

**STATE OF MINNESOTA
BOARD OF DENTISTRY**

**In the Matter of the Proposed Rules
Of the Board of Dentistry
Relating to Advertising, CPR, Licensure
by Credentials and Reinstatements**

**STATEMENT OF NEED
AND REASONABLENESS**

GENERAL STATEMENT

Introduction

The proposed rules do the following:

- place limits on the number of times which an applicant who has been denied licensure by credentials can submit subsequent applications to the board for licensure by credentials;
- bring consistency to existing language related to continuing dental education sponsors;
- bring consistency to existing language related to CPR requirements;
- cite the correct titles of the specialty examining board approved by the board, eliminate references to rules previously repealed;
- bring consistency to existing language related to permissible duties for dental assistants; and
- clarify the procedure for reinstatement of a license or registration which has been suspended or revoked.

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. Pursuant to a new law that went into effect in May 1995, the Board also published a second Notice of Solicitation on August 21, 1995.

The Board developed the proposed amendments on the basis of needs identified by the Board. The Rules Committee subsequently reviewed drafts of the rule on CPR training at public meetings held on January 7, March 4, April 29, June 24 and September 30, 1994. Drafts of all of the other proposed rules except those which eliminate references to rules previously repealed were discussed at the public meeting held by the Rules Committee on September 30, 1994.

The Rules Committee approved a draft of the proposed rules at its September 30, 1994 meeting. The draft was approved at a public meeting of the board 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 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.06, subdivision 1c. clause (c)(3) states that an applicant for a specialty license shall "have been certified by a specialty examining board approved by the board."

Minnesota Statutes, section 150A.06, subdivision 4 provides that an applicant who meets the requirements for application for licensure by credentials shall "be interviewed by the board. The interview shall consist of assessing the applicant's knowledge of dental subjects. If the applicant does not demonstrate the minimum knowledge in dental subjects required for licensure under subdivisions 1 and 2, the application shall be denied. When denying a license, the board may notify the applicant of any specific course that the applicant could take which, if passed, would qualify the applicant for licensure."

Minnesota Statutes, section 150A.08, subdivision 1, clause (6) established 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.08, subdivision 1, clause (10) provides that "failure to maintain adequate safety and sanitary conditions for a dental office in accordance with standards established by the rules of the board" can serve as grounds for the suspension, revocation, limitation, modification, or denial of a license or registration.

Minnesota Statutes, section 150A.10, subdivision 2 states that "the board may also define by rule the scope of practice of registered and nonregistered dental assistants."

Minnesota Statutes, 150A.11, subdivision 3 states that "public advertising by dentists may be controlled by reasonable rules of the board."

Minnesota Statutes, section 214.15 states that "members of occupations regulated by the licensing boards may advertise, but advertisements must not be inconsistent with the rules relating to advertising format and substance which each board is herewith empowered to adopt"

Minnesota Statutes, section 319A.18 states that "each board may make such rules as are necessary to carry out the provisions of sections 319A.01 to 319A.22."

DISCUSSION OF SPECIFIC PROVISIONS

3100.1400 APPLICATION LICENSURE BY CREDENTIALS.

The amendment changing the item **M** to **N** is a technical change, reflecting that the amendment to the rule adds an additional requirement.

Item N. Any person who is already a licensed dentist or dental hygienist in another state or Canadian province has the option of applying for licensure in Minnesota through one of the avenues as provided in the rules of the Board of Dentistry, parts 3100.1100, 3100.1200, or 3100.1400. Under current rule, an applicant who is denied licensure by credentials is not limited to the number of times an application may be submitted to the Board. The Board has identified the need for a rule amendment which would limit the number of times an applicant can apply for licensure to once within a five-year period in order to conserve the Board's resources. It will also serve to emphasize to applicants the need for remedial or additional education before licensure should again be attempted.

Under current rules, a person may apply for licensure by meeting the requirements in part 3100.1100 for dentists and part 3100.1200 for dental hygienists. The applicant is required to submit:

1. a completed application form;
2. evidence of graduation from a school of dentistry or dental hygiene which is accredited by the American Dental Association Commission on Dental Accreditation;
3. certification of having passed all parts of a national board examination acceptable to the Board;
4. evidence of good professional character.

In addition, the applicant must submit evidence of satisfactorily passing a Board-approved examination designed to determine the applicant's level of clinical skills. This must have occurred within the five years before the Board receives the application. The Board staff processes the application and submissions.

In contrast to the licensure process described above, when a dentist or dental hygienist licensed in a state other than Minnesota chooses to apply for licensure by credentials, the applicant does not have to submit evidence of satisfactorily passing -- within the past five years -- a Board-approved examination designed to determine the applicant's level of clinical skills. However, the applicant must demonstrate their knowledge of dental subjects and ability to practice dentistry or hygiene in Minnesota by meeting additional requirements. The applicant must:

1. provide evidence of having passed a clinical examination at any time for licensure in another state or Canadian province, where the licensure requirements are substantially equivalent to that of Minnesota;
2. submit a physician's statement attesting to the applicant's physical and mental condition and a statement from a licensed ophthalmologist or optometrist attesting to the applicant's visual acuity;
3. in the case of an applicant for licensure as a dentist, complete dental records on three patients treated by the applicant within the past five years;
4. records of continuing dental and infection control education completed during the five years preceding the date of the application.

In addition, the applicant must appear before the Board and satisfactorily respond to questions designed to determine the applicant's knowledge of dental subjects and ability to practice dentistry or dental hygiene.

For the interview process, the Board is represented by a Credentialing Committee consisting of a minimum of three Board members. Copies of all the documents submitted to the Board by the applicant are mailed for their review prior to the interview. The entire Board meets prior to the interview to discuss the documents submitted by the applicant. An interview by a Credentialing Committee is scheduled for one hour for an applicant for licensure as a dentist and thirty minutes for an applicant for licensure as a dental hygienist. Time also is scheduled for the Credentialing Committee to determine whether it will present a recommendation to grant or deny licensure to the full Board at a public meeting.

The proposed rule is needed because the process of licensure by credentials utilizes a significant amount of the Board's resources when compared with the alternative method of applying for licensure which requires that the applicant demonstrates their ability to practice dentistry or dental hygiene by satisfactorily passing a Board-approved examination within the five years previous to application. This approach is reasonable because adopting a rule that an applicant cannot repeatedly apply for licensure by credentials does not prevent the applicant from pursuing licensure in Minnesota. Other avenues for becoming licensed are available even though licensure by credentials has been denied by the Board. The applicant may satisfactorily pass a clinical exam approved by the Board or may appeal the Board's denial of application for licensure by credentials.

The Board has determined that limiting the number of times an applicant can apply for licensure by credentials to once in any five-year period is reasonable for the following reasons:

1. It has been the Board's practice to deny an application for licensure by credentials in cases where an applicant, during the interview, has demonstrated gross incompetence in multiple areas related to the knowledge and/or practice of dentistry. In the majority of cases, the applicant will need up to five years to increase their skills to a level at which the public can be protected from receiving substandard care.

2. If an applicant demonstrates deficiencies in knowledge or ability that can be remedied through successful completion of a course within a shorter period of time, it has been the Board's practice to grant licensure subject to completion of that course.

3. When an applicant demonstrates a minor deficiency in some area of knowledge of the practice of dentistry or dental hygiene, which will not interfere with the applicant's ability to practice competently and safely, it has been the Board's practice to grant a license with a recommendation that appropriate continuing education be completed.

4. A Credentials Committee, in most cases, consists of four to five Board members. In fairness to the applicant a subsequent interview is conducted by members of the Board who did not sit on the initial Credentials Committee. Since the Board has only nine members, multiple interviews result in the applicant being interviewed by the same Board members more than one time. The five-year time period ensures that the applicant can be interviewed by Board members who are not acquainted with the applicant's previous interview history.

5. The Board considered adopting an interval of more than five years between applications for licensure by credentials but deemed this as unfair for the majority of applicants with demonstrated incompetencies, who can increase their skills within five years to a level that can ensure that the public is protected adequately from substandard and unsafe dental care.

The proposed rule amendment is needed because it better utilizes the resources of the board while maintaining adequate avenues for persons licensed as a dentist or dental hygienist in another state or Canadian province to apply for licensure.

3100.4200 CDE SPONSORS.

Subpart 7. Denial or revocation of approval. The amendment makes no substantive change to the rule; it reflects the fact that part 3100.4700 has previously been repealed.

3100.6300 ADEQUATE SAFETY AND SANITARY CONDITIONS FOR DENTAL OFFICES.

Subpart 13. CPR Training. The proposed changes are not substantive but are necessary to reflect other language changes that have already become effective regarding CPR requirements. The current rule requires that a "minimum of one person who is 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 or other agencies whose courses are equivalent...must be present in the dental office when dental services are provided." First, there is a need to change the word "certified" because neither of the aforementioned organizations now use that term. This change is reasonable because other recent Board of Dentistry rule changes which are now in effect reflect new language which deleted the term "certifies." Second, the proposed provision indicates that a person needs to have completed such CPR training "within the previous two years." This approach is needed because the American Heart Association requires individuals who wish to be current in cardiac life support to complete the cardiac life support course every two years, while the American Red Cross requires completion every year. This provision is reasonable because it reflects the same language changes that have already become effective in other Board of Dentistry rules related to CPR requirements.

3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.

Subpart 2. Postdoctoral course completion. The proposed amendment makes no substantive change. The names of two specialty examining boards approved by the Board have officially been changed and the proposed amendment is needed to reflect that change. This provision is reasonable because it will serve to reduce confusion on the part of regulated individuals who are expected to comply with the rules of the Board.

3100.8400 ASSISTANTS.

Subpart 1. Permissible duties. The amendment makes no substantive change to the rule; it reflects the fact that part 3100.8600 has previously been repealed.

3100.9300 REVOCATION OF REGISTRATION.

The amendment makes no substantive change to the rule; it reflects the fact that part 1400.8500 of the rules of the Office of Administrative Hearings has been repealed.

REPEALER. Minnesota Rules, part 3100.1850, subpart 4.

The repeal of 3100.1850, subpart 4 is needed to separate the reinstatement requirements contained in a Board order from the administrative reinstatement requirements contained in Minnesota Rules , part 3100.1850.

The Board believes that regulated individuals under disciplinary order should be able to know what the Board requires of them to obtain reinstatement simply by reading their Board order. However, under current rule, a person who has had their license or registration suspended or revoked and has fulfilled all the requirements contained in the disciplinary order, must also comply with the administrative reinstatement process in this subpart prior to reinstatement of the license or registration. The current rule indicates that, "in addition, if the disciplinary action were based in part on failure to meet CDE requirements, the license or registration may not be reinstated until the applicant has successfully completed the applicable examination specified in part 3100.1850, subparts 2 and 3." As indicated in subparts 2 and 3, either the clinical board examination and/or part II of the national board examination may be required. Such requirement may not have been addressed in the board order, and therefore, may cause confusion for regulated individuals attempting to get their license or registration reinstated.

The proposed repeal is needed in order to reduce confusion regarding the requirements that a licensee under Board order must follow in order to have his or her license or registration reinstated. The current rule has had the effect of increasing costs both to the Board and to licensees and registrants who retain legal counsel to assist them in understanding the requirements and reaching resolution. The proposed repeal is reasonable because the reinstatement process for licensees and registrants under Board order can simply and routinely be included in the disciplinary order. This would not have the effect of reducing the requirements for reinstatement --and thereby reducing the protection of the public -- but rather it would have the effect of clarifying the reinstatement requirements. Since the number of regulated individuals who have had their license or registration revoked or suspended has increased over the past few years, the

repeal of this subpart is intended to conserve not only the resources of the Board but also those of regulated individuals.

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 carry out the purposes and enforce the provisions of the dental practice act.

Pursuant to subdivision 2, the Board's consideration of the five methods for reducing the impact of the rule on small businesses resulted in the following:

Methods (a) to (c). The Board has determined that it would not be feasible to establish less stringent compliance or reporting requirements for small businesses; to establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses, or to consolidate or simplify compliance or reporting requirements for small businesses because the proposed rules do not contain compliance or reporting requirements;

Method (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;

Method (e). The Board has determined that it would not be feasible to exempt small businesses from any or all requirements of the proposed rules because the application of this provision would exempt some licensees or registrants from the purview of the rules, a clear conflict with existing statutes.

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 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 January 7, March 4, April 29, June 24 and September 30, 1994, 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.

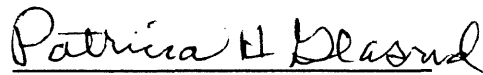
Submission of Statement of Need and Reasonableness to Legislative Commission to Review Administrative Rules

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
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