



Board of Dentistry

EXECUTIVE OFFICE

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

September 15, 1995

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

Dear Ms. Hruby:

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

Attached you will find several documents relating to a proposed rule change by the Minnesota Board of Dentistry. The rule relates to the fees the Board charges for annual renewal of licenses and registrations. The documents attached are:

1. Notice of Intent to Adopt Rules Without a Public Hearing.
2. A Statement of Need and Reasonableness.
3. A copy of the rule as prepared by the Office of the Revisor of Statutes.

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

Sincerely,

A handwritten signature in cursive script that reads "Patricia H. Glasrud".

Patricia H. Glasrud
Executive Director

Encl.

STATE OF MINNESOTA
BOARD OF DENTISTRY

In the Matter of Proposed
Amendments to Rules Relating to
Fees

STATEMENT OF NEED
AND REASONABLENESS

GENERAL STATEMENT

Introduction

The proposed amendments increase the annual license renewal fees for dentists and dental hygienists and increase the annual registration fees for registered dental assistants.

Pursuant to Minnesota Statute 14.23 (1994), the Minnesota Board of Dentistry (hereinafter "Board"), hereby affirmatively presents the need for and facts establishing the reasonableness of the proposed amendments to Minnesota Rules part 3100.2000, subp. 2, relating to license and registration renewal fees.

In order to adopt the proposed amendments, the Board must demonstrate that it has complied with all the procedural and substantive requirements of rulemaking. Those requirements are as follows: 1) there is statutory authority to adopt an amendment to a rule; 2) the amendment is needed and reasonable, 3) approval of the proposed amendment has been obtained from the Commissioner of Finance, 4) public notice has been given in the State Register at least 60 days prior to publishing a notice to adopt the amendment, and 5) all other necessary procedural steps have been taken. This statement demonstrates that the Board has met these requirements.

Statutory Authority

The Board of Dentistry's statutory authority to promulgate the proposed rule amendments is found in Minnesota Statutes 150A.04, subd. 5 (1994); 150A.06, subds. 1, 2, 2(a), and 4 (1994); 150A.08, subd. 3 (1994); 16A.1285 and 214.06 (1994), described below:

Minnesota Statute 150A.04, subdivision 5 authorizes the Board to promulgate rules as necessary to carry out the provisions and purposes of the Minnesota Dental Practices Act, Minnesota Statutes chapter 150A.

Minnesota Statutes sections 150A.04, subdivision 5 (1994); 150A.06, subdivisions 1, 2, 2(a), and 4 (1994); and 150A.08, subdivision 3 (1994) authorize the Board to adopt fees by rule.

Minnesota Statutes section 16A.1285 and 214.06 (1994) require the Board to adjust any fee which the Board is empowered to assess a sufficient amount so that the total fees collected will as closely as possible equal anticipated expenditures during the fiscal biennium plus the agency's general costs,

statewide indirect costs, and Attorney General's costs attributable to the fee function.

Rule Development Process

At its June 10, 1995 public meeting, the Board passed a resolution granting the Board's Executive Director the authority to sign the statement of need and reasonableness and sign and give Notice of the Board's Intent to Adopt Rules Without a Public Hearing governing the increase of fees specified in Minnesota Rules, part 3100.2000 to all persons who have registered their names with the Board for that purpose; publish the notice and rule in the State Register, and perform any necessary acts to initiate rulemaking.

On July 17, 1995, the Board published a Notice of Solicitation in the State Register regarding its intent to increase annual renewal fees for dentists, dental hygienists and registered dental assistants.

On August 31, 1995, the Commissioner of Finance gave approval for the proposed fee increases.

On September 15, 1995, the Board will mail copies of the Notice to persons registered with the Board pursuant to Minnesota Statute section 14.22 (1994), as well as to all others who express interest in the proposed amendments. The proposed amendments and the Notice of Intent to Adopt Rules Without A Public Hearing will be published in the State Register on September 18, 1995. The Notice will comply with the requirements of Minnesota Statutes, section 14.22 and Minnesota Rules, part 2010.0300, item G.

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 to Adopt.

These amendments will become effective five working days after publication of a Notice of Intent to Adopt Rules Without a Public Hearing in the State Register pursuant to Minnesota Statutes, section 14.27.

Submission of Notice and Statement of Need and Reasonableness to Legislature

Pursuant to Minnesota Statutes sections 14.235 and 16A.1285, subd. 4 (1994), the Board sent a copy of the Notice of Intent to Adopt Rules Without a Public Hearing and the proposed rules to the chairs of the Ways and Means Committee of the Minnesota House of Representatives and the Finance Committee of the Minnesota Senate before the Notice was submitted to the State Register. On September 15, 1995, a copy of the Notice of Intent to Adopt Rules Without a Public Hearing, the Statement of Need and Reasonableness and the rule were submitted to the Chairs of the Senate Finance Committee and the House Ways and Means Committee.

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.

Comments and Recommendations of the Commissioner of Finance

Pursuant to Minnesota Statutes sections 14.235 and 16A.1285, the Board is required to include in its Statement of Need and Reasonableness the comments and recommendations of the Commissioner of Finance relating to these proposed fee adjustments. The Commissioner of Finance has approved the fees proposed by these rules, as reflected in Addendum A which is attached to and incorporated in this Statement of Need and Reasonableness.

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 effect 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 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 "government 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 be contrary to the statutory objectives which are the basis for the proposed rulemaking -- namely, (1) to recover the costs involved in performance and administration of the functions involved (Minnesota Statutes section 16A.1285, subdivision 2); and (2) to ensure that the total fees collected by the Board will as closely as possible equal anticipated expenditures during the fiscal biennium (Minnesota Statutes section 214.06, subdivision 1).

Pursuant to subdivision 2, the Board has considered each of the five methods for reducing the impact of the rules on small businesses, and has determined that it would not be feasible to incorporate any of the five methods into these proposed rules, for two reasons: First, because doing so would result in the Board not collecting sufficient fees to cover anticipated expenditures; and second, to collect sufficient fees the Board would have to assess significantly higher fees to the relatively few licensees who practice in large dental clinics.

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 a notice of solicitation of outside information or opinions in the State Register on July 17, 1995;

(2) by discussing these proposed fee increases at a public Board meeting on June 10, 1995, for which a public notice was mailed to all persons who have registered their names with the Board for rulemaking purposes, and

(3) by mailing the notices of intent to adopt 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 public 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 Agriculture 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.

DISCUSSION OF SPECIFIC PROVISIONS

3100.2000 FEES.

Subp. 2. Annual license or registration fees. Given the past experience and projections for the future, including a projection of total Board costs for fiscal year 1996 of \$1,160,000 as approved by the Governor, the 1996 renewal fees must be increased in an effort to avoid incurring a deficit. Accordingly, it is necessary to increase the annual license renewal fee for dentists by 22 percent (changing the renewal fee from \$138 to \$168); increase the annual license renewal fee for dental hygienists by 18 percent (changing the renewal fee from \$50 to \$59), and increase the annual registration fee for registered dental assistants by 18 percent (changing the renewal fee from \$34 to \$40). Revenue generated from these increased renewal fees is expected to be about \$1,011,100. This is based on the assumption that the total number of dentists will remain the same, while the numbers of dental hygienists and assistants will increase, as has been the case over the past several years. All of the user fees, i.e. duplicate certificates, reinstatements, verifications, and initial application fees for dentists, dental hygienists or dental assistants will remain the same. Those fees are expected to generate approximately an additional \$150,000.

This action is necessary to assure that revenues and expenditures match as nearly as possible. This action is also mandated by Minnesota Statutes sections 16A.1285, subd. 2 and 214.06, subd. 1.

The recommended increases are reasonable because they are based on the budgetary actions and appropriations of the 1995 Legislature. The budget adopted by the Legislature appropriates money to the Board for the costs of its continuing functions which include licensure, registration, renewals, complaints and discipline, continuing dental education monitoring, rulemaking and the activities of the Board itself. Legislative appropriations to the Board were increased to reflect the costs of higher levels of activity in the areas of complaint resolution, discipline, and technology development related to licensure by credentials.

The costs of legal and investigative services from the Attorney General's Office (AGO) have increased more than anticipated because of contested case activity, and because of higher hourly rates charged by that office. The Board is actively working to develop criteria to assist Boardmembers in their decisionmaking regarding which cases to send for AGO investigation, and it is working closely with the AGO to control costs during investigations. Although the number of complaints received during the past couple of years has decreased, the level of contested case activity (which is very costly and somewhat unpredictable) has escalated. Finally, the Board requested and received increased attorney, legal assistant and investigator time a couple of years ago in order to reduce a case backlog, and that reduction has been realized. Nevertheless, the current level of AGO staff time must remain at least the same (or increased) in order to reduce the time required to process complaints efficiently while not sacrificing public protection.

As a result of these budgetary requirements, the fees of the Board of Dentistry have been proposed for adjustment so as to produce \$1,160,000 in revenue in fiscal year 1996. This level is reasonable because it is within, and approximately equal to, the level of revenue anticipated in the fiscal year 1996 budget adopted for the Board by the 1995 session of the Legislature.

Conclusion

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

Dated: September 14, 1995

Patricia H. Glasrud
PATRICIA H. GLASRUD
Executive Director

Office Memorandum

Department: of Finance

Date: August 31, 1995

To: Patricia Glasrud, Executive Director
MN Board of Dentistry

From: Michelle Harper 
Budget Operations

Phone: 296-7838

Subject: Departmental Earnings Rate Change Response- Licensing Fees



Pursuant to provisions of M.S. 16A.1285, the Department of Finance has reviewed and approved the attached departmental earnings proposal submitted by the MN Board of Dentistry on 8/9/95. If you have any questions or concerns, please call me at the above number.

cc Bruce Reddemann
Dwight Pederson

ATTACHMENT A

MINNESOTA BOARD OF DENTISTRY

In the Matter of the Proposed Adoption
of the Rule of the Minnesota Board of
Dentistry Governing Fees

NOTICE OF INTENT TO
ADOPT A RULE WITHOUT
A PUBLIC HEARING

The Minnesota Board of Dentistry intends to adopt a permanent rule without a public hearing following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. You have 30 days to submit written comments on the proposed rule.

Agency Contact Person. Comments or questions on the rule must be submitted to:

Patricia H. Glasrud, Executive Director

Minnesota Board of Dentistry

2700 University Avenue West, Suite 70

St Paul, Minnesota 55114

(612)642-0579 or MN Relay Service for Hearing and Speech

Impaired at (612)297-5353 or (800)627-3529.

Subject of Rule and Statutory Authority. The proposed rule governs the annual license or registration fees for dentists, dental hygienists and registered dental assistants (Minnesota Rules part 3100.2000, subpart 2). The statutory authority to adopt this rule is contained in Minnesota Statutes, sections 150A.04, 214.06, subdivisions 1 and 2, and 16A.1285. Pursuant to Minnesota Statutes 214.06, subdivision 3 no public hearing will be held. A copy of the proposed rule is published in the State Register and attached to this notice as mailed.

Comments. You have until 4:30 PM, October 18, 1995 to submit written comment in support of or in opposition to the proposed rule

and any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Modifications. The proposed rule may be modified as a result of public comment. The modifications must be supported by data and views submitted to the Board and may not result in a substantial change in the proposed rule as attached and printed in the State Register. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

Statement of Need and Reasonableness. A Statement of Need and Reasonableness is available by calling the Board office at (612)642-0581 or MN Relay Service for Hearing and Speech Impaired at (612)297-5353 or (800)627-3529. This statement describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule.

Small Business Considerations. The Board has determined that Minnesota Statutes section 14.115 does not apply to this rule for two alternative reasons: (1)the rule does not affect small businesses directly; and (2)to the extent this rule may affect small businesses directly, such businesses are service businesses regulated by government bodies for standards and costs, such as providers of medical care.

If it is determined that Minnesota Statutes section 14.115 does apply to this rule, then it is the Board's position that it would not be feasible to implement any of the methods for reducing

the impact of the rule on small businesses because doing so would be contrary to the statutory objectives which are the basis for the proposed rulemaking -- which are (1) to recover the costs involved in performance and administration of the functions involved (Minnesota Statutes section 16A.1285, subdivision 2); and (2) to ensure that the total fees collected by the Board will as closely as possible equal anticipated expenditures during the fiscal biennium (Minnesota Statutes section 214.06, subdivision 1).

The Board has provided an opportunity for small businesses to participate in the rulemaking process by publishing notice in the State Register.

A more in-depth explanation of the Board's exemption from Minnesota Statutes section 14.115, the Board's consideration and rejection of methods for reducing the impact on small businesses, and the notice provided to small businesses may be found in the Board's statement of need and reasonableness.

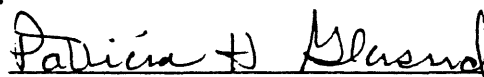
Expenditure of Public Money by Local Public Bodies. The adoption of this rule will not require the expenditure of public money by local public bodies, and therefore the Board need not prepare a fiscal note pursuant to Minnesota Statutes section 14.11, subdivision 1.

Impact on Agriculture Lands. This rule will not have a direct and substantial adverse impact on agricultural land in the state, and therefore the Board need not comply with the requirements of Minnesota Statutes sections 17.80 to 17.84, pursuant to Minnesota Statutes section 14.11, subdivision 2.

Required Notice. Pursuant to Minnesota Statutes sections 14.235 and 16A.1285 subdivision 4 (c), a copy of this

notice and the proposed rule were sent to the chairs of the Senate Finance Committee and House Ways and Means Committee before submitting the notice to the State Register. Pursuant to Minnesota Statutes section 16A.1285, subdivision 5, the comments and recommendations of the Commissioner of Finance will be included in the statement of need and reasonableness and will address any fiscal and policy concerns raised during the review process.

Adoption and Review of Rule. After the end of the comment period the Board may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you wish to be so notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact person listed above.



Patricia H. Glasrud

Executive Director

Dated: 8/30/95

1 Board of Dentistry

2

3 Proposed Permanent Rules Relating to License and Registration

4 Fees

5

6 Rules as Proposed

7 3100.2000 FEES.

8 [For text of subpart 1, see M.R.]

9 Subp. 2. Annual license or registration fees. Each
10 dentist, dental hygienist, registered dental assistant, and
11 dental assistant with a limited registration under part
12 3100.8500, subpart 3, shall submit with an annual license or
13 registration renewal application a fee as established by the
14 board not to exceed the following amounts:

15 A. dentist, ~~\$138~~ \$168;

16 B. dental hygienist, ~~\$50~~ \$59;

17 C. registered dental assistant, ~~\$34~~ \$40; and

18 D. dental assistant with a limited registration, \$12.

19 [For text of subps 3 to 10, see M.R.]

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to License and Registration Fees

AGENCY: Board of Dentistry

MINNESOTA RULES: Chapter 3100

The attached rules are approved for
publication in the State Register

A handwritten signature in cursive script, reading "Carla M. Riehle".

Carla M. Riehle
Senior Assistant Revisor