

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

ATTORNEY GENERAL

January 12, 1988

ROBERT A. SULLIVAN
Executive Director
Board of Unlicensed Mental Health Providers

JULIE A. LEPPINK
Special Assistant
Attorney General

6-9422

In the Matter of the Adopted Rule Relating to
Unlicensed Mental Health Services Providers

The above-referenced rule has been approved as to its legality by the Attorney General on January 3, 1989.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accoradance with Minn. Stat. §14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. §14.34.

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

JAL:rer
Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

File No. 1551 Docket 05.0009.0477

DATE RECEIVED 12/16/88 ADOPTED W/O HEARING ~~X~~

REVIEW DATE ~~12/25/88~~ EMERGENCY RULE X

DUE DATE ~~12/30/88~~ 1/3/89

REVISOR APPROVED

APPROVED 1/3/89 gal REVISOR DISAPPROVED

DISAPPROVED FILED W/SEC. OF STATE

WITHDRAWN RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)

5/30/88 Date published in State Register

2 Comments

~~Petition for Adoption of a Rule (if applicable)~~

✓ Board's Authorizing Resolution

~~6/30/88~~ Date adopted

✓ Proposed Rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

148B.40 - 148B.47 Statutory Authority

no Small Business Statement

no Expenditure of public money statement

yes Signature

~~Statement of Need and Reasonableness (if applicable)~~

~~Small Business Statement~~

~~Fees - § 16A.128~~

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

10/28/88 Date ~~30~~ (25) days before adoption

sr Notice attached

~~Copy of rule or summary attached~~

✓ Publication in State Register

10/31/88 Date 30 (25) days before adoption

180-day deadline from:

~~end of comment period (§ 14.26) (rules without hearing)~~

N/A effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting

12/9/88 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting

12/9/88 Date

✓ Written requests, submissions or comments (11)

✓ Declaration of attorney

Robert Holley Name of SAAG representing agency

✓ Notice of Submission to Atty. Gen. (if applicable)

✓ Aff. of Mailing Notice to Atty. Gen. (if applicable)

✓ Extra Proposed Rules

Board of Unlicensed Mental Health Service Providers

Adopted Emergency Rules Relating to Unlicensed Mental Health Service Providers

Rules as Adopted

9000.0050 [Emergency] PURPOSE.

Parts 9000.0100 to ~~9000.0200~~ 9000.0190 [Emergency] establish filing procedures for unlicensed mental health service providers. The purpose of the filing procedures is to establish a central registry of persons who provide or purport to provide mental health services.

9000.0100 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 9000.0100 to ~~9000.0200~~ 9000.0190 [Emergency], the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person who applies to file as a mental health service provider with the board.

Subp. 3. **Board.** "Board" means the Board of Unlicensed Mental Health Service Providers.

Subp. 4. **Mental health services.**

A. "Mental health services" means the provision of any assessment, diagnosis, treatment, counseling, or therapy including guidance, pastoral, addiction, abuse, psychotherapy, hypnotherapy or hypnoanalysis, personal analysis, or other services for remuneration.

Mental health services are services which are designed to alleviate symptoms, reduce disturbed patterns of behavior, enhance intrapsychic awareness, and increase ability of the individual to adapt to and cope with internal and external stress.

Mental health services must use interpersonal, intrapsychic, or behavioral methods. Mental health services may be provided to individuals, families, or groups who are

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experiencing a problem behavior; have social, interpersonal, or intrapersonal dysfunction; or have cognitive or emotional distress, unwanted anxiety, or other mental or psycho-physiological problems which they seek to alleviate.

B. "Mental health services" does not include services that do not involve the services described in item A, and that are:

(1) primarily for entertainment; ~~or~~

(2) educational, informational, or spiritual~~.~~; <u>;</u>

<u>(3) primarily for client advocacy; or</u>

<u>(4) related to a custodial, direct care, or maintenance function.</u>

C. "Mental health services" does not include the following areas of practice unless the primary focus is the provision of services as defined in item A: educational, vocational, or career guidance; and spiritual counseling or pastoral care of a congregation by clergy when the care is not related to the provision of mental health services described in item A.

Subp. 5. **Provider.** "Provider" means a person who provides or purports to provide mental health services for remuneration. Mental health service providers include the following:

A. counselor (crisis, eating disorder, compulsion, phobia or anxiety, drug and alcohol, mental health, pastoral, sexual and physical abuse);

B. social worker or marriage and family therapist, if the person is exempt from licensure under Minnesota Statutes, section 148B.28, subdivision 4, 5, or 6, or 148B.38;

C. school and college counselor if the counselor is providing mental health services as defined in subpart 4;

D. rehabilitation officer or counselor, if the person provides mental health services as defined in subpart 4;

E. therapist (child care, educational, new age, holistic, dance, music, or recreational if the therapist is providing mental health services as defined in subpart 4);

F. hypnotist or hypnotherapist;

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G. behavior modification practitioner or analyst; and

H. any other person, regardless of title, providing mental health services for remuneration who is not exempt from filing, or is not one of the licensed providers described in Minnesota Statutes, section 148B.40, subdivision 3.

Subp. 6. **Remuneration.** "Remuneration" means a fee, salary, gift, reward, compensation, or the expectation of payment for providing mental health services.

Subp. 7. **Variance.** "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

9000.0110 [Emergency] REQUIREMENT TO FILE.

Subpart 1. **Who must file.** A provider of mental health services for remuneration must file with the board on the forms provided, unless specifically excluded from filing by law or by subpart 2.

The application for filing must contain the information required according to Minnesota Statutes, sections 148B.06, subdivision 3; and 148B.42.

Subp. 2. **Exclusions from filing.** Persons excluded from filing under subpart 1 include:

A. a person who is specifically excluded from the definition of mental health service provider in Minnesota Statutes, section 148B.40, subdivision 3;

B. a person who is not providing mental health services as defined in part 9000.0100, subpart 4 [Emergency]; and

C. a person who is not providing mental health services for remuneration.

Subp. 3. **Requirement to file within 120 days.** A provider who is providing mental health services on the effective date of parts 9000.0100 to ~~9000.0200~~ 9000.0190 [Emergency] must apply to file with the board within 120 days after the effective date of parts 9000.0100 to ~~9000.0200~~ 9000.0190 [Emergency].

A provider who wishes to provide mental health services

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after the effective date of parts 9000.0100 to ~~9000.0200~~ 9000.0190 [Emergency] must apply to the board and receive acknowledgment of the filing as provided in part 9000.0130 [Emergency] before providing services.

~~Subp. 4. Late fees. A provider who is providing mental health services when parts 9000.0100 to 9000.0200 [Emergency] become effective, and who fails to file within the 120-day limit in subpart 3, must pay the late filing fee and the regular filing fee specified in part 9000.0200 [Emergency].~~

9000.0120 [Emergency] PROCEDURE FOR FILING.

Subpart 1. **Application.** The application for filing must:

A. be made to the board on the forms provided by the board;

B. include an affirmation from the applicant that the statements are true and correct to the best of the applicant's knowledge and belief;

~~C. be accompanied by a nonrefundable application fee specified in part 9000.0200 [Emergency];~~

~~D.~~ C. be accompanied by a written authorization for the board to make inquiries to the appropriate regulatory agency in any other state where the applicant has provided mental health service, about the applicant's malpractice history, if any;

~~E.~~ D. be accompanied by a written authorization for the board to inquire about the malpractice history of the applicant at the National Clearing House for Licensure, Enforcement, and Regulation; and

~~F.~~ E. be completed in sufficient detail for the board to determine if the applicant meets the requirements for filing. The board may ask the applicant to provide additional information necessary to clarify incomplete or ambiguous information submitted in the application.

Subp. 2. **Requirements to maintain current information.** A provider must notify the board within 30 days of occurrence of the following:

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A. a change of name, address, or phone number (home and business);

B. a conviction of a crime against persons, or of a crime reasonably related to the provision of mental health service;

C. a settlement or award based on malpractice by the provider;

D. a physical or mental disability that may affect a provider's ability to practice; and

E. other factors that may reasonably be construed to affect public safety.

The board may take an adverse action under Minnesota Statutes, section 148B.45, against a filer who fails to meet the requirements of this notice.

9000.0130 [Emergency] ACKNOWLEDGMENT OF FILING.

When an applicant has satisfied the requirements of filing, the board will issue a written "Acknowledgment of Filing" to the applicant. The "Acknowledgment of Filing" is a written statement that the applicant has met the requirements for filing under parts 9000.0100 to ~~9000.0200~~ 9000.0190 [Emergency]. This acknowledgment is personal and is not transferable to another person. It may not be displayed or published in any way.

9000.0140 [Emergency] DENIAL OF FILING.

Subpart 1. **Grounds for denial.** An application for filing may be denied by the board if:

A. the application does not contain the information necessary for filing as determined by Minnesota Statutes, sections 148B.06, subdivisions 1 to 3, and 148B.42, subdivision 1, and the applicant has not provided the required information within 60 days of application;

B. the applicant has presented false or misleading information on the application;

C. the applicant fails to fully disclose disciplinary actions taken in another state or province;

D. the applicant fails to notify the board of

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disciplinary action taken against the applicant by a licensing, certifying, or registering authority;

E. the applicant fails to authorize the board, as required in part 9000.0120 [Emergency], subpart 1, item ~~B~~ C, to obtain information from the appropriate regulatory agency in any other state or foreign government where the individual has provided mental health services; or

F. the applicant has engaged in behavior that is specifically prohibited under Minnesota Statutes, section 148B.44.

Subp. 2. **Criminal conviction.** If the applicant has been convicted of a crime listed under Minnesota Statutes, section 148B.44, subdivision 1, paragraph (a) or (b), the board shall follow the standards and procedures in Minnesota Statutes, chapter 364, in determining whether to approve or deny an application for filing.

Subp. 3. **Notice of denial.** The board must notify an applicant, in writing, of a denial of an application for filing and the reasons for the denial. If the board denies an application for filing for reasons described in subpart 2, the board's notice must meet the requirements of Minnesota Statutes, section 364.05. An application submitted after a denial is a new application ~~and must be accompanied by a new filing fee~~.

9000.0150 [Emergency] TERM OF FILING.

A filing is valid for one year. The year begins with the date on which the filing is acknowledged, according to part 9000.0130 [Emergency], or reissued after suspension, and ends one year later on the last day of the month in which the filing was acknowledged. The filing must be renewed each year.

9000.0160 [Emergency] RENEWAL OF FILING.

Subpart 1. **Renewal notice.** At least 31 days before the date the filing ends, according to part 9000.0150 [Emergency], the board shall send a renewal notice to the last known address of the provider. The notice must inform the provider of the requirement to renew the provider's filing ~~and pay the current~~

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~~renewal-fee-by-the-deadline-determined-in-subpart-2~~. If the provider does not receive the notice, the provider is still obligated to complete a renewal application ~~and-pay-the-renewal-fee-specified-in-part-9000.0200-{Emergency}~~ within the deadline in subpart 2. The renewal application must be made on the forms provided by the board.

Subp. 2. **Renewal deadline.** ~~The-provider-must-submit-to-the-board-the-renewal-application-and-the-annual-renewal-fee-required-in-part-9000.0200-{Emergency}.~~ The renewal application must be submitted or postmarked on or before the date the filing ends according to part 9000.0150 [Emergency]. The renewal application must include an affirmation by the provider that the statements on the form are true and correct to the best knowledge and belief of the provider.

~~Subp.-3.--Late-fees.--A-provider-seeking-renewal-must-pay-the-renewal-fee-and-the-late-fee-if-the-application-for-renewal-is-submitted-or-postmarked-after-the-time-period-specified-in-subpart-2.~~

~~The-late-fee-must-accompany-applications-of-practicing-mental-health-service-providers-not-made-within-90-days-of-the-effective-date-of-this-part.~~

Subp. ~~4.~~ 3. **Expiration of filing.** A filing expires if it is not renewed with the board within the deadline specified in subpart 2. A filing may be reissued following expiration only if the provider submits a new application ~~and-pays-the-regular-and-the-late-filing-fees-required-in-part-9000.0200-{Emergency}~~.

9000.0170 [Emergency] BILL OF RIGHTS.

A provider of mental services must provide clients with the client's bill of rights as required under Minnesota Statutes, section 148B.46, including the right to choose freely among available providers. For clients incarcerated in a correctional facility or committed to an institution under a court order, "available providers" means those providers who provide services in the correctional facility in which the client is incarcerated or in the institution to which the client is committed.

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9000.0190 [Emergency] VARIANCES.

Subpart 1. **Grounds for variance; variance application.** A filer or applicant may petition the board for a time limited variance from provisions in parts 9000.0100 to ~~9000.0200~~ 9000.0190 [Emergency], except for a provision that incorporates a statutory requirement. The petition must be in writing. The board shall grant a variance if the filer or applicant specifies alternative practices or measures equivalent to or superior to those in the rule in question and provides evidence that:

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

B. adherence to the rule would impose an undue burden on the filer or applicant; and

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

Subp. 2. **Information required in variance petition.** A petition for a variance must contain the following information:

A. the specific rule for which the variance is requested;

B. the reason for the request;

C. the alternative practices or measures that will be taken if a variance is granted;

D. the length of time for which a variance is requested; and

E. any other relevant information the board needs to properly evaluate the petition for the variance.

Subp. 3. **Variance compliance.** A filer or applicant who is granted a variance must comply with the alternative practices or measures specified in the petition for the variance.

Subp. 4. **Renewal of variance.** A variance shall be renewed upon reapplication for a variance, if the circumstances justifying the variance continue to exist. A filer or applicant who has been granted a variance must immediately notify the board of any material change in circumstances that justify the variance. A variance shall be revoked if there is a material

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change in the circumstances which justify the variance.

Subp. 5. **Burden of proof.** The burden of proof is upon the filer or applicant to demonstrate to the board, by a preponderance of the evidence, that the requirements in subpart 1 have been met.

Subp. 6. **Notice of board's decision.** The board shall notify the filer or applicant in writing when the board grants, denies, renews, or revokes a variance. The notice must state the reasons for the action. If a variance is granted, the notice shall specify the period of time for which the variance is effective, and must state the alternative practices or measures the filer or applicant must meet.

~~9000.0200 [Emergency] FEES.~~

~~Fees for filing as a mental health provider are as follows:~~

~~A. the fee for an application is $50;~~

~~B. the fee for renewal of filing is $50; and~~

~~C. the fee for late filing is $25.~~

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STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 11 1989

Joan Anderson Growe

Secretary of State 9:10 AM

APPROVED AS TO FORM AND LEGALITY

January 3, 1989

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Jackie A. Jespersen
SPECIAL ASSISTANT ATTORNEY GENERAL

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Rules Relating to Unlicensed Mental Health Service Providers

AGENCY: Board of Unlicensed Mental Health Service Providers

MINNESOTA RULES: Chapter 9000

The attached rules are approved for publication
in the State Register

Kathleen M. Traxler
Assistant Revisor

Board of Unlicensed Mental Health Service Providers

Proposed Emergency Rules Relating to Unlicensed Mental Health Service Providers

Rules as Proposed (all new material)

9000.0050 [Emergency] PURPOSE.

Parts 9000.0100 to 9000.0200 [Emergency] establish filing procedures for unlicensed mental health service providers. The purpose of the filing procedures is to establish a central registry of persons who provide or purport to provide mental health services.

9000.0100 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 9000.0100 to 9000.0200 [Emergency], the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person who applies to file as a mental health service provider with the board.

Subp. 3. **Board.** "Board" means the Board of Unlicensed Mental Health Service Providers.

Subp. 4. **Mental health services.**

A. "Mental health services" means the provision of any assessment, diagnosis, treatment, counseling, or therapy including guidance, pastoral, addiction, abuse, psychotherapy, hypnotherapy or hypnoanalysis, personal analysis, or other services for remuneration.

Mental health services are services which are designed to alleviate symptoms, reduce disturbed patterns of behavior, enhance intrapsychic awareness, and increase ability of the individual to adapt to and cope with internal and external stress.

Mental health services must use interpersonal, intrapsychic, or behavioral methods. Mental health services may be provided to individuals, families, or groups who are

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experiencing a problem behavior; have social, interpersonal, or intrapersonal dysfunction; or have cognitive or emotional distress, unwanted anxiety, or other mental or psycho-physiological problems which they seek to alleviate.

B. "Mental health services" does not include services that do not involve the services described in item A, and that are:

(1) primarily for entertainment; or

(2) educational, informational, or spiritual.

C. "Mental health services" does not include the following areas of practice unless the primary focus is the provision of services as defined in item A: educational, vocational, or career guidance; and spiritual counseling or pastoral care of a congregation by clergy when the care is not related to the provision of mental health services described in item A.

Subp. 5. **Provider.** "Provider" means a person who provides or purports to provide mental health services for remuneration. Mental health service providers include the following:

A. counselor (crisis, eating disorder, compulsion, phobia or anxiety, drug and alcohol, mental health, pastoral, sexual and physical abuse);

B. social worker or marriage and family therapist, if the person is exempt from licensure under Minnesota Statutes, section 148B.28, subdivision 4, 5, or 6, or 148B.38;

C. school and college counselor if the counselor is providing mental health services as defined in subpart 4;

D. rehabilitation officer or counselor, if the person provides mental health services as defined in subpart 4;

E. therapist (child care, educational, new age, holistic, dance, music, or recreational if the therapist is providing mental health services as defined in subpart 4);

F. hypnotist or hypnotherapist;

G. behavior modification practitioner or analyst; and

H. any other person, regardless of title, providing mental health services for remuneration who is not exempt from

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filing, or is not one of the licensed providers described in Minnesota Statutes, section 148B.40, subdivision 3.

Subp. 6. **Remuneration.** "Remuneration" means a fee, salary, gift, reward, compensation, or the expectation of payment for providing mental health services.

Subp. 7. **Variance.** "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

9000.0110 [Emergency] REQUIREMENT TO FILE.

Subpart 1. **Who must file.** A provider of mental health services for remuneration must file with the board on the forms provided, unless specifically excluded from filing by law or by subpart 2.

The application for filing must contain the information required according to Minnesota Statutes, sections 148B.06, subdivision 3; and 148B.42.

Subp. 2. **Exclusions from filing.** Persons excluded from filing under subpart 1 include:

A. a person who is specifically excluded from the definition of mental health service provider in Minnesota Statutes, section 148B.40, subdivision 3;

B. a person who is not providing mental health services as defined in part 9000.0100, subpart 4 [Emergency]; and

C. a person who is not providing mental health services for remuneration.

Subp. 3. **Requirement to file within 120 days.** A provider who is providing mental health services on the effective date of parts 9000.0100 to 9000.0200 [Emergency] must apply to file with the board within 120 days after the effective date of parts 9000.0100 to 9000.0200 [Emergency].

A provider who wishes to provide mental health services after the effective date of parts 9000.0100 to 9000.0200 [Emergency] must apply to the board and receive acknowledgment of the filing as provided in part 9000.0130 [Emergency] before

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providing services.

Subp. 4. **Late fees.** A provider who is providing mental health services when parts 9000.0100 to 9000.0200 [Emergency] become effective, and who fails to file within the 120-day limit in subpart 3, must pay the late filing fee and the regular filing fee specified in part 9000.0200 [Emergency].

9000.0120 [Emergency] PROCEDURE FOR FILING.

Subpart 1. **Application.** The application for filing must:

A. be made to the board on the forms provided by the board;

B. include an affirmation from the applicant that the statements are true and correct to the best of the applicant's knowledge and belief;

C. be accompanied by a nonrefundable application fee specified in part 9000.0200 [Emergency];

D. be accompanied by a written authorization for the board to make inquiries to the appropriate regulatory agency in any other state where the applicant has provided mental health service, about the applicant's malpractice history, if any;

E. be accompanied by a written authorization for the board to inquire about the malpractice history of the applicant at the National Clearing House for Licensure, Enforcement, and Regulation; and

F. be completed in sufficient detail for the board to determine if the applicant meets the requirements for filing. The board may ask the applicant to provide additional information necessary to clarify incomplete or ambiguous information submitted in the application.

Subp. 2. **Requirements to maintain current information.** A provider must notify the board within 30 days of occurrence of the following:

A. a change of name, address, or phone number (home and business);

B. a conviction of a crime against persons, or of a crime reasonably related to the provision of mental health

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service;

C. a settlement or award based on malpractice by the provider;

D. a physical or mental disability that may affect a provider's ability to practice; and

E. other factors that may reasonably be construed to affect public safety.

The board may take an adverse action under Minnesota Statutes, section 148B.45, against a filer who fails to meet the requirements of this notice.

9000.0130 [Emergency] ACKNOWLEDGMENT OF FILING.

When an applicant has satisfied the requirements of filing, the board will issue a written "Acknowledgment of Filing" to the applicant. The "Acknowledgment of Filing" is a written statement that the applicant has met the requirements for filing under parts 9000.0100 to 9000.0200 [Emergency]. This acknowledgment is personal and is not transferable to another person. It may not be displayed or published in any way.

9000.0140 [Emergency] DENIAL OF FILING.

Subpart 1. **Grounds for denial.** An application for filing may be denied by the board if:

A. the application does not contain the information necessary for filing as determined by Minnesota Statutes, sections 148B.06, subdivisions 1 to 3, and 148B.42, subdivision 1, and the applicant has not provided the required information within 60 days of application;

B. the applicant has presented false or misleading information on the application;

C. the applicant fails to fully disclose disciplinary actions taken in another state or province;

D. the applicant fails to notify the board of disciplinary action taken against the applicant by a licensing, certifying, or registering authority;

E. the applicant fails to authorize the board, as required in part 9000.0120 [Emergency], subpart 1, item D, to

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obtain information from the appropriate regulatory agency in any other state or foreign government where the individual has provided mental health services; or

F. the applicant has engaged in behavior that is specifically prohibited under Minnesota Statutes, section 148B.44.

Subp. 2. **Criminal conviction.** If the applicant has been convicted of a crime listed under Minnesota Statutes, section 148B.44, subdivision 1, paragraph (a) or (b), the board shall follow the standards and procedures in Minnesota Statutes, chapter 364, in determining whether to approve or deny an application for filing.

Subp. 3. **Notice of denial.** The board must notify an applicant, in writing, of a denial of an application for filing and the reasons for the denial. If the board denies an application for filing for reasons described in subpart 2, the board's notice must meet the requirements of Minnesota Statutes, section 364.05. An application submitted after a denial is a new application and must be accompanied by a new filing fee.

9000.0150 [Emergency] TERM OF FILING.

A filing is valid for one year. The year begins with the date on which the filing is acknowledged, according to part 9000.0130 [Emergency], or reissued after suspension, and ends one year later on the last day of the month in which the filing was acknowledged. The filing must be renewed each year.

9000.0160 [Emergency] RENEWAL OF FILING.

Subpart 1. **Renewal notice.** At least 31 days before the date the filing ends, according to part 9000.0150 [Emergency], the board shall send a renewal notice to the last known address of the provider. The notice must inform the provider of the requirement to renew the provider's filing and pay the current renewal fee by the deadline determined in subpart 2. If the provider does not receive the notice, the provider is still obligated to complete a renewal application and pay the renewal fee specified in part 9000.0200 [Emergency] within the deadline

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in subpart 2. The renewal application must be made on the forms provided by the board.

Subp. 2. **Renewal deadline.** The provider must submit to the board the renewal application and the annual renewal fee required in part 9000.0200 [Emergency]. The renewal application must be submitted or postmarked on or before the date the filing ends according to part 9000.0150 [Emergency]. The renewal application must include an affirmation by the provider that the statements on the form are true and correct to the best knowledge and belief of the provider.

Subp. 3. **Late fees.** A provider seeking renewal must pay the renewal fee and the late fee if the application for renewal is submitted or postmarked after the time period specified in subpart 2.

The late fee must accompany applications of practicing mental health service providers not made within 90 days of the effective date of this part.

Subp. 4. **Expiration of filing.** A filing expires if it is not renewed with the board within the deadline in subpart 2. A filing may be reissued following expiration only if the provider submits a new application and pays the regular and the late filing fees required in part 9000.0200 [Emergency].

9000.0170 [Emergency] BILL OF RIGHTS.

A provider of mental services must provide clients with the client's bill of rights as required under Minnesota Statutes, section 148B.46, including the right to choose freely among available providers. For clients incarcerated in a correctional facility or committed to an institution under a court order, "available providers" means those providers who provide services in the correctional facility in which the client is incarcerated or in the institution to which the client is committed.

9000.0190 [Emergency] VARIANCES.

Subpart 1. **Grounds for variance; variance application.** A filer or applicant may petition the board for a time limited variance from provisions in parts 9000.0100 to 9000.0200

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[Emergency], except for a provision that incorporates a statutory requirement. The petition must be in writing. The board shall grant a variance if the filer or applicant specifies alternative practices or measures equivalent to or superior to those in the rule in question and provides evidence that:

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

B. adherence to the rule would impose an undue burden on the filer or applicant; and

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

Subp. 2. **Information required in variance petition.** A petition for a variance must contain the following information:

A. the specific rule for which the variance is requested;

B. the reason for the request;

C. the alternative practices or measures that will be taken if a variance is granted;

D. the length of time for which a variance is requested; and

E. any other relevant information the board needs to properly evaluate the petition for the variance.

Subp. 3. **Variance compliance.** A filer or applicant who is granted a variance must comply with the alternative practices or measures specified in the petition for the variance.

Subp. 4. **Renewal of variance.** A variance shall be renewed upon reapplication for a variance, if the circumstances justifying the variance continue to exist. A filer or applicant who has been granted a variance must immediately notify the board of any material change in circumstances that justify the variance. A variance shall be revoked if there is a material change in the circumstances which justify the variance.

Subp. 5. **Burden of proof.** The burden of proof is upon the filer or applicant to demonstrate to the board, by a preponderance of the evidence, that the requirements in subpart 1 have been met.

Approved
by Revisor _____

Subp. 6. **Notice of board's decision.** The board shall notify the filer or applicant in writing when the board grants, denies, renews, or revokes a variance. The notice must state the reasons for the action. If a variance is granted, the notice shall specify the period of time for which the variance is effective, and must state the alternative practices or measures the filer or applicant must meet.

9000.0200 [Emergency] FEES.

Fees for filing as a mental health provider are as follows:

A. the fee for an application is $50;

B. the fee for renewal of filing is $50; and

C. the fee for late filing is $25.

Approved
by Revisor _____

Board of Unlicensed Mental Health
Service Providers

In the Matter of the Proposed Adoption of Emergency Rules of the State Board of Unlicensed Mental Health Service Providers	**NOTICE OF INTENT TO ADOPT EMERGENCY RULES**

Notice is hereby given that the State Board of Unlicensed Mental Health Service Providers intends to adopt the above entitled emergency rules. The statutory authority to adopt the emergency rules is contained in Minnesota Statutes, 1987, Chapters 148B.171 and 148B.40 to 148B.47. The Board, in adopting the rules, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in Minnesota Statutes, sections 14.29 to 14.36.

All persons have 25 days after publication in which to submit comment in support of or in opposition to the proposed rules, or any part or subpart of the rules, in writing. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any comments must be submitted to:

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental Health Service Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114
(612) 649-5490

The proposed emergency rules may be modified if the modifications are supported by data and views submitted to the board and do not result in a substantial change in the proposed emergency rules as noticed.

A copy of the proposed emergency rules is attached to this notice.

A free copy of the proposed emergency rules is available upon request from Robert Sullivan at the above mentioned address or phone number, or from the:

Office of Social Work and Mental Health Boards
2700 University Avenue West, Suite 225
St. Paul, MN 55114
(612) 643-2580

Upon adoption of the emergency rules by the Board, the rules and the supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the

date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Robert A. Sullivan at the above mentioned address.

The emergency rule will take effect five working days after approval by the Attorney General and will be effective for 180 days. The emergency rules will continue in effect for an additional 180 days if the Board gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

10/19/88
Date

Robert A. Sullivan
Executive Director

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114
(612) 649-5490

In the Matter of The Proposed Adoption the Emergency Rule of the State Board of Unlicensed Mental Health Service Providers governing filing as a provider of Unlicensed Mental Health Service

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT EMERGENCY RULES AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)SS.
COUNTY OF RAMSEY

Robert A. Sullivan, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Board of Unlicensed Mental Health Service Providers rulemaking list is accurate, complete, and current as of this 28th day of October, 1988.

That on the 28th day of October, 1988, at the City of St. Paul, county of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt Emergency Rules by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Robert A Sullivan
Executive Director
Board of Unlicensed Mental Health Service Providers

Subscribed and sworn to before me this 31st day of October, 1988.

Lois Kauppila

LOIS KAUPPILA
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES APRIL 28, 1992

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114
(612)643-2580

Date: October 25, 1988

To: Persons Interested in Rulemaking Pertaining to Unlicensed Mental Health Service Providers

From: Robert A. Sullivan
Executive Director
Board of Unlicensed Mental Health Service Providers

Re: **Notice of Intent to Adopt Emergency Rules Governing Unlicensed Mental Health Service Providers**

Enclosed is a copy of the Board of Unlicensed Mental Health Service Provider's Notice of Intent to Adopt Emergency Rules and a copy of the proposed emergency rules as you requested. The enclosed notice and rules will be published in the State Register on October 31, 1988.

For your convenience, a copy of Minnesota Statutes, Chapter 148B, is also enclosed. Minnesota Statutes, sections 148B.40 to .47, establish the Board of Unlicensed Mental Health Service Providers, set forth the requirements for filing, and gives the Board authority to adopt and enforce rules for the provision of Unlicensed Mental Health Services among other things.

For 25 days after publication of the enclosed Notice and proposed rules, the Board shall give all interested persons an opportunity to submit data and views on the proposed emergency rules in writing. This 25 day public comment period will begin on October 31, 1988 and will end on November 24, 1988.

Your comments, and any other information concerning the Board's proposed emergency rules should be sent to:

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental Health Service Providers
2700 University Avenue, West, #225
St. Paul, Minnesota 55114

If you wish to be notified when the proposed emergency rules are submitted to the State of Minnesota Attorney General for review, please inform me by writing to the above address or by calling me at 612/649-5490.

Your concern is greatly appreciated. I look forward to hearing from you.

Enclosures: Notice of Intent to Adopt Emergency Rules
Proposed Emergency Rules
Minnesota Statutes, Chapter 148B

This notice is in accordance with the Minnesota Administrative Procedure Act, Minnesota Statutes, section 14.30 (1987)

RS/st

Utilities	.028	4.8	.13
Repairs/Maintenance	.015	4.0	.06
Insurance*	.014	4.0	.06
Other Operating	.130	4.0	.52
	1.000		4.62

Technology = 1.00
HCI = 5.6%

*Excludes Malpractice

State Board of Investment and Investment Advisory Council

Meeting Notices

The State Board of Investment will meet on Thursday, June 9, 1988 at 9:00 a.m. in Room 118, State Capitol, Saint Paul, MN.

The Investment Advisory Council will meet on Tuesday, June 7, 1988 at 2:00 p.m. in Conference Room "A", MEA Building, 41 Sherburne Avenue, Saint Paul, MN.

Labor and Industry Labor Standards Division

Notice of Certified Prevailing Wage Rates

On June 1, 1988 the commissioner will certify prevailing wage rates for commercial and highway/heavy construction projects in the following Minnesota counties:

ANOKA	BENTON	BIG STONE
CARVER	CHIPPEWA	CHISAGO
DAKOTA	DOUGLAS	GRANT
HENNEPIN	ISANTI	KANABEC
KANDIYOHI	MCLEOD	MEEKER
MILLE LACS	MORRISON	PINE
POPE	RAMSEY	SCOTT
SHERBURNE	STEARNS	STEVENS
SWIFT	TODD	TRAVERSE
WASHINGTON	WRIGHT	

A copy of the determined wage rates for Minnesota counties may be obtained by contacting the State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155. The charges for the cost of copying and mailing are $.50 for the first county and $.30 for any subsequent copies of the same or other counties. For all 87 counties the charge is $25.00. A sales tax of 6% must be added to all orders.

A check or money order payable to the State of Minnesota must accompany each request.

Ray Bohn, Commissioner
Department of Labor and Industry

Office of Social Work and Mental Health Boards

Board of Unlicensed Mental Health Providers

Outside Information or Opinions Sought Regarding Proposed Emergency Rules Governing the Practice of Unlicensed Mental Health Services

Notice is hereby given that the State Board of Unlicensed Mental Health Providers is seeking information or opinions from sources outside the agency in preparing to propose the adoption of rules governing the practice of Unlicensed Mental Health Services,

including the definition of mental health service provider. The adoption of rules is authorized by *Minnesota Statutes*, Section 14.29 to 14.385 and Section 148B.17, Section 148B.41 Subdivision 4, and Section 148B.47, which permits the Board to adopt emergency rules governing the practice of Unlicensed Mental Health Services.

The State Board of Unlicensed Mental Health Providers requests information and opinions concerning the subject matter of concern in writing or orally. Written statements should be addressed to:

Robert Sullivan
Board of Unlicensed Mental Health Providers
2700 University Ave. W. #225
St. Paul, MN 55114

Oral statements will be received during regular business hours over the telephone at (612) 649-5490 and in person at the above address.

All statements of information and opinions shall be accepted for 30 days from the date of this publication. Any written material received by the State Board of Unlicensed Mental Health Providers shall become part of the rulemaking record to be submitted to the attorney general in the event that the rules are adopted.

Dated: 16 May 1988

Robert Sullivan
Executive Director
Board of Unlicensed Mental Health Providers

Regional Planning Committee for Radio Frequencies

Initial Meeting of the Regional Planning Committee for Radio Frequencies in the 821-824/866-869 MHz Band for Use by Public Safety and Special Emergency Radio Services Within the State of Minnesota, Region 22

Having been duly certified to the Federal Communications Commission (FCC) by the Associated Public Safety Communications Officers, Inc. (APCO) as the Convenor of an initial meeting of representatives of parties eligible for radio authorizations in the Public Safety and Special Emergency Radio Services to establish a Regional Planning Committee within the State of Minnesota, Region 22 as designated by the FCC, I hereby give Public Notice that such an inital meeting will be held on:

Date:	July 13, 1988
Time:	1:00 P.M.
Place:	Anoka County Activity Center 550 Bunker Lake Blvd., N.W. Andover, Mn.

The responsibility of this Regional Planning Committee will be to develop a Plan for the utilization of newly allocated radio frequencies in the 821-824/866-869 Mhz band for use by both the Public Safety and Special Emergency Radio Services. Parties interested in this regional planning process are invited to attend this meeting.

This Public Notice is issued in accord with the FCC's Report and Order in General Docket 87-112, adopted November 24, 1987 and released December 18, 1987.

The Report and Order was based in large part on the Final Report of the National Public Safety Planning Advisory Committee which was submitted to the FCC on September 9, 1987.

Copies of both the Report and Order and the Final Report are available from the FCC's duplication contractor, International Transcription Services, Inc., Suite 140, 2100 M Street N.W., Washington, D.C. 20037. Telephone (202) 857-3800.

Dated: 6 April 1988

H.P. Hillegas
Region 22 Convenor

Department of Transportation

Petition of the County of Chisago for a variance from State Aid Standards for Parking Restrictions

Notice is hereby given that the County Board of the County of Chisago has made a written request to the Commissioner of

B. In order to be able to bank reductions in emissions, the person obtaining those reductions shall report to the ~~director~~ commissioner the amount and location of the banked emissions and the time at which the banked emissions have become permanently and finally implemented.

~~The report shall be made~~ C. A person may bank only those reductions in emissions that:

(1) were obtained after August 1977, but before October 27, 1981, and that were reported to the agency within six months of October 21, 1981; or

(2) are obtained after October 27, 1981, and are reported within six months after the reductions have become final and enforceable ~~or within six months after these parts have been adopted, whichever is later~~.

7005.3060 LIMITATION ON USE OF OFFSETS.

To the extent that these parts ~~creates~~ create a program for the use of offsets or ~~allows~~ allow persons to purchase or obtain offsets, ~~these~~ parts 7005.3010 to 7005.3060 shall not be construed to create a property right that requires compensation from the state should offsets later become unusable due to a change in an applicable emission limitation or standard of the agency.

REVISOR INSTRUCTION. In *Minnesota Rules*, chapters 7001 and 7005, change "director" to "commissioner" where it refers to the chief executive officer of the Pollution Control Agency.

REPEALER. *Minnesota Rules*, parts 7005.0100, subparts 9, 10a, and 44; 7005.3030, subparts 3, 4, 14, 15, 16, 17, 18, and 19; and 7005.3040, subpart 6, are repealed.

Emergency Rules

Proposed Emergency Rules

According to Minn. Stat. of 1984, §§ 14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

1) that a free copy of the proposed emergency rule is available upon request from the agency;
2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules

Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§ 14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules

Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*; and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

Board of Unlicensed Mental Health Service Providers

Proposed Emergency Rules Relating to Unlicensed Mental Health Service Providers

Notice of Intent to Adopt Emergency Rules

NOTICE IS HEREBY GIVEN that the State Board of Unlicensed Mental Health Service Providers intends to adopt the above entitled emergency rules. The statutory authority to adopt the emergency rules is contained in *Minnesota Statutes,* 1987, Chapters 148B.171 and 148B.40 to 148B.47. The Board, in adopting the rules, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in *Minnesota Statutes,* sections 14.29 to 14.36.

All persons have 25 days after publication in which to submit comment in support of or in opposition to the proposed rules, or any part or subpart of the rules, in writing. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any comments must be submitted to:

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental Health Service Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114
(612) 649-5490

The proposed emergency rules may be modified if the modifications are supported by data and views submitted to the board and do not result in a substantial change in the proposed emergency rules as noticed.

A copy of the proposed emergency rules is attached to this notice.

A free copy of the proposed emergency rules is available upon request from Robert Sullivan at the above mentioned address or phone number, or from the:

Office of Social Work and Mental Health Boards
2700 University Avenue West, Suite 225
St. Paul, MN 55114
(612) 643-2580

Upon adoption of the emergency rules by the Board, the rules and the supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Robert A. Sullivan at the above mentioned address.

The emergency rule will take effect five working days after approval by the Attorney General and will be effective for 180 days. The emergency rules will continue in effect for an additional 180 days if the Board gives notice of continuation in accordance with *Minnesota Statutes,* section 14.35.

Dated: 19 October 1988

Robert A. Sullivan
Executive Director

Rules as Proposed (all new material)

9000.0050 [Emergency] PURPOSE.

Parts 9000.0100 to 9000.0200 [Emergency] establish filing procedures for unlicensed mental health service providers. The purpose of the filing procedures is to establish a central registry of persons who provide or purport to provide mental health services.

9000.0100 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 9000.0100 to 9000.0200 [Emergency], the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person who applies to file as a mental health service provider with the board.

Subp. 3. **Board.** "Board" means the Board of Unlicensed Mental Health Service Providers.

Subp. 4. **Mental health services.**

A. "Mental health services" means the provision of any assessment, diagnosis, treatment, counseling, or therapy including guidance, pastoral, addiction, abuse, psychotherapy, hypnotherapy or hypnoanalysis, personal analysis, or other services for remuneration.

Mental health services are services which are designed to alleviate symptoms, reduce disturbed patterns of behavior, enhance intrapsychic awareness, and increase ability of the individual to adapt to and cope with internal and external stress.

Mental health services must use interpersonal, intrapsychic, or behavioral methods. Mental health services may be provided to individuals, families, or groups who are experiencing a problem behavior; have social, interpersonal, or intrapersonal dysfunction; or have cognitive or emotional distress, unwanted anxiety, or other mental or psycho-physiological problems which they seek to alleviate.

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.

B. "Mental health services" does not include services that do not involve the services described in item A, and that are:

(1) primarily for entertainment; or

(2) educational, informational, or spiritual.

C. "Mental health services" does not include the following areas of practice unless the primary focus is the provision of services as defined in item A: educational, vocational, or career guidance; and spiritual counseling or pastoral care of a congregation by clergy when the care is not related to the provision of mental health services described in item A.

Subp. 5. **Provider.** "Provider" means a person who provides or purports to provide mental health services for remuneration. Mental health service providers include the following:

A. counselor (crisis, eating disorder, compulsion, phobia or anxiety, drug and alcohol, mental health, pastoral, sexual and physical abuse);

B. social worker or marriage and family therapist, if the person is exempt from licensure under *Minnesota Statutes,* section 148B.28, subdivision 4, 5, or 6, or 148B.38;

C. school and college counselor if the counselor is providing mental health services as defined in subpart 4;

D. rehabilitation officer or counselor, if the person provides mental health services as defined in subpart 4;

E. therapist (child care, educational, new age, holistic, dance, music, or recreational if the therapist is providing mental health services as defined in subpart 4);

F. hypnotist or hypnotherapist;

G. behavior modification practitioner or analyst; and

H. any other person, regardless of title, providing mental health services for remuneration who is not exempt from filing, or is not one of the licensed providers described in *Minnesota Statutes,* section 148B.40, subdivision 3.

Subp. 6. **Remuneration.** "Remuneration" means a fee, salary, gift, reward, compensation, or the expectation of payment for providing mental health services.

Subp. 7. **Variance.** "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

9000.0110 [Emergency] REQUIREMENT TO FILE.

Subpart 1. **Who must file.** A provider of mental health services for remuneration must file with the board on the forms provided, unless specifically excluded from filing by law or by subpart 2.

The application for filing must contain the information required according to *Minnesota Statutes,* sections 148B.06, subdivision 3; and 148B.42.

Subp. 2. **Exclusions from filing.** Persons excluded from filing under subpart 1 include:

A. a person who is specifically excluded from the definition of mental health service provider in *Minnesota Statutes,* section 148B.40, subdivision 3;

B. a person who is not providing mental health services as defined in part 9000.0100, subpart 4 [Emergency]; and

C. a person who is not providing mental health services for remuneration.

Subp. 3. **Requirement to file within 120 days.** A provider who is providing mental health services on the effective date of parts 9000.0100 to 9000.0200 [Emergency] must apply to file with the board within 120 days after the effective date of parts 9000.0100 to 9000.0200 [Emergency].

A provider who wishes to provide mental health services after the effective date of parts 9000.0100 to 9000.0200 [Emergency] must apply to the board and receive acknowledgment of the filing as provided in part 9000.0130 [Emergency] before providing services.

Subp. 4. **Late fees.** A provider who is providing mental health services when parts 9000.0100 to 9000.0200 [Emergency] become effective, and who fails to file within the 120-day limit in subpart 3, must pay the late filing fee and the regular filing fee specified in part 9000.0200 [Emergency].

9000.0120 [Emergency] PROCEDURE FOR FILING.

Subpart 1. **Application.** The application for filing must:

A. be made to the board on the forms provided by the board;

B. include an affirmation from the applicant that the statements are true and correct to the best of the applicant's knowledge and belief;

C. be accompanied by a nonrefundable application fee specified in part 9000.0200 [Emergency];

D. be accompanied by a written authorization for the board to make inquiries to the appropriate regulatory agency in any other state where the applicant has provided mental health service, about the applicant's malpractice history, if any;

E. be accompanied by a written authorization for the board to inquire about the malpractice history of the applicant at the National Clearing House for Licensure, Enforcement, and Regulation; and

F. be completed in sufficient detail for the board to determine if the applicant meets the requirements for filing. The board may ask the applicant to provide additional information necessary to clarify incomplete or ambiguous information submitted in the application.

Subp. 2. **Requirements to maintain current information.** A provider must notify the board within 30 days of occurrence of the following:

A. a change of name, address, or phone number (home and business);

B. a conviction of a crime against persons, or of a crime reasonably related to the provision of mental health service;

C. a settlement or award based on malpractice by the provider;

D. a physical or mental disability that may affect a provider's ability to practice; and

E. other factors that may reasonably be construed to affect public safety.

The board may take an adverse action under *Minnesota Statutes,* section 148B.45, against a filer who fails to meet the requirements of this notice.

9000.0130 [Emergency] ACKNOWLEDGMENT OF FILING.

When an applicant has satisfied the requirements of filing, the board will issue a written "Acknowledgment of Filing" to the applicant. The "Acknowledgment of Filing" is a written statement that the applicant has met the requirements for filing under parts 9000.0100 to 9000.0200 [Emergency]. This acknowledgment is personal and is not transferable to another person. It may not be displayed or published in any way.

9000.0140 [Emergency] DENIAL OF FILING.

Subpart 1. **Grounds for denial.** An application for filing may be denied by the board if:

A. the application does not contain the information necessary for filing as determined by *Minnesota Statutes,* sections 148B.06, subdivisions 1 to 3, and 148B.42, subdivision 1, and the applicant has not provided the required information within 60 days of application;

B. the applicant has presented false or misleading information on the application;

C. the applicant fails to fully disclose disciplinary actions taken in another state or province;

D. the applicant fails to notify the board of disciplinary action taken against the applicant by a licensing, certifying, or registering authority;

E. the applicant fails to authorize the board, as required in part 9000.0120 [Emergency], subpart 1, item D, to obtain information from the appropriate regulatory agency in any other state or foreign government where the individual has provided mental health services; or

F. the applicant has engaged in behavior that is specifically prohibited under *Minnesota Statutes,* section 148B.44.

Subp. 2. **Criminal conviction.** If the applicant has been convicted of a crime listed under *Minnesota Statutes,* section 148B.44, subdivision 1, paragraph (a) or (b), the board shall follow the standards and procedures in *Minnesota Statutes,* chapter 364, in determining whether to approve or deny an application for filing.

Subp. 3. **Notice of denial.** The board must notify an applicant, in writing, of a denial of an application for filing and the reasons for the denial. If the board denies an application for filing for reasons described in subpart 2, the board's notice must meet the requirements of *Minnesota Statutes,* section 364.05. An application submitted after a denial is a new application and must be accompanied by a new filing fee.

9000.0150 [Emergency] TERM OF FILING.

A filing is valid for one year. The year begins with the date on which the filing is acknowledged, according to part 9000.0130 [Emergency], or reissued after suspension, and ends one year later on the last day of the month in which the filing was acknowledged. The filing must be renewed each year.

9000.0160 [Emergency] RENEWAL OF FILING.

Subpart 1. **Renewal notice.** At least 31 days before the date the filing ends, according to part 9000.0150 [Emergency], the board shall send a renewal notice to the last known address of the provider. The notice must inform the provider of the requirement to renew the provider's filing and pay the current renewal fee by the deadline determined in subpart 2. If the provider does not receive the notice, the provider is still obligated to complete a renewal application and pay the renewal fee specified in part 9000.0200 [Emergency] within the deadline in subpart 2. The renewal application must be made on the forms provided by the board.

Subp. 2. **Renewal deadline.** The provider must submit to the board the renewal application and the annual renewal fee required in part 9000.0200 [Emergency]. The renewal application must be submitted or postmarked on or before the date the filing ends according to part 9000.0150 [Emergency]. The renewal application must include an affirmation by the provider that the statements on the form are true and correct to the best knowledge and belief of the provider.

Subp. 3. **Late fees.** A provider seeking renewal must pay the renewal fee and the late fee if the application for renewal is submitted or postmarked after the time period specified in subpart 2.

The late fee must accompany applications of practicing mental health service providers not made within 90 days of the effective date of this part.

Subp. 4. **Expiration of filing.** A filing expires if it is not renewed with the board within the deadline in subpart 2. A filing may be reissued following expiration only if the provider submits a new application and pays the regular and the late filing fees required in part 9000.0200 [Emergency].

9000.0170 [Emergency] BILL OF RIGHTS.

A provider of mental services must provide clients with the client's bill of rights as required under *Minnesota Statutes,* section 148B.46, including the right to choose freely among available providers. For clients incarcerated in a correctional facility or committed to an institution under a court order, "available providers" means those providers who provide services in the correctional facility in which the client is incarcerated or in the institution to which the client is committed.

9000.0190 [Emergency] VARIANCES.

Subpart 1. **Grounds for variance; variance application.** A filer or applicant may petition the board for a time limited variance from provisions in parts 9000.0100 to 9000.0200 [Emergency], except for a provision that incorporates a statutory requirement. The petition must be in writing. The board shall grant a variance if the filer or applicant specifies alternative practices or measures equivalent to or superior to those in the rule in question and provides evidence that:

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

B. adherence to the rule would impose an undue burden on the filer or applicant; and

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

Subp. 2. **Information required in variance petition.** A petition for a variance must contain the following information:

A. the specific rule for which the variance is requested;

B. the reason for the request;

C. the alternative practices or measures that will be taken if a variance is granted;

D. the length of time for which a variance is requested; and

E. any other relevant information the board needs to properly evaluate the petition for the variance.

Subp. 3. **Variance compliance.** A filer or applicant who is granted a variance must comply with the alternative practices or measures specified in the petition for the variance.

Subp. 4. **Renewal of variance.** A variance shall be renewed upon reapplication for a variance, if the circumstances justifying the variance continue to exist. A filer or applicant who has been granted a variance must immediately notify the board of any material change in circumstances that justify the variance. A variance shall be revoked if there is a material change in the circumstances which justify the variance.

Subp. 5. **Burden of proof.** The burden of proof is upon the filer or applicant to demonstrate to the board, by a preponderance of the evidence, that the requirements in subpart 1 have been met.

Subp. 6. **Notice of board's decision.** The board shall notify the filer or applicant in writing when the board grants, denies, renews, or revokes a variance. The notice must state the reasons for the action. If a variance is granted, the notice shall specify the period of time for which the variance is effective, and must state the alternative practices or measures the filer or applicant must meet.

9000.0200 [Emergency] FEES.

Fees for filing as a mental health provider are as follows:

A. the fee for an application is $50;

B. the fee for renewal of filing is $50; and

C. the fee for late filing is $25.

Errata

Department of Agriculture

Correction to Rules Relating to Grade A and Manufacturing Grade Milk and Dairy Products

Correction to Department of Agriculture rules proposed on July 25, 1988, at 13 *State Register,* page 165. On page 168 the repealer should have included *Minnesota Rules,* part 1525.2080.

These rules were adopted at 13 *State Register,* page 980, on October 17, 1988.

Executive Orders

Emergency Executive Order #88-12 Extending Emergency Executive Order #88-8 Providing for Transportation of Baled Hay to Drought Areas

I, RUDY PERPICH, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

WHEREAS, because of drought conditions existing in the state this year and the need to transport hay to affected areas of the state to provide feed for livestock; and

WHEREAS, in order to provide continued emergency assistance to Minnesota's farmers, the state is willing to waive certain permits, fees, and other obligations normally incurred by transporters;

NOW, THEREFORE, I hereby order that:

Emergency Executive Order 88-8 remain in effect until November 15, 1988.

Pursuant to *Minnesota Statutes* 1986, Section 4.035, this Order shall be effective October 14, 1988, and shall remain in effect until November 15, 1988 or until rescinded by proper authority.

IN TESTIMONY WHEREOF, I have set my hand this 14th day of October, 1988.



Rudy Perpich
Governor

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE MINNESOTA

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the Matter of the Proposed Adoption of Emergency Rules of the State Board of Unlicensed Mental Health Service Providers

DECLARATION OF COUNSEL

I, Robert T. Holley, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0477.

Robert T. Holley

ROBERT T. HOLLEY
Special Assistant
Attorney General

Dated: December 16, 1988

STATE OF MINNESOTA

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the Matter of the Proposed Adoption of the Emergency Rules of the State of Minnesota Board of Unlicensed Mental Health Service Providers Governing the Provision of Unlicensed Mental Health Services

NOTICE OF SUBMISSION OF EMERGENCY RULES TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.32:

PLEASE TAKE NOTICE that the above-captioned emergency rules as adopted have been submitted to the Office of the Attorney General on the date of this notice, December 16, 1988, for review as to legality and form to the extent form relates to legality. The proposed emergency rules, the rules as adopted, all the notices, all written comments received and other required documents also have been submitted to the Attorney General.

The proposed emergency rules which were published in the State Register and made available to the public on October 31, 1988, have been modified. A free copy of the rules as modified as well as the finding of fact, conclusions, and order explaining the amendments and adopting the rules is available upon request from:

The Office of Social Work and Mental Health Boards
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

The emergency rules must be approved or disapproved by the Attorney General. You may submit written comments to the attorney general on the legality of the rules. Any written comments must be submitted within eight calendar days of the date of submission of the emergency rules to the Attorney General. Your comments must address only the issue of legality of the emergency rules or the legality of the specific parts or subparts of the emergency rules. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the Attorney General decision upon written request to the Attorney General. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
515 Transportation Building
John Ireland Blvd.
Saint Paul, Minnesota 55155
Telephone: (612) 296-9715.

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Robert A. Sullivan, Executive Director
Board of Unlicensed Mental Health Service Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114
(612) 649-5490

Date: 12-16-88

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental
Health Service Providers

STATE OF MINNESOTA

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the Matter of the Proposed Adoption of the Emergency Rules of the State of Minnesota Governing the Provision of Unlicensed Mental Health Services

AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF EMERGENCY RULES TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
)SS.
COUNTY OF RAMSEY)

Robert A. Sullivan, being sworn says:

That on the 16th day of December, 1988 in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations who requested notice that the emergency rules in the above-entitled matter have been submitted to the Attorney General.

Robert A. Sullivan

Executive Director
Title

Subscribed and sworn to before me this 16th day of December, 1988.

Lois Kauppila

LOIS KAUPPILA
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES APRIL 28, 1992

Office of the Revisor of Statutes
Administrative Rules

Kathleen M. Traxler
Assistant Revisor
296-0956

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

October 18, 1988

Mr. Bob Sullivan
Board of Unlicensed Mental Health Providers
2700 University Avenue #225
Saint Paul, Minnesota 55114

RE: File No. 1361E

Dear Mr. Sullivan:

I am enclosing six copies of your rules, approved as to form. Please submit two copies to the State Register for publication.

If you have any questions, please call me.

Very truly yours,

Kathleen M. Traxler

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Rules Relating to Unlicensed Mental Health Service Providers

AGENCY: Board of Unlicensed Mental Health Service Providers

MINNESOTA RULES: Chapter 9000

The attached rules are approved for publication in the State Register

Kathleen M. Traxler
Assistant Revisor

Board of Unlicensed Mental Health Service Providers

Proposed Emergency Rules Relating to Unlicensed Mental Health Service Providers

Rules as Proposed (all new material)

9000.0050 [Emergency] PURPOSE.

Parts 9000.0100 to 9000.0200 [Emergency] establish filing procedures for unlicensed mental health service providers. The purpose of the filing procedures is to establish a central registry of persons who provide or purport to provide mental health services.

9000.0100 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 9000.0100 to 9000.0200 [Emergency], the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person who applies to file as a mental health service provider with the board.

Subp. 3. **Board.** "Board" means the Board of Unlicensed Mental Health Service Providers.

Subp. 4. **Mental health services.**

A. "Mental health services" means the provision of any assessment, diagnosis, treatment, counseling, or therapy including guidance, pastoral, addiction, abuse, psychotherapy, hypnotherapy or hypnoanalysis, personal analysis, or other services for remuneration.

Mental health services are services which are designed to alleviate symptoms, reduce disturbed patterns of behavior, enhance intrapsychic awareness, and increase ability of the individual to adapt to and cope with internal and external stress.

Mental health services must use interpersonal, intrapsychic, or behavioral methods. Mental health services may be provided to individuals, families, or groups who are

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experiencing a problem behavior; have social, interpersonal, or intrapersonal dysfunction; or have cognitive or emotional distress, unwanted anxiety, or other mental or psycho-physiological problems which they seek to alleviate.

B. "Mental health services" does not include services that do not involve the services described in item A, and that are:

(1) primarily for entertainment; or

(2) educational, informational, or spiritual.

C. "Mental health services" does not include the following areas of practice unless the primary focus is the provision of services as defined in item A: educational, vocational, or career guidance; and spiritual counseling or pastoral care of a congregation by clergy when the care is not related to the provision of mental health services described in item A.

Subp. 5. **Provider.** "Provider" means a person who provides or purports to provide mental health services for remuneration. Mental health service providers include the following:

A. counselor (crisis, eating disorder, compulsion, phobia or anxiety, drug and alcohol, mental health, pastoral, sexual and physical abuse);

B. social worker or marriage and family therapist, if the person is exempt from licensure under Minnesota Statutes, section 148B.28, subdivision 4, 5, or 6, or 148B.38;

C. school and college counselor if the counselor is providing mental health services as defined in subpart 4;

D. rehabilitation officer or counselor, if the person provides mental health services as defined in subpart 4;

E. therapist (child care, educational, new age, holistic, dance, music, or recreational if the therapist is providing mental health services as defined in subpart 4);

F. hypnotist or hypnotherapist;

G. behavior modification practitioner or analyst; and

H. any other person, regardless of title, providing mental health services for remuneration who is not exempt from

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filing, or is not one of the licensed providers described in Minnesota Statutes, section 148B.40, subdivision 3.

Subp. 6. **Remuneration.** "Remuneration" means a fee, salary, gift, reward, compensation, or the expectation of payment for providing mental health services.

Subp. 7. **Variance.** "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

9000.0110 [Emergency] REQUIREMENT TO FILE.

Subpart 1. **Who must file.** A provider of mental health services for remuneration must file with the board on the forms provided, unless specifically excluded from filing by law or by subpart 2.

The application for filing must contain the information required according to Minnesota Statutes, sections 148B.06, subdivision 3; and 148B.42.

Subp. 2. **Exclusions from filing.** Persons excluded from filing under subpart 1 include:

A. a person who is specifically excluded from the definition of mental health service provider in Minnesota Statutes, section 148B.40, subdivision 3;

B. a person who is not providing mental health services as defined in part 9000.0100, subpart 4 [Emergency]; and

C. a person who is not providing mental health services for remuneration.

Subp. 3. **Requirement to file within 120 days.** A provider who is providing mental health services on the effective date of parts 9000.0100 to 9000.0200 [Emergency] must apply to file with the board within 120 days after the effective date of parts 9000.0100 to 9000.0200 [Emergency].

A provider who wishes to provide mental health services after the effective date of parts 9000.0100 to 9000.0200 [Emergency] must apply to the board and receive acknowledgment of the filing as provided in part 9000.0130 [Emergency] before

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providing services.

Subp. 4. **Late fees.** A provider who is providing mental health services when parts 9000.0100 to 9000.0200 [Emergency] become effective, and who fails to file within the 120-day limit in subpart 3, must pay the late filing fee and the regular filing fee specified in part 9000.0200 [Emergency].

9000.0120 [Emergency] PROCEDURE FOR FILING.

Subpart 1. **Application.** The application for filing must:

A. be made to the board on the forms provided by the board;

B. include an affirmation from the applicant that the statements are true and correct to the best of the applicant's knowledge and belief;

C. be accompanied by a nonrefundable application fee specified in part 9000.0200 [Emergency];

D. be accompanied by a written authorization for the board to make inquiries to the appropriate regulatory agency in any other state where the applicant has provided mental health service, about the applicant's malpractice history, if any;

E. be accompanied by a written authorization for the board to inquire about the malpractice history of the applicant at the National Clearing House for Licensure, Enforcement, and Regulation; and

F. be completed in sufficient detail for the board to determine if the applicant meets the requirements for filing. The board may ask the applicant to provide additional information necessary to clarify incomplete or ambiguous information submitted in the application.

Subp. 2. **Requirements to maintain current information.** A provider must notify the board within 30 days of occurrence of the following:

A. a change of name, address, or phone number (home and business);

B. a conviction of a crime against persons, or of a crime reasonably related to the provision of mental health

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service;

C. a settlement or award based on malpractice by the provider;

D. a physical or mental disability that may affect a provider's ability to practice; and

E. other factors that may reasonably be construed to affect public safety.

The board may take an adverse action under Minnesota Statutes, section 148B.45, against a filer who fails to meet the requirements of this notice.

9000.0130 [Emergency] ACKNOWLEDGMENT OF FILING.

When an applicant has satisfied the requirements of filing, the board will issue a written "Acknowledgment of Filing" to the applicant. The "Acknowledgment of Filing" is a written statement that the applicant has met the requirements for filing under parts 9000.0100 to 9000.0200 [Emergency]. This acknowledgment is personal and is not transferable to another person. It may not be displayed or published in any way.

9000.0140 [Emergency] DENIAL OF FILING.

Subpart 1. **Grounds for denial.** An application for filing may be denied by the board if:

A. the application does not contain the information necessary for filing as determined by Minnesota Statutes, sections 148B.06, subdivisions 1 to 3, and 148B.42, subdivision 1, and the applicant has not provided the required information within 60 days of application;

B. the applicant has presented false or misleading information on the application;

C. the applicant fails to fully disclose disciplinary actions taken in another state or province;

D. the applicant fails to notify the board of disciplinary action taken against the applicant by a licensing, certifying, or registering authority;

E. the applicant fails to authorize the board, as required in part 9000.0120 [Emergency], subpart 1, item D, to

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obtain information from the appropriate regulatory agency in any other state or foreign government where the individual has provided mental health services; or

F. the applicant has engaged in behavior that is specifically prohibited under Minnesota Statutes, section 148B.44.

Subp. 2. **Criminal conviction.** If the applicant has been convicted of a crime listed under Minnesota Statutes, section 148B.44, subdivision 1, paragraph (a) or (b), the board shall follow the standards and procedures in Minnesota Statutes, chapter 364, in determining whether to approve or deny an application for filing.

Subp. 3. **Notice of denial.** The board must notify an applicant, in writing, of a denial of an application for filing and the reasons for the denial. If the board denies an application for filing for reasons described in subpart 2, the board's notice must meet the requirements of Minnesota Statutes, section 364.05. An application submitted after a denial is a new application and must be accompanied by a new filing fee.

9000.0150 [Emergency] TERM OF FILING.

A filing is valid for one year. The year begins with the date on which the filing is acknowledged, according to part 9000.0130 [Emergency], or reissued after suspension, and ends one year later on the last day of the month in which the filing was acknowledged. The filing must be renewed each year.

9000.0160 [Emergency] RENEWAL OF FILING.

Subpart 1. **Renewal notice.** At least 31 days before the date the filing ends, according to part 9000.0150 [Emergency], the board shall send a renewal notice to the last known address of the provider. The notice must inform the provider of the requirement to renew the provider's filing and pay the current renewal fee by the deadline determined in subpart 2. If the provider does not receive the notice, the provider is still obligated to complete a renewal application and pay the renewal fee specified in part 9000.0200 [Emergency] within the deadline

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in subpart 2. The renewal application must be made on the forms provided by the board.

Subp. 2. **Renewal deadline.** The provider must submit to the board the renewal application and the annual renewal fee required in part 9000.0200 [Emergency]. The renewal application must be submitted or postmarked on or before the date the filing ends according to part 9000.0150 [Emergency]. The renewal application must include an affirmation by the provider that the statements on the form are true and correct to the best knowledge and belief of the provider.

Subp. 3. **Late fees.** A provider seeking renewal must pay the renewal fee and the late fee if the application for renewal is submitted or postmarked after the time period specified in subpart 2.

The late fee must accompany applications of practicing mental health service providers not made within 90 days of the effective date of this part.

Subp. 4. **Expiration of filing.** A filing expires if it is not renewed with the board within the deadline in subpart 2. A filing may be reissued following expiration only if the provider submits a new application and pays the regular and the late filing fees required in part 9000.0200 [Emergency].

9000.0170 [Emergency] BILL OF RIGHTS.

A provider of mental services must provide clients with the client's bill of rights as required under Minnesota Statutes, section 148B.46, including the right to choose freely among available providers. For clients incarcerated in a correctional facility or committed to an institution under a court order, "available providers" means those providers who provide services in the correctional facility in which the client is incarcerated or in the institution to which the client is committed.

9000.0190 [Emergency] VARIANCES.

Subpart 1. **Grounds for variance; variance application.** A filer or applicant may petition the board for a time limited variance from provisions in parts 9000.0100 to 9000.0200

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[Emergency], except for a provision that incorporates a statutory requirement. The petition must be in writing. The board shall grant a variance if the filer or applicant specifies alternative practices or measures equivalent to or superior to those in the rule in question and provides evidence that:

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

B. adherence to the rule would impose an undue burden on the filer or applicant; and

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

Subp. 2. **Information required in variance petition.** A petition for a variance must contain the following information:

A. the specific rule for which the variance is requested;

B. the reason for the request;

C. the alternative practices or measures that will be taken if a variance is granted;

D. the length of time for which a variance is requested; and

E. any other relevant information the board needs to properly evaluate the petition for the variance.

Subp. 3. **Variance compliance.** A filer or applicant who is granted a variance must comply with the alternative practices or measures specified in the petition for the variance.

Subp. 4. **Renewal of variance.** A variance shall be renewed upon reapplication for a variance, if the circumstances justifying the variance continue to exist. A filer or applicant who has been granted a variance must immediately notify the board of any material change in circumstances that justify the variance. A variance shall be revoked if there is a material change in the circumstances which justify the variance.

Subp. 5. **Burden of proof.** The burden of proof is upon the filer or applicant to demonstrate to the board, by a preponderance of the evidence, that the requirements in subpart 1 have been met.

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Subp. 6. **Notice of board's decision.** The board shall notify the filer or applicant in writing when the board grants, denies, renews, or revokes a variance. The notice must state the reasons for the action. If a variance is granted, the notice shall specify the period of time for which the variance is effective, and must state the alternative practices or measures the filer or applicant must meet.

9000.0200 [Emergency] FEES.

Fees for filing as a mental health provider are as follows:

A. the fee for an application is $50;

B. the fee for renewal of filing is $50; and

C. the fee for late filing is $25.

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Office of the Revisor of Statutes
Administrative Rules

Kathleen M. Traxler
Assistant Revisor
296-0956

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

December 5, 1988

Bob Sullivan
Board of Unlicensed Mental Health Providers
2700 University Avenue, #225
Saint Paul, Minnesota 55114

RE: File No. 1361E

Dear Mr. Sullivan:

Enclosed are four copies of your rule with the modifications you requested.

Please submit the rules to the Attorney General or the Office of Administrative Hearings, as appropriate.

If you have any questions or need further modifications, please call me.

Very truly yours,

Kathleen M. Traxler

Kathleen M. Traxler

Board of Unlicensed Mental Health Service Providers

Adopted Emergency Rules Relating to Unlicensed Mental Health Service Providers

Rules as Adopted

9000.0050 [Emergency] PURPOSE.

Parts 9000.0100 to 9000.0200 [Emergency] establish filing procedures for unlicensed mental health service providers. The purpose of the filing procedures is to establish a central registry of persons who provide or purport to provide mental health services.

9000.0100 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 9000.0100 to 9000.0200 [Emergency], the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person who applies to file as a mental health service provider with the board.

Subp. 3. **Board.** "Board" means the Board of Unlicensed Mental Health Service Providers.

Subp. 4. **Mental health services.**

A. "Mental health services" means the provision of any assessment, diagnosis, treatment, counseling, or therapy including guidance, pastoral, addiction, abuse, psychotherapy, hypnotherapy or hypnoanalysis, personal analysis, or other services for remuneration.

Mental health services are services which are designed to alleviate symptoms, reduce disturbed patterns of behavior, enhance intrapsychic awareness, and increase ability of the individual to adapt to and cope with internal and external stress.

Mental health services must use interpersonal, intrapsychic, or behavioral methods. Mental health services may be provided to individuals, families, or groups who are

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experiencing a problem behavior; have social, interpersonal, or intrapersonal dysfunction; or have cognitive or emotional distress, unwanted anxiety, or other mental or psycho-physiological problems which they seek to alleviate.

B. "Mental health services" does not include services that do not involve the services described in item A, and that are:

(1) primarily for entertainment; ~~or~~

(2) educational, informational, or spiritual~~.~~; <u>or</u>

<u>(3) primarily for client advocacy; or</u>

<u>(4) related to a custodial, direct care, or maintenance function.</u>

C. "Mental health services" does not include the following areas of practice unless the primary focus is the provision of services as defined in item A: educational, vocational, or career guidance; and spiritual counseling or pastoral care of a congregation by clergy when the care is not related to the provision of mental health services described in item A.

Subp. 5. Provider. "Provider" means a person who provides or purports to provide mental health services for remuneration. Mental health service providers include the following:

A. counselor (crisis, eating disorder, compulsion, phobia or anxiety, drug and alcohol, mental health, pastoral, sexual and physical abuse);

B. social worker or marriage and family therapist, if the person is exempt from licensure under Minnesota Statutes, section 148B.28, subdivision 4, 5, or 6, or 148B.38;

C. school and college counselor if the counselor is providing mental health services as defined in subpart 4;

D. rehabilitation officer or counselor, if the person provides mental health services as defined in subpart 4;

E. therapist (child care, educational, new age, holistic, dance, music, or recreational if the therapist is providing mental health services as defined in subpart 4);

F. hypnotist or hypnotherapist;

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G. behavior modification practitioner or analyst; and

H. any other person, regardless of title, providing mental health services for remuneration who is not exempt from filing, or is not one of the licensed providers described in Minnesota Statutes, section 148B.40, subdivision 3.

Subp. 6. **Remuneration.** "Remuneration" means a fee, salary, gift, reward, compensation, or the expectation of payment for providing mental health services.

Subp. 7. **Variance.** "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

9000.0110 [Emergency] REQUIREMENT TO FILE.

Subpart 1. **Who must file.** A provider of mental health services for remuneration must file with the board on the forms provided, unless specifically excluded from filing by law or by subpart 2.

The application for filing must contain the information required according to Minnesota Statutes, sections 148B.06, subdivision 3; and 148B.42.

Subp. 2. **Exclusions from filing.** Persons excluded from filing under subpart 1 include:

A. a person who is specifically excluded from the definition of mental health service provider in Minnesota Statutes, section 148B.40, subdivision 3;

B. a person who is not providing mental health services as defined in part 9000.0100, subpart 4 [Emergency]; and

C. a person who is not providing mental health services for remuneration.

Subp. 3. **Requirement to file within 120 days.** A provider who is providing mental health services on the effective date of parts 9000.0100 to 9000.0200 [Emergency] must apply to file with the board within 120 days after the effective date of parts 9000.0100 to 9000.0200 [Emergency].

A provider who wishes to provide mental health services

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after the effective date of parts 9000.0100 to 9000.0200 [Emergency] must apply to the board and receive acknowledgment of the filing as provided in part 9000.0130 [Emergency] before providing services.

Subp. 4. Late fees. A provider who is providing mental health services when parts 9000.0100 to 9000.0200 [Emergency] become effective, and who fails to file within the 120-day limit in subpart 3, must pay the late filing fee and the regular filing fee specified in part 9000.0200 [Emergency].

9000.0120 [Emergency] PROCEDURE FOR FILING.

Subpart 1. Application. The application for filing must:

A. be made to the board on the forms provided by the board;

B. include an affirmation from the applicant that the statements are true and correct to the best of the applicant's knowledge and belief;

C. be accompanied by a nonrefundable application fee specified in part 9000.0200 [Emergency];

D. be accompanied by a written authorization for the board to make inquiries to the appropriate regulatory agency in any other state where the applicant has provided mental health service, about the applicant's malpractice history, if any;

E. be accompanied by a written authorization for the board to inquire about the malpractice history of the applicant at the National Clearing House for Licensure, Enforcement, and Regulation; and

F. be completed in sufficient detail for the board to determine if the applicant meets the requirements for filing. The board may ask the applicant to provide additional information necessary to clarify incomplete or ambiguous information submitted in the application.

Subp. 2. Requirements to maintain current information. A provider must notify the board within 30 days of occurrence of the following:

A. a change of name, address, or phone number (home

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and business);

B. a conviction of a crime against persons, or of a crime reasonably related to the provision of mental health service;

C. a settlement or award based on malpractice by the provider;

D. a physical or mental disability that may affect a provider's ability to practice; and

E. other factors that may reasonably be construed to affect public safety.

The board may take an adverse action under Minnesota Statutes, section 148B.45, against a filer who fails to meet the requirements of this notice.

9000.0130 [Emergency] ACKNOWLEDGMENT OF FILING.

When an applicant has satisfied the requirements of filing, the board will issue a written "Acknowledgment of Filing" to the applicant. The "Acknowledgment of Filing" is a written statement that the applicant has met the requirements for filing under parts 9000.0100 to 9000.0200 [Emergency]. This acknowledgment is personal and is not transferable to another person. It may not be displayed or published in any way.

9000.0140 [Emergency] DENIAL OF FILING.

Subpart 1. **Grounds for denial.** An application for filing may be denied by the board if:

A. the application does not contain the information necessary for filing as determined by Minnesota Statutes, sections 148B.06, subdivisions 1 to 3, and 148B.42, subdivision 1, and the applicant has not provided the required information within 60 days of application;

B. the applicant has presented false or misleading information on the application;

C. the applicant fails to fully disclose disciplinary actions taken in another state or province;

D. the applicant fails to notify the board of disciplinary action taken against the applicant by a licensing,

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certifying, or registering authority;

E. the applicant fails to authorize the board, as required in part 9000.0120 [Emergency], subpart 1, item D, to obtain information from the appropriate regulatory agency in any other state or foreign government where the individual has provided mental health services; or

F. the applicant has engaged in behavior that is specifically prohibited under Minnesota Statutes, section 148B.44.

Subp. 2. **Criminal conviction.** If the applicant has been convicted of a crime listed under Minnesota Statutes, section 148B.44, subdivision 1, paragraph (a) or (b), the board shall follow the standards and procedures in Minnesota Statutes, chapter 364, in determining whether to approve or deny an application for filing.

Subp. 3. **Notice of denial.** The board must notify an applicant, in writing, of a denial of an application for filing and the reasons for the denial. If the board denies an application for filing for reasons described in subpart 2, the board's notice must meet the requirements of Minnesota Statutes, section 364.05. An application submitted after a denial is a new application and must be accompanied by a new filing fee.

9000.0150 [Emergency] TERM OF FILING.

A filing is valid for one year. The year begins with the date on which the filing is acknowledged, according to part 9000.0130 [Emergency], or reissued after suspension, and ends one year later on the last day of the month in which the filing was acknowledged. The filing must be renewed each year.

9000.0160 [Emergency] RENEWAL OF FILING.

Subpart 1. **Renewal notice.** At least 31 days before the date the filing ends, according to part 9000.0150 [Emergency], the board shall send a renewal notice to the last known address of the provider. The notice must inform the provider of the requirement to renew the provider's filing and pay the current renewal fee by the deadline determined in subpart 2. If the

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by Revisor _____

provider does not receive the notice, the provider is still obligated to complete a renewal application and pay the renewal fee specified in part 9000.0200 [Emergency] within the deadline in subpart 2. The renewal application must be made on the forms provided by the board.

Subp. 2. **Renewal deadline.** The provider must submit to the board the renewal application and the annual renewal fee required in part 9000.0200 [Emergency]. The renewal application must be submitted or postmarked on or before the date the filing ends according to part 9000.0150 [Emergency]. The renewal application must include an affirmation by the provider that the statements on the form are true and correct to the best knowledge and belief of the provider.

Subp. 3. **Late fees.** A provider seeking renewal must pay the renewal fee and the late fee if the application for renewal is submitted or postmarked after the time period specified in subpart 2.

The late fee must accompany applications of practicing mental health service providers not made within 90 days of the ~~effective-date-of-this-part~~ expiration of filing.

Subp. 4. **Expiration of filing.** A filing expires if it is not renewed with the board within the deadline specified in subpart 2. A filing may be reissued following expiration only if the provider submits a new application and pays the regular and the late filing fees required in part 9000.0200 [Emergency].

9000.0170 [Emergency] BILL OF RIGHTS.

A provider of mental services must provide clients with the client's bill of rights as required under Minnesota Statutes, section 148B.46, including the right to choose freely among available providers. For clients incarcerated in a correctional facility or committed to an institution under a court order, "available providers" means those providers who provide services in the correctional facility in which the client is incarcerated or in the institution to which the client is committed.

9000.0190 [Emergency] VARIANCES.

Approved by Revisor _____

Subpart 1. **Grounds for variance; variance application.** A filer or applicant may petition the board for a time limited variance from provisions in parts 9000.0100 to 9000.0200 [Emergency], except for a provision that incorporates a statutory requirement. The petition must be in writing. The board shall grant a variance if the filer or applicant specifies alternative practices or measures equivalent to or superior to those in the rule in question and provides evidence that:

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

B. adherence to the rule would impose an undue burden on the filer or applicant; and

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

Subp. 2. **Information required in variance petition.** A petition for a variance must contain the following information:

A. the specific rule for which the variance is requested;

B. the reason for the request;

C. the alternative practices or measures that will be taken if a variance is granted;

D. the length of time for which a variance is requested; and

E. any other relevant information the board needs to properly evaluate the petition for the variance.

Subp. 3. **Variance compliance.** A filer or applicant who is granted a variance must comply with the alternative practices or measures specified in the petition for the variance.

Subp. 4. **Renewal of variance.** A variance shall be renewed upon reapplication for a variance, if the circumstances justifying the variance continue to exist. A filer or applicant who has been granted a variance must immediately notify the board of any material change in circumstances that justify the variance. A variance shall be revoked if there is a material change in the circumstances which justify the variance.

Subp. 5. **Burden of proof.** The burden of proof is upon the

Approved
by Revisor _____

filer or applicant to demonstrate to the board, by a preponderance of the evidence, that the requirements in subpart 1 have been met.

Subp. 6. Notice of board's decision. The board shall notify the filer or applicant in writing when the board grants, denies, renews, or revokes a variance. The notice must state the reasons for the action. If a variance is granted, the notice shall specify the period of time for which the variance is effective, and must state the alternative practices or measures the filer or applicant must meet.

9000.0200 [Emergency] FEES.

Fees for filing as a mental health provider are as follows:

A. the fee for an application is $50;

B. the fee for renewal of filing is $50; and

C. the fee for late filing is $25.

Approved
by Revisor _____

BOARD OF UNLICENSED MENTAL HEALTH PROVIDERS

Summary of Comments Received
Concerning Proposed Emergency Rules
(9000.0050 to 9000.0200)
October 31 to November 24 (28), 1988

Name of Commentor	Date	Part	Comment
1. Julie Vikmanis, Manager, State of Minnesota Department of Employee Relations	11/1/88	9000.0160 Subp. 3	1.a) No problem with rules as drafted. b) Concern about length of time to process applications. Suggest grace period between filing and acknowledgement. c) Lapse of filing - when is late fee assessed or not assessed?
2. Mary Beth Curry Minnesota Hospital Association	11/14/88	9000.0200 Subp. 5 B	1.a) "Provider" - should eliminate B. "S.W. & M.F.T."
		9000.0110 Subp. 2	b) "Hospital, nursing home, city, county, or state agency social workers are in the Social Work licensing scope of practice.
		9000.0200	c) $50 registration fee excessive and will drive up cost of care to the public.
3. Nancy Payne, Employment Mgr. Abbott-Northwestern Hospital	11/14/88		3.a) Rule addresses independent providers, but does not exempt those employed in institutions. b) The rules (regulations) do not allow exemption [from filing] of persons working under direction of a licensed provider (person). c) Rules (regulations) do nothing to assure competency. d) $50 fee is excessive. Should follow salary level of those required to file.

4. Sharon A. M. Mertz, Acting Administrator, Behavioral Health Services Abbott-Northwestern Hospital	11/14/88	9000.0110 Subp. 1	4.a) Employees of hospitals, who provide mental health services, and are subject to conduct guidelines of the hospital - Be exempt. b) $50 fee is much to large. c) How do consumers know that a provider of mental health services has filed with the board if they are prohibited from posting their certificate (acknowledgement of filing)?
5. Rolf G. Peterson, Attorney	11/12/88		No comment on content of rule. Request for filing materials only.
6. Michael J. Marcotte and Beverly J. Everson	11/18/88		6.a) Expresses opposition to 148B.46 M.H. Bill of Rights (B). This is negative and should be removed from the rule. b) Change name of Board (from Board of Unlicensed Mental Health Service Providers) to something more positive.
		9000.0100 Subp. 4	c) Objects to use of term "mental health services." Mental health and chemical dependency are two separate disciplines.
7. Tom Beer, Lobbyist AFSCME Council 6 AFL/CIO	11/28/88		7.a) Public sector social workers (not otherwise licensed) for the city, county, state or affected universities, should be exempt from filing based on the exemption given public sector social workers from licensing in 148B.28, subd. 4. b) Public employees who are by employment classification non-professional, or other than professional despite their specific classification, should be exempt. c) Public employees whose duties are essentially those of providing maintenance to clients or who help implement but don't design or monitor the provision of mental health services, should be exempt.

		9000.0140 Subp. 1, C and D.	d) Requiring applicants to disclose disciplinary actions - Should not apply to actions taken by an employer.
8. Mary Ganzel Minnesota Hospital Psychiatry Coalition	11/28/88		8.a) Comment on the statute (148B.40, subd. 4) - Mental health services provided by unlicensed hospital staff persons should be excluded. b $50 fee will contribute to higher health care cost with out contributing to consumer or patient protection.
9. Julle Tilley, Program Coordinator, Minnesota Coalition for Battered Women	11/28/88		9.a) Concern that advocates in battered women's programs may be required to file as mental health service providers.

Official 25 day rules comment period ran from 10/31/88 to 11/24/88. Because November 24th and 25th were office holidays, it is reasonable to assume that the comment period would run until the next business day or 11/28/88.

10. Edward Skarnulis, Dr.: Director for Persons with Developmental Disabilities D.H.S.	12/1/88	9000.0100 Subp. 4. and subp. 5. H & G	10.a) Concern that these parts may be intepreted to require direct care providers, in facilities for the develomentally delayed, to register as mental health service providers. b) The "acknowledgment of filing" may delay access to services because of delay in processing.
		9000.0110 Subp. 2.	c) Change 9000.0110 subp. 2. to exclude providers whose qualifications are set forth in other parts of statute or rule.

State of Minnesota
DEPARTMENT OF EMPLOYEE RELATIONS
3rd Floor
520 Lafayette Road, St. Paul, MN 55155 • 612/296-2616

November 1, 1988

Mr. Robert Sullivan
Executive Director
Board of Unlicensed Mental
Health Service Providers
2700 University Avenue W.
Suite 225
St. Paul, MN 55114

Dear Robert Sullivan:

Our thanks for the reminder JoAnne Ossanna sent regarding our opportunity to comment on the proposed emergency rules for the Board of Unlicensed Mental Health Service Providers.

As you know our primary concern is with the basic coverage of the statute to non-private practice providers who are fully supervised, in for instance, state residential facilities or other governmental agencies. These issues, however, will need to be addressed in the next legislative session.

As to the rules themselves, we have no particular problem with the temporary rules as drafted. We are interpretating them to be very much an individual responsibility of the practitioner rather than a responsibility of any employer. However, if these provisions are to cover providers in state supervised facilities, we as an employer will be quite concerned with the speed with which the acknowledgments of filing are provided to unlicensed providers once they have submitted their filings. This is critical so that once we have made an offer of employment, we will not have to provide long periods of advance notice so new hires can receive acknowledgments of filing before they start work.

Permit me to explain a bit more. Many of the positions in our state residential facilities, for instance, provide newly graduating baccalaureate graduates from the various social sciences their first real job opportunity. These persons may find it impractical, perhaps economically unfeasible, to file and pay the $50 fee when submitting applications for employment which they have no assurance they will achieve. However, once they have been interviewed and notified of a decision to hire and begin work (typically within two weeks and even less if the applicant is unemployed and immediately available for work), they will need to file and have their filing acknowledged before they can provide mental health service. If the

waiting period for acknowledgment is unduly long, candidates may be unable to accept employment offers or having accepted an offer, they may find themselves unable to fulfill the terms of that offer as quickly as originally anticipated.

All of this suggests need for speed in processing or for a grace period between filing and receipt of acknowledgment when new practitioners could practice without acknowledgment.

As indicated above, however, I see no indication in the proposed rules imposing an obligation on the employer to verify the filing and acknowledgment of filing before making an offer of employment or even before permitting a provider to begin work. In spite of this, we would be loathe to compel candidates offered employment to either begin work without acknowledgment of filing or to rescind the employment offer in view of their inability to perform -- a quandary which would occur if the administrative procedures for acknowledgment of filing are not extremely speedy or if a grace period is not provided.

While it has no specific effect on our role with regard to employment of mental health providers, I did find one additional area of the proposed rules to be somewhat confusing -- the late fee for renewal of filing. It seems to me highly likely that there will be persons who file once and perhaps renew several times (or not) and then permit their filing to lapse -- perhaps for several years. If after a long period in which the individual has not filed, s/he chooses to file again, does this become a new filing or a renewal with a required late fee? And, if the former, what is the time period which must elapse before an individual begins again as a new filing rather than as a late filing? As I indicated, it has no real bearing on us as an employer but it does seem to be potentially confusing for persons who wish to file as unlicensed mental health service providers or to your office as administrators of these rules. You may wish to spell the matter out more clearly as you propose permanent rules.

Again, I thank you for the opportunity to comment. We will appreciate staying in touch as you proceed with permanent rules.

Sincerely,

Julie Vikmanis

Julie Vikmanis, Manager
Staffing Division

JV:ej

cc: JoAnne Ossanna, Chairperson
Board of Unlicensed Mental Health Providers
Barbara Sundquist, DHS
Ralph Corey, DHS

minnesota hospital association

representing nonprofit hospitals

November 11, 1988

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Office of Social Work / Mental Health Boards

Mr. Robert Sullivan
Executive Director, Board of Unlicensed
Mental Health Providers
2700 University Avenue West, #225
St. Paul, MN 55114

Dear Mr. Sullivan:

The Minnesota Hospital Association (MHA) represents 162 acute care community-based hospitals throughout Minnesota. MHA would like to take the opportunity to express several concerns relating to the proposed emergency rules for the Board of Unlicensed Mental Health Providers.

First, under 9000.0200, Subp. 5, "Provider," MHA believes (B) should be deleted. Providers of mental health services listed under (B)--social workers and marriage and family therapists--are covered under other licensure laws and, therefore, should not be included in this rule for unlicensed mental health providers.

Second, under 9000.0110, Subp.2, another group of persons excluded from filing as mental health providers should be added between (A) and (B) to read:

"hospital, nursing home, city, county, or state agency social workers".

All persons within the social work scope of practice are covered by the Social Work Licensure Act. The Social Work Licensure Act exempts hospital, nursing home, and public sector work places from licensure. It makes licensure for these categories of social workers voluntary. In coming under this exception for practice setting, hospital, nursing home, and public sector social workers do not become unlicensed mental health practitioners. Nor should they be restricted in the use of the social worker title. They are, in fact, covered under the social work licensure law.

Finally, MHA believes the $50 fee, specified in 9000.0200, for filing as a mental health provider, is excessive especially when compared to licensure fees of other professionals. MHA feels the $50 fee will drive up health

care costs unnecessarily, as hospital employees who are required to file attempt to get hospital employers to cover the expense.

Thank you for your consideration of these comments. We look forward to working with you in the future.

Sincerely,

Mary Beth Curry

Mary Beth Curry
Research Analyst

MBC/al

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ABBOTT
NORTHWESTERN HOSPITAL
a LifeSpan family member

November 11, 1988

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Office of Social Work / Mental Health Boards

Mr. Robert Sullivan
Executive Director
Board of Unlicensed Mental Health Providers
Park Colonial Office Building
2700 University Avenue West
St. Paul, MN 55114

Dear Mr. Sullivan;

We received a copy of the emergency rules which regulate the practice of unlicensed mental health providers and are taking this opportunity to express our concerns regarding the proposed rules.

The rules seem to address individuals in independent practice but do not exempt all of those unlicensed practitioners who are employed by institutions which are heavily regulated by accrediting agencies and third party payors.

The regulations do not allow for an exemption of unlicensed providers working under the direction of a licensed person.

We are very concerned that the regulations do nothing to assure the competency of those people who are not licensed but only require that they pay a fee to be listed as an unlicensed provider.

The $50 filing fee is higher than professional license fees that we typically see (e.g. RN's/LPN's $26 for two years). The fee would be paid by individuals who are in lower paid positions or by the organization in order to assure continued or future employment. This could be a hardship for the individuals as well as the programs.

Please consider the following recommendations:

1. Evaluate the purpose of the regulations and determine if the rules in reality provide a solution to the problem addressed.

2. Provide an exemption for filing if employed by an accredited institution.

3. Explicitly state that unlicensed providers working under the supervision of licensed providers are exempt from filing.

4. Reduce the filing fee to be more in line with the salary levels of the individuals affected and the level of fees for licensed providers.

5. Set up specific criteria to evaluate competencies of unlicensed providers who are not employed by an accredited institution and recognize the competency levels established by other certifying agencies.

I appreciate your time in reviewing our recommendations and ask that you give serious thought to the changes we seek. These proposed regulations will have a great impact on a large number of our employees and hope that you give more thought to those who are employed in an already highly regulated environment.

Thank you.

Sincerely,

Nancy Payne
Employment Manager

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cc Sharon Mertz, Acting Administrator, Behavioral Health Division
Mary Ganzel, Executive Director, Minnesota Psychiatric Coalition

ABBOTT NORTHWESTERN HOSPITAL
a LifeSpan family member

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Office of Social Work / Mental Health Board

November 8,1988

Mr. Robert Sullivan
Board of Unlicensed Mental Health Providers
Park Colonial Office Building
2700 University Avenue West
Suite 225
St. Paul, Minnesota 55114

Dear Mr. Sullivan,

This letter is to make public comment of the proposed emergency rule which will regulate practice of unlicensed mental health providers. It is written on behalf of pastoral care programs, the inpatient, outpatient, and residential mental health and chemical dependency programs at Abbott Northwestern Hospital and the various licensed and unlicensed employees of these programs.

The issues and concerns fall into a number of categories which are listed below:

1. The rule states that its intent is "...establish procedures by which unlicensed mental health providers must comply with standards of conduct". All employees of hospitals who provide mental health/counseling services, whether licensed or unlicensed meet strict conduct guidelines as established by hospital personnel and departmental policies. Disciplinary policies are enforced as well. We believe that all mental health provides employed by hospitals should be exempted.

2. The fee is much to large for the purposes of a registration procedure. It is unclear as to who would be responsible for payment of this fee if the person is not self-employed.

3. It appears that the overall purpose of the law is to offer some sort of protection to those individuals seeking counseling services in the community at large. As I understand it, you would prohibit practitioners from displaying their registration from your board so that an endorsement that the board does not intend is not assumed. How is it that a consumer will then know that this is a registered unlicensed person? Prohibiting posting of this certificate eliminates the obvious course of action a

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consumer would have in assuring themselves that this person has meet the required registration criteria.

Thank you for the opportunity to document our concerns to you.

Sincerely,

Sharon A.M. Mertz
Behavioral Health Services
Acting Administrator

Rolf G. Peterson
Attorney at Law
3536 Bloomington Avenue South
Minneapolis, Minnesota 55407
(612) 721-7070

November 12, 1988

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental Health
Service Providers
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114

Dear Mr. Sullivan,

Pursuant to your Notice of Intent dated October 19, 1988, I am requesting that you advise me of the date of submission to the Attorney General of your emergency rules.

I also request a copy of the adopted rule with its modifications, after any modifications are made, as well as a copy of those particular comments or data which resulted in the modification.

Finally, I would also like five copies of each of the following:

1. The Application referred to in § 9000.0120 Subp.1(A) of the proposed emergency rules;
2. The Affirmation referred to in § 9000.0120 Subp.1(B) of the proposed emergency rules if not a part of the application;
3. The Authorization referred to in § 9000.0120 Subp.1(D) of the proposed emergency rules;
4. The Authorization referred to in § 9000.0120 Subp.1(E) of the proposed emergency rules;

I would also like one copy of the renewal application referred to in § 9000.0160 Subp.1 of the rules. Please let me know if any of these are not available, and if not, when they will be available.

Sincerely yours,

Rolf G. Peterson
Attorney at Law

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Board of Unlicensed Mental Health Providers

Robert Sullivan
Executive Director
(612) 643-2580

2700 University Avenue West
Suite 225
St. Paul, MN 55114

December 16, 1988

Rolf G. Peterson
Attorney at Law
536 Bloomington Avenue South
Minneapolis, Minnesota 55407

Dear Mr. Peterson:

Pursuant to your request, you are hereby advised that the Emergency Rules of the Board of Unlicensed Mental Health Service Providers have been submitted to the Attorney General on this date. The Notice of Submission is enclosed.

I am also enclosing, pursuant to your request, a copy of the Adopted Rules, as well as a copies of the comments which resulted in modifications.

As soon as application materials are available, your request for applications and authorizations of release of information will be forwarded to you.

In the interim, if there is other information you desire, please feel free to contact us.

Sincerely yours,

Robert A. Sullivan
Executive Director

RAS:EKP
Enclosures: Rules as adopted
Notice of Submission
Comments: Beer
Vikmanis
Tilley

Board of Unlicensed Mental Health Providers

Robert Sullivan
Executive Director
(612) 643-2580

2700 University Avenue West
Suite 225
St. Paul, MN 55114

November 22, 1988

Mr. Rolf G. Peterson
Attorney at Law
3536 Bloomington Avenue South
Minneapolis, MN 55407

Dear Mr. Peterson:

I acknowledge receipt of your letter of November 12, 1988, and your desire to be notified when the revisions of the rules governing the Board of Unlicensed Mental Health Service Providers are modified and submitted to the Attorney General. You will be notified of such submission, together with any modifications.

The application forms and authorizations for release of information are presently in the process of being developed, and will be forwarded to you as soon as they are approved by the Board. We expect that all forms and documentation back-up will be available shortly after January 1, 1989. In the interim, if I can be helpful with any other information please do not hesitate to let me know.

Sincerely,

Robert Sullivan
Executive Director

RS/lj

MJM
INTERVENTION AND COUNSELING SERVICES

November 18, 1988

Board of Unlicensed Mental Health
Service Providers
Park Colonial Office Building
2700 University Ave. West Suite 225
St. Paul, MN. 55114

Re: The matter of proposed adoption of emergency rules of the State Board of Unlicensed Mental Health Services

We are writing to express our opposition to the statement found in 148B.46, Mental Health Client Bill of Rights, B.

It is our belief that at the current time we are required to display our credentials, and make clients aware of what these credentials represent. Paragraph B is a negative statement which "implies" a level of incompetence amoung chemical dependency services providers. We therefore, would like to see this removed from the rule.

We also feel a more professional, positive name for the board could be selected other than B.U.M.P.

As we in the field are currently regulated by the Institute of Chemical Dependency Professionals of Minnesota, as well as Federal and State regulations, we do not understand the need for creation of another agency to duplicate regulations along with additional costs. We believe this is a function of I.C.D.P.M.'s Ethic's Committee.

Under 9000.0100 Subp 4

We object to the term "Mental Health Services". This term does not give credit to, but takes away awarness, and acknowledgement of the chemical dependency field.

We truly believe that chemical dependency and mental health are two seperate disciplines/philosophies, and should remain as such.

Sincerely,

Michael J. Marcotte, C.C.D.P.

Michael J Marcotte

Beverly J. Everson, C.C.D.C.-R

Beverly J Everson

1304 University Avenue Northeast, Minneapolis, Minnesota 55413
612 • 331-1006

AFSCME
American Federation of State, County and Municipal Employees
COUNCIL 6, AFL-CIO
265 Lafayette Road South
St. Paul, Minnesota 55107-1683
Telephone:
(612) 291-1020
s 19
Representing State and University Employees

November 21, 1988

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Office of Social Work / Mental Health Board

Mr. Robert Sullivan, Executive Director
Board of Unlicienced Mental Health Service Providers
2700 University Avenue West, Suite 225
St. Paul, MN 55115

Dear Mr. Sullivan:

AFSCME, Council 6, AFL-CIO is the exclusive representative of certain state employees and University of Minnesota employees who may be subject to the proposed emergency rules governing unlicienced mental health service providers. For your consideration, our Union offers the following arguments, comments and suggested changes.

Regarding the overall policy of including public employees under the proposed emergency rule: Laws of Minnesota Chapter 148A as amended make exceptions for the licensing of public sector social workers based on considerations by the legislature that public sector mental health employees are already subject to sufficient regulation to make additional oversight unnecessary. It is out position that this very same rationale applies with equal clarity to other public employees who offer mental health services through a public agency or program. Therefore, exception should be made in the proposed emergency rules for city, county, state agency and any affected University mental health employees.

Regarding the inclusiveness of public sector employees under the proposed emergency rule: If the proposed rule does apply to certain public employees, then classes of public employees who are non-professional by bargaining unit, even though they may have mental health titles or classifications, should be exempted from coverage. Minnesota Statutes 1488.40 references "mental health service providers" and defines "mental health services" in terms of "the professional treatment, assessment, or counseling of another person . . ." Therefore, public employees who are by employment classification non-professional, or other than professional despite their specific classifications, should be exempt.

Regarding public employees who provide direct care for the mentally ill, developmentally disabled, geriatric and chemically dependent clients: Public sector employees whose duties involve work with a developmentally disabled clientele should be excluded from the proposed rule because by definition, employment duties involve care and treatment that is educative, not a mental health service, per-se. Public employees whose duties are essentially those of providing maintenance to clients, or who help implement but don't design or

monitor the provision of mental health services should be exempt.

Regarding disclosure of employment records: 9000.0140, subpart 1.C. and D. require applicants to disclose disciplinary actions taken against the applicant. These parts should be read as not including disciplinary action taken by an employer.

Please contact me if you have any questions.

Sincerely,

Tom Beer

Tom Beer, Lobbyist
AFSCME Council 6, AFL-CIO

TB:nz

cc: file

MINNESOTA HOSPITAL PSYCHIATRY COALITION

"Leadership through Collaboration"

November 22, 1988

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NOV 28 1988

Office of Social Work / Mental Health Boards

Mr. Robert Sullivan
Office of Social Work
and Mental Health Boards
2700 University Avenue W #225
St. Paul, Minnesota 55114

Dear Mr. Sullivan:

This letter is in follow-up to comments I made on behalf of the Minnesota Hospital Psychiatry Coalition at the November 14, 1988 meeting held at the Board Office. Thank you for the opportunity to discuss our concerns with regard to Minnesota Statute Chapter 148B, particularly 148B.40 through 148B.48 which discusses the registration and regulation of Unlicensed Mental Health Service Providers.

Community-based, acute care hospitals with specialized psychiatric inpatient services, employ a variety of unlicensed mental health workers to assist with carrying out the inpatient treatment plan as approved by the patient's psychiatrist. These workers participate in patient observation, therapeutic group activities, individual counseling and behavioral intervention, but they do so as part of a treatment team and under the supervision of licensed professionals. These professionals include psychiatrists, psychologists, and registered nurses. There is always a licensed professional providing on-site supervision of the individual's treatment program on a 24-hour-a-day basis. Treatment services are provided in State licensed hospital facilities where the Clients Bill of Rights is already distributed and posted as required.

As currently worded, it is not completely clear whether the present statute's definition of mental health services (148B.40 Subd.4) would include the services provided by these hospital staff persons. We believe they should be clearly excluded, since they are neither responsible for the professional assessment or prescribed treatment for the patient, and their patient contact is performed under the direction of the treating psychiatrist and other on-site licensed professionals within a licensed hospital facility.

Establishing a Board and filing system to account for and provide State oversight of the unregistered and unlicensed mental health therapists engaged in independent practice, can be seen as a way of protecting unwary consumers. However, hospital employees are already under the oversight of professionals and facilities licensed by the State. Requiring these workers to register yearly and pay a suggested $50.00 fee will only contribute to higher health care costs without significantly contributing to increased consumer or patient protection.

Sincerely,

Mary Ganzel
Executive Director

MG/jp

800 EAST 28th STREET AT CHICAGO AVENUE ▲ MINNEAPOLIS, MINNESOTA 55407 ▲ (612) 874-5175

Minnesota Coalition for Battered Women

November 21, 1988

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NOV 28 1988

Office of Social Work/Mental Health Board

Robert Sullivan, Executive Director
Board of Unlicensed Mental Health Service Providers
2700 University Avenue West, Suite 225
St. Paul, MN 55114

Dear Mr. Sullivan,

I am writing on behalf of the Minnesota Coalition For Battered Women - a membership organization of programs throughout the state which provide services to battered women and their children.

After reviewing the proposed emergency rules of the State Board of Unlicensed Mental Health Service Providers, I wish to clarify for the Board the kinds of services our member programs provide to battered women and their children. Since the proposed emergency rules include references to counselors and references to physical abuse, I wish to clarify that the majority of employees in battered women's programs are not counselors and do not provide mental health services as defined in statute and the proposed rules.

Most battered women's programs provide emergency assistance, temporary safe shelter, transportation, information about options, advocacy, referral, educational groups and peer support groups. The majority of employees in these programs statewide are "advocates". Their role is to assist a battered woman in exploring medical, legal and social service options available to her and to advocate on her behalf, if needed, within the medical, legal and social service systems. Advocates do not provide mental health services - they do not assess, diagnose, treat, counsel, or provide therapy. Advocates do not purport to provide mental health services. If a battered woman identifies a need for mental health services, then an advocate refers her to available counselors and therapists, just as an advocate refers a battered woman in need of legal representation to an attorney.

A small number of battered women's programs do, however, provide mental health services. They employ counselors or therapists and clearly state that they offer mental health services to the battered women and children they serve. These programs clearly differentiate between persons serving as advocates and persons providing counseling or therapy.

I make these clarifications because our coalition has concerns about how these proposed rules may impact on battered women's programs. We certainly understand that any programs which employ counselors or therapists who provide mental health services to battered women and their children would be required to file with your Board, but we are concerned that advocates

continued

for battered women may also be expected to file. We would oppose this because it would name advocates as providing mental health services - something which they do not do.

In the early development of battered women's services in Minnesota, conscious and deliberate choices were made to create advocacy services, not mental health services. We understood that as battered women we were victims of a crime who needed support and information about our legal rights. And we needed advocates to help us through the criminal justice and other systems. We also avoided creating mental health services because we believed it would further perpetuate the societal myth that as battered women we were psychologically ill - masochistic or in other ways caused or attracted the violence perpetrated on us.

I also wish to explain that our coalition supports the intent of the legislation which established the Board of Unlicensed Mental Health Service Providers. We understand that intent to be the provision of protection for consumers of mental health services. Our concern with the proposed rules arises not from a desire to avoid a central registry of service providers, but to clearly avoid a definition which does not apply to the work we do.

To solve any potential problems in this area, I recommend changing the proposed rules on page 2, adding after line 9 another line to read: (3) primarily advocacy services.

I would appreciate hearing from you regarding these matters. As I mentioned, the intent of the statute and proposed rules is one which our coalition supports. I trust we can work together on refining the rules to best serve the people of Minnesota.

Sincerely,

Julie Tilley

Julie Tilley, Program Coordinator
MN Coalition For Battered Women

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STATE OF MINNESOTA
Department of Human Services

Date: November 29, 1988

To: Allyson Ashley
Assistant Commissioner

Robert A. Sullivan, Executive Director
Board of Unlicensed Mental Health Service Providers

Robert York
Assistant Commissioner

From: Edward R. Skarnulis, Ph.D., Director
Division for Persons with Developmental Disabilities

Phone: 296-9139

RE: Comments on Proposed Minnesota Rule, parts 9000.0050 to 9000.0200 [Emergency]

The purpose of this proposed rule, and its contents in general, appear to be a positive step, insofar as its application may affect the quality of services for persons with developmental disabilities.

I am concerned with the definition of "mental health services" in part 9000.0100, subpart 4 and with items G and H, subpart 5 of part 9000.0100. It seems that contents of these subparts could be interpreted to require filing with the board by significant numbers of direct care providers of services for persons with developmental disabilities in a variety of settings.

If such is the intent, possible fiscal and program effects should be noted. It may be that the $50.00 filing fee and $50.00 annual renewal fee for each person will be paid by their employer(s) and will be incorporated in overall cost of care. Further, it may be that the filing procedure leading to "acknowledgment of filing" (part 9000.0130 [emergency]) will, by processing time required, delay access to services.

In the case of waiver, semi-independent living, ICF/MR and DAC services for persons with developmental disabilities, it is likely that supervision, care and training of service recipient will often require actions by direct care staff which falls under the definition of "Mental Health Services". Are such staff to be classified as mental health service providers?

I propose that in those circumstances where staff qualifications for services to persons with developmental disabilities are already set forth in rule or law, those service providers meeting the qualifications should be excluded under part 9000.0110 [emergency], subpart 2.

Perhaps the broader question to be considered is whether it is appropriate to so broadly define mental health services as this rule appears to do. It seems that further discussion of this issue to clarify application of the definition would be helpful, should the rule be adopted.

OFFICE OF SOCIAL WORK AND MENTAL HEALTH BOARDS

2700 University Avenue W. #225 • St. Paul, MN 55114 • 612/643-2580

TO: Bruce Reddeman, Director
Budget Operations & Support
Department Of Finance

FROM: Thomas F. Vesely Thomas F. Vesely
Business Manager

SUBJECT: Approval of Fees

In accordance with Minnesota Statutes, Chapter 148B, Section 148B.17 and Chapter 214, Section 214.06, I am requesting your approval of the following fee for the Board of Unlicensed Mental Health Service Providers:

Filing Fee	$50.00

This fee is being included in the emergency rules of this board and is set to recover the estimated costs incurred during the eighteen month period ending June 30, 1989.

Your attention to this matter is greatly appreciated.

APPROVED:

B. Reddeman
Bruce Reddeman

7-19-88
Date

cc: R. Sullivan

RECEIVED
JUL 20 1988
Office of Social Work / Mental Health Boards

1551

Authority

The dept has authority to adopt rules. The statutes do not give authority to adopt "emergency" or "permanent" per se, just "Rules" in general.

Findings

They dont state that the rule is needed & reasonable

Rule

See AG Copy for comments

Fees are involved.

Documents

Board's Authorizing Resolution is missing

Rec Board's Resolution Adopting is missing

I have called & requested them.

AG Copy

Board of Unlicensed Mental Health Service Providers

Adopted Emergency Rules Relating to Unlicensed Mental Health Service Providers

Rules as Adopted

9000.0050 [Emergency] PURPOSE.

Parts 9000.0100 to 9000.0200 [Emergency] establish filing procedures for unlicensed mental health service providers. The purpose of the filing procedures is to establish a central registry of persons who provide or purport to provide mental health services.

9000.0100 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 9000.0100 to 9000.0200 [Emergency], the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person who applies to file as a mental health service provider with the board.

Subp. 3. **Board.** "Board" means the Board of Unlicensed Mental Health Service Providers.

Subp. 4. **Mental health services.**

A. "Mental health services" means the provision of any assessment, diagnosis, treatment, counseling, or therapy including guidance, pastoral, addiction, abuse, psychotherapy, hypnotherapy or hypnoanalysis, personal analysis, or other services for remuneration.

Mental health services are services which are designed to alleviate symptoms, reduce disturbed patterns of behavior, enhance intrapsychic awareness, and increase ability of the individual to adapt to and cope with internal and external stress.

Mental health services must use interpersonal, intrapsychic, or behavioral methods. Mental health services may be provided to individuals, families, or groups who are

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experiencing a problem behavior; have social, interpersonal, or intrapersonal dysfunction; or have cognitive or emotional distress, unwanted anxiety, or other mental or psycho-physiological problems which they seek to alleviate.

B. "Mental health services" does not include services that do not involve the services described in item A, and that are:

(1) primarily for entertainment; ~~or~~

(2) educational, informational, or spiritual~~.~~; <u>;</u>

<u>(3) primarily for client advocacy; or</u>

<u>(4) related to a custodial, direct care, or maintenance function.</u>

Substantial change? They are eliminating several classes of people who may have thought were included

C. "Mental health services" does not include the following areas of practice unless the primary focus is the provision of services as defined in item A: educational, vocational, or career guidance; and spiritual counseling or pastoral care of a congregation by clergy when the care is not related to the provision of mental health services described in item A.

Subp. 5. **Provider.** "Provider" means a person who provides or purports to provide mental health services for remuneration. Mental health service providers include the following:

A. counselor (crisis, eating disorder, compulsion, phobia or anxiety, drug and alcohol, mental health, pastoral, sexual and physical abuse);

B. social worker or marriage and family therapist, if the person is exempt from licensure under Minnesota Statutes, section 148B.28, subdivision 4, 5, or 6, or 148B.38;

C. school and college counselor if the counselor is providing mental health services as defined in subpart 4;

D. rehabilitation officer or counselor, if the person provides mental health services as defined in subpart 4;

E. therapist (child care, educational, new age, holistic, dance, music, or recreational if the therapist is providing mental health services as defined in subpart 4);

F. hypnotist or hypnotherapist;

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G. behavior modification practitioner or analyst; and

H. any other person, regardless of title, providing mental health services for remuneration who is not exempt from filing, or is not one of the licensed providers described in Minnesota Statutes, section 148B.40, subdivision 3.

Subp. 6. **Remuneration.** "Remuneration" means a fee, salary, gift, reward, compensation, or the expectation of payment for providing mental health services.

Subp. 7. **Variance.** "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

9000.0110 [Emergency] REQUIREMENT TO FILE.

Subpart 1. **Who must file.** A provider of mental health services for remuneration must file with the board on the forms provided, unless specifically excluded from filing by law or by subpart 2.

The application for filing must contain the information required according to Minnesota Statutes, sections 148B.06, subdivision 3; and 148B.42.

Subp. 2. **Exclusions from filing.** Persons excluded from filing under subpart 1 include:

A. a person who is specifically excluded from the definition of mental health service provider in Minnesota Statutes, section 148B.40, subdivision 3;

B. a person who is not providing mental health services as defined in part 9000.0100, subpart 4 [Emergency]; and

C. a person who is not providing mental health services for remuneration.

Subp. 3. **Requirement to file within 120 days.** A provider who is providing mental health services on the effective date of parts 9000.0100 to 9000.0200 [Emergency] must apply to file with the board within 120 days after the effective date of parts 9000.0100 to 9000.0200 [Emergency].

A provider who wishes to provide mental health services

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after the effective date of parts 9000.0100 to 9000.0200 [Emergency] must apply to the board and receive acknowledgment of the filing as provided in part 9000.0130 [Emergency] before providing services.

Subp. 4. **Late fees.** A provider who is providing mental health services when parts 9000.0100 to 9000.0200 [Emergency] become effective, and who fails to file within the 120-day limit in subpart 3, must pay the late filing fee and the regular filing fee specified in part 9000.0200 [Emergency].

9000.0120 [Emergency] PROCEDURE FOR FILING.

Subpart 1. **Application.** The application for filing must:

A. be made to the board on the forms provided by the board;

B. include an affirmation from the applicant that the statements are true and correct to the best of the applicant's knowledge and belief;

C. be accompanied by a nonrefundable application fee specified in part 9000.0200 [Emergency];

D. be accompanied by a written authorization for the board to make inquiries to the appropriate regulatory agency in any other state where the applicant has provided mental health service, about the applicant's malpractice history, if any;

E. be accompanied by a written authorization for the board to inquire about the malpractice history of the applicant at the National Clearing House for Licensure, Enforcement, and Regulation; and

F. be completed in sufficient detail for the board to determine if the applicant meets the requirements for filing. The board may ask the applicant to provide additional information necessary to clarify incomplete or ambiguous information submitted in the application.

Subp. 2. **Requirements to maintain current information.** A provider must notify the board within 30 days of occurrence of the following:

A. a change of name, address, or phone number (home

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and business);

B. a conviction of a crime against persons, or of a crime reasonably related to the provision of mental health service;

C. a settlement or award based on malpractice by the provider;

D. a physical or mental disability that may affect a provider's ability to practice; and

E. other factors that may reasonably be construed to affect public safety.

The board may take an adverse action under Minnesota Statutes, section 148B.45, against a filer who fails to meet the requirements of this notice.

9000.0130 [Emergency] ACKNOWLEDGMENT OF FILING.

When an applicant has satisfied the requirements of filing, the board will issue a written "Acknowledgment of Filing" to the applicant. The "Acknowledgment of Filing" is a written statement that the applicant has met the requirements for filing under parts 9000.0100 to 9000.0200 [Emergency]. This acknowledgment is personal and is not transferable to another person. It may not be displayed or published in any way.

9000.0140 [Emergency] DENIAL OF FILING.

Subpart 1. **Grounds for denial.** An application for filing may be denied by the board if:

A. the application does not contain the information necessary for filing as determined by Minnesota Statutes, sections 148B.06, subdivisions 1 to 3, and 148B.42, subdivision 1, and the applicant has not provided the required information within 60 days of application;

B. the applicant has presented false or misleading information on the application;

C. the applicant fails to fully disclose disciplinary actions taken in another state or province;

D. the applicant fails to notify the board of disciplinary action taken against the applicant by a licensing,

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certifying, or registering authority;

E. the applicant fails to authorize the board, as required in part 9000.0120 [Emergency], subpart 1, item D, to obtain information from the appropriate regulatory agency in any other state or foreign government where the individual has provided mental health services; or

F. the applicant has engaged in behavior that is specifically prohibited under Minnesota Statutes, section 148B.44.

Subp. 2. **Criminal conviction.** If the applicant has been convicted of a crime listed under Minnesota Statutes, section 148B.44, subdivision 1, paragraph (a) or (b), the board shall follow the standards and procedures in Minnesota Statutes, chapter 364, in determining whether to approve or deny an application for filing.

Subp. 3. **Notice of denial.** The board must notify an applicant, in writing, of a denial of an application for filing and the reasons for the denial. If the board denies an application for filing for reasons described in subpart 2, the board's notice must meet the requirements of Minnesota Statutes, section 364.05. An application submitted after a denial is a new application and must be accompanied by a new filing fee.

9000.0150 [Emergency] TERM OF FILING.

A filing is valid for one year. The year begins with the date on which the filing is acknowledged, according to part 9000.0130 [Emergency], or reissued after suspension, and ends one year later on the last day of the month in which the filing was acknowledged. The filing must be renewed each year.

9000.0160 [Emergency] RENEWAL OF FILING.

Subpart 1. **Renewal notice.** At least 31 days before the date the filing ends, according to part 9000.0150 [Emergency], the board shall send a renewal notice to the last known address of the provider. The notice must inform the provider of the requirement to renew the provider's filing and pay the current renewal fee by the deadline determined in subpart 2. If the

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provider does not receive the notice, the provider is still obligated to complete a renewal application and pay the renewal fee specified in part 9000.0200 [Emergency] within the deadline in subpart 2. The renewal application must be made on the forms provided by the board.

Subp. 2. **Renewal deadline.** The provider must submit to the board the renewal application and the annual renewal fee required in part 9000.0200 [Emergency]. The renewal application must be submitted or postmarked on or before the date the filing ends according to part 9000.0150 [Emergency]. The renewal application must include an affirmation by the provider that the statements on the form are true and correct to the best knowledge and belief of the provider.

Subp. 3. **Late fees.** A provider seeking renewal must pay the renewal fee and the late fee if the application for renewal is submitted or postmarked after the time period specified in subpart 2.

The late fee must accompany applications of practicing mental health service providers not made within 90 days of the ~~effective-date-of-this-part~~ expiration of filing.

Subp. 4. **Expiration of filing.** A filing expires if it is not renewed with the board within the deadline specified in subpart 2. A filing may be reissued following expiration only if the provider submits a new application and pays the regular and the late filing fees required in part 9000.0200 [Emergency].

9000.0170 [Emergency] BILL OF RIGHTS.

A provider of mental services must provide clients with the client's bill of rights as required under Minnesota Statutes, section 148B.46, including the right to choose freely among available providers. For clients incarcerated in a correctional facility or committed to an institution under a court order, "available providers" means those providers who provide services in the correctional facility in which the client is incarcerated or in the institution to which the client is committed.

9000.0190 [Emergency] VARIANCES.

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Subpart 1. **Grounds for variance; variance application.** A filer or applicant may petition the board for a time limited variance from provisions in parts 9000.0100 to 9000.0200 [Emergency], except for a provision that incorporates a statutory requirement. The petition must be in writing. The board shall grant a variance if the filer or applicant specifies alternative practices or measures equivalent to or superior to those in the rule in question and provides evidence that:

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

B. adherence to the rule would impose an undue burden on the filer or applicant; and

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

Subp. 2. **Information required in variance petition.** A petition for a variance must contain the following information:

A. the specific rule for which the variance is requested;

B. the reason for the request;

C. the alternative practices or measures that will be taken if a variance is granted;

D. the length of time for which a variance is requested; and

E. any other relevant information the board needs to properly evaluate the petition for the variance.

Subp. 3. **Variance compliance.** A filer or applicant who is granted a variance must comply with the alternative practices or measures specified in the petition for the variance.

Subp. 4. **Renewal of variance.** A variance shall be renewed upon reapplication for a variance, if the circumstances justifying the variance continue to exist. A filer or applicant who has been granted a variance must immediately notify the board of any material change in circumstances that justify the variance. A variance shall be revoked if there is a material change in the circumstances which justify the variance.

Subp. 5. **Burden of proof.** The burden of proof is upon the

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filer or applicant to demonstrate to the board, by a preponderance of the evidence, that the requirements in subpart 1 have been met.

Subp. 6. **Notice of board's decision.** The board shall notify the filer or applicant in writing when the board grants, denies, renews, or revokes a variance. The notice must state the reasons for the action. If a variance is granted, the notice shall specify the period of time for which the variance is effective, and must state the alternative practices or measures the filer or applicant must meet.

9000.0200 [Emergency] FEES.

Fees for filing as a mental health provider are as follows:

A. the fee for an application is $50;

B. the fee for renewal of filing is $50; and

C. the fee for late filing is $25.

Approved
by Revisor _____

Board of Unlicensed Mental Health Providers

Robert Sullivan
Executive Director
(612) 643-2580

2700 University Avenue West
Suite 225
St. Paul, MN 55114

DATE: December 30, 1988

TO: Ms. Julia Leppink
Assistant Attorney General

FROM: Robert A. Sullivan
Executive Director
Board of Unlicensed Mental Health Providers

SUBJECT: Withdrawal of Rules Regarding the Filing Fees of Unlicensed Mental Health Service Providers

Pursuant to our discussion, I am hereby withdrawing the Proposed Emergency Rules relating to fees of the Board of Unlicensed Mental Health Service Providers as submitted December 16, 1988, (Parts 9000.0100 to 9000.0200).

This withdrawal is necessitated by the probable rejection of the rules by your office based on the failure to comply with Minnesota Statutes 16A.128 (Notice of Fee Setting to the Senate and House Finance Committees).

A revisors clean copy, with references to fees deleted, is attached.

cc: Robert Holley
Assistant Attorney General

STATE OF MINNESOTA

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the matter of the Proposed Adoption of the Rules of the State Board of Unlicensed Mental Health Service Providers Governing the Filing of Unlicensed Mental Health Service Providers

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULES

SUPPLEMENTAL FINDINGS OF FACT

67. Since the procedures of Notification concerning fee setting outlined in Minnesota Statutes 16A.128 may have been omitted, it is reasonable and necessary to delete from the rules, references to fees.

68. This deletion does not constitute a substantial change to the rules as published.

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental Health Service Providers

12/30/86
Date

CERTIFICATE OF THE

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

AND

RESOLUTION ADOPTING EMERGENCY RULES

I, JoAnne Ossanna, do hereby certify that I am a member and the Chairperson of the Board of Unlicensed Mental Health Service Providers, 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 Unlicensed Mental Health Service Providers, duly and properly called and held on the 9th day of December, 1988, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> **"RESOLVED,** that the rules relating to filing of unlicensed mental health service providers are approved and adopted, pursuant to authority vested in the Board of Unlicensed Mental Health Service Providers by Minnesota Statutes, Chapter 148B.171 and 148B.40 to 148B.47. Robert A. Sullivan, executive director of the Board of Unlicensed Mental Health Service Providers, is authorized to sign the findings of fact, conclusions, and order adopting the rules, and further is authorized to modify the rules, if necessary to obtain the approval of the rules by the attorney general and to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this day of December 9, 1988.

JoAnne Ossanna
Chairperson

Member, Board of Unlicensed
Mental Health Service Providers

OFFICE OF SOCIAL WORK
AND MENTAL HEALTH BOARDS

2700 University Avenue W. #225 • St. Paul, MN 55114 • 612/643-2580

BOARD OF UNLICENSED MENTAL HEALTH PROVIDERS

CERTIFICATE OF THE BOARD OF
UNLICENSED MENTAL HEALTH PROVIDERS
AUTHORIZING RESOLUTION

I, JoAnne M. Ossanna, do hereby certify that I am a member and the chairperson of the State of Minnesota Board of Unlicensed Mental Health Providers, a board duly authorized under the 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 the Board of Unlicensed Mental Health Providers duly and properly called and held on the 8th day of July, 1988, that a quorum was present, and that a majority of those present voted for the resolution which has not been recinded or modified.

"RESOLVED, that Robert A. Sullivan, the executive director of the Board of Unlicensed Mental Health Providers, is hereby granted the authority and directed to sign and to give the Notice of the Board's Intent to Adopt Emergency rules governing the registration of unlicensed mental health providers, including but not limited to procedures and standards relating to mental health services, the definition of mental health services, setting fees, and disciplinary procedures, to all persons who have registered their names with the board for that purpose and publish the Notice and rules in the State Register, and to perform any and all acts incidental thereto."

IN WITHNESS WHEREOF, I have hereunto subscribed my name this 8th day of July, 1988.

JoAnne M. Ossanna
Chairperson

Kathryn Selseth-Dill
Board Member

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JUL 22 1988

Board of Unlicensed Mental Health Service Providers

Adopted Emergency Rules Relating to Unlicensed Mental Health Service Providers

Rules as Adopted

9000.0050 [Emergency] PURPOSE.

Parts 9000.0100 to 9000.0200 [Emergency] establish filing procedures for unlicensed mental health service providers. The purpose of the filing procedures is to establish a central registry of persons who provide or purport to provide mental health services.

9000.0100 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 9000.0100 to 9000.0200 [Emergency], the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person who applies to file as a mental health service provider with the board.

Subp. 3. **Board.** "Board" means the Board of Unlicensed Mental Health Service Providers.

Subp. 4. **Mental health services.**

A. "Mental health services" means the provision of any assessment, diagnosis, treatment, counseling, or therapy including guidance, pastoral, addiction, abuse, psychotherapy, hypnotherapy or hypnoanalysis, personal analysis, or other services for remuneration.

Mental health services are services which are designed to alleviate symptoms, reduce disturbed patterns of behavior, enhance intrapsychic awareness, and increase ability of the individual to adapt to and cope with internal and external stress.

Mental health services must use interpersonal, intrapsychic, or behavioral methods. Mental health services may be provided to individuals, families, or groups who are

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experiencing a problem behavior; have social, interpersonal, or intrapersonal dysfunction; or have cognitive or emotional distress, unwanted anxiety, or other mental or psycho-physiological problems which they seek to alleviate.

B. "Mental health services" does not include services that do not involve the services described in item A, and that are:

(1) primarily for entertainment; ~~or~~

(2) educational, informational, or spiritual~~.~~;

(3) primarily for client advocacy; or

(4) related to a custodial, direct care, or maintenance function.

C. "Mental health services" does not include the following areas of practice unless the primary focus is the provision of services as defined in item A: educational, vocational, or career guidance; and spiritual counseling or pastoral care of a congregation by clergy when the care is not related to the provision of mental health services described in item A.

Subp. 5. **Provider.** "Provider" means a person who provides or purports to provide mental health services for remuneration. Mental health service providers include the following:

A. counselor (crisis, eating disorder, compulsion, phobia or anxiety, drug and alcohol, mental health, pastoral, sexual and physical abuse);

B. social worker or marriage and family therapist, if the person is exempt from licensure under Minnesota Statutes, section 148B.28, subdivision 4, 5, or 6, or 148B.38;

C. school and college counselor if the counselor is providing mental health services as defined in subpart 4;

D. rehabilitation officer or counselor, if the person provides mental health services as defined in subpart 4;

E. therapist (child care, educational, new age, holistic, dance, music, or recreational if the therapist is providing mental health services as defined in subpart 4);

F. hypnotist or hypnotherapist;

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G. behavior modification practitioner or analyst; and

H. any other person, regardless of title, providing mental health services for remuneration who is not exempt from filing, or is not one of the licensed providers described in Minnesota Statutes, section 148B.40, subdivision 3.

Subp. 6. **Remuneration.** "Remuneration" means a fee, salary, gift, reward, compensation, or the expectation of payment for providing mental health services.

Subp. 7. **Variance.** "Variance" means board authorized permission to comply with a rule in a manner other than that generally specified in the rule.

9000.0110 [Emergency] REQUIREMENT TO FILE.

Subpart 1. **Who must file.** A provider of mental health services for remuneration must file with the board on the forms provided, unless specifically excluded from filing by law or by subpart 2.

The application for filing must contain the information required according to Minnesota Statutes, sections 148B.06, subdivision 3; and 148B.42.

Subp. 2. **Exclusions from filing.** Persons excluded from filing under subpart 1 include:

A. a person who is specifically excluded from the definition of mental health service provider in Minnesota Statutes, section 148B.40, subdivision 3;

B. a person who is not providing mental health services as defined in part 9000.0100, subpart 4 [Emergency]; and

C. a person who is not providing mental health services for remuneration.

Subp. 3. **Requirement to file within 120 days.** A provider who is providing mental health services on the effective date of parts 9000.0100 to 9000.0200 [Emergency] must apply to file with the board within 120 days after the effective date of parts 9000.0100 to 9000.0200 [Emergency].

A provider who wishes to provide mental health services

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by Revisor _____

after the effective date of parts 9000.0100 to 9000.0200 [Emergency] must apply to the board and receive acknowledgment of the filing as provided in part 9000.0130 [Emergency] before providing services.

Subp. 4. **Late fees.** A provider who is providing mental health services when parts 9000.0100 to 9000.0200 [Emergency] become effective, and who fails to file within the 120-day limit in subpart 3, must pay the late filing fee and the regular filing fee specified in part 9000.0200 [Emergency].

9000.0120 [Emergency] PROCEDURE FOR FILING.

Subpart 1. **Application.** The application for filing must:

A. be made to the board on the forms provided by the board;

B. include an affirmation from the applicant that the statements are true and correct to the best of the applicant's knowledge and belief;

C. be accompanied by a nonrefundable application fee specified in part 9000.0200 [Emergency];

D. be accompanied by a written authorization for the board to make inquiries to the appropriate regulatory agency in any other state where the applicant has provided mental health service, about the applicant's malpractice history, if any;

E. be accompanied by a written authorization for the board to inquire about the malpractice history of the applicant at the National Clearing House for Licensure, Enforcement, and Regulation; and

F. be completed in sufficient detail for the board to determine if the applicant meets the requirements for filing. The board may ask the applicant to provide additional information necessary to clarify incomplete or ambiguous information submitted in the application.

Subp. 2. **Requirements to maintain current information.** A provider must notify the board within 30 days of occurrence of the following:

A. a change of name, address, or phone number (home

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and business);

B. a conviction of a crime against persons, or of a crime reasonably related to the provision of mental health service;

C. a settlement or award based on malpractice by the provider;

D. a physical or mental disability that may affect a provider's ability to practice; and

E. other factors that may reasonably be construed to affect public safety.

The board may take an adverse action under Minnesota Statutes, section 148B.45, against a filer who fails to meet the requirements of this notice.

9000.0130 [Emergency] ACKNOWLEDGMENT OF FILING.

When an applicant has satisfied the requirements of filing, the board will issue a written "Acknowledgment of Filing" to the applicant. The "Acknowledgment of Filing" is a written statement that the applicant has met the requirements for filing under parts 9000.0100 to 9000.0200 [Emergency]. This acknowledgment is personal and is not transferable to another person. It may not be displayed or published in any way.

9000.0140 [Emergency] DENIAL OF FILING.

Subpart 1. **Grounds for denial.** An application for filing may be denied by the board if:

A. the application does not contain the information necessary for filing as determined by Minnesota Statutes, sections 148B.06, subdivisions 1 to 3, and 148B.42, subdivision 1, and the applicant has not provided the required information within 60 days of application;

B. the applicant has presented false or misleading information on the application;

C. the applicant fails to fully disclose disciplinary actions taken in another state or province;

D. the applicant fails to notify the board of disciplinary action taken against the applicant by a licensing,

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certifying, or registering authority;

E. the applicant fails to authorize the board, as required in part 9000.0120 [Emergency], subpart 1, item D, to obtain information from the appropriate regulatory agency in any other state or foreign government where the individual has provided mental health services; or

F. the applicant has engaged in behavior that is specifically prohibited under Minnesota Statutes, section 148B.44.

Subp. 2. **Criminal conviction.** If the applicant has been convicted of a crime listed under Minnesota Statutes, section 148B.44, subdivision 1, paragraph (a) or (b), the board shall follow the standards and procedures in Minnesota Statutes, chapter 364, in determining whether to approve or deny an application for filing.

Subp. 3. **Notice of denial.** The board must notify an applicant, in writing, of a denial of an application for filing and the reasons for the denial. If the board denies an application for filing for reasons described in subpart 2, the board's notice must meet the requirements of Minnesota Statutes, section 364.05. An application submitted after a denial is a new application and must be accompanied by a new filing fee.

9000.0150 [Emergency] TERM OF FILING.

A filing is valid for one year. The year begins with the date on which the filing is acknowledged, according to part 9000.0130 [Emergency], or reissued after suspension, and ends one year later on the last day of the month in which the filing was acknowledged. The filing must be renewed each year.

9000.0160 [Emergency] RENEWAL OF FILING.

Subpart 1. **Renewal notice.** At least 31 days before the date the filing ends, according to part 9000.0150 [Emergency], the board shall send a renewal notice to the last known address of the provider. The notice must inform the provider of the requirement to renew the provider's filing and pay the current renewal fee by the deadline determined in subpart 2. If the

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provider does not receive the notice, the provider is still obligated to complete a renewal application and pay the renewal fee specified in part 9000.0200 [Emergency] within the deadline in subpart 2. The renewal application must be made on the forms provided by the board.

Subp. 2. **Renewal deadline.** The provider must submit to the board the renewal application and the annual renewal fee required in part 9000.0200 [Emergency]. The renewal application must be submitted or postmarked on or before the date the filing ends according to part 9000.0150 [Emergency]. The renewal application must include an affirmation by the provider that the statements on the form are true and correct to the best knowledge and belief of the provider.

Subp. 3. **Late fees.** A provider seeking renewal must pay the renewal fee and the late fee if the application for renewal is submitted or postmarked after the time period specified in subpart 2.

The late fee must accompany applications of practicing mental health service providers not made within 90 days of the ~~effective-date-of-this-part~~ expiration of filing.

Subp. 4. **Expiration of filing.** A filing expires if it is not renewed with the board within the deadline specified in subpart 2. A filing may be reissued following expiration only if the provider submits a new application and pays the regular and the late filing fees required in part 9000.0200 [Emergency].

9000.0170 [Emergency] BILL OF RIGHTS.

A provider of mental services must provide clients with the client's bill of rights as required under Minnesota Statutes, section 148B.46, including the right to choose freely among available providers. For clients incarcerated in a correctional facility or committed to an institution under a court order, "available providers" means those providers who provide services in the correctional facility in which the client is incarcerated or in the institution to which the client is committed.

9000.0190 [Emergency] VARIANCES.

Approved
by Revisor _____

Subpart 1. **Grounds for variance; variance application.** A filer or applicant may petition the board for a time limited variance from provisions in parts 9000.0100 to 9000.0200 [Emergency], except for a provision that incorporates a statutory requirement. The petition must be in writing. The board shall grant a variance if the filer or applicant specifies alternative practices or measures equivalent to or superior to those in the rule in question and provides evidence that:

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

B. adherence to the rule would impose an undue burden on the filer or applicant; and

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

Subp. 2. **Information required in variance petition.** A petition for a variance must contain the following information:

A. the specific rule for which the variance is requested;

B. the reason for the request;

C. the alternative practices or measures that will be taken if a variance is granted;

D. the length of time for which a variance is requested; and

E. any other relevant information the board needs to properly evaluate the petition for the variance.

Subp. 3. **Variance compliance.** A filer or applicant who is granted a variance must comply with the alternative practices or measures specified in the petition for the variance.

Subp. 4. **Renewal of variance.** A variance shall be renewed upon reapplication for a variance, if the circumstances justifying the variance continue to exist. A filer or applicant who has been granted a variance must immediately notify the board of any material change in circumstances that justify the variance. A variance shall be revoked if there is a material change in the circumstances which justify the variance.

Subp. 5. **Burden of proof.** The burden of proof is upon the

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by Revisor _____

filer or applicant to demonstrate to the board, by a preponderance of the evidence, that the requirements in subpart 1 have been met.

Subp. 6. **Notice of board's decision.** The board shall notify the filer or applicant in writing when the board grants, denies, renews, or revokes a variance. The notice must state the reasons for the action. If a variance is granted, the notice shall specify the period of time for which the variance is effective, and must state the alternative practices or measures the filer or applicant must meet.

9000.0200 [Emergency] FEES.

Fees for filing as a mental health provider are as follows:

A. the fee for an application is $50;

B. the fee for renewal of filing is $50; and

C. the fee for late filing is $25.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Emergency Rules Relating to Unlicensed Mental Health Service Providers

AGENCY: Board of Unlicensed Mental Health Service Providers

MINNESOTA RULES: Chapter 9000

The attached rules are approved for filing with the Secretary of State

Kathleen M. Traxler
Assistant Revisor

STATE OF MINNESOTA

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

In the matter of the Proposed Adoption of the Rules of the State Board of Unlicensed Mental Health Service Providers Governing the Filing of Unlicensed Mental Health Service Providers

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULES

Notice of the Board of Unlicensed Mental Health Service Providers' intent to adopt the above-entitled emergency rules was published in the State Register on October 31, 1988 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.30 on October 28, 1988.

All persons were given the opportunity to submit written comment on the rule for at least 25 days after notice of proposed rulemaking.

The above-entitled matter came before the State Board of Unlicensed Mental Health Service Providers (Board) on the 9th day of December, 1988. After considering all written comments submitted to the Board, in accordance with statutory requirements regarding the adoption of emergency rules, the board being fully advised in the premises, hereby adopts the following findings of fact, conclusions and order.

FINDINGS OF FACT

1. The Board published its notice of intent to adopt the above-entitled rules, together with the proposed rules, in the State Register on October 31, 1988.

2. The notice of the board's intent to adopt the emergency rules afforded interested persons 25 days in which to submit data and views on the proposed rules. The comment period, as set out in the notice expired on November 28, 1988.

3. During the comment period, the board received written comments from interested persons or departments or agencies. They are as follows:

Julie Vikmanis; State of Minnesota,Department of Employee Relations, St. Paul
Mary Beth Curry; Minnesota Hospital Association, Minneapolis
Nancy Payne; Abbott-Northwestern Hospital, Minneapolis
Sharon A.M. Mertz; Abbott-Northwestern Hospital, Minneapolis

Rolf Peterson; Attorney, Minneapolis
Michael J. Marcotte & Beverly J. Everson; MJM, Minneapolis
Tom Beer; AFSCME - Council 6, St. Paul
Mary Ganzel; Minnesota Hospital Psychiatry Coalition, Minneapolis
Julle Tilley; Minnesota Coalition for Battered Women, St. Paul
Edward R. Skarnulis; Department of Human Services, St. Paul
(Comment received after close of open comment period)

In addition, the Board staff made changes to clarify language, and these comments are part of the record.

4. The board finds that certain of these comments have merit and has modified the rules accordingly. None of these modifications are substantive.

5. The modifications and the specific grounds for their adoption are as follows:

CLARIFICATION OF LANGUAGE AMBIGUITY

6. Page 2, Lines 10 to 12. [Part 9000.0100, **Definitions**, Subp. 4, item B. "Mental Health Services"]* The language could be misconstrued to include persons who by definition in subp. 4, item A, are not providing mental health services.

7. For clarity, it is reasonable to modify page 2, line 10 to add, "(3) Primarily for client advocacy; or"

8. For clarity, it is reasonable to modify page 2, lines 11 and 12, by adding "(4) related to a custodial, direct care, or maintenance function."

9. These modifications are not substantially different from the rules as proposed.
(Comment: Julle Tilley; Program Director, Minnesota Coalition for Battered Women
Tom Beer; Lobbyist, AFSCME Council 6, AFL/CIO)

DRAFTING ERROR

10. Page 7, line 20 [Part 9000.0160, subp.3, **Renewal of filing - late fees.**]* The present language could be confusing since it is not consistent with the title of the subpart.

11. To correct a drafting error, it is reasonable to modify page 7, line 20.

*Emergency Rules Draft, Dated 12/5/88

12. The proposed modification to page 2, line 20 is as follows:

> The late fee must accompany applications of practicing mental health service providers not made with 90 days of the ~~effective date of this part~~ expiration of filing.

13. This modification is consistent with the meaning of this subpart, which deals only with renewals of filing, and not with initial filings.

14. This modification is not substantially different from the rules as proposed.

Comment: Julie Vikmanis; Manager, State of Minnesota Department of Employee Relations)

CLARIFICATION OF LANGUAGE AMBIGUITY

15. Page 7, line 22 [Part 9000.0160, subp. 4. **Expiration of filing**]* The proposed language could be misconstrued by not specifying what deadline is referenced.

16. For clarity, it is reasonable to modify page 7, line 22.

17. The proposed modification to page 7, line 22, is as follows:

> ...deadline specified in subp. 2.

18. This modification is not substantially different from the rules as proposed.

(Comment: Board of Unlicensed Mental Health Service Providers) 12/5/88

OTHER COMMENTS

Julie Vikmanis; Minnesota Department of Employee Relations.

19. Ms. Vikmanis suggests in her comments, concern that the length of time to process applications may be a problem for state institutions because a potential provider would be required to have a "acknowledgement of filing" prior to beginning practice, ie: employment.

20. Minnesota Statutes 148B.42 requires all mental health service providers to file with the Board. The enabling legislation makes no provision for expedited filings and is, therefore, not an appropriate subject for emergency rules.

*Emergency Rules Draft, Dated 12/5/88

21. The Board, in practice, will make every effort to expedite the filings of applicants so that the potential for a delay between an offer of employment and "acknowledgement of filing" with the Board will not become a problem.

22. The Board has determined that the emergency rules should not be changed at this point to deal with the length of time for processing applications as the comment relates to a potential problem which is anticipated without experience. If, in practice, this becomes a problem it can be dealt with in the permanent rulemaking process.

23. The Board chooses not to modify the proposed rules in accordance with this comment. The proposed language in the rules is consistent with the Board's governing statute.

Mary Beth Curry; Minnesota Hospital Association.

24. Ms. Curry, in her comments, believes that:

a) social workers and marriage and family therapists are covered under other licensing statutes and, therefore, should be exempt under part 9000.0200, subpart 5 "Providers".

b) under part 9000.0110, subpart 2, a section be added to exempt "hospital, nursing home, city, county, or state agency social workers." She comments that they are covered under the social work scope of practice and, therefore, should be exempt.

c) the $50 fee filing fee, specified in part 9000.0200, is excessive when compared with other fees for professionals. She is also concerned that this cost will be passed on to the employer.

25. Although social workers are licensed under Minnesota Statutes 148B.18 and marriage and family therapists are licensed under 148B.30, the exclusions under Minnesota Statutes 148B.40, subdivision 3, for mental health service providers, extends only to persons who are duly licensed under the respective governing statutes. No authority exists in Minnesota Statutes for the Board to exempt these categories if they are not otherwise licensed.

26. The rules establish the filing fee at $50. The method of arriving at the fee is set forth in Minnesota Statutes 214.06, requiring that the Board recover its costs. A fee determination statement has been completed by the Board, submitted to the State Department of Finance, and approved. The approval is part of the record.

27. For comparison, the following fees and rule citations are listed:

Profession	Fee	Rule Citation
Dentistry	$75	3100.2000, subp. 1.A.
Pharmacy	$200	6800.1250, subp. 1
Medical Doctor	$100	5600.2500B
Chiropractors	$150	2500.1000
Marriage & Family Therapists	$100 - $300	5300.0360, A. & D.
Psychology	$125	7200.6100B.
Optometry	$50	6500.1800
Podiatry	$200	6900.0250A.

28. It can be seen from the above comparisons, that the fees for this Board are not out of line with fees charged by other boards.

29. The fee is assessed against the individual and nothing in the rules or statutes speak to the responsibility of any employer to reimburse their employees for that expense. It is noted, however, that it is possible that employers, through collective bargaining or other means, may assume this cost indirectly.

30. The Board believes that these comments have been adequately addressed, and does not choose to modify the proposed rules at this time. The proposed language in the rules is reasonable and consistent with the governing statutes, and within the Board's statutory authority. Ms. Curry's comments should be pursued legislatively.

Nancy Payne; Employment Manager, Abbott-Northwestern Hospital, Minneapolis.

31. Ms. Payne suggests in her comments the following changes:

a) Evaluate the purpose of the regulations and determine if the rules, in reality, provide a solution to the problems addressed.

b) Provide an exemption from filing for persons employed by accredited institutions.

c) Provide exemption from filing for unlicensed providers working under the supervision of licensed providers.

d) Reduce the filing fee to be in line with salary levels of filers.

e) Set up criteria to evaluate competencies and/or recognize competency levels of other certifying agencies.

32. Minnesota Statutes 148B.40 to .47 establishes the Board of Unlicensed Mental Health Service Providers and addresses its purposes. The Board believes that the purposes outlined in the Statutes have been satisfactorily addressed.

33. Minnesota Statutes 148B.40 to .47 provide no authorization for the Board to adopt rules exempting providers employed by accredited institutions. Further, in no place does the statute define the term "accredited institution."

34. Likewise, Minnesota Statutes 148B.40 to .47 provide the Board no authority to exempt persons working under the supervision of otherwise licensed providers.

33. The filing fee, as set by the rules, is governed by Minnesota Statutes 214.06, which requires the Board to recover its costs of operation through the assessment of fees reasonably related thereto. The methods outlined in the statute were followed and the $50 fee approved by the Department of Finance as required. A copy of that approval is attached to the rulemaking file. No authority exists in Minnesota law to reduce or adjust filing fees in accord with salary levels.

34. Minnesota Statutes 148B.41, subd. 4, prohibits the Board from adopting "... rules that restrict or prohibit persons from providing mental health services on the basis of education, training, experience, or supervision; or that restrict the use of any title."

35. In a sense, competency is addressed by the Code of Conduct in Minnesota Statutes 148B.44. Further, the commentor does not define what is meant by "competency". However, the term is taken to mean the provision which is often included in licensure statutes and rules, which set up education, training, and experience standards, prior to the issuance of licensure or registration.

36. The request by the commentor for specific competency criteria to be established, is not within the authority of the Board, and is, in fact, prohibited.

37. The Board chooses not to modify the proposed rules in accordance with these comments. The proposed language in the rules in consistent with the Board's governing statute. Ms. Payne should seek legislative policy change.

Sharon A. M. Mertz; Acting Administrator, Behavioral Health Services, Abbott-Northwestern Hospital, Minneapolis.

38. Ms. Mertz makes the following comments:

a) Mental health providers, employed by hospitals, should be exempt.

b) The fee is too large for purposes of registration and it is unclear who would be responsible for the payment of the filing fee for employees of institutions.

c) Objects to the filer being unable to display the "Acknowledgement of Filing".

39. Minnesota Statutes 148B.40 to .47, giveS no authority for the Board to adopt rules exempting employees of hospitals.

40. The methods of establishing fees is governed by Minnesota Statues 214.06. Those procedures have been followed by the Board.

41. The Board believes that the rules are sufficiently clear: the individual provider is responsible for payment of the fee. In no way do the rules suggest or imply that the employer of the provider be responsible for the payment of fees.

42. While the Board recognizes that the provision of Minnesota Statutes 148B.43, which prohibits filers from displaying or advertising their "Acknowledgement of Filing", may be inconsistent with the purpose of this chapter,(ie: Protection of the Public), the Board is without statutory authority to change this by adoption of rules.

43. The Board chooses not to modify the proposed rules in accordance with these comments. The proposed language in the rules is consistent with the Boards governing statute. Ms. Mertz's comments should be pursued as a matter of legislative policy.

Rolf G. Peterson; Attorney at Law, Minneapolis.

44. Mr. Peterson makes no comment concerning proposed changes in the rules in his letter. Response is included as it was received during the open comment period.

Michael J. Marcotte & Beverly J. Everson; M.J.M. Intervention and Counseling Services, Minneapolis.

45. Mr. Marcotte and Ms. Everson object to the following parts of the rules:

a) 148B.46, Mental Health Bill of Rights, paragraph B.

b) The name of the Board, "BUMP".

c) The term "mental health services", holding that chemical dependency services are not mental health services.

46. The commentors' reference to the "Bill of Rights" is a section of Minnesota Statues 148B.46. The Board does not have authority to change Minnesota Statutes as the comment requests.

47. "BUMP" is an acronym adopted by certain groups to describe the Board of Unlicensed Mental Health Service Providers. This is not the official designation by statute. The Board is without authority to change the official name of the Board, since it is set in Minnesota Statutes 148B.41.

48. The term "mental health services" is set by Minnesota Statutes 148B.40, subd. 4. The Board believes it is reasonable to include chemical dependency counselors under the definition of Mental Health Service,as chemical dependency services are clearly designed to "assess" and "counsel" persons for "behavioral" or "social dysfunction". The Board also believes that it is reasonable to conclude that the intent of Minnesota Statutes is to include chemical dependency counselors by reason of the fact that 148B.41, subd. 1, which outlines the composition of the Board, provides for two chemical dependency counselors to be members.

49. The Board chooses not to modify the proposed rules in accordance with these comments. The proposed language in the rules, is consistent with the Board's governing statute. Mr. Marcotte's and Ms. Everson's comments should be pursued as a matter of legislative policy.

Tom Beer; AFSCME Council 6, St. Paul.

50. Mr. Beer makes the following comments:

a) Exemption from filing should be made in the proposed emergency rules for city, county, and state agency, and any affected university mental health employees.

b) Public employees in non-professional job classifications should be exempt from filing.

c) The parts of the rules relating to professional disciplinary proceedings should not include disciplinary actions taken by an employer.

51. The first comment of the writer is somewhat confusing, but appears to ask that the provisions of Minnesota Statutes 148B.28, subd. 4, excluding city, county, and state agency social workers, should apply to Minnesota Statutes 148B.40 to .47 (The Board of Unlicensed Mental Health Service Providers).

52. Under the rules of strict construction of statutes (Minnesota Statutes 645.19), it is reasonable to conclude that a narrow construction of the statute does not make Minnesota Statutes 148B.28 applicable to 148B.40 to .47.

53. Therefore, it is reasonable to conclude that no authority exists for the Board to adopt rules excepting the categories of providers referenced by the comment, if they are providing mental health services as defined and are not otherwise exempt.

54. Minnesota Statutes 148B.40 to .47 grants no authority to exempt persons covered by civil service or any other employment classifications. It is reasonable to conclude that persons in these classifications would be required to file with the Board, if they are providing mental health services as defined by the statutes and the rules as proposed, and are not otherwise exempt.

55. The Board believes that part 9000.0140, subp. 1, items C and D, clearly refer to disciplinary actions taken by a licensing, certifying, or registering authority. In no way does this section specify the disclosure of employment records. It is noted, however, that, even if this section did specify the reporting of employee records, the Board believes that Minnesota Statutes 148B.07, subd. 2 may, in some cases, "...require the employer to report, to the Board, actions which "might constitute grounds for disciplinary or adverse action...." on the part of regulated individuals.

56. The Board does not choose to modify the proposed rules in accordance with these comments. The proposed language in the rules is consistent with the Board's governing statutes. The Board further believes that the language of the rules is clear. The comments made by Mr. Beer should be pursued as legislative policy.

Mary Ganzel; Executive Director, Minnesota Hospital Psychiatry Coalition, Minneapolis.

57. Ms. Ganzel makes the following comments:

a) That exemption from filing should be made for persons who are practicing under the supervision of other licensed professionals. It is unclear whether she requests a change in 148B.40, subd. 4 or that the Board should adopt rules to make this exclusion.

b) The suggested $50 fee will contribute to higher health care costs without significantly contributing to increased consumer or patient protection.

58. Minnesota Statutes 148B.40, subd. 4 as referenced by the commentor, does not give the Board authority to adopt rules excluding providers who practice under the supervision of otherwise licensed providers.

59. Fees, as stated in earlier responses, are governed by Minnesota Statutes 214.06. They are approved by the State Department of Finance. The approval is on file.

60. It may well be a point that the $50 fee could indirectly affect the cost of health care without substantially contributing

to increased consumer or patient protection. However, this is an issue which should be left to legislative policy. It is not the subject of rulemaking.

61. The Board chooses not to modify the proposed rules in accordance with these comments. The proposed language in the rules is consistent with the Board's governing statute. Ms. Ganzel's comments should be pursued legislatively.

Julle Tilley; Program Coordinator, Minnesota Coalition for Battered Women.

62. Ms. Tilley makes the following comments:

a) That "advocates" employed by battered women's shelters are not mental health providers as defined. They should be excluded.

63. These comments were adopted by the Board as reasonable to clarify the meaning of the rule without introducing a substantial change.

Edward R. Skarnulis, Ph.D.; Director, Division for Persons With Developmental Disabilities, Minnesota Department of Human Services, St. Paul.

(Although Dr. Skarnulis' comments were received after the open comment period, they are included as they appeared clearly to have been intended to be included as official comments.)

64. Dr. Skarnulis' comments on the following:

a) Concern that significant numbers of direct care providers, for persons with developmental disabilities, would be required to register. They should be exempt if their qualifications are governed by other parts of Minnesota rules.

b) That the $50 filing fee may become a cost to the employer.

c) That processing time of the "acknowledgement of filing" part 9000.0130, will cause delay in access to services.

65. Minnesota Statutes 148B.40 to .47 does not give the Board authority to adopt rules specifically exempting providers, whose qualifications may be included under other rules or statutes, unless they are specifically exempt under Minnesota Statutes 148B.40, subd. 3.

66. The Board chooses not to modify the proposed rules in strict accordance with this comment. However it is reasonable to modify the rules as stated in paragraphs 8 and 9. The proposed language in the rules is consistent with the Board's governing statutes.

CONCLUSIONS

1. The Board published and served adequate notice of the intent to adopt the proposed emergency rules.

2. The Board has demonstrated its statutory authority to adopt the proposed emergency rules and has fulfilled all other substantive and procedural requirements of the statutes and rules.

3. The changes that are being made in the proposed emergency rules do not result in rules which are substantially different from those as published in the State Register.

4. Any findings which might properly be termed conclusions, and any conclusions which might properly be termed findings, are hereby adopted as such.

ORDER

NOW, THEREFORE, IT IS ORDERED that the rule identified as Proposed Emergency Rules Relating to Unlicensed Mental Health Service Providers as modified is adopted this 9th day of December, 1988, pursuant to authority vested in the Board of Unlicensed Mental Health Service Providers by Minnesota Statutes, section 148B.171.

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental Health
Service Providers

Board of Unlicensed Mental Health Providers

Robert Sullivan
Executive Director
(612) 643-2580

2700 University Avenue West
Suite 225
St. Paul, MN 55114

Rec'd 12/16/88 KMD

December 16, 1988

Ms. Martha Casserly
Assistant Attorney General
515 Transportation Building
St. Paul, Minnesota 55155

Dear Ms. Casserly:

Herewith, are the proposed emergency rules of the Board of Unlicensed Mental Health ~~Service Providers~~ for your review.

The record contains the Certification of Assistant Attorney General Robert Holley, the public comments documents, the Findings of Fact, Conclusions, and Order adopting the rules, and copies of the rules as published and as modified.

Thank you for your consideration of the file.

Sincerely,

Robert A. Sullivan
Executive Director
Board of Unlicensed Mental Health
Service Providers

RAS:ekp