

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: January 28, 1991

TO: David Sherwood-Gabrielson
Rehabilitation Review Panel and
Medical Services Review Board

FROM: CHARLENE HATCHER
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-9422

SUBJECT: In the Matter of the Adopted Rule Relating to Joint Rules of Practice of the Medical Services Review Board and the Rehabilitation Review Panel

The above-referenced rule has been approved as to its legality by the Attorney General on January 22, 1991.

Enclosed is your 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, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance 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.

CH:sc
Enclosures
cc: Julie Leppink
William Brown, Chief Judge
MaryAnn Hruby

Charlene please look at my sheet early so we can decide if their findings have to be redone

CH

RULE REVIEW CHECKLIST

File No. 1780
DATE RECEIVED 1-8-91
REVIEW DATE 1-17-91
DUE DATE 1-22-91
(DIS)APPROVED 1-22-91
WITHDRAWN _____

Docket No. 15, 8889.0613
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 1/11/91
REVISOR (DIS)APPROVED 1-15-91
FILED W/SEC. OF STATE 1-25-91
RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
September 11, 1989 Date published in State Register
_____ Comments

_____ Petition for Adoption of a Rule

✓ Board's Authorizing Resolution
October 18, 1989 Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
176.102 subd 3b Statutory Authority 176.103 subd 3(c)
_____ Small Business Statement
_____ Expenditure of public money statement
9-28-90 Signature

✓ Statement of Need and Reasonableness (if applicable)
✓ Small Business Statement
_____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
10-18-90 Dated 30/25 days before adoption
_____ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
October 22, 1990 Date 30/25 days before adoption

✓ 180-day deadline from:
NA Effective date of law requiring rule (14.12) (both rules) amendments don't apply not mandatory
✓ end of comment period (§ 14.26) (rules without hearing)
_____ effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
December 6, 1990 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
December 20, 1990 Date

_____ Written Requests, Submissions or Comments - no comments called for comments

_____ Declaration of Attorney
Julie Leppink Name of SAAG representing agency

_____ Notice of Submission to Attorney General (if applicable)

_____ Affidavit of Mailing Notice to Attorney General (if

Department of Labor and Industry

Adopted Permanent Rules Relating to Joint Rules of Practice of the Medical Services Review Board and the Rehabilitation Review Panel

Rules as Adopted

5217.0300 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5217.0300 to 5217.1000, the terms defined in this part have the meanings given them.

Subp. 2. **Board.** "Board" means the Medical Services Review Board created by Minnesota Statutes, section 176.103, subdivision 3.

Subp. 3. **Chair.** "Chair" means the member selected by the board or panel to accomplish or delegate the administrative tasks of the board or panel and to take action as directed.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Labor and Industry.

Subp. 5. **Department.** "Department" means the Department of Labor and Industry.

Subp. 6. **Executive secretary.** "Executive secretary" means the person assigned to the board or panel by the department to communicate with the parties concerning the procedural aspects of cases and to receive documents filed by the parties.

Subp. 7. **Panel.** "Panel" means the rehabilitation review panel created by Minnesota Statutes, section 176.102, subdivision 3.

Subp. 8. **Party.** "Party" means each person named as a party in the notice of hearing or later intervening as a party.

Subp. 9. **Person.** "Person" means an individual, business entity, or governmental unit.

Subp. 10. **Quorum.** "Quorum" means a majority of the total voting members.

Subp. 11. **Voting members.** "Voting members" means:

Approved
by Revisor _____

A. a member of the board or panel who is physically present at the meeting and who has not been disqualified; or

B. an alternate who has filled a vacancy or an absence.

Board alternates shall fill vacancies or absences for members as they appear for the meeting. The chair shall decide which alternates will serve as members if there is a controversy. Alternates shall fill vacancies according to their statutory classification.

5217.0400 ACTION.

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Any member of the board or panel shall voluntarily disqualify himself or herself and withdraw from any case in which the member cannot accord a fair and impartial hearing or consideration. At least ten days before the hearing, at which the board or panel votes to render a final decision, any party may request the disqualification of any board or panel member by filing an affidavit which states with particularity the grounds

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upon which it is claimed that a fair and impartial hearing cannot be accorded. The affidavit shall be filed with the executive secretary of the board or panel. If a party requests that a member be disqualified, the disqualification issue shall be determined by majority vote of the other members present even if the other members do not constitute a quorum.

5217.0800 CONTESTED CASES.

Subpart 1. **Written exceptions.** The parties may file written exceptions to the administrative law judge's report with the executive secretary of the board or panel no later than 20 calendar days after service and filing of the administrative law judge's report.

Written exceptions shall be accompanied by an affidavit stating that service of a copy of the written exceptions has been made upon all other parties to the action. In matters before the board, the original and 21 copies of written exceptions and arguments shall be filed with the executive secretary of the board; in matters before the panel, the original and 15 copies shall be filed with the executive secretary of the panel.

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5217.0900 SETTLEMENT AGREEMENTS.

Approval or disapproval of proposed settlement agreements that come before the board or panel shall be by affirmative vote of at least a majority of voting members present so long as there is a quorum. The chair shall execute approved settlement agreements on behalf of the board or panel.

5217.1000 DECISION AND ORDER AND APPEALS.

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Final decisions of the board or panel in a contested case may be appealed to the Workers' Compensation Court of Appeals pursuant to the procedures in Minnesota Statutes, section 176.421, except that all appeals shall be filed through the executive secretary of the board or panel.

Approved
by Revisor _____

APPROVED AS TO LEGALITY

January 22, 1991

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Charlene H. Hatch
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 25 1991 NK

Joan Anderson Growe
Secretary of State

3:30pm

176.102 subd 3(b)

Recommendations from the administrative law judge following a contested case hearing shall be determined by the panel. The panel may adopt rules of procedure which may be joint rules with the medical services review board.

176.103 subd 3(c)

The board may adopt rules of procedure. The rules may be joint rules with the rehabilitation review panel

1-15-91

Called Kate Berger. I told her the F findings did not indicate if there were any comments. She said there wasn't any comments. The comments referred to the findings were to her comment to the board which wasn't written.

Minnesota
Department of Labor and Industry

443 Lafayette Road
St. Paul, Minnesota 55155
(612) 296-6107

Telecommunication Device
for the Deaf (612) 297-4198

FAX (612) 297-1329

January 9, 1991

Patricia Nolte
Office of the Attorney General
Public Finance Division
525 Park Street
St. Paul, Minnesota 55103

RE: Joint Rules of Practice of the Rehab Review Panel and Medical Services Review Board

Dear Ms. Nolte:

Enclosed please find the documents required by Minnesota Rule 2010.0300 for review of the above rule. Please note that no written comments or submissions regarding the rule were received during the comment period.

If you have any questions, please call me at 297-3313, as Janice Keesling is on leave.

Sincerely,

Kate Berger

Kate Berger
Attorney

KB/lls

Enclosure

Celebrate MINNESOTA 1990

An Equal Opportunity Employer

Department of Labor and Industry

Proposed Permanent Rules Relating to Joint Rules of Practice of the Medical Services Review Board and the Rehabilitation Review Panel

Rules as Proposed (all new material)

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Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Joint Rules of Practice of the Medical Services Review Board and the Rehabilitation Review Panel

AGENCY: Department of Labor and Industry

MINNESOTA RULES: Chapter 5217

The attached rules are approved for publication in the State Register

Paul M. Marinac
Assistant Deputy Revisor

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of the Rule of the Rehabilitation Review Panel and Medical Services Review Board Governing Proposed Permanent Rules Relating to Joint Rules of Practice of the Medical Services Review Board and the Rehabilitation Review Panel

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on October 22, 1990 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on October 18, 1990. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) No requests for a public hearing on the rule were received by the agency.

No requests for notice of submission to the attorney general were received by the agency.

(9) Based on the comments and evidence in the record before the agency, I find the following non substantial changes are appropriate:

FINDINGS OF FACT

(6) 5217.0800 Contested Cases.

Subpart 3. **Oral arguments.** The board or panel shall schedule oral argument ~~in addition to written exceptions~~. The board or panel shall notify the parties by first class mail as to the date set for oral argument at least 14 calendar days in advance.

Each party shall be allotted ten minutes for oral argument to the board or panel and five minutes for rebuttal argument. Any party may waive oral argument.

The above change to the proposed rule defining "contested cases" is deleted so that it does not confuse the parties. Written exceptions are submitted according to 5217.0800, subpart 1 of the proposed rule and should not be scheduled. This change clarifies that only oral argument will be scheduled.

Based upon the Findings of Fact, I make the following:

CONCLUSIONS

1. That the Board and Panel has complied with all procedural requirements of law or rule adopting the proposed rule.

2. That the Board and Panel has acted within its statutory authority in adopting proposed rules.

3. That the above captioned rule as modified is needed and reasonable (9)

NOW, THEREFORE, IT IS ORDERED that the rule identified as Part 5217.0300-5217.1000 is adopted this 20th day of December, 1990, pursuant to authority vested in Minnesota Statutes, section 176.102 and 176.103.

Janis Keesling

Janis Keesling
Executive Secretary
Rehabilitation Review Panel
and Medical Services Review Board

JK/cj (7)

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Labor and Industry

Proposed Permanent Rules Relating to Joint Rules of Practice of the Medical Services Review Board and the Rehabilitation Review Panel

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Labor and Industry intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is 176.102, subd. 3b and 176.103, subd. 3(c).

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Janis Keesling
Department of Labor and Industry
443 Lafayette Road
St. Paul, MN 55155
(612) 296-8213

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

A copy of the proposed rule is attached to this notice.

A free copy of the rule is available upon request from Janis Keesling at the above listed address.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Janis Keesling at the above listed address upon request.

These rules establish procedural rules of practice for the Board and Panel. The Panel and Board have considered the methods enumerated in *Minnesota Statutes* 14.115, subd. 2 of reducing the impact of rules on small businesses. The procedural rules for the

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.

Panel and Board has been drafted to provide due process for parties while allowing the Panel and Board to perform their duties efficiently and within statutory deadlines. The impact of the rules on small businesses is negligible and cannot be reduced by revision of the rules. For the same reasons there is no anticipated cost to local public bodies under *Minnesota Statutes* 14.11.

If no hearing is required, upon adoption of the rule, the rule and the required 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 Janis Keesling.

Dated: 28 September 1990

Janis Keesling
Executive Secretary
Rehabilitation Review Panel and
Medical Services Review Board

Rules as Proposed (all new material)

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Board of Marriage and Family Therapy

Proposed Permanent Rules Relating to Marriage and Family Therapy

ALTERNATIVE NOTICES: Notice of Intent to Adopt Rules Without a Public Hearing, Notice of Intent to Adopt Rules With a Public Hearing If 25 or More Persons Request a Hearing, and Notice of Intent to Cancel Hearing If Fewer Than 25 Persons Request a Hearing

I. Explanation of Alternative Notices

The Minnesota Board of Marriage and Family Therapy (hereinafter "Board") is hereby giving notice of its intent to adopt rules without a public hearing under the noncontroversial rulemaking procedure of *Minnesota Statutes* sections 14.22 to 14.28 (1988).

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.

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the matter of the Proposed Adoption of the Rule of the Rehabilitation Review Panel and Medical Services Review Board, Governing Proposed Permanent Rules Relating to Joint-Rules of Practice of the Medical Services Review Board and the Rehabilitation Review Panel

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Janis Keesling, being sworn says:

I hereby certify that the list of persons and associations who have requested , pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Department of Labor and Industry, Workers' Compensation Division rulemaking mailing list is accurate, complete, and current as of this 18th day of October, 1990.

That on the 18th day of October, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing 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.

Janis Keesling
[Name]

Executive Secretary
[Title]

Subscribed and sworn to before me this 18th day of October, 1990.

HOLLY JO ROBINSON
NOTARY PUBLIC, Ramsey Co., Minn.
My Commission Expires Oct. 4, 1990

Note: One address was added to the list on October 18, 1990 and that person was mailed a copy of the rule on October 19, 1990.

Department of Labor and Industry

Workers' Compensation Rehabilitation Review Panel

Workers' Compensation Medical Services Review Board

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Workers' Compensation Rules of Practice for the Rehabilitation Review Panel and Medical Services Review Board

NOTICE IS HEREBY GIVEN that the State Department of Labor and Industry is seeking information or opinions from sources outside the agency in preparing to propose the adoption of rules of practice for health care providers and qualified rehabilitation consultant and vendor disciplinary proceedings and for appeals from orders of the Commissioner of the Department of Labor and Industry regarding certification of QRCs and vendors.

The adoption of the rule is authorized by *Minnesota Statutes*, section 176.102, subd. 3(b) and 176.103, subd. 3(c).

The State Department of Labor and Industry requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

David Sherwood-Gabrielson
Rehabilitation Review Panel and
Medical Services Review Board
443 Lafayette Road
St. Paul, Minnesota 55155-4316

Oral statements will be received during regular business hours over the telephone at (612) 296-8213 and in person at the above address.

All statements of information and opinions shall be accepted until October 5, 1989. Any written material received by the Department of Labor and Industry shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 1 September 1989

David Sherwood-Gabrielson, Director
Rehabilitation & Medical Affairs

Department of Natural Resources

Bureau of Real Estate Management—Land Exchange Board

Notice of Special Meeting of the Land Exchange Board

A special meeting of the Land Exchange Board has been scheduled for Wednesday, September 20, 1989, at 8:30 a.m. in Room 237, State Capitol Building, St. Paul, Minnesota. This meeting is being held at the request of the U.S. Fish & Wildlife Service to consider their request for LEB approval of land acquisitions.

Department of Natural Resources

Minerals Division

Notice of Sale of State Metallic Minerals Leases

NOTICE IS HEREBY GIVEN that a sale of leases to prospect for, mine and remove metallic minerals in trust fund lands, lands and minerals forfeited for nonpayment of taxes, lands and minerals otherwise acquired, and other state-owned land under the jurisdiction of the Commissioner of Natural Resources, and located in portions of Aitkin, Beltrami, Itasca, Koochiching, Lake of the Woods, Marshall, Roseau and St. Louis counties, is scheduled to be held on October 12, 1989 at 1:30 p.m. The sale will take place in the auditorium at Ironworld U.S.A., Box 392, Highway 169, Chisholm, Minnesota in conjunction with the Sixth Annual Current Mineral Activities Forum. No land or water areas within the Boundary Waters Canoe Area Wilderness or Voyagers National Park are included in this lease sale.

CERTIFICATE OF THE

Authorization Resolution Of The Medical Services Review Board

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RESOLUTION ADOPTING RULES

I Lawrence J. Schut, M.D., do hereby certify that I am a member and the chair of the Medical Services Review Board, (hereinafter "Board") a Board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Board, duly and properly called and held on the 18th day of October, 1989, 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 Janis Keesling, or her successor as the Executive Secretary of the Board, is hereby granted the authority to sign and to give the Notice of the Board's Intent to Adopt a Rule without a public hearing governing the Rules of Practice before the Workers' Compensation Rehabilitation Review Panel and the Medical Services Review Board to all persons who have registered their names with the Board and Panel for that purpose, to publish the notice and rule in the State Register, and to perform any and all acts incidental thereto. It is further resolved that the publication of the Notice of Solicitation of Opinion dated September 1, 1989 and published in the State Register on Monday, September 11, 1989 is hereby ratified.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 18th day of October, 1989.

Lawrence J. Schut
Officer of the Panel

Attest by one other Panel member

CERTIFICATE OF THE

Authorization Resolution Of The Rehabilitation Review Panel

RESOLUTION ADOPTING RULES

I Joseph Sweere, D.C., do hereby certify that I am a member and the chair of the Rehabilitation Review Panel, (hereinafter "Panel") a panel 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 Panel, duly and properly called and held on the 5th day of October, 1989, 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 Janis Keesling, or her successor as the Executive Secretary of the Panel, is hereby granted the authority to sign and to give the Notice of the Panel's Intent to Adopt a Rule without a public hearing governing the Rules of Practice before the Workers' Compensation Rehabilitation Review Panel and the Medical Services Review Board to all persons who have registered their names with the Board and Panel for that purpose, to publish the notice and rule in the State Register, and to perform any and all acts incidental thereto. It is further resolved that the publication of the Notice of Solicitation of Opinion dated September 1, 1989 and published in the State Register on Monday, September 11, 1989 is hereby ratified.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 5th day of October, 1989.

Joseph Sweere D.C.
Officer of the Panel

Phyllis O'Donnell
Attest by one other Panel member

STATE OF MINNESOTA

MEDICAL SERVICES REVIEW BOARD
AND
REHABILITATION REVIEW PANEL

In the Matter of the Proposed Adoption of the Rule of the Rehabilitation Review Panel and Medical Services Review Board, Governing Proposed Permanent Rules Relating to Joint Rules of Practice of the Medical Services Review Board and the Rehabilitation Review Panel

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the State Department of Labor and Industry intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is 176.102, subd. 3b and 176.103, subd. 3(c).

(2) All person have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

(5) Comments or written requests for a public hearing must be submitted to:

Janis Keesling
Department of Labor and Industry
443 Lafayette Road
St. Paul, MN 55155

(612) 296-8213

(8) The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

(11) A copy of the proposed rule is attached to this notice.

(11) A free copy of the rule is available upon request from Janis Keesling at the above listed address.

(12) A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Janis Keesling at the above listed address upon request.

(14) These rules establish procedural rules of practice for the Board and Panel. The Panel and Board have considered the methods enumerated in M.S. 14.115, subd. 2 of reducing the impact of rules on small businesses. The procedural rules for the Panel and Board has been drafted to provide due process for parties while allowing the Panel and Board to perform their duties efficiently and within statutory deadlines. The impact of the rules on small businesses is negligible and cannot be reduced by revision of the rules. For the same reasons there is no anticipated cost to local public bodies under M.S. 14.11.

(9) If no hearing is required, upon adoption of the rule, the rule and the required 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 Janis Keesling.

9/28/90
Date

Janis Keesling
JANIS KEESLING
Executive Secretary
Rehabilitation Review Panel and
Medical Services Review Board

STATE OF MINNESOTA
REHABILITATION REVIEW PANEL AND
MEDICAL SERVICES REVIEW BOARD

In the Matter of

The Adoption of the Proposed
Joint Rules of Practice of
the Workers' Compensation
Rehabilitation Review Panel
and the Medical Services
Review Board, Parts
5217.0300 to 5217.1000

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION AND STATUTORY AUTHORITY

In 1987, the Minnesota Legislature amended Minnesota Statutes sections 176.102 and 176.103, which pertain to the Rehabilitation Review Panel and the Medical Services Review Board. The amendments limited the Panel's authority to deciding appeals from orders of the Commissioner of Labor and Industry (hereinafter "Commissioner") regarding certification of qualified rehabilitation consultants (hereinafter "QRCs") and to discipline of QRCs and vendors. The Medical Services Review Board's authority was limited as enumerated in Minn. Stat. § 176.103. Both the Panel and the Board retained advisory functions as well. As a result of the amendments, the rules previously in place became obsolete and have since been repealed. The rules currently proposed are procedural rules made necessary by the revised authority of the Panel and the Board. The statutory authority for these joint rules of practice is Minn. Stat. §§ 176.102, subd. 3b and 176.103, subd. 3c.

II. STATEMENT OF NEED

As described above, the statutory authority of the Panel and Board has changed since these bodies were created and currently, both are functioning without procedural rules to guide parties involved in disciplinary actions. These procedural rules are necessary to provide notice to parties involved in cases before the Panel and Board of timelines and requirements. In addition, the procedural rules are necessary to ensure that the Panel and Board are consistent in handling the cases that come before them.

III. SMALL BUSINESS CONSIDERATION

The Panel and Board have considered the methods enumerated in Minn. Stat. § 14.115, subd. 2 of reducing the impact of rules on small businesses. The procedural rules for the Panel and Board have been drafted to provide due process for parties while allowing the Panel and Board to perform their duties efficiently and within statutory deadlines. The impact of the rules on small businesses is negligible and cannot be reduced by revision of the rules.

IV. STATEMENT OF REASONABLENESS

5217.300 Definitions

Subparts 1-9: These definitions are reasonable because they provide consistency throughout the rules and clearly define which Commissioner, Board, Department and Panel are referenced in the text of the rules.

Subparts 10 and 11: The definitions of "Quorum" and "Voting Members" establish how many members of the Panel or

Board must be present for business to be conducted. A majority of the Panel or Board is reasonable for a quorum because requiring more than half of the members to be present ensures that a small contingent within the Panel or Board will not be able to take action independently to the detriment of the goals of the Panel or Board as a whole. "Voting Members" is defined in the rule to clarify how Panel and Board positions will be temporarily filled if a member is absent, when there is a short term vacancy or when a member has been disqualified. It is reasonable that Board alternates fill vacant positions on the Board as they arrive for the meeting because the alternates are physicians who do not have definite, predictable schedules, and who are unable to attend all meetings on time. It is reasonable that Panel alternates fill vacant positions according to their classification because each alternate is appointed to represent a certain point of view within the rehabilitation field.

5217.0400 Action

This section describes how the Panel and Board will conduct their business. It is reasonable to require the majority vote of the Panel or Board members present rather than the majority vote of the entire Panel or Board because it expedites the decision-making process and requiring a quorum of a majority already ensures broad participation.

5217.0500 Officers

This section indicates the term of the chairperson and vice-chairperson and how the Panel and Board shall appoint members to those positions. The month of May was chosen for election of officers so that the election does not conflict with holidays and members of the Panel or Board will be present for the election. This section also indicates that a member may be elected to serve as a chairperson in the absence of the chairperson and vice-chairperson. It is necessary to provide a mechanism for appointing a temporary replacement for the Panel or Board chairperson so that the activities of the Panel and Board can be continued in spite of the absence of the chair and vice-chair.

5217.0600 Meetings

This section is necessary because of the obligation of the Panel and Board to give the public notice of meetings providing for the formal scheduling of meetings helps to ensure that meetings schedules are clearly established. This section also gives the Panel and Board the option of scheduling additional meetings. Additional meetings may be necessary to fulfill their statutory obligations.

5217.0700 Disqualification of Board or Panel Member

This section is reasonable because it is occasionally necessary for a member to disqualify himself or herself if that member feels that he or she cannot render a fair

decision. Voluntary withdrawal is the most expeditious way to ensure that no member participates in making a decision where that member may have a conflict of interest. This section also provides for a mechanism for disqualification of a member if requested by a party. It is reasonable that the issue of whether a member should be disqualified be decided by the Board or Panel because a group decision helps to ensure that the evidence of a conflict of interest is objectively weighed.

5217.0800 Contested Cases

This section is reasonable because it is in accordance with Minn. Stat. § 14.61. The timelines were chosen because the Panel and Board have only 90 days from receipt of the administrative law judge's report in which to render a decision and the Panel and Board generally meet only once per month. The deadlines afford parties sufficient time to prepare, serve, and file briefs and replies. The number of copies of documents to be filed with the Panel and Board was determined by the total number of members and alternates on the Panel and Board. The times that are allowed for oral argument and rebuttal assure due process while permitting expeditious completion of the decision-making process.

5217.0900 Settlement Agreements

This section indicates how the Panel and Board shall execute settlement agreements. It is necessary for the

chairperson to have the authority to execute settlement agreements as a representative of the Panel or Board so that the process of approval or disapproval can be completed. The method of approval of settlement agreements is consistent with the Panel and Board's procedure for conducting all other business.

5217.1000 Findings and Order

This section is reasonable because it is pursuant to Minn. Stat. § 14.62, which contains requirements for findings and orders in contested cases. It is reasonable to require that appeals be filed directly with the Panel or Board because the Panel and Board have the responsibility of initiating contested case proceedings.

V. CONCLUSION

Based on the foregoing, Minn. Rules pts. 5217.0300-.1000 are needed and reasonable.

Dated: 10/11, 1990

Joseph T. Sweere DC
Chairperson, Rehabilitation
Review Panel

Dated: 10/17, 1990

Chairperson, Medical
Services Review Board

CERTIFICATION OF THE

Rehabilitation Review Panel

RESOLUTION ADOPTING RULES

I Joseph Sweere, D.C., do hereby certify that I am a member and the chair of the Rehabilitation Review Panel, (hereinafter "panel") a panel 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 panel, duly and properly called and held on the 6th day of December, 1990, 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 adoption of the Rules of Practice before the Workers' Compensation Rehabilitation Review Panel and Medical Services Review Board is approved, pursuant to authority vested in the Panel by Minnesota Statutes, Section 176.102, subd. 3b.

Janis Keesling, the Executive Secretary of the Panel, is authorized to sign the findings of fact, conclusions, and order adopting the rule and further is authorized 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 6th day of December, 1990.

Joseph M Sweere DC
Officer of the Panel

Philip O Hamilton MD MPH.
Attest by one other Panel member

CERTIFICATION OF THE

Medical Services Review Board

RESOLUTION ADOPTING RULES

I Joe Wegner, M.D., do hereby certify that I am a member and the chair of the Medical Services Review Board, (hereinafter "board") a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the board, duly and properly called and held on the 19th day of December 1990, 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 adoption of the Rules of Practice before the Workers' Compensation Rehabilitation Review Panel and Medical Services Review Board is approved, pursuant to authority vested in the Board by Minnesota Statutes, Section 176.103, subd. 3b.

Janis Keesling, the Executive Secretary of the Board, is authorized to sign the findings of fact, conclusions, and order adopting the rule and further is authorized 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 19th day of December 1990.

Officer of the Board

Attest by one other Board member

JK/cj (7)

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of the Rule of the Rehabilitation Review Panel and Medical Services Review Board Governing Proposed Permanent Rules Relating to Joint Rules of Practice of the Medical Services Review Board and the Rehabilitation Review Panel

DECLARATION OF COUNSEL

I, Julie A. Leppink, 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 0613.

Julie A. Leppink
Special Assistant Attorney General

Dated: 12/24/90

JK/cj (7)

Minnesota
Department of Labor and Industry

443 Lafayette Road
St. Paul, Minnesota 55155
(612) 296-6107

Telecommunication Device
for the Deaf (612) 297-4198

FAX (612) 297-1329

January 22, 1991

Charlene Hatcher
Assistant Attorney General
Public Finance Department
525 Park Street, Suite 400
St. Paul, Minnesota 55103

Re: Joint Rules of Practice of the Medical Services Review Board and Rehabilitation Review Panel

Dear Ms. Hatcher:

Enclosed please find a photocopy of the Findings of Fact for the above rule, as corrected to show that no written submissions or written comments on the rule were received. Also corrected is the first sentence of the document in which "Board and Panel" is substituted for "commissioner". As always, the original document is kept in the agency's rulemaking file.

Thank you for your assistance. If you need anything further you can reach me at 297-3313.
Sincerely,

Kathryn Berger
Compensation Attorney

KB/cb

Enclosure

An Equal Opportunity Employer

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of the Rule of the Rehabilitation Review Panel and Medical Services Review Board Governing Proposed Permanent Rules Relating to Joint Rules of Practice of the Medical Services Review Board and the Rehabilitation Review Panel

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Board and Panel's intent to adopt the above-entitled rule was published in the State Register on October 22, 1990 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on October 18, 1990. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the agency.

No written submissions or written comments on the rule were received by the agency. No requests for notice of submission to the attorney general were received by the agency.

Based on an oral comment received from the Department of Labor and Industry, I find the following non substantial changes are appropriate:

FINDINGS OF FACT

5217.0800 Contested Cases.

Subpart 3. **Oral arguments.** The board or panel shall schedule oral argument in addition to written exceptions. The board or panel shall notify the parties by first class mail as to the date set for oral argument at least 14 calendar days in advance.

Each party shall be allotted ten minutes for oral argument to the board or panel and five minutes for rebuttal argument. Any party may waive oral argument.

The above change to the proposed rule defining "contested cases" is deleted so that it does not confuse the parties. Written exceptions are submitted according to 5217.0800, subpart 1 of the proposed rule and should not be scheduled. This change clarifies that only oral argument will be scheduled.

Based upon the Findings of Fact, I make the following:

CONCLUSIONS

1. That the Board and Panel has complied with all procedural requirements of law or rule adopting the proposed rule.

2. That the Board and Panel has acted within its statutory authority in adopting proposed rules.

3. That the above captioned rule as modified is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Part 5217.0300-5217.1000 is adopted this 20th day of January, 1991, pursuant to authority vested in Minnesota Statutes, section 176.102 and 176.103.

Janis Keesling

Janis Keesling
Executive Secretary
Rehabilitation Review Panel
and Medical Services Review Board

JK/cj (7)