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Board of Dentistry

EXECUTIVE OFFICE

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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 administration of nitrous oxide and anesthesia. 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

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Executive Director

PHG/pmn

encl.

Administration of Anesthesia and Nitrous Oxide

Statement Of Need And Reasonableness

April 20, 1995

Background Information

Purpose of Amendments

The proposed rules require a dentist, in order to administer a pharmacological agent for the purpose of general anesthesia or for the purpose of conscious sedation, to complete, at least every two years, an advanced cardiac life support course or basic cardiac life support education program; allows a dental hygienist to administer nitrous oxide inhalation analgesia by meeting the same conditions imposed on a dentist for such administration; and allows a dental hygienist to administer local anesthesia under indirect 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. The rules may specify training and education necessary for administering general anesthesia and intravenous conscious sedation."

Minnesota Statutes, section 150A.10, subdivision 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."

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 originally conceived as two separate proposals, one amending the CPR requirements, the second allowing a dental hygienist to administer local anesthesia. The CPR proposal was classified as category 2 changes, which are those deemed noncontroversial but needing additional research and advisory committee input before being proposed. The local anesthesia proposal was classified as category 3 changes, because there needed to be consultation with affected groups and individuals in order for it to be noncontroversial. At its September 25, 1993 meeting, the Board approved the recommendations of the committee to proceed with development of the rules.

The Rules Committee subsequently reviewed proposed drafts of the rules at several public meetings it held in the following months, and gave final approval at its meeting on June 24, 1994. The Board approved the proposed rules at a public meeting held on November 19, 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

3100.3600 TRAINING AND EDUCATIONAL REQUIREMENTS TO ADMINISTER ANESTHESIA AND SEDATION.

Subpart 1. Prohibitions. This amendment removes the prohibition against a dental hygienist administering nitrous oxide inhalation analgesia. A dental hygienist would continue to be not allowed to administer general anesthesia or conscious sedation. The proposed change reflects changes in the accepted and prevailing standards among dentists and dental hygienists.

Subp. 2. General anesthesia. The current rules require a dentist who administers a pharmacological agent for the purpose of general anesthesia to be "currently certified in advanced cardiac life support or basic cardiac life support as provided in educational programs recognized by the American Heart Association, the American Red Cross ..." The American Heart Association and the American Red Cross no longer use the term "certification." In order to avoid using the term, but also to maintain the spirit of the requirement, the proposed rules require that a course or program

must be completed at least every two years.

Subp. 3. Conscious sedation. This change in the language regarding the CPR requirement for the administration of a pharmacological agent for the purpose of conscious sedation parallels the change described for subpart 2.

Subp. 4. Nitrous oxide inhalation analgesia. The effect of these changes is to state that, in order to administer nitrous oxide inhalation analgesia, a dental hygienist must meet the same requirements that a dentist must meet in order to do so.

Paragraph C makes changes in the language regarding the CPR requirement for the administration of nitrous oxide inhalation analgesia paralleling those described for subpart 2.

Subp. 5. Notice to board. The effect of these changes is to state that, if a dental hygienist administers nitrous oxide inhalation analgesia, the hygienist must meet the same notification requirements that a dentist must meet in order to do so.

Subp. 8. Reporting of incidents required. The effect of this change is to state that a dental hygienist who administers nitrous oxide inhalation analgesia must meet the same reporting requirements that a dentist who does so must meet.

3100.8700 DENTAL HYGIENISTS.

Subp. 2. Duties under indirect supervision. The proposed changes allow a dental hygienist to, under indirect supervision, administer local anesthesia as well as nitrous oxide inhalation analgesia.

The proposed rules require that before administering local anesthesia, a dental hygienist must have successfully completed a didactic and clinical program sponsored by a dental or dental hygiene school accredited by the Commission on Accreditation, resulting in the dental hygienist becoming clinically competent in the administration of local anesthesia.

Allowing dental hygienists to administer local anesthesia reflects changes in accepted and prevailing standards. In at least fifteen other states, dental hygienists are allowed to do so, and have experienced no complaints about the practice. A number of studies as well as the experience in these states also show that dental hygienists can be taught to administer local anesthesia safely, consistently, and effectively.

Administration of local anesthesia is a useful or necessary part of many dental treatments, in order to lessen the pain and attendant fear, stress, and anxiety that patients would otherwise experience. Permitting the dental hygienist to administer local anesthesia allows the supervising dentist to provide uninterrupted care to the patients receiving other dental treatments. Unnecessary delays in the daily schedule are avoided as the dentist is not continuously interrupted by the dental hygienist treating a patient in need of local anesthesia. In addition, the dental hygiene patient is not kept waiting while the dentist finishes a procedure before administering the anesthesia.

The proposed rules would permit a dental hygienist, under indirect supervision, to administer nitrous oxide inhalation analgesia in accordance with the requirements of 3100.3600, subparts 4 and 5. The effect of the change would be to state that, in order to administer nitrous oxide inhalation analgesia, a dental hygienist must meet the same requirements that a dentist must meet in order to do so.

Nitrous oxide is a mild inhalation anesthetic gas which reduces the transmission of pain stimuli as well as the perception of pain, and does so without the patient losing consciousness. Pain control is often necessary for the safe and comfortable performance of routine dental care. Increasing the patient's tolerance for such dental procedures as subgingival instrumentation and scaling will enhance the dental hygienist's ability to provide quality treatment to an anxious patient and will, in some cases, circumvent the need to interrupt the dentist in order to request a local anesthetic.

The administration of nitrous oxide is quite simple for a well-trained dental hygienist, and has been done by dental hygienists in other states for over ten years. According to Stanley F. Malamed, D.D.S., an Associate Professor of Anesthesia & Medicine, "The safety of this technique is unparalleled. There is none safer. Add to this, well conceived training courses in inhalation sedation and the patients of Minnesota dentists and hygienists will be the beneficiaries of a higher level of dental care without an added degree of risk. I support, without hesitation, the request of the Minnesota Dental Hygienist Association to permit the administration of nitrous oxide and oxygen inhalation sedation to dental patients by well-trained, certified, dental hygienists."

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]." 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