



The Legislative Commission to
Review Administrative Rules

Board of Dentistry

EXECUTIVE OFFICE

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AUG 08 1994

M. Hruby

August 5, 1994

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

Dear Ms. Hruby:

Pursuant to Minnesota Statutes, section 14.23, I am enclosing copies of the following documents relating to proposed permanent rules relating to continuing dental education:

1. A Notice of Intent to Adopt Rules Without a Public Hearing.
2. A Statement of Need and Reasonableness.
3. A copy of the proposed rule.

The Statement of Need and Reasonableness and the proposed rule are available to the general public as of today.

If you have any questions or concerns, please feel free to contact me.

Sincerely,

Richard W. Diercks

Richard W. Diercks
Executive Director

Encl.

BOARD OF DENTISTRY

**Proposed Permanent Rules Relating to Continuing Dental Education
Notice of Intent to Adopt Rules Without a Public Hearing**

NOTICE IS HEREBY GIVEN that the Minnesota Board of Dentistry (hereinafter "Board") intends to adopt the above entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* 14.22 to 14.28. The statutory authority to adopt the rules is *Minnesota Statutes* 150A.04, subd. 5 and 214.06, subd. 1.

All persons have until September 9, 1994, in which to submit comment in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any changes proposed.

Any person may make a written request for a public hearing on the rules within the comment period which will close on September 9, 1994. If 25 or more persons submit a written request for a public hearing within the 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 rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Board will proceed pursuant to *Minnesota Statutes* 14.131 to 14.20. Comments or written requests for a public hearing must be submitted to:

Richard W. Diercks, Executive Director

Minnesota Board of Dentistry (612)642-0579

2700 University Avenue West, Suite 70

St. Paul, Minnesota 55114

Minnesota Relay Service for Hearing and Speech Impaired:

Metro Area: (612) 297-5353

Outside Metro Area: (800) 627-3529

The proposed 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 rules as noticed.

The rules proposed for adoption increase fees for sponsors of CDE courses; require CDE sponsors to submit renewal applications annually; establish stricter and clearer standards for approval of CDE sponsors; establish standards for CDE courses; clarify the requirements for proof of participation in CDE courses; require sponsors to maintain records of CDE course offerings and attendance; give the board authority to review CDE sponsors' records and conduct surveys of participants; require, if a course is not taken from an approved sponsor, that the licensee or registrant apply for course approval within 30 days, rather than two weeks, after completing the course; clarify credit hours for CDE courses and activities; clarify that successful completion of examinations and education programs will not satisfy specific continuing education requirements such as for infection control; and give registered dental assistants CDE credit comparable to that given to dentists and dental hygienists for completion of examinations and education programs. A free copy of the rules is

available upon request from Karen L. Ramsey at the Board office.

A Statement of Need and Reasonableness has been prepared and is available from Karen L. Ramsey upon request. The statement describes the need for and reasonableness of the proposed rules, identifies the data and information relied upon to support the proposed rules, and addresses the Board's position regarding the applicability of the small business rulemaking provisions and the impact of the proposed amendments on small business.

Minnesota Statutes 14.115 specifies certain actions which an agency must take if any agency engages in rulemaking which may affect small businesses. It is the Board's position that the Board's rules are not subject to section 14.115.

Upon adoption of the rules by the Board, the rules 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 rules must submit a written request to Karen L. Ramsey at the board office.



Richard W. Diercks
Executive Director

July 25, 1994

BOARD OF DENTISTRY

**PROPOSED PERMANENT RULES RELATING TO
CONTINUING DENTAL EDUCATION**

STATEMENT OF NEED AND REASONABLENESS

BACKGROUND INFORMATION

Purpose of Amendments

The proposed rules increase fees for sponsors of CDE courses; require CDE sponsors to submit renewal applications annually; establish stricter and clearer standards for approval of CDE sponsors; establish standards for CDE courses; clarify the requirements for proof of participation in CDE courses; require sponsors to maintain records of CDE course offerings and attendance; give the board authority to review CDE sponsors' records and conduct surveys of participants; require, if a course is not taken from an approved sponsor, that the licensee or registrant apply for course approval within 30 days, rather than two weeks, after completing the course; clarify credit hours for CDE courses and activities; clarify that successful completion of examinations and education programs will not satisfy specific continuing education requirements such as for infection control; and give registered dental assistants CDE credit comparable to that given to dentists and dental hygienists for completion of examinations and education programs.

Statutory Authority

Minnesota Statutes, section 150A.04, subdivision 5 provides that "the board may promulgate rules as are necessary to carry out and make effective the provisions and purposes of sections 150A.01 to 150A.12, in accordance with sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.57 to 14.62."

Minnesota Statutes, section 214.06, subdivision 1 provides that "all health-related licensing boards and all non-health-related licensing boards shall by rule, with the approval of the commissioner of finance, adjust any fee which the commissioner of health or the board is empowered to assess a sufficient amount so that the total fees collected by each board will as closely as possible equal anticipated expenditures during the fiscal biennium, as provided in section 16A.128."

Rule Development Process

The board began the process of developing the proposed rules by publishing in the April 5, 1993 edition of the *State Register* a notice that the board is seeking information or opinions from sources outside the board in preparing to propose noncontroversial

amendments.

The board developed the proposed amendments on the basis of needs identified by the board. After having compiled a list of suggested changes, the board surveyed the Minnesota Dental Association, the Minnesota Dental Assistants Association, the Minnesota Dental Hygienists' Association, and other dentistry-related groups and organizations and asked them to indicate, with respect to each proposed change, whether in their opinion the change was needed and whether it would be controversial. The board's Rules Committee subsequently held a public meeting on July 16, 1993 to review the proposed changes and the survey responses. Based on the input provided by the various groups, the survey results, and the comments received at the meeting, the committee placed the proposed changes into several categories. The amendments now being proposed were classified as category 2 changes, which are those deemed noncontroversial but needing additional research and advisory committee input before being proposed.

An Advisory Committee, consisting of representatives of organizations that sponsor CDE offerings, met on October 29 to review an initial draft of the proposed rules. Revised drafts were considered in two public meetings of the Rules Committee, the first on December 3, 1993, and the second on January 7, 1994. The rules were approved by the Board of Dentistry at a public meeting held on January 29, 1994.

Pursuant to Minnesota Statutes, section 14.23, the board has prepared this Statement of Need and Reasonableness and made it available to the public as of August 5, 1994.

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 Statutes, section 14.22 as well as to others who the board believes will have an interest in the rules. The Notice will comply with the requirements of Minnesota Statutes, section 14.22 and Minnesota Rules, part 2010.0300, item E.

These rules will become effective five working days after publication of a Notice of Adoption in the *State Register* pursuant to Minnesota Statutes, section 14.27.

DISCUSSION OF SPECIFIC PROVISIONS

Part 3100.0100 Definitions.

Subp. 7a. Clinical participation. This definition is needed in order to clarify that one form of educational experience

involves giving clinical treatment to, or practicing clinical techniques on, humans.

Subp. 9. Course. The definition of "course" is deleted because, given the substantive content of the provisions in which the term is used, as revised, the meaning of the term is self-explanatory.

Continuing dental education. This definition is intended to clarify that CDE credits may be awarded for courses and activities approved by the board or presented by CDE sponsors approved by the board.

Subp. 12c. Laboratory or preclinical participation. This definition is needed in order to clarify that one form of educational experience involves practicing treatment techniques using study models, casts, manikins, or other simulation methods.

3100.2000 Fees.

Subp. 8. Application for approval as sponsor of CDE courses. "Person" is changed to "organization" in order to clarify that a CDE sponsor is ordinarily an organization, not an individual.

The initial application fee is increased from \$75 to \$100 in order to more accurately reflect the current costs of processing an initial application.

An annual renewal fee of \$50 is imposed in order to cover the current costs of processing a renewal application.

3100.4200 CDE Sponsors.

Subpart 1. Sponsor approval system. This revision makes no substantive changes; it is for purposes of clarification only.

Subp. 2. Application procedure. "Persons or organizations" is changed to "organizations" to reflect the fact that CDE courses are offered by organizations, not individuals. The phrase "use as a consultant" is changed to "consult with" for purposes of clarification only.

Subp. 4. Sponsor renewal. Under the revisions, CDE sponsors are subject to renewal every year rather than every four years. The revision is needed in order to give the board more timely information on which to base renewal decisions.

Subp. 5. Approval standards. The revised language establishes stricter and clearer standards for approval of CDE sponsors. The new standards are needed in order to ensure that CDE sponsors and CDE courses serve the purpose of providing appropriate

continuing dental education.

A. This item establishes standards for CDE sponsors.

(1) This provision restates present language. The restatement is necessary for purposes of clarification because of the new way in which item A is organized.

(2) This provision restates present language. The restatement is necessary for purposes of clarification because of the new way in which item A is organized.

(3) This provision requires a sponsoring organization to have a designated individual to plan and manage CDE activities. The board already requests organizations to provide this information in order to facilitate communication with the organization. The information demonstrates to the board the organization's commitment to its stated purpose of providing CDE.

(4) This provision requires the organization to disclose to the board disciplinary or legal action taken or pending against the organization. The requirement is intended to enable the board to have information it needs to consider in deciding whether or not to approve the organization as a sponsor.

(5) This provision requires the organization to have written policies on conflicts of interest. The requirement is intended to minimize possible conflicts of interest which an individual presenting a course might have, or if the presenter has a potential conflict of interest, to disclose that fact as required by the Federal Drug Administration in its policy statement on Industry-Supported Scientific and Educational Activities.

(6) This provision requires that the organization provide complete and accurate information in the materials used to publicize course offerings. The requirement is intended to prevent false or misleading statements about what is being offered.

B. This item establishes standards for CDE courses.

(1) This provision requires that a course be presented as an organized program of learning. The requirement is intended to ensure that a course is a structured activity, with a definite purpose and a method for achieving that purpose.

(2) This provision requires that a the method used be one or more of the following: clinical participation, group discussion, laboratory or preclinical participation, lecture, media usage, and self-instruction. The requirement is intended to ensure that the methods used are those commonly accepted as effective for

teaching dental concepts and techniques.

(3) This provision requires that the course (a) be on clinical or nonclinical subjects as specified by statute and (b) be designed to review existing dental concepts and techniques or to update participants on advances in the dental sciences. The requirement is intended to ensure that the subject matter be related to the information it is necessary for dental licensees and registrants to have in order to be current.

(4) This provision requires that the subject matter of a clinical participation course be within the legal scope of practice for the licensees or registrants attending the course.

(5) This provision requires that the course content promote practices that are scientifically valid, have proven efficacy, or ensure public safety. The requirement is intended to ensure that the course content be within the commonly accepted parameters of dental practice. The wording is the same as a comparable standard adopted by the American Dental Association.

C. This provision is revised in order to make the requirement more clear; there are no substantive changes.

D. This provision contains requirements previously located in part 3100.4300, subpart 4.

E. Video tapes, motion pictures, audio tapes, interactive television classrooms, teleconferences, and distance learning activities are recognized as acceptable classroom devices and techniques in order to include new technologies available for educational activities. This provision requires that when interactive devices or methods are used, except in the context of a self-instruction course, a qualified individual must be available to interact with the participants and to verify attendance. The requirement is intended to ensure that interactive education is conducted in a manner that complies with appropriate standards.

F. This provision contains requirements previously located in part 3100.4400, item C.

Subp. 6. Proof of participation. This provision is revised in order to clarify the requirements and to more accurately reflect current practice. The reference to submitting to the board a card "within two weeks of completion of the course" is deleted, because the sponsor is responsible for collecting the CDE cards and can set its own deadline for accepting cards from the participants. The requirement for the sponsor's submission of the cards to the board is changed from three weeks to 30 days because in practice the board has accepted cards for that length of time.

Subp. 6a. Recordkeeping.

A. This provision requires sponsors to maintain records of each CDE course offering. The requirement is intended to ensure that the board has a way to verify course offerings and the participants in them. If the courses are offered at an annual convention or mid-year meeting, records do not have to be kept for each course offering; records of the names of the participants for the convention or meeting as a whole are sufficient. This variance is permitted because sponsors at such conventions and meetings do not now compile attendance records for each course offering, and there is no practical way at present for them to do so.

B. This provision states that the board may review the records and conduct a survey of participants to determine the sponsor's compliance with the standards specified in subpart 5. The intent of the provision is to give the board the ability to enforce its standards for CDE courses and verify attendance.

Subp. 7. Denial or revocation of approval. The changes in this provision are technical. The reference to "part 3100.4300, subpart 3" is changed to "3100.4200, subpart 5, items B, C, D, E, and F" because the latter provision is where the standards are actually set forth. The reference to "subparts 4, 5, and 6" is amended to add "6a" because this is a new subpart under the proposed rules. The reference to "part 3100.4700" is deleted because this part was previously deleted from the rules.

3100.4300 Approval of Courses Presented by Nonapproved Sponsors

Subpart 1. Credit for courses by nonapproved sponsors. The changes in this subpart are not substantive; they are for purposes of clarification only.

Subp. 2. Information required. The revised language deletes the reference to the form supplied by the board because with the revised language in item A, the reference is unnecessary. Other changes in the first paragraph are for purposes of clarification only; they are not substantive.

A. This provision requires that a licensee or registrant seeking CDE credit provide to the board a completed CDE card. The language replaces the reference in the first paragraph to the form supplied by the board. The revised language more accurately reflects current practice. The stricken language is now in item C.

B. This provision requires that the licensee or registrant provide evidence of attendance at the course. The intent is to give the board a basis for being able to verify that the licensee or registrant actually attended. The stricken language is now in item D.

C. The new language is the same as what was previously in item A. The stricken language is replaced by the new language in item E.

D. The new language is the same as what was previously in item B. The stricken language is replaced by the new language in item F.

E. The new language replaces the language previously in item C. The revised language permits a licensee or registrant to submit an outline of the content of a course, rather than having to submit a detailed description. The reason for the change is that it is not always feasible for the participant to submit a detailed description; nor is a detailed description always necessary for the board to determine whether the course content is acceptable. The stricken language is replaced by the new language in item G.

F. This provision replaces what was previously in item D. The change in wording is for purposes of clarification only.

G. This provision replaces what was previously in item E. The change in wording is for purposes of clarification only.

Subp. 2a. Time limits for notice of attendance. This provision requires that if a course is not taken from an approved sponsor, the licensee or registrant must apply for course approval within 30 days after completing the course. The new language replaces the language previously in part 3100.4600, which provided for a two-week time period. The change gives a licensee or registrant more time because the shorter time period is not necessary in order for the board to make a timely decision.

Subp. 3. Course approval standards. The revision strikes existing language and substitutes references to other provisions in the rules in order to clarify that the new standards contained in part 3100.4200, subpart 5 apply, and that the description of nonclinical subjects in part 3100.4100, subpart 2 apply here as well.

Subp. 4. Written denial. The new language replaces the repealed language in subpart 6. The stricken language is replaced by the language in part 3100.4200, subpart 5.

Subp. 5. Excluded courses. The repealed language is replaced by the language in part 3100.4200, subpart 5.

Subp. 6. Written denial. The repealed language is replaced by the language in subpart 4.

3100.4400 Establishing Credit Hours for CDE Courses and Activities

The changes made in the first paragraph are for purposes of clarification only.

A. The changes made in this item are not substantive; they are for purposes of clarification only.

B. The changes made in this item are intended to clarify what is meant by "scientific or educational meetings or courses."

C. The changes made in this item are not substantive; they are for purposes of clarification only.

D. The changes made in this item are not substantive; they are for purposes of clarification only.

E. This item provides that authoring or coauthoring a published scientific article will be awarded five credits per article. The provision replaces the language which was contained in 3100.4500, subpart 2, item E, stating that CDE credit for publication of articles or books "will be granted on an individual consideration basis." The revised language provides a specific and uniform basis for awarding credit. Awarding five credits is the board's judgment of what would be appropriate.

F. This item provides that completion of postgraduate courses will be awarded ten credits per credit hour. Previously the board had no rule on the number of credits earned for postgraduate courses. Awarding ten credits per credit hour is the board's judgment of what would be appropriate.

G. This item provides that completion of a jurisprudence examination will be awarded two credits per five-year cycle. Previously the board did not award credits for completion of a jurisprudence examination. Doing so is justifiable on the grounds that it is important for dental workers to have up-to-date knowledge and information about legal requirements. Awarding two credits is the board's judgment of what would be appropriate. Allowing credit only one time in each five-year cycle reflects the board's judgment that the statutes and rules do not change often enough to warrant more frequent crediting. The first five-year cycle is excluded because the licensee or registrant will have been tested on jurisprudence during the initial licensure application process.

3100.4500 Credit Hours for Examinations and Advanced Education Programs

The repealed language in what was subpart 1 is replaced by the language contained in part 3100.4200, subpart 5.

Technical changes are made in the language in what was subpart

2. A reference to part 3100.4100, subpart 2 is added so that the requirement is consistent with part 3100.4300, subpart 3. The reference to part 3100.4300, subpart 3 is deleted because the reference is not needed; part 3100.4300, subpart 3 only cites the two provisions (part 3100.4100, subpart 2 and part 3100.4200, subpart 5) already cited in this subpart, as amended.

A. The language "except for any specific topic area required by statute or rule" is added to clarify that successful completion of the examination will not satisfy specific continuing education requirements such as for infection control.

B. The language "except for any specific topic area required by statute or rule" is added to clarify that successful completion of the education program will not satisfy specific continuing education requirements such as for infection control.

C. The language "except for any specific topic area required by statute or rule" is added to clarify that successful completion of the examination will not satisfy specific continuing education requirements such as for infection control.

D. The language "except for any specific topic area required by statute or rule" is added to clarify that successful completion of the education program will not satisfy specific continuing education requirements such as for infection control.

E. The new language gives registered dental assistants CDE credit comparable to that given to dentists in item A and to dental hygienists in item C.

F. The new language gives registered dental assistants CDE credits comparable to that given to dentists in item B and to dental hygienists in item D.

3100.4600 Time Limits for Notice of Attendance

The repealed language is not necessary because this subject is addressed in part 3100.4200, subpart 6.

Effective Date

Part 3100.4200, subpart 4 is made effective May 1, 1995. Subpart 4 requires that an approved sponsor submit to the board a renewal application by May 1 of each year. The provision clarifies that the first date to which this requirement applies will be in 1995.

ADDITIONAL INFORMATION

Expenditure of Public Money by Local Public Bodies

Minnesota Statutes, section 14.11, subdivision 1 requires that "if the adoption of a rule by an agency will require the expenditure of public money by local public bodies, the appropriate notice of the agency's intent to adopt a rule shall be accompanied by a written statement giving the agency's reasonable estimate of the total cost to all local public bodies."

The board does not anticipate that the proposed amendments will require the expenditure of public money by local public bodies.

Impact on Agricultural Land

Minnesota Statutes, section 14.11, subdivision 2 requires that "if the agency proposing the adoption of the rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the agency shall comply with the requirements of sections 17.80 to 17.84."

The board does not anticipate that the proposed amendments will have a direct and substantial adverse impact on agricultural land in the state.

Small Business Considerations

Minnesota Statutes, section 14.115, subdivision 2 requires that when an agency proposes new or amended rules, it must consider "methods for reducing the impact of the rule on small business" and "document how it has considered these methods"; subdivision 4 requires the agency to "provide an opportunity for small businesses to participate in the rulemaking process."

The board's position is that the requirements of section 14.115 do not apply to the proposed rules, because subdivision 7, clause (2) provides that the section does not apply to "agency rules that do not affect small business directly." The board's authority relates only to the qualifications of dentists, dental hygienists, and registered dental assistant to provide dental services; the board has no authority over the dental businesses in which they practice. Therefore the rules do not affect dental businesses as such, and the board is exempt from the requirements of section 14.115.

Fees

Minnesota Statutes, section 16A.128, subdivision 1a requires that "fees for accounts for which appropriations are made may not be established or adjusted without the approval of the commissioner [of finance]." Approval is being requested of the commissioner.

Expert Witnesses

Minnesota Rules, part 1400,0500, subpart 1 requires that if rules are adopted with a public hearing, the statement of need and reasonableness must include "a list of any witnesses to be called by the agency to testify on its behalf."

The board does not anticipate that it will be necessary to have a public hearing on the proposed amendments.



Richard W. Diercks
Executive Director

July 25, 1994