

ADMINISTRATIVE RULES COMMITTEE**September 12, 2011****North Dakota State Board of Medical Examiners****Duane Houdek, Executive Secretary**

Chairman Koppelman, 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.

Please accept the following responses to the written questions we received from Mr. Walstad:

1. These rules are not the result of statutory changes made by the Legislative Assembly.
2. The rules are not related to any federal statute or regulation.
3. We followed the rule making 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 during the week of May 14-20, 2011, and also gave notice of the public hearing on the rules, which was held at our office on June 10, 2011. We held the record open for 10 days following the hearing for written or oral comments. The process was reviewed by the Attorney General and approved as to its legality in an opinion dated July 27, 2011.
4. We received no comments at the hearing, nor have we received any since.
5. The major cost of developing and adopting these rules, other than staff time, was the cost of publication, which was \$1,943.52.

6. The following is a brief explanation of each rule and what prompted the board to pass it:

A. 50-02-07.1-01 increases a physician's annual registration fee from \$150 to \$200. I have explained the reasoning for this in more detail in the regulatory analysis, which is attached, but I think it is sufficient to say that this is the first fee increase the board has given doctors since 1997, nearly 15 years, and it is less than the inflation that has occurred in that time.

Part of the reason for the increase is that our expenses, of course, have increased steadily while our revenue has remained relatively flat. But more importantly, we are making two changes to our programs that I think are significant in terms of serving the public.

First, we are well into the process of reviewing our physician's health program, which is the program that monitors physicians with mental health or chemical dependency issues in an effort to treat them before they become impaired and a danger to their patients. We will either move the program out of the board office— with the belief that more physicians would then be likely to use it—or strengthen it within our office, in either case providing more and better monitoring and, through the increased use of experts in the field, more individually tailored programs for each individual participant.

Our health program is successful now, providing better than 90% success rate—that is, five years of monitored, safe compliance with our program— but I think we can do even better and do it better for more

participants. When you think that each doctor we can keep in safe practice serves thousands of North Dakotans in a year, I think this is worth the effort.

We are also providing a major improvement to our website through a project recently started by a North Dakota firm—Albertson Consulting in Minot—which will provide the public with much more meaningful information about their doctors and help them in choosing a doctor when they are looking for one.

These two initiatives, alone, will absorb almost all of this fee increase, depending on how much we can get from cooperation with other boards, or from medically related foundations.

- B. 50-02-11-03.1 provides an exception to our requirement that a doctor pass each step of the licensing examination in no more than three attempts. It allows the board to make this exception for doctors who have safely practiced in other states and can show that by having no disciplinary cases and maintaining board certification. In this way, we can safely extend a license, I believe, in cases where our rule prohibited us in the past.
- C. 50-03-01-16 provides a 31 day grace period to physician assistants who forget to renew their license. This is the same grace period we extended to physicians two years ago.
- D. 50-03-01-17 provides, administratively, the same penalty for physician assistants that the legislature provides for doctors who fail to renew their licenses on time. It is three times the normal fee. In this way,

we can get their attention a little bit and get them to renew their licenses without taking any action against their licenses, which interrupts insurance payments and could be really harmful to a practice.

7. A regulatory analysis is attached because the fee increase has a total impact cumulative impact in excess of \$50,000.00 on licensed doctors.
8. No small entity analysis was made as the board is exempt.
9. No takings assessment was required.
10. These rules were not adopted as emergency or interim rules.

I would be glad to try to answer any questions of the committee.

Respectfully submitted,

Duane Houdek

Executive Secretary

REGULATORY AND SMALL ENTITY ANALYSIS

North Dakota State Board of Medical Examiners

Relating to the enactment of 50-03-01-16, NDAC, Physician Assistants, Renewal of Licenses; the enactment of 50-03-01-17, NDAC, Physician Assistants, Late Fees; the amendment of 50-02-11-03.1, NDAC, Examination, Limitation on attempts at examination passage; and the amendment of 50-02-07.1-01, License Fees, License Fees.

The North Dakota State Board of Medical Examiners, as a professional licensing agency, is exempt from the small entity analysis under 28-32-08.1, NDCC.

I have examined each of these rules and have determined that the amendment to 50-02-07.1-01, NDCC, increasing the annual license fee for physicians from \$150.00 to \$200.00 will have an impact on the regulated community in excess of \$50,000, as explained below.

North Dakota licenses 1,656 physicians who reside out-of-state and 1,554 physicians who reside in-state, for a total of 3,210 physicians. A \$50.00 increase will have an impact of \$160,500.00.

The class of persons who will bear the costs of this rule are physicians licensed to practice in the state of North Dakota.

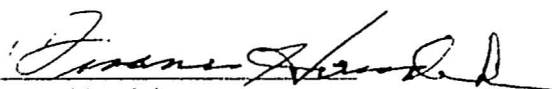
The probable economic impact will be \$50.00 to each physician.

The rule will have no cost to the medical board nor any impact on state revenues, as the medical board neither expends nor receives general funds.

The board considered alternatives to the proposed rules, and based its decision on the following factors:

1. Annual fees for physicians licensed in North Dakota have not increased in 15 years, having stayed the same since 1997.
2. The proposed annual fee of \$200 is below the national average of \$205.24 for physician license fees.
3. The proposed annual fee of \$200 is comparable to and competitive with neighboring states: Montana: \$200.00; Minnesota: \$192.00; and South Dakota: \$200.00.
4. The proposed fee increase is less than inflation. Since physician license fees -- which comprise approximately 90% of the medical board's annual revenue-- have last been raised in 1997, inflation has increased costs by 2.40% per year. The 1997 fee, adjusted to 2012 dollars, would be \$214.48.
5. The board is considering outsourcing its existing physician's health program, a public safety program that tests and monitors physicians with chemical dependency issues to ensure they do not abuse drugs or alcohol and affect patient safety. It is also in need of purchasing and maintaining a licensing software program to facilitate the licensing, disciplinary and public notification processes. Its current revenue will not support either of these needed improvements nor the

inflationary increase in operating costs on an ongoing basis.

A handwritten signature in cursive script, appearing to read "Duane Houdek", written over a horizontal line.

Duane Houdek
Executive Secretary
ND State Board of Medical Examiners