

**STATE OF MINNESOTA
BOARD OF DENTISTRY**

**In the Matter of the Proposed Rules
Of the Board of Dentistry
Relating to Duties of Dental Hygienists
and Registered Dental Assistants**

**STATEMENT OF NEED
AND REASONABLENESS**

GENERAL STATEMENT

Introduction

The proposed amendments expand the duties of registered dental assistants under general supervision, indirect supervision, and direct supervision; clarify the duties of dental hygienists under general supervision; and expand the duties of dental hygienists under direct supervision.

Rule Development Process

The Board began the process of developing the proposed amendments 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. Additional Notices of Solicitation were published on May 8, 1995 and August 21, 1995, the latter pursuant to a new law that went into effect in May 1995.

The Board developed the proposed amendments on the basis of needs identified by the Board and by practicing dental health care professionals. The Board surveyed the Minnesota Dental Association, the Minnesota Dental Assistants' Association, the Minnesota Dental Hygienists' Association, and other dental groups and organizations and asked them to indicate, with respect to each proposed change, whether they believed 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, deemed to be needed and noncontroversial, but not as high a priority as "category 1" changes.

The Rules Committee subsequently held public meetings to consider drafts of the "category 2" rules changes, and approved a proposed draft to be submitted to the full Board. The draft was approved at a public meeting of the Board of Dentistry held on June 11, 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 before publishing the Notice of Intent.

The Board will publish in the State Register the proposed amendments and the Notice of Intent to Adopt Rules Without a Public Hearing on December 26, 1995. On December 22, 1995, the Board will mail copies of the Notice to persons registered with the Board pursuant to Minnesota Statutes, section 14.22, as well as to others who contact the Board expressing 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 G.

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.

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 150A.10, subdivision 1 provides that a licensed dental hygienist may perform those services which are educational, diagnostic, therapeutic, or preventive in nature and are authorized by the Board of Dentistry. Minnesota Statutes, section 150A.10, subdivision 2 provides that, the Board may also define by rule the scope of practice of registered and nonregistered dental assistants. The Board by rule may require continuing dental education for differing levels of dental assistants, as a condition to their registration or authority to perform their authorized duties.

DISCUSSION OF SPECIFIC PROVISIONS

3100.1300 APPLICATION FOR REGISTRATION AS A REGISTERED DENTAL ASSISTANT.

A technical amendment to item C changes a reference to the subparts in which the duties of registered dental assistants are defined. The change reflects the additional duties specified under part 3100.8500. This proposed change is necessary to eliminate confusion and reasonable in order for the rules to be consistent.

3100.8500 REGISTERED DENTAL ASSISTANTS.

Subpart 1. Duties under general supervision. The proposed amendment adds a type of supervision -- general supervision -- under which a registered dental assistant may perform certain specific duties. General supervision means that a dentist has authorized the procedures and the registered dental assistant performs the procedures in accordance with the dentist's diagnosis and treatment plan. The provision authorizes a registered dental assistant to perform the following duties under general supervision: cut arch wires, remove loose bands, and remove loose brackets

on orthodontic appliances to provide palliative treatment. This amendment is designed to reflect changes in prevailing standards and practices of duties that registered dental assistants are qualified to perform. It also allows dentists greater flexibility in delegating appropriate responsibilities to assistants.

These changes are needed because patients suffering from arch wires that are causing irritation, loose bands or loose orthodontic brackets, should be able to obtain relief quickly even if the dentist is not available. Allowing registered dental assistants to perform those services, even in the dentist's absence, provides a safe and convenient way for patients to obtain that necessary relief. Without this provision, patients must be referred elsewhere in the event that bands or brackets become loose and the dentist is out of the office. Bands and brackets frequently become loose, the condition is irritating to the patient's mouth, and the remedy -- cutting the arch wire, removing the loose band or loose bracket -- is relatively fast and easy.

This provision is reasonable because registered dental assistants already receive training in performing other intraoral procedures on dental patients. The proposed additional duties are relatively simple and safe to perform, and they are reversible procedures. The provision will allow patients to receive more expedient care, thereby helping to control costs.

Subp. 1a. Duties under indirect supervision. Indirect supervision means that a dentist is present in the office, authorizes procedures, and remains in the office while the procedures are performed.

C. This proposal clarifies one of the duties which a registered dental assistant may perform under indirect supervision, that of applying topical medications. The proposed amendment states that the topical medications which a registered assistant may apply are those that are physiologically reversible, and specifically names topical fluoride and bleaching agents. The need for this clarification is to eliminate confusion on the part of practitioners who may question which "topical medications" are permitted. This provision is reasonable because dental assistants are trained to apply topical fluoride and bleaching agents in their dental assisting programs.

M. and N. The proposed amendments expand the duties which registered dental assistants may perform to include the following: dry root canals with paper points; place cotton pellets and place temporary restorative materials into endodontic access openings. These changes are designed to reflect changes in prevailing standards and practices of what registered dental assistants are qualified to perform. The changes also allow dentists greater flexibility in delegating useful responsibilities to registered dental assistants, and will result in dental patients receiving more expedient dental treatment.

The proposed changes are needed because allowing registered dental assistants to perform these procedures frees the dentist to perform more complicated, irreversible procedures which cannot be delegated, thereby providing dentists with a way to keep patient costs under control. The provisions are reasonable because registered dental assistants are already trained to perform other intraoral procedures on dental patients. Furthermore, these procedures are relatively simple and safe to perform, and they are reversible.

Subp.1b. Duties under direct supervision. Item E. Direct supervision means that a dentist is in the dental office, personally diagnoses the condition to be treated, personally authorizes the procedure, and evaluates the performance of the auxiliary before dismissing the patient. The proposal expands the duties which a registered dental assistant may perform under direct supervision to include the removal of temporary crowns with hand instruments only. This amendment is designed to reflect changes in prevailing standards and practices of what duties registered dental assistants are qualified to perform. The changes also give dentists greater flexibility in delegating useful responsibilities to registered dental assistants, and will result in dental patients receiving more expedient care.

The proposed changes are needed because allowing registered dental assistants to perform temporary crown removal with hand instruments frees the dentist to perform more complicated, irreversible procedures, thereby providing dentists with a way to keep costs to patients under control. This approach is reasonable because registered dental assistants are already trained to perform other intraoral procedures, and because the proposed function is reversible, safe and relatively easy to perform. Finally, it will allow dental patients to receive more expedient treatment.

3100.8700 DENTAL HYGIENISTS

Subpart 1. Duties under general supervision. Item A. General supervision of dental hygienists means that a dentist has authorized the procedures and the hygienist carries them out in accordance with the dentist's diagnosis and treatment plan. This provision expands the permissible duties of dental hygienists to include those described in Minnesota Rule 3100.8500, subparts 1 and 1a, as described above for registered dental assistants. This approach is needed in order to be consistent with that proposed change, and it is reasonable because dental hygienists' permissible duties include all of those allowed for registered dental assistants.

Item B. and Item G. The proposed language in Item B clarifies the duties which a dental hygienist can perform under general supervision by deleting the phrase "temporary placement of restorations" and substituting it with "replacement of intact temporary crowns or restorations with temporary restorative materials prior to the placement of a permanent restoration," now found in new **Item G**. This definition of replacement of restorations does not include the construction of temporary crowns. The proposed change is needed to clarify what is permissible for dentists to delegate regarding the replacement of temporary crowns and restorations. There has been confusion on the part of dentists and dental hygienists about the meaning of the phrase "temporary replacement of restorations." The Board has been asked whether this term includes temporary crowns, and if so, whether dental hygienists could actually construct temporary crowns or whether they could just replace existing temporary crowns that had been constructed by the dentist.

This provision is reasonable because dental hygienists are already trained to perform several intraoral procedures. Furthermore, replacing intact temporary restorations and crowns is considered safe and both are reversible procedures. This provision will allow patients to receive more expedient dental treatment, thereby helping to control costs.

The proposed language changes in **Items E and F** are nonsubstantive and are needed to make the language grammatically correct.

Subp. 2a. Duties under direct supervision. Item C. Direct supervision means that a dentist is in the office, personally diagnoses the condition to be treated, personally authorizes the procedure, and evaluates the performance of the dental hygienist before dismissing the patient. The proposed language in **Item C** adds to the duties that a dental hygienist may perform under direct supervision the removal of temporary crowns with hand instruments only. The authorization, need and reasonableness parallel that for registered dental assistants under direct supervision with the proposed new language in part 3100.8500, subpart 1b, item E.

STATUTORY REQUIREMENTS

Small Business Considerations

Minnesota Statutes section 14.115, subdivision 2 requires that, when an agency proposes a new or amended rule which may affect small businesses, the agency shall consider methods for reducing the impact of the rule on small businesses and document in its statement of need and reasonableness how it has considered these methods and the results. Subdivision 3 requires the agency to incorporate into the proposed rule any of the methods found to be feasible, unless doing so would be contrary to the statutory objectives of the proposed rule. Finally, subdivision 4 requires an agency to provide an opportunity for small businesses to participate in the rulemaking process, utilizing one or more of the methods specified in subdivision 4.

It is the Board's position that, pursuant to the exemption set forth in subdivision 7(2), the requirements of section 14.115 do not apply to these proposed rules insofar as they do not affect small businesses directly. Any effect these rules may have on dental businesses would be, at most, indirect. While it could be argued that the Board regulates dental businesses insofar as Minnesota Statutes section 150A.11 makes it unlawful to practice dentistry under the name of a corporation or company, the fact remains that the Board issues licenses to individuals, not to businesses. The licenses issued to individuals by the Board are intended to ensure that dental services are provided in a safe and competent manner; the licenses do not govern the business aspects of dental practices.

To the extent the proposed rules may affect small businesses directly, they are exempt from the requirements of section 14.115 because the businesses affected are "service businesses regulated by government bodies, for standards and costs, such as ... providers of medical care," pursuant to subdivision 7(3). First, dental offices are service businesses insofar as the employees of the office are providing dental treatment to the public. Second, these dental offices and the individuals working in the offices are regulated by government bodies, such as the Board and the Minnesota Department of Human Services (DHS). Third, the services provided in a dental office are regulated by those government bodies for standards and costs; the Board regulates them for standards, and DHS regulates them for costs. Finally, dentists, dental hygienists and registered dental assistants clearly are providers of medical care, under the definition of the practice of dentistry found in Minnesota Statutes, section 150A.05.

While the question may be raised as to whether the same government body must regulate the service business for both standards **and** costs for the exemption to apply, the Board believes this could not be what the legislature intended, for two reasons: First, subdivision 7(3) specifically refers to regulation by "governmental bodies," which suggests regulation by more than one

government body. Second, and even more significant, some of the examples of exempt service businesses listed in subdivision 7(3) would not, in fact, qualify for the exemption if the same government body had to regulate the business for both standards and costs. For example, nursing homes and hospitals are regulated by the Minnesota Department of Health for standards, but by DHS for costs. If the legislature had intended to exempt only those service businesses regulated by a single government body for both standards and costs, then it could not have included nursing homes and hospitals in its list of exemptions.

If it is determined that section 14.115 does apply to these rules, then it is the Board's position, after having considered the methods for reducing the impact of the rules on small businesses set forth in subdivision 2, that applying any of those methods would not be feasible because it would have an adverse impact on public health, safety or welfare, and would be contrary to the statutory objectives which are the basis for the proposed rulemaking -- namely, to establish the services which may be performed by dental hygienists and registered dental assistants.

Pursuant to subdivision 2, here are the results of the Board's consideration of the five methods for reducing the impact of the rule on small businesses:

(a) The Board has determined that it would not be feasible to establish less stringent compliance or reporting requirements for small businesses because the proposed rule does not have compliance or reporting requirements.

(b) The Board has determined that it would not be feasible to establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses because there are no such requirements in the proposed rule.

(c) The Board has determined that it would not be feasible to consolidate or simplify compliance or reporting requirements for small businesses, because there are no such requirements in the proposed rule.

(d) The Board has determined that it would not be feasible to establish performance standards for small businesses to replace design or operational standards required in the rules, because these proposed rules contain no design or operational standards.

(e) The Board has determined that it would not be feasible to exempt small businesses from any or all requirements of the proposed rules. If small dental offices were exempt from the proposed rules, they would not have the benefits of dental hygienists or registered dental assistants performing these expanded functions on patients, and patients would not enjoy the benefits of receiving more expeditious dental care.

Pursuant to subdivision 4, the Board has provided an opportunity for small businesses to participate in the rulemaking process in the following ways:

(1) by publishing notices of solicitation of outside information or opinions in the State Register on April 5, 1993; May 8, 1995, and August 21, 1995;

(2) by publishing notices of the proposed rulemaking in the Board's newsletters dated June 1993, February 1994, August 1994 and October 1995 and mailing these newsletters to all licensees and registrants of the Board;

(3) by conducting public meetings on these proposed rules on April 17 and July 16, 1993, for which public notices were mailed to all persons who have registered their names with the Board for rulemaking purposes;

(4) by mailing the proposed rules and the notices of intent to adopt the proposed rules to all persons who have registered their names with the Board for rulemaking purposes.

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 bodies in an amount estimated to exceed \$100,000, the agency's notice of intent to adopt the rule shall be accompanied by a written statement giving the agency's reasonable estimate of the total cost to all local public bodies in the state. It is the Board's position that these proposed rules will not require the expenditure of public money by local public bodies.

Impact on Agricultural Lands

Minnesota Statutes section 14.11, subdivision 2 requires that if an agency's proposed 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. It is the Board's position that the proposed rules will not have a direct and substantial adverse impact on agricultural land in the state, and therefore the Board need not comply with sections 17.80 to 17.84.

Comments and Recommendations of Commissioner of Finance/Fiscal and Policy Concerns

This Statement of Need and Reasonableness does not include comments or recommendations from the Commissioner of Finance, nor does it address fiscal and policy concerns raised during the review process because the proposed amendments do not set, adjust, or establish regulatory, licensure or other charges for goods or services.

Board's Efforts to Provide Additional Notification

The Board's effort to provide additional notification are explained in the "Rule Development Process" and "Small Business Considerations" sections above.

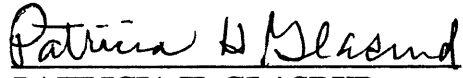
Submission of Statement of Need and Reasonableness to Legislative Commission to Review Administrative Rules

Pursuant to Minnesota Statutes section 14.23, the Board has submitted a copy of the Statement of Need and Reasonableness relating to these proposed rules to the Legislative Commission to Review Administrative Rules.

Conclusion

For the reasons stated above, the Board submits that these proposed rules are both needed and reasonable.

Dated: 12-21-95


PATRICIA H. GLASRUD
Executive Director



Board of Dentistry

EXECUTIVE OFFICE

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MN RELAY SERVICE FOR HEARING IMPAIRED (612) 297-5353 OR (800) 627-3529

APR 24 1995

VB

April 21, 1995

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 a copy of the Statement of Need and Reasonableness on proposed permanent rules relating to registered dental assistants. The Statement of Need and Reasonableness is being made available to the general public as of today.

Please let me know if I can be of any further assistance.

Sincerely,

Patricia H. Glasrud

Patricia H. Glasrud
Executive Director

PHG/pmn

encl.

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DISCUSSION OF SPECIFIC PROVISIONS

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A technical amendment to item C changes a reference to the subparts in which the duties of registered dental assistants are defined. The change reflects the additional duties specified under part 3100.8500. This proposed change is necessary to eliminate confusion and reasonable in order for the rules to be consistent.

3100.8500 REGISTERED DENTAL ASSISTANTS.

Subpart 1. Duties under general supervision. The proposed amendment adds a type of supervision -- general supervision -- under which a registered dental assistant may perform certain specific duties. General supervision means that a dentist has authorized the procedures and the registered dental assistant performs the procedures in accordance with the dentist's diagnosis and treatment plan. The provision authorizes a registered dental assistant to perform the following duties under general supervision: cut arch wires, remove loose bands, and remove loose brackets

on orthodontic appliances to provide palliative treatment. This amendment is designed to reflect changes in prevailing standards and practices of duties that registered dental assistants are qualified to perform. It also allows dentists greater flexibility in delegating appropriate responsibilities to assistants.

These changes are needed because patients suffering from arch wires that are causing irritation, loose bands or loose orthodontic brackets, should be able to obtain relief quickly even if the dentist is not available. Allowing registered dental assistants to perform those services, even in the dentist's absence, provides a safe and convenient way for patients to obtain that necessary relief. Without this provision, patients must be referred elsewhere in the event that bands or brackets become loose and the dentist is out of the office. Bands and brackets frequently become loose, the condition is irritating to the patient's mouth, and the remedy -- cutting the arch wire, removing the loose band or loose bracket -- is relatively fast and easy.

This provision is reasonable because registered dental assistants already receive training in performing other intraoral procedures on dental patients. The proposed additional duties are relatively simple and safe to perform, and they are reversible procedures. The provision will allow patients to receive more expedient care, thereby helping to control costs.

Subp. 1a. Duties under indirect supervision. Indirect supervision means that a dentist is present in the office, authorizes procedures, and remains in the office while the procedures are performed.

C. This proposal clarifies one of the duties which a registered dental assistant may perform under indirect supervision, that of applying topical medications. The proposed amendment states that the topical medications which a registered assistant may apply are those that are physiologically reversible, and specifically names topical fluoride and bleaching agents. The need for this clarification is to eliminate confusion on the part of practitioners who may question which "topical medications" are permitted. This provision is reasonable because dental assistants are trained to apply topical fluoride and bleaching agents in their dental assisting programs.

M. and N. The proposed amendments expand the duties which registered dental assistants may perform to include the following: dry root canals with paper points; place cotton pellets and place temporary restorative materials into endodontic access openings. These changes are designed to reflect changes in prevailing standards and practices of what registered dental assistants are qualified to perform. The changes also allow dentists greater flexibility in delegating useful responsibilities to registered dental assistants, and will result in dental patients receiving more expedient dental treatment.

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Subp.1b. Duties under direct supervision. Item E. Direct supervision means that a dentist is in the dental office, personally diagnoses the condition to be treated, personally authorizes the procedure, and evaluates the performance of the auxiliary before dismissing the patient. The proposal expands the duties which a registered dental assistant may perform under direct supervision to include the removal of temporary crowns with hand instruments only. This amendment is designed to reflect changes in prevailing standards and practices of what duties registered dental assistants are qualified to perform. The changes also give dentists greater flexibility in delegating useful responsibilities to registered dental assistants, and will result in dental patients receiving more expedient care.

The proposed changes are needed because allowing registered dental assistants to perform temporary crown removal with hand instruments frees the dentist to perform more complicated, irreversible procedures, thereby providing dentists with a way to keep costs to patients under control. This approach is reasonable because registered dental assistants are already trained to perform other intraoral procedures, and because the proposed function is reversible, safe and relatively easy to perform. Finally, it will allow dental patients to receive more expedient treatment.

3100.8700 DENTAL HYGIENISTS

Subpart 1. Duties under general supervision. Item A. General supervision of dental hygienists means that a dentist has authorized the procedures and the hygienist carries them out in accordance with the dentist's diagnosis and treatment plan. This provision expands the permissible duties of dental hygienists to include those described in Minnesota Rule 3100.8500, subparts 1 and 1a, as described above for registered dental assistants. This approach is needed in order to be consistent with that proposed change, and it is reasonable because dental hygienists' permissible duties include all of those allowed for registered dental assistants.

Item B. and Item G. The proposed language in Item B clarifies the duties which a dental hygienist can perform under general supervision by deleting the phrase "temporary placement of restorations" and substituting it with "replacement of intact temporary crowns or restorations with temporary restorative materials prior to the placement of a permanent restoration," now found in new **Item G**. This definition of replacement of restorations does not include the construction of temporary crowns. The proposed change is needed to clarify what is permissible for dentists to delegate regarding the replacement of temporary crowns and restorations. There has been confusion on the part of dentists and dental hygienists about the meaning of the phrase "temporary replacement of restorations." The Board has been asked whether this term includes temporary crowns, and if so, whether dental hygienists could actually construct temporary crowns or whether they could just replace existing temporary crowns that had been constructed by the dentist.

This provision is reasonable because dental hygienists are already trained to perform several intraoral procedures. Furthermore, replacing intact temporary restorations and crowns is considered safe and both are reversible procedures. This provision will allow patients to receive more expedient dental treatment, thereby helping to control costs.

The proposed language changes in **Items E and F** are nonsubstantive and are needed to make the language grammatically correct.

Subp. 2a. Duties under direct supervision. Item C. Direct supervision means that a dentist is in the office, personally diagnoses the condition to be treated, personally authorizes the procedure, and evaluates the performance of the dental hygienist before dismissing the patient. The proposed language in **Item C** adds to the duties that a dental hygienist may perform under direct supervision the removal of temporary crowns with hand instruments only. The authorization, need and reasonableness parallel that for registered dental assistants under direct supervision with the proposed new language in part 3100.8500, subpart 1b, item E.

STATUTORY REQUIREMENTS

Small Business Considerations

Minnesota Statutes section 14.115, subdivision 2 requires that, when an agency proposes a new or amended rule which may affect small businesses, the agency shall consider methods for reducing the impact of the rule on small businesses and document in its statement of need and reasonableness how it has considered these methods and the results. Subdivision 3 requires the agency to incorporate into the proposed rule any of the methods found to be feasible, unless doing so would be contrary to the statutory objectives of the proposed rule. Finally, subdivision 4 requires an agency to provide an opportunity for small businesses to participate in the rulemaking process, utilizing one or more of the methods specified in subdivision 4.

It is the Board's position that, pursuant to the exemption set forth in subdivision 7(2), the requirements of section 14.115 do not apply to these proposed rules insofar as they do not affect small businesses directly. Any effect these rules may have on dental businesses would be, at most, indirect. While it could be argued that the Board regulates dental businesses insofar as Minnesota Statutes section 150A.11 makes it unlawful to practice dentistry under the name of a corporation or company, the fact remains that the Board issues licenses to individuals, not to businesses. The licenses issued to individuals by the Board are intended to ensure that dental services are provided in a safe and competent manner; the licenses do not govern the business aspects of dental practices.

To the extent the proposed rules may affect small businesses directly, they are exempt from the requirements of section 14.115 because the businesses affected are "service businesses regulated by government bodies, for standards and costs, such as ... providers of medical care," pursuant to subdivision 7(3). First, dental offices are service businesses insofar as the employees of the office are providing dental treatment to the public. Second, these dental offices and the individuals working in the offices are regulated by government bodies, such as the Board and the Minnesota Department of Human Services (DHS). Third, the services provided in a dental office are regulated by those government bodies for standards and costs; the Board regulates them for standards, and DHS regulates them for costs. Finally, dentists, dental hygienists and registered dental assistants clearly are providers of medical care, under the definition of the practice of dentistry found in Minnesota Statutes, section 150A.05.

While the question may be raised as to whether the same government body must regulate the service business for both standards **and** costs for the exemption to apply, the Board believes this could not be what the legislature intended, for two reasons: First, subdivision 7(3) specifically refers to regulation by "governmental bodies," which suggests regulation by more than one

government body. Second, and even more significant, some of the examples of exempt service businesses listed in subdivision 7(3) would not, in fact, qualify for the exemption if the same government body had to regulate the business for both standards and costs. For example, nursing homes and hospitals are regulated by the Minnesota Department of Health for standards, but by DHS for costs. If the legislature had intended to exempt only those service businesses regulated by a single government body for both standards and costs, then it could not have included nursing homes and hospitals in its list of exemptions.

If it is determined that section 14.115 does apply to these rules, then it is the Board's position, after having considered the methods for reducing the impact of the rules on small businesses set forth in subdivision 2, that applying any of those methods would not be feasible because it would have an adverse impact on public health, safety or welfare, and would be contrary to the statutory objectives which are the basis for the proposed rulemaking -- namely, to establish the services which may be performed by dental hygienists and registered dental assistants.

Pursuant to subdivision 2, here are the results of the Board's consideration of the five methods for reducing the impact of the rule on small businesses:

(a) The Board has determined that it would not be feasible to establish less stringent compliance or reporting requirements for small businesses because the proposed rule does not have compliance or reporting requirements.

(b) The Board has determined that it would not be feasible to establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses because there are no such requirements in the proposed rule.

(c) The Board has determined that it would not be feasible to consolidate or simplify compliance or reporting requirements for small businesses, because there are no such requirements in the proposed rule.

(d) The Board has determined that it would not be feasible to establish performance standards for small businesses to replace design or operational standards required in the rules, because these proposed rules contain no design or operational standards.

(e) The Board has determined that it would not be feasible to exempt small businesses from any or all requirements of the proposed rules. If small dental offices were exempt from the proposed rules, they would not have the benefits of dental hygienists or registered dental assistants performing these expanded functions on patients, and patients would not enjoy the benefits of receiving more expeditious dental care.

Pursuant to subdivision 4, the Board has provided an opportunity for small businesses to participate in the rulemaking process in the following ways:

(1) by publishing notices of solicitation of outside information or opinions in the State Register on April 5, 1993; May 8, 1995, and August 21, 1995;

(2) by publishing notices of the proposed rulemaking in the Board's newsletters dated June 1993, February 1994, August 1994 and October 1995 and mailing these newsletters to all licensees and registrants of the Board;

(3) by conducting public meetings on these proposed rules on April 17 and July 16, 1993, for which public notices were mailed to all persons who have registered their names with the Board for rulemaking purposes;

(4) by mailing the proposed rules and the notices of intent to adopt the proposed rules to all persons who have registered their names with the Board for rulemaking purposes.

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 bodies in an amount estimated to exceed \$100,000, the agency's notice of intent to adopt the rule shall be accompanied by a written statement giving the agency's reasonable estimate of the total cost to all local public bodies in the state. It is the Board's position that these proposed rules will not require the expenditure of public money by local public bodies.

Impact on Agricultural Lands

Minnesota Statutes section 14.11, subdivision 2 requires that if an agency's proposed 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. It is the Board's position that the proposed rules will not have a direct and substantial adverse impact on agricultural land in the state, and therefore the Board need not comply with sections 17.80 to 17.84.

Comments and Recommendations of Commissioner of Finance/Fiscal and Policy Concerns

This Statement of Need and Reasonableness does not include comments or recommendations from the Commissioner of Finance, nor does it address fiscal and policy concerns raised during the review process because the proposed amendments do not set, adjust, or establish regulatory, licensure or other charges for goods or services.

Board's Efforts to Provide Additional Notification

The Board's effort to provide additional notification are explained in the "Rule Development Process" and "Small Business Considerations" sections above.

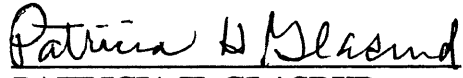
Submission of Statement of Need and Reasonableness to Legislative Commission to Review Administrative Rules

Pursuant to Minnesota Statutes section 14.23, the Board has submitted a copy of the Statement of Need and Reasonableness relating to these proposed rules to the Legislative Commission to Review Administrative Rules.

Conclusion

For the reasons stated above, the Board submits that these proposed rules are both needed and reasonable.

Dated: 12-21-95


PATRICIA H. GLASRUD
Executive Director

BOARD OF DENTISTRY

**PROPOSED PERMANENT RULES RELATING TO
THE DUTIES OF HYGIENISTS AND ASSISTANTS**

STATEMENT OF NEED AND REASONABLENESS

BACKGROUND INFORMATION

Purpose of Amendments

The proposed rules expand the duties of registered dental assistants under general supervision, indirect supervision, and direct supervision; clarify the duties of dental hygienists under general supervision; and expand the duties of dental hygienists under direct supervision.

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 150A.06, subdivision 2 provides that an applicant to practice as a dental hygienist "may be examined by the board or by an agency pursuant to section 150A.03, subdivision 1, in a manner to test the applicant's fitness to practice dental hygiene."

Minnesota Statutes, section 150A.06, subdivision 2a provides that an applicant to practice as a registered dental assistant "may be examined by the board or by an agency pursuant to section 150A.03, subdivision 1, in a manner to test the applicant's fitness to perform as a registered dental assistant."

Minnesota Statutes, section 150A.08, subdivision 1, clause (6) establishes as one of the grounds for the board to suspend, revoke, limit, modify, or deny any license to practice dentistry or dental hygiene or the registration of any dental assistant "conduct unbecoming a person licensed to practice dentistry or dental hygiene or registered as a dental assistant, or conduct contrary to the best interest of the public, as such conduct is defined by the rules of the board."

Minnesota Statutes, section 150A.10, subdivision 1 provides that a "licensed dental hygienist may perform those services which are educational, diagnostic, therapeutic, or preventive in nature and are authorized by the board of dentistry."

Minnesota Statutes, section 150A.10, subdivision 2 provides that "the board may also define by rule the scope of practice of

registered and nonregistered dental assistants. The board by rule may require continuing dental education for differing levels of dental assistants, as a condition to their registration or authority to perform their authorized duties."

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 Hygienists' Association, and other dental 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, deemed to be needed and noncontroversial but not as high a priority as category 1 changes.

The Rules Committee subsequently held public meetings to consider drafts of the category 2 rules changes, and approved a proposed draft to be submitted to the full board. The draft was approved at a public meeting of the Board of Dentistry held on June 11, 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 April 21, 1995.

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 3100.1300 Application for Registration as a Registered Dental Assistant.

A technical amendment to item C changes a reference to the subparts in which the duties of registered dental assistants are defined. The change reflects the additional duties specified under part 3100.8500.

Part 3100.8500 Registered Dental Assistants.

Subpart 1. Duties under general supervision. Duties under general supervision are those that may be performed if a dentist has authorized the procedures and the registered dental assistant performs the procedures in accordance with the dentist's diagnosis and treatment plan. The proposal authorizes a registered dental assistant to perform the following duties under general supervision: cut arch wires, remove loose bands, or remove loose brackets on orthodontic appliances to provide palliative treatment. The amendment is designed to reflect changes in prevailing standards and practices of what duties registered dental assistants are qualified to perform and to allow dentists greater flexibility in delegating appropriate responsibilities to assistants.

Subp. 1a. Duties under indirect supervision. Duties under indirect supervision are those that may be performed if a dentist is in the office, authorizes the procedures, and remains in the office while the procedures are being performed. The proposal expands the duties which a registered dental assistant may perform under indirect supervision to include the following: apply topical flouride and bleaching agents; dry root canals with paper points, and place cotton pellets and temporary restorative materials into endodontic access openings. The provision also clarifies that a registered dental assistant may, under indirect supervision, apply only topical medications that are physiologically reversible. The amendment is designed to reflect changes in prevailing standards and practices of what duties registered dental assistants are qualified to perform and to allow dentists greater flexibility in delegating appropriate responsibilities to assistants.

Subp. 1b. Duties under direct supervision. Duties under direct supervision are those that may be performed if a dentist is in the dental office, personally diagnoses the condition to be treated, personally authorizes the procedure, and evaluates the performance of the auxiliary before dismissing the patient. The proposal expands the duties which a dental assistant may perform under direct supervision to include the removal of temporary crowns with hand instruments only. The amendment is designed to reflect changes in prevailing standards and practices of what duties registered dental assistants are qualified to perform and to allow dentists greater flexibility in delegating appropriate

responsibilities to assistants.

3100.8700 Dental Hygienists

Subpart 1. Duties under general supervision. Duties under general supervision are those that may be performed if a dentist has authorized them and the hygienist carries them out in accordance with the dentist's diagnosis and treatment plan. The proposal clarifies the duties which a dental hygienist can perform under general supervision by deleting the phrase "temporary placement of restorations" and substituting "replacement of intact temporary crowns or restorations with temporary restorative materials prior to the placement of a permanent restoration. Replacement of restorations does not include the construction of temporary crowns." The amendment is designed to reflect changes in prevailing standards and practice of what duties dental hygienists are qualified to perform and to allow dentists greater flexibility in delegating appropriate responsibilities to hygienists.

Subp. 2a. Duties under direct supervision. Duties under direct supervision are those that may be performed if a dentist is in the office, personally diagnoses the condition to be treated, personally authorizes the procedure, and evaluates the performance of the dental hygienist before dismissing the patient. The proposal adds to the duties a dental hygienist can perform under direct supervision the removal of temporary crowns with hand instruments only. The authorization parallels what is authorized for dental assistants under direct supervision with the proposed new language in part 3100.8500, subpart 1b, item E.

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 assistants to provide dental services; the board has not 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]." The proposed rules do not establish or adjust fees.

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.



Patricia H. Glasrud
Executive Director

April 21, 1995



The Legislative Commission to
Review Administrative Rules

Board of Dentistry

EXECUTIVE OFFICE

2700 UNIVERSITY AVENUE WEST • SUITE 70
ST. PAUL, MINNESOTA 55114-1055

(612) 642-0579

MN RELAY SERVICE FOR HEARING IMPAIRED (612) 297-5353 OR (800) 627-3529

AUG 0 8 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 registered dental assistants:

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 Registered Dental Assistants
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; 150A.06, subds. 2 and 2a; 150A.08, subd. 1(6); and 150A.10, subd. 2.

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 expand the duties of registered dental assistants under general supervision, indirect supervision, and direct supervision; clarify the duties of dental hygienists under general supervision; and expand the duties of dental hygienists under direct supervision. 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
THE DUTIES OF HYGIENISTS AND ASSISTANTS**

STATEMENT OF NEED AND REASONABLENESS

BACKGROUND INFORMATION

Purpose of Amendments

The proposed rules expand the duties of registered dental assistants under general supervision, indirect supervision, and direct supervision; clarify the duties of dental hygienists under general supervision; and expand the duties of dental hygienists under direct supervision.

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 150A.06, subdivision 2 provides that an applicant to practice as a dental hygienist "may be examined by the board or by an agency pursuant to section 150A.03, subdivision 1, in a manner to test the applicant's fitness to practice dental hygiene."

Minnesota Statutes, section 150A.06, subdivision 2a provides that an applicant to practice as a registered dental assistant "may be examined by the board or by an agency pursuant to section 150A.03, subdivision 1, in a manner to test the applicant's fitness to perform as a registered dental assistant."

Minnesota Statutes, section 150A.08, subdivision 1, clause (6) establishes as one of the grounds for the board to suspend, revoke, limit, modify, or deny any license to practice dentistry or dental hygiene or the registration of any dental assistant "conduct unbecoming a person licensed to practice dentistry or dental hygiene or registered as a dental assistant, or conduct contrary to the best interest of the public, as such conduct is defined by the rules of the board."

Minnesota Statutes, section 150A.10, subdivision 1 provides that a "licensed dental hygienist may perform those services which are educational, diagnostic, therapeutic, or preventive in nature and are authorized by the board of dentistry."

Minnesota Statutes, section 150A.10, subdivision 2 provides that "the board may also define by rule the scope of practice of

registered and nonregistered dental assistants. The board by rule may require continuing dental education for differing levels of dental assistants, as a condition to their registration or authority to perform their authorized duties."

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 Hygienists' Association, and other dental 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, deemed to be needed and noncontroversial but not as high a priority as category 1 changes.

The Rules Committee subsequently held public meetings to consider drafts of the category 2 rules changes, and approved a proposed draft to be submitted to the full board. The draft was approved at a public meeting of the Board of Dentistry held on June 11, 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 3100.1300 Application for Registration as a Registered Dental Assistant.

A technical amendment to item C changes a reference to the subparts in which the duties of registered dental assistants are defined. The change reflects the additional duties specified under part 3100.8500.

Part 3100.8500 Registered Dental Assistants.

Subpart 1. Duties under general supervision. Duties under general supervision are those that may be performed if a dentist has authorized the procedures and the registered dental assistant performs the procedures in accordance with the dentist's diagnosis and treatment plan. The proposal authorizes a registered dental assistant to perform the following duties under general supervision: cut arch wires, remove loose bands, or remove loose brackets on orthodontic appliances to provide palliative treatment. The amendment is designed to reflect changes in prevailing standards and practices of what duties registered dental assistants are qualified to perform and to allow dentists greater flexibility in delegating appropriate responsibilities to assistants.

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responsibilities to assistants.

3100.8700 Dental Hygienists

Subpart 1. Duties under general supervision. Duties under general supervision are those that may be performed if a dentist has authorized them and the hygienist carries them out in accordance with the dentist's diagnosis and treatment plan. The proposal clarifies the duties which a dental hygienist can perform under general supervision by deleting the phrase "temporary placement of restorations" and substituting "replacement of intact temporary crowns or restorations with temporary restorative materials prior to the placement of a permanent restoration. Replacement of restorations does not include the construction of temporary crowns." The amendment is designed to reflect changes in prevailing standards and practice of what duties dental hygienists are qualified to perform and to allow dentists greater flexibility in delegating appropriate responsibilities to hygienists.

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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."

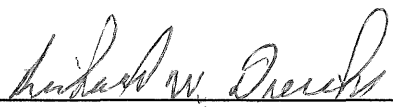
The board's position is that the requirements of section 14.115 do not apply to the proposed rules, because subdivision 7, clause (2) provides that the section does not apply to "agency rules that do not affect small business directly." The board's authority relates only to the qualifications of dentists, dental hygienists, and registered dental assistants to provide dental services; the board has not 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]." The proposed rules do not establish or adjust fees.

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