7/8/91

Board of Dentistry

EXECUTIVE OFFICE
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SUITE 70
ST. PAUL, MINNESOTA 55114-1055
(612) 642-0579

July 9, 1991

Maryanne V. Hruby
Legislative Commission To Review Administrative Rules
Room 55, State Office Building
100 Constitution Avenue
St Paul, Minnesota 55155

Dear Ms. Hruby:

This letter is written on behalf of the Minnesota Board of Dentistry.

Pursuant to Minnesota Statutes 14.23 (1990) we are providing you a copy of a Statement of Need and Reasonableness relating to the proposed amendment to the Board of Dentistry Rule relating to Fees, Minnesota Rules, 3100.2000, subp. 1, subp. 2, subp. 3, subp. 5 and subp. 6. Our Notice of Intent to Adopt Rules Without a Public Hearing was published in the State Register on July 8, 1991.

If you have any questions or need additional information concerning the proposed rule change, please do not hesitate to contact me.

Sincerely,

Karen L. Ramsey

Karen L. Ramsey
Office Services Supervisor
(612)642-0581

Encl.

STATE OF MINNESOTA | **BEFORE THE MINNESOTA**

COUNTY OF RAMSEY | **BOARD OF DENTISTRY**

In the Matter of Proposed Amendment to the Board of Dentistry Rule Relating to Fees, Minnesota Rules, 3100.2000, subp. 1, subp. 2, subp. 3, subp. 5 and subp. 6.

STATEMENT OF NEED AND REASONABLENESS

Pursuant to Minnesota Statute 14.23 (1990), the Minnesota Board of Dentistry (hereinafter "Board), hereby affirmatively presents the need for and facts establishing the reasonableness of the proposed amendments to Minnesota Rules, 3100.2000, subp. 1, subp. 2, subp. 3, subp. 5 and subp. 6 relating to application fees; license and registration renewal fees; licensure by credentials fees; duplicate license or registration fees; and reinstatement fees.

In order to adopt the proposed amendments, the Board must demonstrate that it has complied with all the procedural and substantive requirements of rulemaking. Those requirements are as follows: 1) there is statutory authority to adopt a rule; 2) the rules are needed; 3) the rules are reasonable; 4) all necessary procedural steps have been taken; and 5) any additional requirements imposed by law have been satisfied. This statement demonstrates that the Board has met these requirements.

I. STATUTORY AUTHORITY

The statutory authority of the Board to adopt these rules is as follows:

1. Minnesota Statutes 150A.04, subd. 5 (1990), authorizes the Board to promulgate rules necessary to carry out the provisions and purposes of the Minnesota Dental Practices Act, Minnesota Statutes 150A.

2. Minnesota Statutes 150A.04, subd. 5 (1990); 150A.06, subds. 1, 2, 2(a) and 4 (1990); and 150A.08, subd. 3 (1990) authorize the Board to to adopt fees by rule.

3. Minnesota Statutes 16A.128 and 214.06 (1990), requires the Board to adjust any fee which the Board is empowered to assess a sufficient amount so that the total fees collected will as closely as possible equal anticipated expenditures during the fiscal biennium plus the agency's general costs, statewide indirect costs, and Attorney General costs attributable to the fee function.

II. COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS

A. Requirements in General.

The Board at its meeting on Saturday, June 8, 1991, determined that the above-captioned rules are noncontroversial and has elected to follow the procedures set forth in Minnesota Statutes 14.05 to 14.12 and 14.22 to 14.28 (1990), which provide for the adoption of noncontroversial rules without the holding of a public hearing.

Pursuant to Minnesota Statutes 14.23 (1990), the Board prepared this Statement of Need and Reasonableness and made it available to the public.

The Board will publish in the State Register the proposed rules and the Notice of Intent to Adopt Rules Without a Public Hearing. The Board will also mail copies of the Notice to persons registered with the Board pursuant to Minnesota Statute 14.22 (1990), as well as to others whom the Board believes will have an interest in the rules. The notice will comply with the requirements of Minnesota Statute 14.22 (1990) and Minnesota Rules 2010.0300 E (1990).

These rules will become effective five working days after

publication of a notice of adoption in the State Register pursuant to Minnesota Statute 14.27 (1990).

B. Notice Of Intent To Solicit Information From Non-Agency Sources.

Minnesota Statute 14.10 (1990) requires an agency, which seeks information or opinions from sources outside the agency in preparing to propose the amendment of rules, to publish a notice of its action in the State Register and afford all interested persons an opportunity to submit data or comments on the subject of concern in writing or orally. In the State Register issue of June 10, 1991, the Board published a notice entitled "Outside Information or Opinions Regarding Existing Rule Amendment Governing Fees Minnesota Rules 3100.2000, subp. 1, subp. 2, subp. 3, subp. 5 and subp. 6."

After publication of the notice, the Board's Rules Committee met to review this rule to determine which fees were in need of amendment. As a result of that process, the Committee drafted a specific proposal amending existing rules. This proposal was distributed among the dental profession and community. As a result of this process, the Board developed a final proposal which is addressed in this Statement of Need and Reasonableness.

III. COMPLIANCE WITH OTHER RULEMAKING REQUIREMENTS

A. Miscellaneous Requirements

These rules do not incorporate by reference text from any other law, rule or available text or book. See Minnesota Statute 14.07, subd. 4 (1990). The adoption of these rules will not require expenditure of public money greater than $100,000 by local public bodies in either of the two years following promulgation, nor do the rules have any impact on agricultural land. See Minnesota Statute 14.11 (1990). A fiscal note as required by

Minnesota Statute 3.982 (1990) is not required because the proposed rules will not result in local agencies or school districts incurring costs mandated by the state. Pursuant to Minnesota Statutes 16A.128, subd. 2a (1990), the Board sent a copy of the Notice of Intent to Adopt Rules Without a Public Hearing and the proposed rules to the chairs of the appropriations committee of the Minnesota House of Representatives and of the Minnesota Senate Finance Committee before the Board submitted the Notice to the State Register.

B. Approval of the Commissioner of Finance.

Pursuant to Minnesota Statute 16A.128, subd. 1a (1990), if a fee is required to be fixed by rule, the Commissioner of Finance must approve the fee and the Commissioner's approval must be in the statement of need and reasonableness. The Commissioner's approval of the fees established in the proposed permit rules is contained in the attached addendum, which is incorporated into this Statement of Need and Reasonableness as Addendum A.

C. Small Business Considerations.

It is the position of the Board that Minnesota Statute 14.115 (1990), relating to small business considerations in rulemaking does not apply to the rules is promulgates. Minnesota Statutes 14.115, subd. 7b (1990), states that section 14.115 does not apply to "agency rules that do not affect small businesses directly." The Board's authority relates only to dentists and not to the dental businesses they operate. While someone cannot operate a dental business without being licensed as a dentist by the Board, the license runs primarily to the technical ability to provide dental services for the purposes of public protection and not to the business aspects. This is graphically illustrated in

in recent dealings with nondentists who are involved with dental franchise offices. The Board has not taken the position prohibiting nondentist involvement in operating a dental business. Instead, the Board's position is that nondentists may not interfere with or have any control over the dentists when it comes to any aspect of the practice which could affect the providing of professional services to a patient. Thus, the Board regulates the provision of dental services and not the dental business per se. As such, it is exempt under Minnesota Statute 14.115, subd. 7b (1990).

The Board is also exempt from the provisions of section 14.115, pursuant to its subdivision 7c which states that section 14.115 does not apply to "service businesses regulated by government bodies, for standards and costs, such as...providers of medical care." Dentist provide medical care and are regulated for standards and costs. The Board regulates dentists for standards and the Minnesota Department of Human Services regulates them for costs.

The question might be raised as to whether the same government body has to regulate the service business for standards and costs in order for the exemption to apply. The Board's position is that the question should be answered in negative. First, the provision specifically refers to regulation by "government bodies." Second, and most significantly, some of the examples listed in subdivision 7c of service businesses exempt from the conditions of section 14.115 actually would not qualify for the exemption if the same government body had to regulate for standards and costs. For example, nursing homes and hospitals are regulated by different government bodies for standards and costs. The

Minnesota Department of Health regulates them for standards and the Minnesota Department of Human Services regulates them for costs. If the legislature had intended to exempt from the scope of section 14.115 only those rules addressing service businesses regulated by one government body for standards and costs, then it could not have included nursing homes and hospitals in its list of exemptions.

Based on the foregoing, it is clear that section 14.115 is not intended to apply to rules promulgated by the Board.

IV. NEED FOR AND REASONABLENESS OF THE PROPOSED RULES

A. Statement Of Need For Proposed Rules.

In order to amend administrative rules, an agency must demonstrate that the proposed rules are needed and reasonable. The proposed changes more clearly delineate the provisions of the Minnesota Dental Practices Act and have a rational basis in law and dentistry as is detailed below.

As the following figures illustrate, the Board's expenditures have exceeded its revenue from existing fees for the past several years.

	FY 1989	FY 1990	FY 1991(estimated)
Total Costs	466,000	496,000	614,000
Receipts	480,000	495,000	601,000
Surplus(Deficit)	14,000	(1,000)	(13,000)

Given the past experience and projections for the future, including a projection of total Board costs for FY 1992 of 804,000, remedial action must be taken for the 1992 fees to avoid increasing the deficit. Accordingly, it is necessary to increase renewal fees and other related fees to assure that revenues and expenditures match as nearly as possible. This action is also mandated by Minnesota Statutes 16A.128, subd. 1a, 214.06, subd. 1 (1990).

B. Statement Of Reasonableness.

The recommended increases are predicated on historical information that relates to basic services and legal services. It has been the Board's experience that basic services such as licensure, registration, renewal, CDE maintenance and rules have increased in cost by approximately 15 percent over the past three years. In addition, costs to enforce the provisions of the Practice Act and related rules through additional federal and state mandates as well as the basic complaint and disciplinary activities has increased more than 50 percent over the past three years. With this increase in basic services, the renewal fees are being increased by 30 percent for all licensees and registrants.

In addition to the basic services, legal services represent a significant cost to the Board. Pursuant to Minnesota Statutes 214.04 (1990), these services are provided by the Attorney General's Office. These charges have increased from $107,000 in FY 1989 to a projected $190,000 in FY 1991. The entire increase can be attributed to legal and investigative services related to complaints received against licensees and registrants. The proposed fee increases for licensees and registrants and applicants reflects the increased cost for legal services in addition to the percent increase cost for basic services referenced above.

Detailed information regarding the fees is found in an attached addendum which is made part hereof. Mr. Bruce Reddemann, Director of Operations and Support at the Department of Finance has reviewed the proposed fees and has indicated the fee increases are necessary to comply with Minnesota Statute 214..06, subd. 1 (1990).

It is the Board's judgment that all of the proposed amendments are both needed and reasonable and in the best interest

of the dental profession and the public.

Dated: July 9, 1991

STATE OF MINNESOTA

BOARD OF DENTISTRY

Douglas R. Sell

DOUGLAS R. SELL
Executive Director