended by the Minnesota Psychological Association, Public Exhibit 8, page 3 of the record. The Board agrees that "cognitive functioning" is a more precise term than "intelligence." The rule, as amended, would state as follows:

J. Test. "Test" means any instrument, device, survey, questionnaire, technique, scale, inventory, or other process which is designed or constructed for the purpose of measuring, evaluating, assessing or describing personality, behavior, traits, ~~intelligence~~ cognitive functioning, aptitudes, attitudes, skills, values, interests, ability, or other psychological or emotional characteristics of individuals.

6. 7 MCAR § 10.002E has been amended consistent with Finding 32 at page 9 of the Report, and the Report of the Chief Hearing Examiner, dated May 19, 1982. The Board agrees with the Chief Hearing Examiner that E.3 should be stricken from the rules for the reasons given in his Report. In keeping with Findings 34 through 36 of the Report the Board finds that it has the authority to require endorsements inasmuch as the hearing examiner did not recommend the striking of H in Findings 34 through 36 of the Report. Consistent with the Chief Hearing Examiner's statement in his Report dated May 19, 1982, that in the current rules "the endorsers are certifying to a specific area of competence rather than the statutory requirement for licensure," the Board has amended this subsection to

require the applicant to provide evidence of having met the requirements of Minn. Stat. § 148.91, subd. 4(2) by means of endorsements. It is the Board's position that the rule as amended is a restatement of the endorsement portion of present Psych. 2.E., meets statutory requirements, and is not substantive since it adds no provision to 7 MCAR § 10.002 which was not present before the amendment. The rule as amended would read as follows:

E. Requirements for licensure. To be eligible for licensure the applicant must meet the following requirements in addition to those in B.:

1. file with the board a notarized application for licensure, which includes an affirmation that the statements made in the application are true and correct to the best knowledge and belief of the applicant and which is accompanied by the current licensure application fee;

2. have completed two years of post degree employment as stated in G. and 7 MCAR § 10.004;

~~3. state at least one area of competence and have written endorsements from at least two qualified persons, as stated in H., for each area of competence stated;~~

4 3. have performed satisfactorily on both parts of the examination listed in 7 MCAR § 10.005;

5 4. be of good moral character provide evidence of having met the requirements of Minn. Stat. § 148.91, subd. 4(2) and of not ~~have~~ having engaged in conduct prohibited by 7 MCAR § 10.008, by means of endorsements from at least two persons with the qualifications stated in H.; and

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6 5. for an application for licensure as a licensed psychologist, file an agreement to collaborate signed by a licensed consulting psychologist.

7. 7 MCAR § 10.002G has been amended. Since the hearing examiner stated in Finding 68 at page 18 of the Report and the Chief Hearing Examiner in his Report of May 19, 1982, agreed, that the Board may require a licensee to state his areas of competence, this section is revised to include as part of the information submitted about the applicant's supervised employment those areas of competence gained through that employment and through other experience which is not eligible to be counted toward the employment requirement. This statement is not endorsed and serves as a statement required of licensees under 7 MCAR § 10.008B. The Board adopted this method of amendment rather than adding a separate subsection as suggested in No. 3 by the Chief Hearing Examiner in his Report dated May 19, 1982, because areas of competence relate directly to experience and may best be addressed through this subsection of the rule. The rule now reads as follows:

G. Supervised employment. The application for licensure shall include the setting, nature and extent of the supervised employment, the time period involved, the number of hours per week engaged in professional duties, ~~and~~ the name and qualifications of each supervisor and the areas of competence in which proficiency has been gained. The application may include areas of competence in which proficiency has been gained through experience, such as internships or practica, which is not counted toward the employment requirement of Minn. Stat. § 148.91, subds. 4 and 5.

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8. 7 MCAR § 10.002H has been amended consistent with the hearing examiner's recommendation at Finding 36 at page 10. These revisions are made so

that the rule is consistent with the changes regarding endorsement required by the hearing examiner and implemented as referenced in Findings 7 and 8, hereinabove. The Board finds it is sensible to strike all reference to areas of competence because of the changes required by the hearing examiner with respect to competency issues.

So as to add precision to the rule as initially proposed, the Board is striking one sentence and replacing it with another so as to require that endorsers have observed the applicants in their work settings as a basis for determining whether the applicant has been professionally ethical. The rule as amended reads as follows:

> H. Requirements for endorsement. To qualify as an endorser a person listed on the application for licensure must be a licensee of the board, a person who is licensed to practice psychology by another state whose licensure standards are similar to the standards of this state, or a person whose education and experience meet the licensure standards of Minn. Stat. § 148.91 and 7 MCAR §§ 10.001-10.009. An employee of an applicant may not be an endorser of that applicant. ~~An endorser must have firsthand knowledge of the area of competency endorsed.~~ A person who has not observed the work of the applicant in the professional environment of the applicant may not be an endorser of the applicant. A current member of the board may not be an endorser.

9. 7 MCAR § 10.002 I has been amended, without changing the rule as initially proposed. The amendment does not insert a new provision; it simply inserts into this section a provision previously required in another section. Consistent with the requirements of the hearing examiner concerning areas of

competency, it is sensible to remove any reference to areas of competence documented in the application for licensure since documentation is no longer required. Because a notarized affirmation of the statements in the application form is required, however, adding this language concerning an affidavit to I merely keeps the rules internally consistent. The rule as adopted reads as follows:

I. Adding areas of competence. A licensee may at any time add an area of competence ~~at any time if the added area of competence is documented as required in the application for licensure~~ in which proficiency has been gained by submitting to the board a written statement of the area of competence which is accompanied by a notarized affirmation that the statement is true and correct to the best knowledge and belief of the licensee.

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10. 7 MCAR § 10.002J has been amended merely to reflect the changes in numbering in E necessitated by striking E.3. The rule will read as follows:

J. Inquiries regarding applicants. The board may make inquiries when there is a question as to whether an applicant meets the requirement of E.5 4.

11. 7 MCAR § 10.003 has been amended to emphasize that a degree with a major in psychology is required for licensure. The Board has omitted the "such as" phrase as required by the hearing examiner in Finding 44 at page 13 of the Report and has made no substantive changes throughout the section. Essentially, A and B of the rules as proposed have been combined into one section, some excess words have been omitted, and the phrase "with a major in psychology, the major to be demonstrated by compliance with one of the following" has been added to the first sentence.

Former sections C and D have been combined into section B, and the language is exactly parallel to that in A. The rule as adopted reads as follows:

A. Educational requirement for licensed consulting psychologists. The educational requirement for licensure as a licensed consulting psychologist is a doctorate obtained in an institution accredited by a regional accrediting association to grant a doctorate, ~~offered through~~ with a major in psychology, the major to be demonstrated by compliance with one of the following:

1. the major is offered through a department of psychology; ~~or~~

2. ~~an academic department or unit other than a department of psychology, with a~~ the major ~~such as~~ is in educational psychology, child psychology, counseling psychology, or industrial psychology.~~;~~

~~B. Other doctorates accepted. The board shall accept a doctorate other than those listed in A. if:~~

~~1. The doctorate is obtained from an institution accredited by a regional accrediting association to grant the doctorate;~~ or

3. if the major is offered through an academic department or unit other than a department of psychology and its title is not listed in 2.~~,~~ the dissertation for the degree ~~is~~ shall be psychological in topic and method according to the ~~following~~ criteria~~,~~ in a. and b., and the coursework leading to the degree shall meet the criteria in c.

a. the topic shall fall within the list of psychological topics included in the table of contents of all editions of the "Annual Review of Psychology," up to and including the 1981 edition, and shall have the potential to directly impact upon the body of knowledge in the field of psychology; and

b. the method shall include at least one of the following: experimental manipulation of psychological variables; correlational or statistical method, using data collected by observations made by oneself or other persons; case study; creation of theory based on analysis of data obtained by oneself or other persons, including conceptual analysis; introspection; or psychohistory; and

~~3.~~ c. for a person seeking licensure on the basis of a doctorate earned before January 1, 1984, at least half of the number of credits completed for the degree, excluding dissertation credits, shall have been successfully earned in graduate courses which are predominantly psychological in content.

For any other person, at least two-thirds of the number of credits completed for the degree, excluding dissertation credits, shall have been successfully earned in graduate courses which are predominantly psychological in content.

Credits for post-doctoral course work earned within five years after receiving the doctorate may be used in part to meet the requirements in 3.

~~C.~~ B. Educational requirement for licensed psychologists. The educational requirement for licensure as a licensed psychologist is a master of arts or science degree, including a master equivalent in a

doctoral program, obtained in an institution accredited by a regional accrediting association to grant a doctorate or a master of arts or science degree, ~~offered through~~ with a major in psychology, the major to be demonstrated by compliance with one of the following:

1. the major is offered through a department of psychology; or

2. ~~an academic department or unit other than a department of psychology, with a~~ the major ~~such as~~ is in educational psychology, child psychology, counseling psychology or industrial psychology.

~~D. Other degrees accepted. The board shall accept a master of arts or science degree other than those listed in C. if:~~

~~1. the degree is obtained from an institution accredited by a regional accrediting association to grant a doctorate or a master of arts or science degree~~; or

3. if the major is offered through an academic department or unit other than a department of psychology and its title is not listed in 2., the thesis, if it is a degree requirement, ~~is~~ shall be psychological in topic and method according to the criteria listed in ~~B.2~~ A.3.a and b.; and ~~3.~~ at least two-thirds of the number of credits required for the degree, excluding thesis credits, shall have been successfully earned in graduate courses which are predominantly psychological in content.

Credits for post master course work earned within five years after receiving the degree may be used in part to meet the requirements in 3.

E- C. Accreditation. For a degree to meet the standards for licensure, the institution must be accredited at the time the degree is granted.

F- D. Degrees from foreign institutions. A degree from a foreign institution shall be accepted if the institution meets standards required for accreditation of a domestic institution.

12. 7 MCAR § 10.004 has been amended to clarify the rule as suggested by testimony at the hearing, to change a verb tense and to delete language which the hearing examiner addressed in Findings 47, 48, and 49 at page 14. In A, it was never the intention of the Board to exclude voluntary service as a legitimate employment requirement, and the rules as proposed never did so exclude. However, to allay the fears expressed that voluntary service will no longer be acceptable as professional experience, the Board is specifically referencing this issue.

The change in A.2 is minor and merely removes the archaic form "shall be" and substituting it with the present tense "is."

A.2 is amended only to eliminate reference to documented areas of competence so that this section is in agreement with changes required by the hearing examiner concerning competence.

D as amended is recommended by the hearing examiner in Findings 47 and 48. G is amended to incorporate suggestions made by the public during the course of the rules process, and ruled by the hearing examiner as a nonsubstantive change. The rule as amended reads as follows:

A. Employment requirements. To meet the requirements for professional employment, the employment of the applicant, which may include voluntary service, must:

1. involve the application of psychological principles in the description, prediction and modification of human behavior and emotional adjustment, including but not restricted to such practices as: psychological assessment, including such functions as intelligence, personality, aptitude, and attitude appraisal; psychological treatment of persons who have adjustment problems; psychological counseling and guidance; conducting behavioral research; and teaching of psychology;

2. be under the supervision of a licensee of the board of a person whose education and experience meet the standards for licensure imposed by Minn. Stat. § 148.91 and 7 MCAR §§ 10.001-10.009 and who ~~shall be~~ is competent in the areas of practice in which supervision is provided. The private practice of psychology for a fee in this state is not allowed prior to licensure and shall not be credited, except that a licensed psychologist seeking licensure as a licensed consulting psychologist may engage in the private practice of psychology for a fee and need not require supervision ~~unless the licensee is gaining competence in an area other than those already documented.~~ The private practice of psychology in another state shall be credited only if engaged in after licensure by that state; and

3. be performed competently as judged by the supervisor.

B. Employment criterion. Employment shall include tasks and judgments which depend upon the application of skill or knowledge acquired during formal education in psychology.

C. Delegation of training. The supervisor may not transfer supervisory responsibility. The supervisor may delegate training in specific skills to specialists who need not be psychologists.

D. Degree requirement experiences. Experiences which are required as preparation for the master or doctoral degree, such as ~~pre-degree~~ internships, assistantships, associateships, clerkships and practica, may not be offered to satisfy the employment requirement for either level of licensure.

E. Completion of degree requirements. Professional experience acquired by the applicant between the time all requirements for the degree were met and the time of conferral of the degree may be credited toward the employment requirements for licensure if the date of completion of all degree requirements is verified directly to the board in writing by a responsible academic or administrative official.

F. Time requirement. To meet employment requirements, the applicant shall have completed 24 months of full-time employment, or their equivalent in part-time employment, under supervision as described in A., with regularly scheduled vacation periods and holidays considered as days worked. Full-time employment consists of at least 1800 hours during a 12-month period.

G. Part-time employment credited. Part-time employment shall be credited by the board on a pro-rated basis, if the part-time employment consists of at least ~~a three-month, quarter-time~~ 10 hours per week for a period of 12 consecutive weeks at ~~any particular~~ the same agency or facility.

13. 7 MCAR § 10.008A.4 has been amended to reflect the statements of the hearing examiner as found in his Report at Findings 64 and 65 at pages 17 and 18. The rule as amended reads as follows:

4. ~~The rules of conduct are not all inclusive and do not specify all grounds for disciplinary action or denial of licensure.~~ The 1981 revision of "The Ethical Principles of Psychologists" published by the American Psychological Association ~~may~~ shall be used as an aid in resolving any ambiguity which may arise in the interpretation of the rules of conduct. However, in a conflict between the rules of conduct and the ethical principles, the rules of conduct shall prevail.

14. 7 MCAR § 10.008B.1 is amended to make the meaning of the rule more clear, to strike any language referring to the now deleted 7 MCAR § 10.002E.3, and to retain the permissible section of the rule as proposed allowing the Board to ask psychologists to state areas of competence. The hearing examiner suggested in Finding 68 at page 18 of his Report that the requirement that a licensee submit a statement of areas of competence to the Board could be included in this section. Since such a statement is a procedural requirement necessitating a form and acknowledgement of receipt, the Board believes it properly belongs in 7 MCAR § 10.002E.6, a procedural section rather than the rule of conduct section. The rule as amended reads as follows:

1. A psychologist shall limit practice to the areas of competence ~~for~~ in which proficiency has been gained through education and training or experience ~~have been gained~~ and which have been stated in writing to the board by the psychologist ~~and accepted by the board as stated in 7 MCAR § 10.002E.3~~.

15. 7 MCAR § 10.008B.3 deletes a clause, the deletion of which is permitted by the hearing examiner in Finding 69 at pages 18 and 19 of his Report.

A further change suggested by the hearing examiner in Finding 69 at pages 18 and 19 of his Report recommends modifying the consultation requirement

to "where possible." As is evidenced in the supplemental response filed by the Board, Exhibit L of the rules record, it never was the intention of the Board that persons working in developing fields contact "experts" since the very nature of the subject is such that there may be no experts. However, the Board finds that consultation with one's peers is always available, and consultation is productive even if one's peers are not "experts" in the developing field. It is intended that a psychologist should keep in communication with others in his field who presumably can provide practical guidance regarding efficacy, potential harm to clients, new directions to explore, and similar matters, even though they themselves have not developed any expertise into the new field. Since the rule as proposed only requires ongoing consultation with other psychologists and similar professionals, and not experts, the board believes the addition of new language may give the appearance that the board is requiring consultation with "experts." The rule as amended states as follows:

> 3. In cases in which a new service, technique, or specialty is developing ~~and in which supervision is not available~~, a psychologist shall engage in ongoing consultation with other psychologists or similar professionals as skills are developed in the new area and shall seek continuing education which corresponds to the new area. A client whose treatment involves the use of a newly developing service, technique, or specialty shall be informed of its innovative nature and of known risks associated with it.

16. 7 MCAR § 10.008B.4 has been amended so as to incorporate the recommendations suggested in testimony regarding referrals, to clarify that a psychologist does not need to be familiar with <u>every</u> resource available to clients,

and to follow a suggestion, but not a requirement, made by the hearing examiner in Findings 70 and 71 of the Report. The rule as amended would read as follows:

4. A psychologist shall recognize ~~the~~ that there are other professional, technical, and administrative resources available to ~~the client~~ clients and ~~refer the client~~ make referrals to ~~them~~ those resources when it is in the best interests of ~~the client~~ clients to be provided with alternative or complementary services.

17. 7 MCAR § 10.008C.2 has not been amended. The hearing examiner in Finding 72 at page 19 found the section to be needed and reasonable as proposed. The Board has considered changing the "clear and substantial risk" standard to a "probable cause" standard. However, because the Board believes that only in the rare instance should the privacy of clients be violated without the client's consent, a high degree of probability of risk must be sustained to breach privacy.

18. 7 MCAR § 10.008C.3 has been amended to clarify the section, although the hearing examiner found in Finding 73 at page 20 that the rule was needed and reasonable as proposed. The amendments constitute a mere rewording so as to remove awkwardness. The rule as amended states as follows:

3. In any situation in which ~~a person requests that the~~ services of a psychologist ~~be provided to a third~~ are requested by one party for another party, the psychologist shall inform both the requester and the ~~third party~~ receiver of the services of the responsibility of the psychologist regarding the privacy of any information gained in the course of rendering the services.

19. 7 MCAR § 10.008C.4 has been amended to clarify its meaning. The rule now states as follows:

4. At the beginning of a professional relationship a psychologist shall inform a ~~A~~ client who is a minor ~~shall be informed at the beginning of the professional relationship concerning~~ of the ~~limitation~~ limit the law imposes on the right of privacy of a minor with respect to communications of a minor with a psychologist.

20. 7 MCAR § 10.008C.6 has been amended to incorporate a suggestion made during oral testimony. Transcript of the hearing at 151. The Board agreed that the change would improve the subsection, Exhibit L of the record, and the hearing examiner found the subsection reasonable and needed in Finding 75 at page 20. The rule shall read as follows:

6. A psychologist shall instruct the staff to inquire of clients and to comply with the ~~request~~ wishes of ~~a client~~ clients regarding ~~the individual~~ to whom and where statements for services are to be sent.

21. 7 MCAR § 10.008C.9 has been amended so as to avoid confusion as to whether or not the focus of the rule is on maintenance of records or maintenance of privacy. The Board finds that by moving the phrase "as private information" so that the emphasis is on keeping information private rather than on maintaining records, the rule is more clear. The rule states as follows:

9. A psychologist shall continue to maintain as private information the records of a client ~~as private information~~ after the professional relationship between the psychologist and the client has ceased.

22. 7 MCAR § 10.008C.11 has been amended to incorporate the suggestion offered by the Minnesota Psychological Association in Public Exhibit 8. The rule as amended shall read as follows:

11. A psychologist in the course of professional practice shall not violate any law, ~~the violation of which involves the practice of psychology~~ concerning the reporting of abuse of children and vulnerable adults.

23. 7 MCAR § 10.008D.1 and D.2 have been amended to incorporate the changes recommended by the hearing examiner in Findings 77 through 80 of the Report. The rule as amended would read as follows:

1. A psychologist ~~may~~ shall not undertake or continue a professional relationship with a client in which the objectivity of the psychologist ~~may~~ is or would be impaired ~~because of an interpersonal relationship such as~~ due to a familial, social, emotional, economic, supervisory, or political interpersonal relationship. A psychologist whose objectivity becomes impaired because of the development of ~~an~~ a listed interpersonal relationship during a professional relationship with a client shall notify the client orally and in writing that the psychologist shall no longer see the client professionally, ~~take steps to terminate~~ begin termination of the professional relationship, and assist the client in obtaining services from another professional.

2. A psychologist ~~may~~ shall not undertake or continue a professional relationship with a client in which objectivity or effectiveness is or would be impaired ~~because of a personal problem of the psychologist such as~~ due to the divorce, grief reaction, severe health problem, or chemical abuse or dependency of the psychologist. A psychologist whose objectivity or effectiveness becomes impaired during a professional relationship with a client because of such a

personal problem shall notify the client orally and in writing that the psychologist shall no longer see the client professionally, ~~take steps to terminate~~ begin termination of the relationship, and assist the client in obtaining services from another professional.

24. 7 MCAR § 10.008E.1 has been amended. In Finding 81 at page 21 of the Report, the hearing examiner found the rule needed and reasonable as proposed, but suggested that the Board might consider specifying at what point an explanation must be provided. Agreeing, the Board finds that the rule will be improved by clarifying that an explanation must be provided "upon request." The Board finds that requiring a more specific time reference may not be reasonable since procedures can be explained before hand, but results of tests may not be explained until such time as the results are completed. Further, in individual client therapy sessions, mandatory explanations in all circumstances may interfere with the treatment process. The rule as amended reads as follows:

> 1. A client has the right to have and a psychologist has the responsibility to provide upon request a nontechnical explanation of the nature and purpose of the psychological procedures to be used and the results of tests administered to the client. The psychologist shall establish procedures to be followed if the explanation is to be provided by another person under the direction of the psychologist.

25. 7 MCAR § 10.008E.2 has been amended. The hearing examiner in Findings 82 and 83 at pages 21 through 22 made several suggestions for changes, all of which have been adopted by the Board. The Board also has accepted the hearing examiner's recommendation that the provisions of 7 MCAR § 10.008C and E have limited application so as to avoid a large number of requests for variances and waivers. The Board finds that this may be accomplished by limiting the application

of the provisions of C and D to the populations in J. The rule as amended shall read as follows:

2. A psychologist shall display prominently on the premises ~~of the primary location~~ of the professional practice or make available as a handout the statement of areas of competence submitted to the board and the bill of rights of clients, including a statement that consumers of psychological services offered by psychologists licensed by the State of Minnesota have the right:

a. to expect that a psychologist has met the minimal qualifications of training and experience required by state law;

b. to examine public records maintained by the board of psychology which contain the credentials of a psychologist;

c. to obtain a copy of the rules of conduct from the ~~Document Section~~ State Register and Public Documents Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155;

d. to report complaints to the board of psychology, 717 Delaware Street Southeast, Room 343, Minneapolis, Minnesota 55414;

e. to be informed of the cost of professional services before receiving the services;

f. to privacy as defined by rule and law;

g. to be free from being the object of discrimination on the basis of race, religion, gender or other unlawful category while receiving psychological services.

See Finding 41 hereinbelow concerning the application of the bill of rights to research subjects and psychology students.

26. 7 MCAR § 10.008E.3 has been amended to incorporate the suggestion made by the hearing examiner in Finding 84 at page 22 of the Report. The Board finds that the rule as amended would be more fair and enforceable if stereotyping is prohibited only if it interferes with objective assessment and treatment. The rule as amended would read as follows:

> 3. A psychologist shall consider the client as an individual and shall not impose on the client any stereotypes of behavior, values or roles related to age, gender, religion, race, disability, nationality or sexual preference which would interfere with the objective provision of psychological services to the client.

27. 7 MCAR § 10.008E.4 has been amended to incorporate changes recommended by the Minnesota Psychological Association, Public Exhibit 8 of the hearing record, and as addressed in Findings 85 and 86 at page 23 of the Report. The Board finds that the deletion of "value" and the addition of the phrase "of the psychologist's" preferences makes this section more clear. The Board has stricken the word "available" since the psychologist should not have to know whether other options are "available" and the deletion avoids the implication that all potential options need to be presented. The rule shall read as follows:

> 4. A psychologist shall disclose to the client ~~value~~ preferences of the psychologist for choice of treatment or outcome and shall present other ~~available~~ options for the consideration or choice of the client.

28. 7 MCAR § 10.008E.5 has been amended. Although the hearing examiner found the rule to be reasonable and needed as proposed, the Board accepts his recommendation for clarifying the language as found in Finding 88 at page 23 of the Report. The rule shall read as follows:

5. A psychologist who becomes aware of ~~such~~ a divergence of interests, values, attitudes or biases between a client and the psychologist ~~that~~ sufficient to impair their professional relationship ~~may be impaired~~ shall so inform the client. ~~and shall have the right to~~ Either the psychologist or the client may terminate the relationship.

29. 7 MCAR § 10.008E.6 has been amended. Although the hearing examiner found the rule as proposed to be necessary and reasonable, the Board accepted his recommendation for amending the section as set forth in Finding 89 at pages 23 and 24 of the Report. The rule shall read as follows:

6. A psychologist shall ~~inform in writing~~ terminate a professional relationship with a client ~~who~~ when the client is not ~~benefiting~~ likely to benefit from continued professional services, ~~take steps to terminate the professional relationship~~ or the services are unneeded. The psychologist shall inform the client orally and in writing of the termination and assist the client in obtaining services from another professional.

30. 7 MCAR § 10.008E.7 has been amended. Although the hearing examiner found the rule to be needed and reasonable as proposed, the Board accepts his recommendation for amending the section as set forth in Finding 90 at page 24 of the Report. The rule shall read as follows:

7. ~~When requested by a client, a~~ A psychologist shall make a prompt and appropriate referral of ~~the~~ a client to another professional when requested to do so by the client.

31. 7 MCAR § 10.008E.8 has been amended by merely deleting the article "a" and substituting for it the article "the" so as to agree with the style used in other rules. The rule shall read as follows:

8. A psychologist shall not engage in sexual intercourse or other physical intimacies with a client, nor in any verbal or physical behavior which is sexually seductive or sexually demeaning to ~~a~~ the client. Physical intimacies include handling of the breasts or genital areas of either sex by either the psychologist or the client.

32. 7 MCAR § 10.008E.9 has been amended. The Board agrees with the hearing examiner's recommendation in Findings 94 and 95 at pages 24 and 25 of the Report and finds that the language "make an attempt to determine" can be improved with the substitution of "ask a client" since the latter is a more positive and direct statement. The Board adopts the same rationale for changing "attempt to coordinate" to "coordinate . . . to the extent possible and consistent with the wishes and best interests of the client." The Board has deleted the term "psychologist" and substituted in its place the terms "mental health professional" to provide a more exact description of what would best serve the client's interests. The rule shall read as follows:

9. A psychologist shall ~~make an attempt to determine~~ ask a client whether ~~a~~ the client has had or continues to have a professional relationship with another ~~psychologist~~ mental health professional. If it is determined that the client had or has a professional relationship with another ~~psychologist~~ mental health professional, the psychologist shall ~~attempt~~, to the extent possible and consistent with the wishes and best interests of the client, ~~to~~ coordinate ~~psychological~~ services for that client with the other ~~psychologist~~ mental health professional.

33. 7 MCAR § 10.008E.10 has been amended to incorporate a suggestion made by Minnesota Psychologists In Private Practice, found in Public

Exhibit 15 of the record. The hearing examiner found the additional language did not constitute a substantial change in Finding 96 at page 25 of the Report. The rule shall read as follows:

> 10. A psychologist shall file a complaint with the board when the psychologist has reason to believe that another psychologist is or has been engaged in conduct which violates C.11., failure to report suspected abuse of children or vulnerable adults, or E.8., sexual contact with a client. This rule shall not apply when the belief is based on information obtained in the course of a professional relationship with a client who is the other psychologist. Nothing in this rule relieves a psychologist from the duty to file a report as required by Minn. Stat. §§ 626.556 or 626.557, reporting abuse of children and vulnerable adults.

34. 7 MCAR § 10.008F.2 has been amended. The Board finds that to avoid the deficiencies in the section regarding potential exclusion of new publishers or private publication of tests, the Board has restated the rule in the negative, but leaving the meaning of the rule unchanged. The rule as amended shall state as follows:

> 2. A psychologist ~~may~~ shall not offer psychological tests for commercial publication ~~only~~ to publishers who have presented tests in ~~a professional~~ an unprofessional manner and who have distributed them ~~only~~ to other than qualified professional users.

35. 7 MCAR § 10.008F.3 has been amended to include the recommendation made by the hearing examiner in Finding 100 at page 26 of the Report. The rule shall state as follows:

3. A report of the results of a test shall include ~~any~~ relevant reservations or qualifications regarding validity or reliability which a psychologist may have because of the testing circumstances or any deficiencies of the test norms for the individual tested, and how the psychologist has applied those reservations and qualifications to the score of the individual.

36. 7 MCAR § 10.008H.1 has been amended. The Board agrees with the hearing examiner in Finding 101 at page 26 of the Report. The rule shall state as follows:

1. ~~A client has the right to ask about and be informed by a psychologist about the cost of professional services before the services are provided.~~ A psychologist shall, when asked by a client about the cost of professional services, disclose the costs of services provided.

37. 7 MCAR § 10.008H.2 has not been revised. The Board notes that the hearing examiner found the rule needed and reasonable as proposed. Although it considered changing the language of the rule, the Board has left it as initially proposed since alternative language is less preferable.

38. 7 MCAR § 10.008H.3 has been amended. The Board finds that the words "directing" and "by the psychologist" are redundant and unnecessary. The rule shall state as follows:

3. A psychologist shall not directly or by implication misrepresent to the client or to a third party billed for services the nature of the services, the extent to which the psychologist has provided the services, or the person who is professionally responsible for ~~directing~~ the services provided ~~by the psychologist~~.

39. 7 MCAR § 10.008H.4 has been amended to incorporate suggestions made by the Minnesota Psychological Association and other testimony presented on

the record. The rule as amended and approved by the hearing examiner in Finding 103 at page 27 of the Report is as follows:

4. A psychologist shall not claim a fee for services unless the psychologist is either the direct provider of the services or the person who is professionally responsible for the provision of the services and under whose direction the ~~psychologist provides~~ services were provided.

40. 7 MCAR § 10.008 I has been amended. The Board finds that the suggestion made by the Minnesota Psychological Association in Public Exhibit 8 has merit in that it improves the clarity of the section and, as amended, is needed and reasonable according to Finding 105 at page 27 of the Report. The rule shall read as follows:

I. Practicing without a license. A psychologist shall not aid or abet an unlicensed person in engaging in the private practice of psychology. A psychologist who supervises a person preparing for the professional practice of psychology according to Minn. Stat. § 148.97, subd. 3, clause (2), is not ~~aiding or abetting an unlicensed~~ in violation of this rule if the person ~~in~~ is not engaging in the private practice of psychology.

41. 7 MCAR § 10.008J has been amended. The hearing examiner in Findings 16 at page 60, 83 at page 22, and 107 at page 28 commented about the potential of large numbers of requests for waivers or variances in the event certain rules may not apply to practitioners in specific areas of psychology such as teaching or research. The Board agrees, and as stated in its Supplemental Response, Exhibit L, has never intended to enforce a rule in situations when to do so would result in an absurdity.

Since J already addresses the question of "clients" of licensees who are researchers, that is, research subjects, the Board finds that amending this section to exclude research subjects from inappropriate client rights is the most reasonable approach. It has, therefore, amended the rule to exclude human research subjects from selected client rights found in 7 MCAR § 10.008C.4, C.6, E.4, E.6, and E.9. These rights essentially relate to the obligation of a psychologist to inform minors of privacy limits, to clients' right regarding fee statements, the psychologist's obligation to disclose treatment or outcome preferences, termination of unbeneficial professional relationships, and the coordination with other mental health professionals of services. These rules clearly relate to therapy settings, and not to research settings. All the remaining client rights appear to the Board to be reasonably applicable to human research subjects.

Both in testimony and in the Report referred to hereinabove, it has been reiterated that the field of teaching should also have some exemptions. On examination of client rights, it is evident that the exemptions which are reasonable for licensees who are researchers are equally reasonable for licensees who teach psychology students. The Board therefore accepted the recommendation of the hearing examiner in Finding 60 at page 16 of the Report, explaining how certain rules apply or do not apply to particular areas such as teaching or research, and included "psychology students" with "human research subjects" in the rule which grants those populations client rights with certain exceptions. The rule states as follows:

J. Welfare of psychology students and research subjects.

A psychologist shall protect the welfare of psychology students and research subjects and shall accord psychology students and human research subjects the client rights listed in C. except C.4 and C.6 and E. except E.4, E.6, and E.9.

42. 7 MCAR § 10.008K has been amended so as to incorporate the language recommended by the hearing examiner in Finding 108 at page 28 of the Report. The rule shall read as follows:

K. Violation of law. A psychologist shall not violate any law in which the facts giving rise to the violation involve the provision of psychological services. In determining whether a violation involves the provision of psychological services the board shall consider:

1. the nature and seriousness of the violation the psychologist is alleged to have committed;

2. the relationship of the alleged violation to the purposes of regulating the practice of psychology; and

3. the relationship of the violation to the ability, capacity, fitness or integrity of the psychologist in rendering psychological services.

In any board proceeding alleging a violation of this rule the proof of a conviction of a crime shall constitute proof of the underlying factual elements ~~needed to constitute a violation of this rule~~ necessarily underlying that conviction.

43. 7 MCAR § 10.009 has been amended since initially proposed. The Board adopted the change of "may" to "shall" as required by the hearing examiner in Finding 109 at page 28 of the Report in A, and in B, C, and D. The Board has also added language to clarify that parts of the rules which incorporate statutory requirements may not be waived and are not subject to the granting of a variance. Because of the incorporation of nonstatutory provisions with statutory provisions within many rules, the Board finds that an attempt to dissect each rule into separate statutory and nonstatutory requirements and to promulgate a new rule

with such classifications would be cumbersome and confusing. Since the statute pertaining to licensing of psychologists is included in the printed copies of the rules, applicants and licensees should have no difficulty in recognizing the provisions of the rules which are not subject to waiver or variance. The Board further amended the section to strike "the licensee or applicant provides evidence that" as being redundant since F states that the burden of proof is on the requester of the waiver or variance.

So as to incorporate a recommendation of the hearing examiner in Finding 110 at pages 28 and 29 of the Report, the Board has added a new G. The Board agrees with the hearing examiner that it is useful as a guarantee against arbitrary decisions to include a provision that reasons for the Board's granting, denying, renewing, or revoking a waiver or variance be included in the minutes. The rule shall state as follows:

A. Waivers; application. A licensee or applicant for licensure may apply to the board for a time limited waiver of any rule except that part of a rule which incorporates a statutory requirement. The waiver ~~may~~ shall be granted if ~~the licensee or applicant provides evidence that~~:

1. the rule in question does not address a problem of significance to the public in relation to the practice of the licensee or application of the applicant;

2. adherence to the rule would impose an undue burden on the licensee or applicant; and

3. the granting of a waiver will not adversely affect the public welfare.

B. Waivers, renewal, reporting and revocation. A waiver ~~may~~ shall be renewed upon reapplication according to the procedure described in A if the circumstances justifying its granting continue to exist. Any licensee who is granted a waiver shall immediately notify the board in writing of any material change in the circumstances which justify its granting. A waiver ~~may~~ shall be revoked if a material change in the circumstances which justify its granting occurs.

C. Variances; application. A licensee or applicant may apply to the board for a time limited variance from any rule except that part of a rule which incorporates a statutory requirement. A variance ~~may~~ shall be granted if the licensee or applicant specifies alternative practices or measures equivalent to or superior to those prescribed in the rule in question and provides evidence that:

1. the rationale for the rule in question can be met or exceeded by the specified alternative practices or measures;

2. adherence to the rule would impose an undue burden on the licensee or applicant; and

3. the granting of the variance will not adversely affect the public welfare.

D. Variances; compliance. Any licensee or applicant who is granted a variance shall comply with the alternative practices or measures specified in the application for the variance.

E. Variance; renewal, reporting, and revocation. A variance ~~may~~ shall be renewed upon reapplication according to the procedure described in C. if the circumstances justifying its granting continue to exist. Any licensee or applicant who has been granted a

variance shall immediately notify the board of any material change in circumstances which justify the granting of the variance. A variance ~~may~~ shall be revoked if a material change in the circumstances which justify its granting occurs.

F. Burden of proof. The burden of proof is upon the licensee or applicant to demonstrate to the board that the requirements cited in A. and C. have been met.

G. Reasons for action stated in minutes. The minutes of any meeting at which a waiver or variance is granted, denied, renewed or revoked shall include the reason for the action.

CONCLUSIONS

The Board accepts as its own those conclusions found in the Report at pages 29 and 30.

ORDER

NOW, THEREFORE, IT IS ORDERED that these rules identified as 7 MCAR §§ 10.001 through 10.009 are adopted this 25th day of June, 1982, pursuant to authority vested in me by Minn. Stat. §§ 148.90, subd. 2(4), 15.0412, subd. 1(a), and 148.98, and by resolution of the Minnesota Board of Psychology duly adopted at a meeting of the said Board on the 25th day of June, 1982.

Dated: June _____, 1982

STATE OF MINNESOTA

BOARD OF PSYCHOLOGY

Lois E. Mizuno

LOIS E. MIZUNO
Executive Secretary

CERTIFICATE OF BOARD'S

ADOPTION OF RULES RESOLUTION

I, Patricia S. Lilligren, do hereby certify that I am a member and Chair of the Minnesota Board of Psychology, 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 Psychology duly and properly called and held on the 25th day of June, 1982; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> RESOLVED, that the proposed new rules relating to rules of conduct, general waivers, and variances, and amendments relating to application for licensure, requirements for professional experience, waivers for examination, and collaboration, identified as 7 MCAR §§ 10.001-.009 are found to be reasonable, necessary and supported by the evidence contained in the record, and are hereby approved and adopted, pursuant to authority vested in us by Minn. Stat. §§ 148.90, subd. 2(4), 15.0412, subd. 1(a), and 148.98, and that Lois Mizuno, Executive Secretary of the Minnesota Board of Psychology, be and hereby is authorized to sign an order adopting those rules and is further authorized to perform the necessary acts to provide that these rules shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 25th day of June, 1982.

STATE OF MINNESOTA

BOARD OF PSYCHOLOGY

Patricia S. Lilligren

Alice J. Hudson - Board Member

Bd. Exhibit No. E
File No.
Date

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY

In the Matter of Proposed New Rules Relating to Rules of Conduct, General Waivers, and Variances, and Amendments Relating to Application for Licensure, Requirements for Professional Experience, Waivers From Examination, and Collaboration

STATEMENT OF NEED AND REASONABLENESS

The above-captioned rules contain both new rules and amendments to existing rules of the Minnesota Board of Psychology (hereinafter "Board").

The proposed rules of conduct and rules governing the granting of waivers and variances are new. The remainder of the proposed rules are amendments to existing rules.

1. The legal authority to promulgate the rules of conduct is contained in Minn. Stat. § 148.98 (1980). That statute directs the Board to adopt a code of ethics to govern appropriate practices and behavior. These rules of conduct are needed in order to define for the public and for licensees and applicants those minimum standards of acceptable conduct below which disciplinary action may be initiated.

2. The legal authority to promulgate rules governing the granting of waivers is contained in Minn. Stat. § 148.90, subd. 2(4) (1980). That statute allows the Board to "prescribe rules as may be necessary to enable it to carry into effect the provision of Laws 1973, Chapter 685" (the Minnesota licensing law for psychologists). The proposed waiver rules are necessary to allow the Board, within established criteria, to grant a time-limited waiver of a rule in special circumstances when application of the rule would impose an undue hardship on the applicant or licensee. The rule is needed to assure that the rules do not inhibit appropriate changes in professional practice.

3. The legal authority to promulgate rules governing the granting of variances is contained in Minn. Stat. § 15.0412, subd. 1(a) (1980). That statute authorizes an agency to promulgate rules setting forth procedures and standards by which variances shall be granted and denied. These rules allowing variances are necessary to enable the Board, within established guidelines, to modify the rule for an applicant or licensee with special circumstances.

4. The legal authority for promulgating the remaining amendment to the existing rules is contained in Minn. Stat. § 148.90, subd. 2(4) (1980) which grants the Board authority to make rules which are necessary to effectuate the provision of the licensing law.

5. The Board has proposed changes to Minn. Rule Psych 4 by further defining the requirements of professional experience employment to include supervision and defining what comprises supervision. A requirement that the applicant's professional employment be supervised by one who meets Board requirements is necessary to ensure that the applicant has developed adequate skills and competency in the practice of psychology to warrant licensure. Supervision is also necessary to protect the consumer of psychological services. Since the purpose of professional employment experience is to train an applicant for the privilege of independent practice, supervision by one who is qualified is a necessary adjunct to accomplishing this goal.

6. The amendments to Psych 2 are proposed to simplify the licensure process by separating it into two distinct parts—application for admission to examination and application for licensure. The proposed amendment permits an applicant to sit for examination before he completes the supervised employment requirement. This amendment does not alter or reduce the requirements for licensure.

7. The amendments to Psych 7 are proposed to clarify the date on which a licensee or applicant is legally permitted to practice.

Further need is set forth in the Statement of Reasonableness which is attached hereto and made a part hereof.

Dated: March /__, 1982

BEFORE THE MINNESOTA

BOARD OF PSYCHOLOGY

Lois Mizuno

LOIS MIZUNO
Executive Secretary

RECEIVED
MAR 1 1982
ADMINISTRATIVE HEARINGS

MINNESOTA BOARD OF PSYCHOLOGY

# STATEMENT OF REASONABLENESS

Proposed Rules

March 1, 1982

## Introduction

In the intervening years since the Board of Psychology adopted its original Rules following passage of the Psychology Practice Act (1973), the Board has become increasingly aware of difficulties in interpreting and administering the Rules. Ambiguities and omissions have made it difficult for applicants, licensees, and the consumers of psychological services to understand the exact meaning of and/or to abide by the Rules.

It is easy to understand how this has come about. The original Rules were drafted and adopted before the Board and its staff had had any practical experience in administration of the law. Under these conditions it is virtually impossible to anticipate all future problems and needs and to draft anything approaching a perfect set of Rules. The needed experience is simply not available.

While the Board makes no claims that the proposed revision of the Rules is perfect, it does claim that this draft provides reasonable procedures in compliance with the law, eliminates the more problematic ambiguities, and clarifies both the process of licensure and the standards against which the ethics of professional practice can be measured.

There are two major thrusts to this revision: 1) to simplify the

licensure process by separating it into distinct parts: a) application for admission to examination and b) application for licensure; and 2) to change the emphasis in the code of ethics from a somewhat vague and idealistic statement regarding ethical professional behavior to a set of concrete minimum standards regarding what a psychologist must and must not do in order to be ethical in professional practice. The remaining changes generally involve clarification of existing language without materially altering the original intent. A section by section explanation of the changes begins on page 5. However, an overview at this point serves to highlight the reasons for the two major changes mentioned above.

1. Change in Licensing Procedures

The proposed change in licensing procedures is fully in compliance with the law. Minn. Stat. S 148.91 states the requirements for each level of licensure but does not specify the sequence or time period in which requirements must be met before licensure can be granted.

Present procedures require the applicant for licensure to wait until the two years of post degree employment required by law have been completed before being permitted to sit for the examination. Because the objective part of the examination is scheduled only twice each year (April and October), some applicants have had to wait as much as six months after completing employment requirements before they could sit for the examination. This situation has often resulted in severe economic hardship and anxiety for the applicant.

This procedure also causes an uneven workload for the Board and its staff, with the bulk of licensure-related work occurring in February-March and August-September. While not unmanageable, such peaking is not as efficient as spreading the paper-work evenly throughout the year which will happen under the new procedures.

The proposed changes will permit the applicant to apply for admission to examination any time after completing the education requirements, that is, after obtaining the degree required for the level of licensure sought. Because the only documentation required over and above the application itself is the academic transcript, the paper work is extremely simple and quickly completed.

If the applicant passes the objective part of the examination, the application is kept in the active file until the requisite two years of employment have been completed. The applicant then files an application for licensure. Documentation at this stage involves verifying the claimed employment and obtaining endorsements of the claimed areas of competence. This activity requires a great deal of staff and Boardtime, so that spreading it evenly throughout the year without deadline pressure will be conducive to more efficient use of staff and better service to the applicant.

When documentation is complete and the application has been reviewed by the Board for verification that all requirements of the law have been met, the applicant is administered the oral part of the examination. If the applicant performs successfully, licensure is granted. As the Board meets regularly throughout the year, an applicant can be licensed within two

months after completing employment requirements, compared with up to eight months of waiting under present procedures.

The proposed system provides other advantages to applicants who fail to pass the objective part of the examination: 1) if they try again, they need to pay only that portion of the fee allotted to the application for admission to examination (one half the present total fee); 2) there is time to retake the examination during the two-year employment period without delaying licensure, assuming the applicants eventually pass; and 3) applicants who recognize that they cannot pass the objective part of the examination can seek other career choices before investing in two full years of post degree employment.

The proposed licensure procedures, then, are more reasonable than their current counterparts.

2. Rules of Conduct

Minn. Stat. S 148.98 mandates the Board to adopt a code of ethics and requires three principles to be included: recognizing boundaries of competence, assisting clients in obtaining professional help for problems outside of the psychologist's competence, and prohibiting misrepresentation of qualifications. The present Code of Ethics, except for the four introductory paragraphs, was taken from the "Ethical Standards of Psychologists", 1973 edition, of the American Psychological Association.

There is nothing inherently wrong with the content of the present code. The difficulty lies in attempting to use it to determine whether an allegation concerning the conduct of a psychologist against whom a complaint has

been made is, in fact, a violation of the Rules. The language in places is so vague and imprecise that the Board does not have clear direction in determining whether alleged conduct constitutes a violation. Furthermore, to the extent that legal standards are ambiguous, the enforcement of such standards becomes more problematic.

The proposed new code is called "Rules of Conduct" rather than a "Code of Ethics" to place emphasis on conduct which is a violation of the Rules. The three principles mandated by the law are included and elaborated upon. In addition, the Rules of Conduct provide minimum requirements for the ethics of practice in specific enough terms to serve as a yardstick in processing complaints of unprofessional or unethical conduct in professional practice. As such, the Rules of Conduct provide greater protection for the public than does the present Code of Ethics.

What follows is a section by section description of the changes which are proposed and an explanation of why the changes are needed and how they meet the test of reasonableness.

7 MCAR S 10.001 General Definitions

Law

The definition of law is stricken because the term as it is used in the proposed Rules does not refer specifically to the licensing law for psychologists. Statutory references are cited in the text of the proposed Rules as they are needed.

Board

The only change in the definition of "Board" reflects the change made

in the law regarding the name of the Board.

Licenses Issued

The definition is stricken because it repeats wording in Minn. Stat. S 148.91, subd. 1. "Licensee" is defined in E. instead.

Original License

The definition of original license is stricken because the term no longer appears in the text.

Year

The definition of year is stricken because it is preferable not to assign a specific definition to a word which has a generally accepted meaning. Minn. Stat. S 148.91, subd. 3, sets the renewal period at two years, but does not specify the time of beginning or ending. To avoid any problems which might arise, rather than define "year", the period of a valid license is now clearly stated at the beginning of 7 MCAR S 10.006B.

Waiver

The definition of "waiver" is stricken because the Rule to which it pertains is repealed. The time period involved has long since expired.

Collaboration, Collaborative Contact

Minn. Stat. S 148.93 specifies that a licensed psychologist may engage in private practice only in collaboration with a licensed consulting psychologist. Minn. Stat. S 148.89, subd. 2, defines what collaboration is: consultation on at least an annual basis, but not consultation on each case referred to the

licensed psychologist. Minn. Stat. S 148.97, subd. 3(1) uses the term "supervision" in an entirely different context. It is clear that in the licensing law for psychologists "collaboration" does not mean "supervision". Nevertheless, the Board is repeatedly made aware of widespread misunderstanding of the term. Many licensees, especially licensed consulting psychologists, appear to believe that licensed psychologists are not permitted to engage in private practice without supervision. It is therefore reasonable to make a distinction between the terms as is done in the Rule definition of collaboration and to reinforce the concept that it is not confined to case consultation.

Area of Competence

The term "area of competence" is defined in order to impart meaning to the expression "boundaries of his competence" as it is used in Minn. Stat. S 148.98. In order to determine by some objective measure whether a psychologist recognizes (and by implication stays within) the boundaries of his competence, areas of competence must be defined. It is reasonable to define the phrase in terms of proficiency gained through education, training or experience, as these are factors used to determine whether an applicant qualifies for licensure.

Informed Written Consent

The term "informed written consent" has widespread use and has a fairly universal meaning not different from its use in these Rules. It is reasonable to include this definition in the Rules because a clear understanding of the term in the context of ethical conduct is so fundamental to the protection of a client's rights that the term needs to be spelled out.

Licensee of the Board/Licensee

The need for a shorthand term meaning "Licensed Consulting Psychologist or Licensed Psychologist" is obvious in reading the text, since the term is used frequently.

Private Information

It is reasonable to define the term "private information" because its meaning and usage are not the same as the meaning and usage of the term "private data on individuals" as defined in the Minnesota Government Data Practices Act, Minn. Stat. S 15.162, subd. 5a (1981 Supplement), and the difference could lead to confusion. It is reasonable to include in private information all communication which occurs during a professional relationship to ensure that a client's confidences and information about his problems will not become public without his consent.

Professional Relationship

It is reasonable to restrict the meaning of "professional relationship" to the association which occurs when psychological services are actually provided by a psychologist to a client so that absurdities are avoided, such as a claim that a casual encounter at a cocktail party between a psychologist and a lay person is a professional relationship.

Psychologist

The term "psychologist" is used only in the Rules of Conduct, and is synonymous with "licensee". It is reasonable to employ the term "psychologist" instead of "licensee" in this context in order to emphasize the professional nature of the practice being regulated.

Supervision

The term "supervision" is defined because in general usage it has many meanings. Minn. Stat. S 148.97, subd. 3(2) requires that the performance of psychological functions during the two years of post degree employment must be under "supervision". In order to provide adequate protection to the consumer of psychological services, the Rules must clearly spell out what constitutes supervision.

It is reasonable to specify that supervision means full professional responsibility for all that goes into the work product of the supervisee because the supervisee is an unlicensed person and as such cannot legally engage in independent private practice. In the context of the licensure law, then, the supervisee cannot be independently responsible to the Board for his work product. It is also reasonable to specify the form and frequency of the contact between the supervisor and supervisee which constitute the minimum interaction to ensure the development of the supervisee's competence. Requiring face-to-face contact is reasonable because it provides the setting for optimum interaction. With weekly conferences generally considered to be necessary for development of competence in the supervisee, requiring ten hourly sessions per quarter is reasonable as it allows for possible illness or vacations which might interfere with the schedule.

Test

"Test" is defined as broadly as possible to cover any measurement, evaluation or assessment of mental or psychological characteristics in order to ensure that a narrow construction cannot be invoked as a defense to a complaint. The definition is essentially the same as that used generally in the practice of psychology. It is reasonable to include the definition in the Rules to make the public, particularly consumers of

psychological services, aware of the meaning of the term to avoid misinterpretation.

Variance

"Variance" is defined to avoid having to repeat the longer phrase it replaces: "board authorized permission to comply with a rule in a manner other than that generally specified in the rule".

Waiver

"Waiver" is defined to avoid having to repeat the longer phrase it replaces: "board authorized permission to not comply with a rule".

7 MCAR S 10.002 General Requirements for Licensure

Although present Psych 2 also covers the application process, it was not feasible to set forth the application requirements in an orderly fashion by amending existing language. Psych 2 is therefore repealed.

A. The change in the licensing procedure to require separate applications for examination and for licensure is basic to this Rule. It is therefore reasonable to state this fact at the beginning of the Rule. To summarize the arguments supporting this change which are presented in the introduction, the change to a two application procedure is reasonable because it shortens the delay between completion of employment requirements and licensure, it permits applicants who fail the objective part of the examination to retake the examination without paying the full licensure fee, and it spreads the work load for the Board and its staff evenly throughout the year, which in turn promotes efficiency in processing applications.

B. This section states the requirement for admission to examination. Since the applicant is permitted to sit for the objective part of the examination before completing the employment requirements, only the education requirements stated in Minn. Stat. S 148.91, subds. 4 and 5,

need to be completed, and the fee paid as prescribed in Minn. Stat. S 148.91, subd. 3. The only new requirement in this section is that the application be signed in the presence of a notary and affirmed as to the truth and correctness of the statements made. This provision is reasonable because it provides some guarantee that the statements made in the application are true and also provides grounds for discipline or denial of licensure if the applicant knew the statements were false. The requirement for transcripts and direct verification of the degree or degree equivalency from the institution granting the degree is not changed from Psych 2E.

C. This section requires the Board to admit an applicant to the objective part of the examination if the applicant meets the requirements stated in B. The specific examination to which the applicant is admitted must be the earliest examination scheduled 40 days or more after verification that requirements have been met. This requirement is reasonable because the examination service requires a 30-day lead time and the Board must be allowed sufficient time to meet and admit applicants to examination prior to that deadline.

The former deadline for filing the application far in advance of the examination is no longer necessary because staff work at this stage is minimal. Furthermore, under the new procedure, incomplete documentation at deadline results in deferral, not denial.

D. This section, requiring written notification of denial and reasons for the denial, for example, lack of sufficient psychology credits or obtaining a degree from an unaccredited institution, is reasonable to ensure that the applicant is officially informed of his status and can then take steps to meet requirements, request a waiver, or appeal.

Denial of admission to examination is confined only to the application to which it pertains, whether or not this fact is explicitly stated in the Rules. It is reasonable to state that a new application may be filed and if so it must be accompanied by the current fee so that any possible misinterpretation is avoided.

E. This section outlines clearly the requirements for the second stage of the process, that is, application for licensure. Most of the provisions are a restatement of existing explicit or implicit requirements.

One change is the requirement that the applicant sign in the presence of a notary and affirm that the statements made are true and correct to the applicant's best knowledge and belief. This provision is reasonable because it provides some guarantee that the statements made in the application are true and also provides grounds for discipline or denial of licensure if the applicant knew the statements were false.

Another change from present Rules is the requirement that the applicant state at least one area of competence. Present Psych 2E requires that "satisfactory evidence of the candidate's qualifications has been supplied in writing", without explicit reference to competence.

The proposed requirement that the applicant state at least one area of competence is based on Minn. Stat. S 148.98(1) and the Rules of Conduct, 7 MCAR S 10.008B. Both require a licensee to recognize the limits of his competence. In order to do so, a licensee must be aware of what his areas of competence are. Competence in one or more areas of psychological practice result from education, training and professional employment. In fact, the rationale for the education and employment requirements for licensure in the law is assurance that a person engaging in private practice is competent to do so. It is therefore reasonable to require an applicant for licensure to state formally those areas of

practice in which he is competent.

If there were no area in which a licensee was competent to practice, the licensee would be practicing in violation of the sections of the statutes and Rules cited above. It is therefore reasonable to require that at least one area of competence be stated for the reasons cited above and in order to provide a standard for reviewing complaints alleging a violation of 7 MCAR S 10.008B.

A third change reduces the number of required endorsements from three to two. This change is coupled with a tightening of qualifications for endorsers in H. It is reasonable to reduce the number of endorsements in conjunction with an increase in the qualification standards for endorsers because together these changes should have no deleterious effect on the quality of persons granted licensure. An endorsement of competence from two licensed or licensable persons should carry as much or more weight as three endorsements from professionals in related fields. It is also reasonable to reduce the number of endorsers because some applicants may work in settings where few or none of their associates are licensees or licensable (for example, the Sister Kenny Institute, where associates are likely to be non-psychiatrist M. D. s. )

F. Because the procedures separate the application for examination from application for licensure, it is reasonable to state explicitly what is already implicit in the procedures, that both applications may be submitted at the same time if all requirements for licensure have been met. If both are submitted at the same time, only the documentation for the application for admission to examination must be completed by the 40-day deadline. There is no deadline pertaining to the application for licensure.

G. This section states the minimum amount of information necessary to allow the Board to judge whether the applicant's employment meets the qualifications for licensure. The information required is reasonable since it relates directly to the requirements in Minn. Stat. SS 148.91, subds. 4 and 5, and 148.97, subd. 3(2), and includes data necessary to implement the provisions of these statutes.

H. This section states the qualifications necessary for persons who endorse an applicant's areas of competence. The qualifications are reasonable because they provide assurance that endorsements are made by persons who are themselves competent to judge. In an ideal situation endorsers are licensees. However, not all qualified psychologists in Minnesota are required to be licensed (see Minn. Stat. S 148.96) and not all potential endorsers live or practice in Minnesota. Therefore, it is reasonable to permit persons not licensed in Minnesota to endorse, provided they meet Minnesota's education and experience standards for licensure.

Beyond that, in order to ensure a bona fide endorsement, it is reasonable to exclude as endorsers the employees of an applicant, because employees may be reluctant to provide a justifiably unflattering evaluation; persons who have no personal knowledge of the applicant's competence, because they would have no basis on which to make an evaluation; and current Board members, since it would be a conflict of interest to provide an endorsement and then evaluate the applicant for whom it was made.

The provision permitting an applicant to add endorsers' names is reasonable because the application is not final until the Board evaluates it for admission to licensure, and because the endorsers listed on the application may not return the form or not provide a complete endorsement.

The provision permitting an applicant to delete an area of competence if two endorsements are not forwarded to the Board is reasonable because endorsers for that area of competence may be unavailable at the time of application, or the applicant may be working in a setting in which his associates are not licensees or licensable persons. It would be unreasonable to deny licensure because an area of competence is not endorsed for reasons unrelated to the applicant's competence.

I. There is no counterpart in the present Rules for this section which provides for adding areas of competence after a person has been licensed. In practice, however, many licensees do add to their areas of competence by obtaining additional education, training, and/or supervised experience. It is reasonable to permit a formal procedure for added areas of competence to be documented so that licensees can prove compliance with the provisions of 7 MCAR S 10.008B. It is reasonable to require the same degree of documentation as is required in the original application to assure that licensees are as competent in added areas as they were in areas claimed at the time of licensure.

J. This section simply restates the concept in Psych 2J.

K. This section restates the provisions of Psych 2G. and 2H., with a new provision requiring a written notice when licensure is denied. It is reasonable for an applicant who is denied licensure to be informed of the denial in writing so that he may take steps to meet the requirements, request a waiver, or appeal.

7 MCAR S 10.003 Educational Requirements for Licensure

Almost all of the revisions in this rule are a restatement of the provisions of Psych 3 in simpler language, using parallel construction and removing ambiguities in order to make the meaning clear. The exceptions are listed below.

Because the provisions of A2 and C2 are identical except for the degree to which each pertains, the two sections are discussed together to avoid repetition. This is also true for sections B2 and D2.

1) A2, C2. These sections specify the majors which the Board considers to be psychology majors for purposes of meeting the educational requirements for licensure. The list includes educational, child, counseling, and industrial psychology. It is reasonable to include these hyphenated psychology majors as bona fide psychology majors since the open language of Minn. Stat. S 148.91, subds. 4 and 5, permits inclusion of psychology majors which may not originate within a Department of Psychology. The statute requires a major in psychology "which may include educational and child psychology..." The statute statute does not specify that the psychology major must be obtained in a department of psychology. In addition, the statute's use of the open term "may" implies that child psychology and educational psychology are examples of majors which the Board may consider as psychology majors not requiring evaluation of course credits as a test of meeting the education requirements.

In its evaluation of transcripts of majors other than psychology under the provisions of Psych 3(b) and 3(d), the Board has consistently found that the four hyphenated psychology majors listed meet psychological course credit requirements of those sections. Thus, for all practical purposes, these hyphenated psychology majors are pyschology majors in both name and course requirements. There is, therefore, no rational reason to distinguish between them.

2) B2, D2. These sections specify the criteria for determining whether a dissertation or thesis for a major other than psychology is

psychological in topic and method. It is reasonable to require the topic to be listed in an edition of the "Annual Review of Psychology" because that ensures its psychological nature without excluding any legitimate psychological inquiry. The paragraph which specifies what constitutes psychological method results from a court challenge of the Board's right to deny admission to examination on the ground that the applicant's dissertation was not psychological in method. The court upheld the Board's right to deny admission to examination based on the criteria which have been included in this rule. The criteria are therefore reasonable.

3) B3. Existing Rules require that for doctorates with non-psychology majors one-half the course credits be in courses which are predominantly psychological in content. The amendment raises the proportion to two-thirds. It is reasonable that the proportion of psychology course credits be the same for both the doctoral and the master's level, and that the higher of the two figures be used, since course work is a determining factor for both levels of licensure in acquiring competence to provide psychological services. This change, of course, necessitates the provision for "grandfathering" doctoral candidates who began their degree programs prior to adoption of these Rules.

The other change in this section limits already permitted post degree courses which can be applied to the education requirements to the five year period immediately following the granting of the degree. This limit is reasonable since it permits sufficient time to complete required course work while guarding against loss of competence which may result from the passage of too much time after receiving the degree.

4) D3. The change in this section permits post-master course work to count toward the two-thirds requirement for non-psychology majors, paralleling existing provisions for the doctoral level. It is reasonable for provisions to be identical for the two levels since course work is a determining factor for both levels of licensure in acquiring competence to provide psychological services.

7 MCAR S 10.004 Professional Employment

The title of this Rule is changed from "Professional Experience" to "Professional Employment" so that the terminology agrees with that used in Minn. Stat. S 148.91, subds. 4(4) and 5(2). Wherever in the Rule that "experience" was used, it has been changed to "employment".

A1. The first paragraph of section A remains unchanged except to make the section as a whole more grammatical.

A2. This paragraph is added to clarify what qualifications are necessary for a supervisor of a person undergoing the two years of post-degree, pre-licensure employment required for licensure by Minn. Stat. S 148.91, subds. 4(4) and 5(2). It is reasonable to require the supervisor to be a licensee or to have the education and experience required for licensure and be competent in the area being supervised in order to ensure that the supervisee has adequate professional training to engage in private practice following licensure.

The second sentence in A2 is necessary to clarify the ambiguity of the law as it relates to private practice. The Board has held the position since its inception that Minn. Stat. S 148.97, subd. 3(2) permits persons preparing for licensure to perform the functions described in Minn.

Stat. S 148.89, subd. 1, but only as employees under supervision, on the ground that the section as a whole prohibits anyone but a licensee of the Board from engaging in the private practice of psychology as it is defined in Minn. Stat. S 148.89, subd. 1. However, it is possible to interpret the cited sections to mean that persons preparing for licensure may engage in the private practice of psychology -- for a fee-- provided they are supervised. Since the law makes licensure a requirement for engaging in private practice, the Board has consistently considered it unreasonable to adopt this second interpretation. Until now, however, the Board's interpretation has never been stated as a rule, which has led to confusion and in some cases to engaging in private practice prior to licensure.

It is also necessary, however, to specify that licensed psychologists are permitted to engage in the private practice of psychology without supervision, since some licensed consulting psychologists have mistakenly informed licensed psychologists that they cannot practice without supervision. It is reasonable to make it clear that a licensed psychologist seeking licensure as a licensed consulting psychologist does not require supervision during the two years of post-degree experience (except for gaining competence in another area) so that licensees and the public are made aware that such experience is not a violation of the law.

To be consistent, it is also reasonable to exclude private practice in other states prior to licensure from counting toward the two year employment requirement.

B. The changes in this section are made only for the purposes of increasing clarity and they do not alter intent.

C. This section permits the supervisor to delegate training in specific skills to other persons, including non-psychologists, but does not permit the supervisor to transfer supervisory responsibility. This provision is reasonable because it gives the supervisor the needed leeway to provide quality training without diluting his responsibility for the training.

It is reasonable to strike the existing language in this section because it does not add to the provisions of B, which sets forth the employment criterion. Clerical, routine, and repetitive tasks do not relate to skill and knowledge acquired in formal education in psychology.

D., E. The changes in these sections were made only for the purposes of increasing clarity, omitting duplicative language, and removing language which is contrary to state law ( (h)(1) is contrary to Minn. Stat. S 148.96), and they do not alter intent.

F. This section describes what constitutes two years of employment. The provisions are reasonable because they permit time off for holidays and vacations without requiring that the hours be made up, they permit part-time employment, and they set the minimum number of hours of employment per year at 1800 to allow for positions which have irregular work schedules, all of which are standard practices in most work settings.

G. This section puts reasonable limits on the duration of part-time work which will be accepted in lieu of full-time work. It is reasonable to require a minimum number of hours per week and weeks per year in order to ensure that the position provides adequate training. Quarter-time for a minimum of three months for any one position is reasonable because a smaller time commitment is unlikely to foster the development of competence.

7 MCAR S 10.005 Examinations

A. This section serves the same purpose as present (a), with the changes reflecting the changes in procedure set forth in 7 MCAR S 10.002.

B. This section replaces present (d) and adds a brief description of the two parts of the examination. It is reasonable to include a description so that potential applicants have some idea of what to expect. The provisions are moved to this position because a description of the examination logically follows the provisions for announcing the examination.

C. The first sentence in this section requires the Board to notify applicants admitted to examination. This provision is new in the Rules but it does not represent a new procedure, since notification is now done routinely. The second part of C. is new only because it reflects the new waiver procedure in 7 MCAR S 10.009 for permission not to comply with a Rule. Since written request for deferment is required at present, this provision is not really new.

Present section (c) is stricken because it duplicates the provisions of 7 MCAR S 10.002D.

D. This section provides for acceptance of an applicant's score on the objective part of the examination taken in another state or taken in Minnesota for a different level of licensure, and for acceptance of a "pass" on the oral part of the examination achieved when the applicant applied for another level of licensure. Since the objective part of the examination is given nationwide, it does not matter where an applicant has taken it. The quality of the examination from year to year and from state to state is uniform. It is reasonable to waive that part of the examination which has been passed previously, since there is no reason to assume that requiring repassage provides greater competence to practice or better protection for the public.

E. The only change in this section, apart from clarifying the language, is the deletion of the reference to the next examination. There is no sound reason for requiring that an applicant who has not performed satisfactorily on any part of the examination must reapply for the next examination. A re-examination will be valid regardless of when it occurs. Furthermore, this change is consistent with the change in procedure in 7 MCAR S 10.002, which provides in most cases two full years in which an applicant can attempt to pass the objective part of the examination (which has a much higher failure rate than the oral part) without delaying his professional career.

7 MCAR S 10.006 Licenses, License Renewal

A. This section is a substitution for Psych 12, which is repealed. It is reasonable to require the license to be displayed where the licensee spends most of his professional time, so that clients and potential clients have the opportunity to see first-hand that the psychologist is licensed. Furthermore, "in a professional manner" which is the present language is vague and susceptible to a variety of interpretations.

B. This section is a new provision which states the time period in which a license is valid. The provision is needed to avoid ambiguity about whether a licensee is licensed to practice on the date the Board grants licensure or on the first day of the following month (the renewal date). Because the present Rules lack a provision clarifying this, much confusion has been the result. In the absence of specifics in the law, it is reasonable to state that a person is legally licensed to engage in the private practice of psychology from the date of Board's granting of the license, and unreasonable to consider that person unable to legally engage in private practice for as much as three weeks after he is granted

a license.

C. The changes in this section are made only for the purpose of increasing the clarity of the meaning and they do not alter intent.

D. Most of the changes in this section are made only for the purpose of increasing clarity without altering intent. The amount of the renewal fee is stricken because Minn. Stat. S 214.06 permits fees to be set without incorporating the fee amount in the Rules. The other change requires the renewal application to be signed in the presence of a notary and affirmed as to the truth and correctness of the statements made. This provision is reasonable because it provides some assurance that the statements made in the renewal are true and also provides grounds for discipline if the applicant knew the statements were false.

E., F. The changes in these sections are made only for the purpose of increasing clarity without altering intent.

Present D. is stricken because its purpose is served by the new provisions in B.

G., H. These sections are amended only for the purpose of increasing clarity without altering intent.

7 MCAR S 10.007 Collaboration

Present (a) and (b) are stricken because they duplicate the provisions of 7 MCAR S 10.002E. 6. and Minn. Stat. SS 148.89, subd. 2, and 148.93.

A. The amendment to this section requires the collaborator to be provided with a summary of the applicant's training, experience and areas of competence. It is reasonable to require this summary so that a licensed consulting psychologist asked to serve as a collaborator may have a rational basis for deciding whether to serve as a collaborator.

B. The first sentence of this section requires that the responsibility

for determining the nature and frequency of collaborative contacts be shared by both the licensed psychologist and the licensed consulting psychologist who is the collaborator. This provision is reasonable because it reinforces the provision of Minn. Stat. S 148.89, subd. 2, that collaboration is not confined to case consultation, and by implication, is not supervision.

The remaining changes in this section are made only for the purpose of increasing clarity without altering intent.

C. This section is all new language but is a new concept only to the extent that it is not now in the Rules. Because Minn. Stat. S 148.93 requires collaboration only for licensed psychologists who engage in private practice, the Board has permitted licensed psychologists who are not in private practice to state that fact on the renewal form. It is reasonable to state in the Rules that a collaboration report is not required of licensed psychologists who are not in private practice in order to avoid confusing and contradictory provisions.

D. This section is a new provision. Its purpose is to remind all licensees that under certain circumstances, as indicated by the cited Rules, they are required to consult. It is reasonable to include this provision so that licensees are alerted to the fact that certain of the Rules of Conduct require consultation under certain circumstances.

7 MCAR S 10.008 Rules of Conduct

The Rules of Conduct are all new material which replaces Psych 10, the Code of Ethics (repealed). In many cases the new provisions paraphrase concepts occurring in Psych 10. Where this is the case, it is indicated in the explanation.

Both the present Code of Ethics and the proposed Rules of Conduct

are based on the premise that client welfare is the primary consideration for a psychologist practicing his profession. It is reasonable to apply to psychologists the physician's admonition "do no harm," because they, too, are practitioners of one of the healing arts.

As was stated in the introduction, the Rules of Conduct are an attempt to set forth minimum standards for ethical practice to safeguard consumers of psychological services against unethical or unprofessional practice.

A. Scope and Purpose. This section states what the Rules of Conduct are and to whom they apply. It is obvious that they apply to all licensees. It is reasonable also to include conduct during the education and training period, since Minn. Stat. S 148.91, subd. 4(2) requires the applicant to be of good moral character and not found to be engaging in unethical practices. If the Rules of Conduct did not apply to the education and training period, there would be no standard for determining whether an applicant has engaged in unethical or unprofessional practices, and therefore no standard for denial of licensure on unethical grounds which is mandated by law.

In order to be absolutely clear to consumers of psychological services and to applicants and licensees, and because ethical conduct is so fundamental to the provision of quality services, it is reasonable to state that the Rules of Conduct are the standard for measuring professional conduct and that a violation of the Rules of Conduct is ground for disciplinary action or denial of licensure. Because it is not possible to anticipate every possible unethical or unprofessional act, it is also reasonable to state that the Rules are not all-inclusive and that there may be other grounds not specifically mentioned. It is anticipated that psychologists

will also be familiar with the American Psychological Association's "Ethical Principles of Psychologists". It is reasonable to state that a violation of the Principles may also be ground for disciplinary action, except where they may be in conflict with the Rules of Conduct, because both documents relate to ethical conduct in psychological practice.

B. Competence. This section is based upon Minn. Stat. S 148.98 (1) and (3) and expands upon the provisions of Psych 10(a)(1) and (3) and (b)(2)(cc). This section also complements 7 MCAR S 10.002E.3, which requires the applicant to state at least one area of competence and to provide endorsements verifying the areas of competence stated.

Because the field of psychology is extremely broad and because licensure is not based on specialties, it is not possible for a psychologist to be competent in all the areas in which he is licensed to practice. It is reasonable to require a psychologist not to practice outside of the documented areas of competence because of the risk of harm to clients in providing services in which the psychologist has inadequate background.

It is reasonable to require psychologists to state their areas of competence accurately so that clients are not misled into contracting for services which cannot be adequately provided, again because of potential harm to clients.

When new services, techniques, or specializations evolve out of existing practices, traditional ways of gaining competence may not apply since formal education and supervised training geared to them are not available. In such cases it is reasonable to provide an alternate method for gaining competence so that legitimate innovations are not stifled. It is reasonable to permit consultation with other professionals and continuing education, if available, until the new service, technique or

specialty is proved reliable and efficacious, because ongoing consultation provides the necessary checks to insure adequate client care. It is also reasonable to require that the client be informed about the newness and unproved nature of the service, technique or specialty so that the client can make an informed decision on whether to proceed.

It is reasonable to require a psychologist to refer a client to another professional when the psychologist has reached the boundaries of his competence in providing efficacious services to the client so that the client is neither abandoned nor given services which do not help and may even cause harm to the client.

C. Protecting the Privacy of Clients. Most of the provisions of this section paraphrase in clearer language the provisions of Psych 10(b)(6), (b)(7)(aa) and (b)(8)(aa).

Protecting the privacy of communication between a psychologist and a client is fundamental to providing services which benefit the client. In order to provide beneficial services, the psychologist must be aware of the true nature of the client's problems. If the client has no assurance that what he reveals to the psychologist will be kept confidential, he may conceal facts which, if known by the psychologist, might lead to successful treatment. It is therefore reasonable to require that psychologists keep communications with clients private.

The requirement, however, should not be absolute, because there are circumstances in which the interests of the client are better served by not keeping the information private, or in which revealing certain kinds of information is mandated by law.

It is obvious that a client should have the right to give permission for private information to be disclosed. It is therefore reasonable to

allow the psychologist to disclose private information about a client to others provided he has the client's consent. It is reasonable to require that the client sign a written consent form which indicates the client has been informed of reason for and use of the information so that it is clearly understood by both parties and so that the psychologist has the consent form to prove he has the client's consent for disclosure.

It is reasonable to permit a psychologist to disclose private information about a client without his consent when the client threatens suicide or murder, because it is in the best interests of the client that the authorities and the intended victim (of threatened murder) are warned.

In cases in which a person or agency requests psychological services to be provided to a third party, for example a court-ordered psychological evaluation of a person charged with a crime, it is not reasonable to require the informed written consent from the third party before disclosing information to the requestor, because the third party is not a client. It is reasonable in this situation, however, to require the psychologist to inform the third party that information will not be kept private, so that the third party is alerted to the consequences of what he might reveal. The provision is protection against self-incrimination.

Because the law does not recognize a minor's absolute right to privacy, a psychologist need not always obtain the informed written consent of the minor to disclose information to his parent or guardian. In this case, however, it is necessary that the minor be informed before he begins to communicate with the psychologist as to what the limits of his right to privacy are so he is protected from revealing information he does not want others to know.

It is reasonable to allow access to a client's records by a staff member who needs access to perform his duties, since requiring prior written consent would unnecessarily increase the burden of paper work without providing additional protection to the client. However, it is then reasonable to require the psychologist to instruct the staff that they, too, as agents of the psychologist, are responsible for protecting the privacy of clients, because private information about a client can be equally damaging whether disclosed by the psychologist or a staff member.

It is reasonable to require that a psychologist instruct his staff to comply with clients' requests regarding billing because sending a bill to someone other than the client is in fact disclosing private information to the person receiving the bill.

It is reasonable to require that case reports used for instructional purposes be disguised sufficiently to prevent identifying the individuals they relate to because the case reports are private information .

Because taping or permitting observation of sessions between a psychologist and a client means that privacy of communications between them may be breached, it is reasonable to require the informed written consent of the client to do so.

It is reasonable to require that a psychologist keep a client's records private as long as they are in his possession, since the reason for protecting the client's privacy does not cease with the cessation of professional services.

It is reasonable to include the provision that a psychologist may disclose private information when required to do so by law, so that the

disclosure cannot be considered a violation of the Rules of Conduct. This principle applies to sections 10 and 11.

D. Impaired Objectivity. This section restates in clearer language the provisions of Psych 10(b)(2)(dd), (b)(8)(cc) and (b)(12)(cc).

If a psychologist's objectivity concerning a client's psychological problems is impaired, his ability to provide services appropriate to the client is decreased. The psychologist loses the capacity to remain objective and at arm's length. The psychologist's view of the problem becomes distorted and the appraisal and resulting treatment can be faulty. Because of this, it is reasonable to include rules regarding what a psychologist must do if objectivity is impaired for whatever reason.

It would be unreasonable to prohibit the provision of psychological services in all instances in which an interpersonal relationship exists between the client and the psychologist or in which the psychologist has severe personal problems, because not all such instances are objectivity impairing. It is reasonable to require such prohibition only when the interpersonal relationship or personal problem impairs the psychologist's objectivity.

When objectivity is impaired because of an interpersonal relationship or personal problem which develops after a professional relationship has begun, it is reasonable to provide a method for extricating the psychologist from the professional relationship because continuing the professional relationship is potentially harmful to the client. In such cases it is reasonable to require the psychologist to terminate the professional relationship and to assist the client in obtaining services from another professional so that the client is not abandoned and can continue to receive help for his problems. It is reasonable to notify the client in

writing so that the client really knows that the professional relationship is terminated and so that the psychologist has proof that the client was notified.

It is reasonable to prohibit a psychologist from requesting or authorizing a client to solicit business for the psychologist because the very nature of the vendor/agent relationship is objectivity impairing. The vendor/agent relationship is an interpersonal relationship in which the boundary between the psychologist's self interest and his perception of the client's best interests becomes blurred.

E. Client Welfare. Client welfare, as has already been stated, underlies all of the Rules of Conduct, since the psychologist's primary concern must be to provide psychological services which benefit his clients and to avoid causing harm while doing so. Some aspects of the psychologist-client relationship are so compelling, however, that they require emphasis. These are set forth in a separate category.

1. The first requirement in this category is that the psychologist must provide the client with a non-technical explanation of the nature and purpose of the psychological services and the results of tests he is given. It is reasonable to require an explanation of psychological services so that the client can make an informed decision on whether to accept the services. It is reasonable to require an explanation of test results so that the client is aware of the reasons for recommended treatment. A non-technical explanation also promotes the trust which is necessary to a successful professional relationship. Frequent client complaints to the Board are, "I didn't know what I was getting into," and "He didn't tell me anything."

2. The second requirement is that a psychologist must inform the

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client of his areas of competence and of the Clients' Bill of Rights, either by posting them in a prominent place on his premises or by offering the information as a handout. This requirement, which has no counterpart in Psych 10, is reasonable because it is notification that clients and potential clients have certain rights, are informed of what those rights are, and are made aware of how they can measure the services they receive against those rights. Since only clients and professionals themselves are in a position to police the profession, it is reasonable to alert clients to their rights and how to seek remedy when the need arises.

The items included in the Clients' Bill of Rights are reasonable as they explain how to evaluate the psychologist's conduct (items a, b, c, e, f, and g) and how to seek remedy if they believe the psychologist is practicing in an unethical or unprofessional manner (d).

3. The requirement that a psychologist shall not stereotype a client, which has no counterpart in Psych 10, is reasonable because stereotyping interferes with objective assessment of a client's problems, which in turn may lead to the choice of an inappropriate therapy. Pre-cast ideas prevent the openminded, objective approach which is necessary to fit the treatment to the client.

4. In the practice of psychology there are many methods of treating each problem. Each psychologist prefers, because of his own personality and where and by whom he was trained, one or more methods over others. Yet other methods may be equally beneficial for the particular client. It is reasonable to require the psychologist to reveal his value preferences so that the client is able to make an informed decision on whether to accept or reject the psychologist's choice. This provision also has no counterpart in Psych 10.

5. It is possible for a psychologist and a client to have such different values that the psychologist cannot establish the rapport necessary to provide beneficial services. It is reasonable in such cases to permit the psychologist to terminate the professional relationship so that neither is wasting time and the client isn not wasting money. This provision also has no counterpart in Psych 10.

6. This section restates in clearer language the provisions of Psych 10(b)(7)(cc). It is reasonable to require a psychologist to terminate a professional relationship when the client is not benefiting from it to prevent the client from returning merely for the economic benefit of the psychologist. It is reasonable to require the psychologist to notify the client of the termination in writing so that the termination is absolutely clear to the client and so that the psychologist has proof he terminated the professional relationship.

It is a fundamental principle of psychology that a client must not be abandoned before his need for psychological services has been met, since such abandonment might exacerbate the client's problems. It is therefore reasonable to require a psychologist when terminating a professional relationship to assist the client in obtaining professional services from someone else.

7. This section has no counterpart in Psych 10. It is reasonable to require a psychologist to make a prompt referral when requested, to ensure continuity of services and to avoid appearing to retain the client for economic reasons.

8. This section prohibits a psychologist from engaging in sexual intercourse or other physical intimacies with a client, and from engaging in verbal or physical behavior which is sexually seductive or sexually

demeaning to a client. This provision has no exact counterpart in Psych 10, although Psych 10(b)(3) touches on the moral and social codes related to this provision. The provision is reasonable for the following reasons:

A study completed by the American Psychological Association in 1975 indicated that women who have been sexually exploited by therapists are bitter, and that sexual exploitation occurs for the therapist's own gratification, not for the client's benefit. In the study one psychologist said: "This is the ultimate in sex-role bias: the rationalization of the therapist that his exploitation of the doctor-patient relationship for his gratification could be construed as therapeutic for a woman." The report also states that literature on the subject has failed to reveal even anecdotal cases in which sex with the therapist was reported as beneficial to the client.

Clients who seek psychological help are already in a more vulnerable state than peers around them who can work out their own problems. Sexual exploitation tends to increase that vulnerability and has been shown to increase the client's feelings of worthlessness and humiliation.

It should be evident that the findings regarding sexual exploitation of female clients by male psychologists apply also to sexual exploitation when the psychologist and the client are the same gender.

It is obvious, also, that a psychologist who is intimate with a client cannot maintain objectivity, since the relationship from that point on is not longer strictly professional.

9. This section has no counterpart in Psych 10. It is reasonable to require a psychologist to make an attempt to determine whether a

client has had or continues to have a professional relationship with another psychologist because if such a relationship exists, providing psychological services could be counterproductive. This would be true especially when the two psychologists use techniques which are greatly dissimilar or when the diagnoses do not match. It is reasonable to require the psychologist to attempt to coordinate the services provided if another professional relationship exists, provided the client agrees, because coordination would avoid the provision of services which are counterproductive.

10, 11. These two sections replace Psych 10(b)(2)(aa). As stated above, client welfare is fundamental to ethical and professional conduct in practice. These sections are reasonable because they provide remedies in situations in which a psychologist is made aware that another psychologist has been or is engaged in unethical or unprofessional conduct. Section 10 mandates a psychologist to file a complaint with the Board if there is reason to believe another psychologist is or has engaged in conduct which is a violation of section 8, sexual contact with a client, or C.11, failure to report suspected abuse of children or vulnerable adults. Mandated reporting in these cases is reasonable because the conduct involved results in such serious consequences for the client or the abused person. Attempting to solve the problem by talking to the alleged offender could result in the destruction or alteration of records which could prove the allegations true.

Section 11 provides that for other kinds of suspected violations of the Rules of Conduct the psychologist may either communicate with the alleged offender or report to the Board. This provision is reasonable because the consequences of the suspected violations to the clients are

less severe. Communicating with the offending psychologist could frequently result in a correction of the psychologist's behavior without the necessity of reporting to the Board.

Because of the self-policing nature of the profession, it is reasonable to consider the failure to take action when violations of the Rules of Conduct are suspected as ground for disciplinary action. Failure to act in cases of suspected serious violations could result in continued harm to clients.

It is reasonable to not require a psychologist to file a complaint when he learns of the violation from the offending psychologist during the course of a professional relationship with that psychologist as his client, because to require him to report would cause him to disclose private information, which is also a violation of the Rules of Conduct.

12. This section restates the provision of Psych 10(a)(4). Because the right of a client to file a complaint with the Board when he believes a psychologist's conduct is in violation of the Rules of Conduct is so important, it is reasonable to require psychologists to provide information on how to file a complaint if asked. It would be unreasonable to require the psychologist to assist with filing the complaint because he may not agree that a violation has occurred.

F. Tests.

1. This section restates the provisions of Psych 10(b)(15)(aa), (bb), (cc) and (ee). It is reasonable to assure that tests employed in evaluating clients' problems are valid and reliable so that a resulting course of treatment matches as closely as possible the needs of the client, and so that the client is not "labeled" incorrectly. To accomplish this goal it is reasonable to require tests to be administered properly and to be

documented as to their validity, reliability and the population for which they are designed. It follows, then, that it is also reasonable to require a psychologist who designs tests for use by others to provide that documentation and to advertise them factually without evaluation.

2. This section restates the first paragraph of Psych 10(b)(15). It is reasonable to require that psychological tests be offered for publication only to publishers who have presented tests in a professional manner and who have distributed them only to qualified users, because tests in the hands of unqualified users can be damaging to individuals to whom they are administered.

3. This section has no counterpart in Psych 10. As a protection to the client it is reasonable to require a psychologist to note in the test report any reservations he has because of the testing circumstances or possible deficiencies of the test norms for the individual tested, and of how these reservations or qualifications have been applied to the score. Test scores can so easily be distorted by the circumstances under which the tests are administered that it is reasonable to require a psychologist to take precautions to ensure an accurate interpretation of the scores.

4. It is reasonable to state in this Rule that test results are private information so that they cannot be disclosed to others without the client's consent.

G. Public Announcement of Services. This section restates the provisions of Psych 10(b)(10)(bb), (cc), (dd) and (ee). It is now legal for psychologists to advertise their services. It is reasonable for the purpose of protecting consumers of psychological services to require that such advertising does not include false statements, does not make

evaluative statements, and does not include testimonials. Such statements may cause potential clients to seek services unsuited to them or to have too high an expectation of treatment success. If the services subsequently turn out to have little or no beneficial effect, the client may believe it is his fault and be worse off than before treatment was started.

The second paragraph restates the provisions of Psych 10(b)(4)(aa) and (bb). As with false statements in advertising, misrepresentation of the psychologist's qualifications and professional affiliations is a form of lying. It can lead to unreasonably high client expectations with the same consequences as are stated above.

H. Fees and Statements.

1. It is reasonable to require the psychologist to inform the client about the cost of the psychological services he provides so that the client is able to make an informed judgment as to whether he can afford them and whether the fees are reasonable and consistent with fees charged by other psychologists for similar services.

2., 3., and 4. These paragraphs, which have no counterpart in Psych 10, could be called the "Truth in Billing" rule. It is reasonable to require a psychologist to itemize fees for services to ensure that clients (and third party payers when applicable) know what they are paying for, to avoid billing clients for services not rendered,, to prevent psychologists from being reimbursed for services which they had no hand in providing or directing, and to aid in promoting the trust between the psychologist and the client which must be present for effective treatment.

5. This section restates the provisions of Minn. Stat. S 148.93 and Psych 10(b)(12)(bb). It is reasonable to prohibit rebates for referrals to prevent inflated fees and/or unnecessary referrals.

6. This section is based on Minn. Stat. S 148.93, but has no counterpart in Psych 10. It is reasonable to include this provision in order to clarify the intent of the statutory language. so that division of fees based on actual performance of services and with the client's consent is not prohibited. It is also reasonable to provide that the prohibition against dividing fees does not apply to the financial arrangements of business organizations such as partnerships and corporations, because dividing profits is not technically the same as dividing fees in the sense intended by the statutory language.

I. Practicing Without a License. This section replaces part of Psych 10(b)(2)(aa). While there is a specific prohibition against engaging in the private practice of psychology in Minn. Stat. S 148.97, subd. 1, there is no prohibition in the statutes against aiding and abetting unlicensed persons in the private practice of psychology. The licensure law is designed to protect consumers of psychological services from being unwitting clients of incompetent, untrained, unprofessional, or unethical persons. It is therefore reasonable to include in the Rules a provision which makes aiding and abetting an unlicensed person in the practice of psychology a violation, not only because it is unethical to help another person violate the law, but also because of the potential harmful consequences to the public.

It is reasonable to exclude psychologists who supervise persons preparing for licensure from this prohibition, first of all, because the supervisees as employees are not engaging in private practice, and second, because it would be absurd to state that supervision required by law is a violation of the Rules.

J. Welfare of Research Subjects. This section is a restatement of the provisions of Psych 10(b)(16) in a much abbreviated form.

According to the definition in Minn. Stat. S 148.89, subd. 1, conducting behavioral research is included in the list of practices which constitute the private practice of psychology, along with assessment, treatment, counseling and teaching. It can reasonably be inferred from the definition that research subjects and clients occupy the same position with respect to the licensee, regardless of whether the licensee is a therapist or a researcher. It is therefore reasonable to equate research subjects with clients, which is implicit in the Rules of Conduct. It is reasonable to state this explicitly, including the fact that human research subjects enjoy the same rights as clients, so that there is no confusion as to their status vis a vis the Rules of Conduct.

K. Violation of the Law. This section has no counterpart in Psych 10. The provisions of this section are reasonable because a violation of the law which involves the provision of psychological services directly impacts upon the psychologist's ability to provide those services in an ethical and professional manner. It is reasonable to include criteria

for judging whether the violation of the law involves the provision of psychological services so that the Board has clear guidelines in disciplinary actions related to the violation of a law. The criteria are reasonable because they relate directly to the factors which make up ethical and professional practice and do not impose arbitrary or capricious standards. It is reasonable to include the provision that conviction of a crime is proof of the underlying factual elements needed to constitute a violation of the rule because a conviction is a higher order of proof than the results of a Board investigation would be.

7 MCAR S 10.009 Waivers and Variances

Because it is virtually impossible to draft a set of rules which anticipates every need, it is reasonable to provide in the Rules a mechanism for dealing with situations in which strict compliance with a rule might be inappropriate or counter-productive.

An example of this type of circumstance is an application for licensure of a person who began his two years of post-degree employment one-and-a-half years before the adoption of these Rules. His supervisor met with him once every two weeks for an hour during the period before the Rules become effective. Under the present Rules, the degree of supervision would be accepted. Under the proposed Rules it would not. The applicant began his employment with the good faith belief that he was in compliance with the Rules, then suddenly his employment is not in compliance. The waiver provisions provide him with the opportunity to request a waiver of the Rules so that his supervised employment can be accepted.

The specific provisions of this Rules are reasonable because they set forth the conditions under which a time-limited waiver or variance can be granted, renewed or revoked, so that the Board's actions under this Rule cannot be arbitrary or capricious. The provisions are reasonable also because the public is safeguarded by requiring the burden of proof to be on the requestor to demonstrate that these three conditions have been met: the rule in question does not address a problem of significance to the public in relation to the licensee's practice or the applicant's application, in the case of a waiver, or, in case of a variance, that the rationale of the rule can be met or exceeded by the variance; adherence to the rule would impose an undue burden on the licensee or applicant; and granting the waiver or variance will not adversely affect the public welfare.

It is the Board's intention to examine each request for a waiver or variance with care, and to grant the waiver or variance only if the requestor provides proof that all three of the above conditions have been met.

Repealers

Psych 2

Many of the concepts of Psych 2 are restated in the proposed Rules. Those that are not are repealed for the reasons stated below:

B. The instruction sheet is not part of the Rules, therefore the Rule should not require that it be followed in completing the application.

C. It is not necessary to set the application fee by Rule, as Minn. Stat. S 214.06 permits fees to be set by administrative action.

D. There is no longer a need to require a written notification of deficiencies in applications, because the consequences of temporary deficiencies will not be as serious as they are under present Rules. There is no deadline for applications for licensure, and applicants for admission to examination can be deferred. As a practical matter, however, applicant's are routinely notified of deficiencies.

E. Because of the new two-step procedure, the procedures relating to completion of the application in a one-step procedure are obsolete. Proposed provisions prevent an application from being considered – at either step – before it is complete.

I. The provision of this section is redundant. Minn. Stat. S 148.91 clearly states that requirements must be met before the Board can grant licensure, and the Proposed Rules clearly state which requirements must be met for each step of the process. The Board would have no way of knowing whether an application met requirements if it did not review the application.

Psych 5

Psych 5 is repealed because the section of the law it was designed to implement, Minn. Stat. S 148.92, the so-called "grandfather" section, expired on July 1, 1975. The Rule therefore does not need to be retained, and should not be retained because the term "waiver" in the Proposed Rules has a different meaning. Retention would create unnecessary

confusion.

Psych 8

Psych 8, pertaining to disciplinary procedures, is repealed because the Board follows the disciplinary procedures set forth in Minn. Stat. S 214.10. Retaining this Rule will simply cause confusion without adding substance.

Psych 10

Psych 10 is repealed because it is replaced by 7 MCAR S 10.008. The following table indicates the provisions of Psych 10 which correspond in content to 7 MCAR S 10.008:

| Psych 10 | 7 MCAR S 10.008 | Psych 10 | 7 MCAR S 10.008 |
|---|---|---|---|
| (a) (1) | B.1. | (b) (7) (ff) | J. |
| (a) (2) | B.4. | (b) (8) (aa) | C.8. |
| (a) (3) | B.2. | (b) (8) (bb) | D.1., D. 2. |
| (a) (4) | E.11. (partial) | (b) (8) (cc) | D.1. |
| (b) (2) (aa) | E.9., E. 10., I. | (b) (10) (bb) | G.1. |
| (b) (2) (bb) | (Minn. Stat. S 148.91) | (b) (10) (cc) | G.1. |
| (b) (2) (cc) | B.1., B.4. | (b) (10) (dd) | G.1. |
| (b) (2) (dd) | D.2. | (b) (10) (ee) | G.1. |
| (b) (4) (aa) | G.2. | (b) (10) (ff) | G.1. |
| (b) (4) (bb) | G.2. | (b) (11) (bb) | E.9. |
| (b) (4) (dd) | G.2. | (b) (12) (bb) | H.4. |
| (b) (5) (aa) | G.1. | (b) (12) (cc) | D.3. |
| (b) (5) (bb) | F.2. | (b) (13) | F.2. |
| (b) (6) | C. | (b) (14) (aa) | E.1., F.3. |
| (b) (6) (aa) | C.2. | (b) (14) (bb) | E.1., F.3. |
| (b) (6) (cc) | C.7. | (b) (14) (cc) | E.1., F.3. |
| (b) (6) (ee) | C.1. | (b) (15) | F.2. |
| (b) (6) (ff) | C.5., C.9. | (b) (15) (aa) | F.1. |
| (b) (7) (aa) | C.3. | (b) (15) (bb) | F.1. |
| (b) (7) (bb) | E. | (b) (15) (cc) | F.1. |
| (b) (7) (cc) | E.6. | (b) (15) (dd) | F.1. |
| (b) (7) (dd) | C. | (b) (15) (ee) | F.1. |
| (b) (7) (ee) | D.1., D.2., E.6., E.7. | (b) (16) | J. |

The reasons for repealing the remaining provisions of Psych 10 are listed below.

Because all of Psych 10(b) was borrowed intact from the American Psychological Associations's "Ethical Standards of Psychologists" (since changed to "Ethical Principles of Psychologists") many of its provisions concern the psychologist's relationship with the APA and do do relate to the welfare of clients. These provisions are marked "APA related" in the list below.

(b) (1). The provisions in this section speak to what a psychologist believes, recognizes, or knows, not to what he does. Thus they do not translate into rules of conduct and because of that, are unenforceable.

(b) (3). This section also speaks to what a psychologist recognizes regarding his professional behavior with respect to moral and legal standards, and is unenforceable for the reason given above.

(b) (4) (cc). This section is APA related.

(b) (5). This section, which prohibits a psychologist from participating in radio and television ads recommending products, is repealed because it encroaches on First Amendment rights.

(b) (6) (bb). This section is repealed because it conflicts with the Rules of Conduct pertaining to the privacy of clients. It permits disclosure of private information without informed written consent.

(b) (6) (dd). This section is repealed also because it conflicts with the Rules of Conduct pertaining to privacy of clients. It permits communications about clients to be disseminated among professionals

but not shown to the client.

(b) (7) (gg). This section is repealed because it encroaches on a teacher's right to present classroom instructions as he believes best to inform students, and does not directly relate to the welfare of clients.

(b) (7) (hh). This section is repealed because it does not relate to specific conduct and is therefore not enforceable. Furthermore, its concept is contrary to accepted theory that clients may benefit from a wide variety of settings.

(b) (7) (ii). This section is repealed because it does not spell out how a psychologist can ensure that a collaborating physician provides suitable safeguards in the use of drugs with a client.

(b) (9). This section is repealed because as written it does not provide specifics for guaranteeing protection of the public and protection of the psychologist from encroachment on his first amendment rights.

(b) (11). This section is APA related.

(b) (12) (aa) and (dd). These sections are repealed because the setting of fees is not an ethical matter, as long as the client is informed of what the fees will be.

(b) (13) (aa) and (bb). These sections are repealed because while interpreting a test may be more difficult or be rendered invalid by being described in publications available to lay persons, such publication is not an ethical concern relating to clients.

(b) (17) This section is repealed because it is APA related.

(b) (18). This section is repealed because it is APA related.

(b) (19). This section is repealed because a psychologist who does not give public credit to co-authors of a publication is in fact misrepresenting his own qualifications. That kind of conduct is prohibited by 7 MCAR S 10.008G. 1 and 2. so that a separate provision is unnecessary.

Psych 11

This rule is repealed because, like Psych 8, it is superseded by the complaint procedure in Minn. Stat. S 214.10.

Psych 12

This rule is repealed because its intent was incorporated into 7 MCAR S. 10.006A.

Psych 13

This rule is repealed because Minn. Stat. S 214.06 permits the adoption of fees without formal incorporation into rules.

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STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF PSYCHOLOGY

In the Matter of Proposed New Rules Relating to Rules of Conduct, General Waivers, and Variances, and Amendments Relating to Application for Licensure, Requirements for Professional Experience, Waivers for Examination, and Collaboration

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Terry P. O'Brien, do hereby declare that I have examined the above-captioned rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed without any exceptions.

Dated: June 25, 1982

BEFORE THE MINNESOTA

BOARD OF PSYCHOLOGY

TERRY P. O'BRIEN
Special Assistant
Attorney General

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

In the Matter of Proposed New Rules Relating to Rules of Conduct, General Waivers, and Variances, and Amendments Relating to Application for Licensure, Requirements for Professional Experience, Waivers for Examination, and Collaboration

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Lois Mizuno, being first duly sworn, deposes and says:

That on the 25th day of June, 1982, in the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the United States mail at said City of Minneapolis, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Lois E. Mizuno

Subscribed and sworn to before me
this 25th day of June, 1982.

Alice D. Hummer

ALICE D. HUMMER
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 18, 1988

STATE OF MINNESOTA

BOARD OF PSYCHOLOGY

In the Matter of Proposed New Rules Relating to Rules of Conduct, General Waivers, and Variances, and Amendments Relating to Application for Licensure, Requirements for Professional Experience, Waivers for Examination, and Collaboration

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minn. Stat. § 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, June 25, 1982, for review as to form and legality. Pursuant to 1 MCAR § 1.206 B., the Attorney General will not approve the rules for at least twenty calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, 204 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 297-3471. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after publication in the State Register and before submission to the Attorney General, you may contact Lois Mizuno, Minnesota Board of Psychology, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414.

Lois E. Mizuno

LOIS E. MIZUNO
Executive Secretary