

ADMINISTRATIVE RULES COMMITTEE
December 10, 2009

North Dakota State Board of Medical Examiners
Duane Houdek, Exec. Secretary

Chairman Carlson, members of the Administrative Rules Committee, my name is Duane Houdek, Executive Secretary of the North Dakota State Board of Medical Examiners. Thank you for the opportunity to provide testimony with regard to rules recently passed by our board.

In response to the written questions we received from Mr. Walstad, please accept the following:

1. These rules are not the result of statutory changes made by the legislature.
2. The rules are not related to any federal statute or regulation.
3. We followed the rulemaking procedure as outlined in state law and summarized in the attorney general's manual for state agencies. Specifically, we published written notice of the intent to adopt these rules in all legal newspapers from July 22-27, 2009, and gave notice of the public hearing, which was held at our offices on August 24, 2009. We made copies of the rules available and invited oral and written comments. The procedure has been reviewed and approved by the Attorney General.
4. We received no comments at the hearing, nor any in the subsequent time allowed for written comments.
5. The major cost of giving developing and adopting these rules, other than staff time, was the cost of publication, which was \$1,730.54.
6. The following is a brief explanation of each rule and what prompted the board to pass it:
 - A. **50-03-01-07.1. Medication dispensation.** A pharmacist brought to our attention that our prior rule about PA's dispensing medication had an error. Although PA's could prescribe schedule III-V controlled substances, our rule allowed them to dispense only schedule IV and V. This rule addresses that inconsistency by saying, essentially, they can dispense whatever they can legally prescribe. It added two safety features,

saying PA's should dispense only if pharmacy services are not reasonably available, and their supervising physician must generally approve dispensation.

B. 50-03-01-09.1. Physician assistants under physician's supervision.

We have had requests over the years for an exemption from our requirement that a physician could supervise only two physician assistants. In the last year, we had a two such requests that caused us to re-examine the rule. One was from a rural clinic in Oakes and the other was from a community clinic in Fargo. In each case, the physicians told us that they made great use of mid-levels, but that often times they would have three or four PA's rotating to fill the equivalent of two full-time positions. Their staffing did not allow them to have one physician for every two PA's. Also, they said that physician turnover in their clinics was not particularly fast, and they had trouble with our rules when they were "down" one physician.

Although the board has always had the discretion to make exceptions to the two PA limit, this rule change lets the board set it directly according to the needs of the clinic, while retaining the ability to evaluate each, specific situation to make sure adequate supervision is being maintained.

C. 50-02-07.1. License fees. We have a new chapter relating to license fees. The first section, 50-02-07.1-01, is not changed. It keeps the same amount for the initial license and for each annual renewal.

Section 02, Late Fees, is not a change either. It merely puts into rule what has been in statute since 1997, that is, those who renew late must be assessed a fee of three times the normal registration fee. We thought we should make people aware of this in our rules, as well as by statute.

Section 03, Administrative Sanctions, does represent a change. If someone lies to us on an application, statute has always provided that we may discipline them by fines or restrictions on their license. But we have

never had a tool short of discipline to deal with people who provide false information that, although material, is not of such a nature that we would want to discipline them and have to report it as discipline to the national data banks. We followed the late fee statute I just discussed by saying we could impose administrative sanctions of three times the annual registration fee if people give us false information about their CME's, etc. That way, we can get their attention, compensate for having to ferret out the correct information, but not give them a disciplinary record where it isn't really necessary to do so to protect the public.

- D. **50-02-14-01. Renewal of Licenses.** This provides physicians with a one month "grace period" in which to renew their license. It is a big blow for a physician if he or she forgets to renew a license. We are told that they cannot charge insurance companies for services or for any lab tests ordered if their license has lapsed.. This rule allows the board to give a license back to the original renewal date, for a period of one month. The board still retains the right to discipline a physician for practicing without a license if the circumstances call for it.
- E. **50-03-04-09. Primary supervising physician's responsibility.** This amends our previous rule to allow supervision of fluoroscopy technicians through televideo. This is in response to a request made by a physician in Williston, who was supervising techs in Dickinson, and wanted to do it by televideo, rather providing two hours supervision per week in person, which is what our previous rule required. There still must be a physician onsite to address any emergencies, but the radiologist may now supervise the procedures by televideo and audio.

If you have any other questions about the content of the rules, or the reasons the board made these changes, I would be glad to try to answer them.

7. No regulatory analysis was requested or required.
8. No small entity analysis was made as the board is exempt.
9. No takings assessment as required.
10. These rules were not adopted as emergency or interim rules.