



MINNESOTA BOARD OF DENTISTRY

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November 20, 2012

Legislative Reference Library
645 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155-1050

Re: Proposed Amendments to Permanent Rules Relating to Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules*, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.9600; Revisor's ID number 4059

Dear Librarian:

The Minnesota Board of Dentistry intends to adopt rules relating to the following: licensure for limited general dentists; adding "consecutive" to the CPR requirement for licensure; an interview option when reinstating; expanding professional development elective activities; professional development portfolio audit fee; adding another recognized specialty area; new duties for dental hygienists and licensed dental assistants; and new recordkeeping requirements. We plan to publish a Dual Notice of Intent to Adopt Rules in the November 26, 2012, State Register.

The Board has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Board is sending the Library an electronic copy of the Statement of Need and Reasonableness about the same time we are mailing our Dual Notice.

If you have any questions, please contact me at (612) 548-2134.

Yours very truly,

A handwritten signature in blue ink that reads "Kathy T. Johnson".

Kathy T. Johnson
Legal Analyst Liaison
Minnesota Board of Dentistry

Enclosures: Statement of Need and Reasonableness

Minnesota Board of Dentistry

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendments to Permanent Rules Relating to Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules*, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.9600

INTRODUCTION

The Minnesota Board of Dentistry is the state agency authorized to establish permanent rules for regulating limited general dentists, dentists, dental therapists, dental hygienists, and licensed dental assistants. Through the establishment of rules, the Board may obtain optimal results towards protecting the public with regard to the practice of dentistry.

The Board is seeking to amend the rules governing a number of different components relating to dentistry. The amendments that are under consideration are to add new or modify existing language in the following areas: licensure for a limited general dentist; reinstatement of license; professional development and portfolio audit; dental specialty practice; duties for a licensed dental assistant; and recordkeeping. In addition, there are various technical changes to properly coordinate rule language with current statute language and some supplemental clarification and minor technical corrections in certain rules which are not substantial changes to the regulatory requirements.

The process used to draft these amendments to the rules started with multiple open meetings involving the Board, various standing and task force committees of the Board, Board staff, professional association representatives, dental professionals and specialists, and the general public. The rules in need of change were identified and amended. All of these amendments were heard before the Board and given approval to proceed with the rulemaking process. Over the course of multiple open meetings involving the aforementioned groups and individuals, drafts and proposals of the rules were discussed and created.

The Board shall post a draft copy of the proposed rule changes being considered on the Board's website. On March 21, 2012, a copy of the Board's Request for Comments regarding these proposed rules was posted on the Board's website. In addition, the formal Request for Comments was published in the State Register on March 26, 2012, and an electronic copy was e-mailed to all known interested persons on the Board's rulemaking mailing list at least three days before publication. All comments received by the Board regarding the proposed rules shall be reviewed and subsequent changes shall be considered by the Board.

The decisions of the Board to propose an amendment to a rule in this rulemaking proceeding are explained and justified in the Rule-By-Rule Analysis section of this statement.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or audio. To make a request, contact Kathy Johnson at the Minnesota Board of Dentistry, 2829 University Avenue SE, Suite 450, Minneapolis, Minnesota 55414, (612) 548-2134, (612) 617-2250 or (888) 240-4762 (outside metro). TTY users may call (800) 627-3529.

STATUTORY AUTHORITY

The Board of Dentistry's statutory authority to adopt the rules set forth is found in Minnesota Statutes section 150A.04, subdivision 5, which provides:

"150A.04 RULES OF THE BOARD.

Subdivision 5. **Rules.** 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 Chapter 14."

Under this statute, the Board of Dentistry has the necessary statutory authority to adopt the proposed rules. All sources of statutory authority were adopted and effective prior to January 1, 1996, and so Minnesota Statutes, section 14.125 does not apply. See Minnesota Laws 1995, chapter 233, article 2, section 58.

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below state these factors and then provide the Board of Dentistry's responses.

"(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule"

- The classes of affected persons will include limited general dentists, dentists, dental therapists, dental hygienists, and licensed dental assistants who are regulated by the Board of Dentistry; and the general public;
- The costs of the proposed rules will be borne by limited general dentists who want to obtain and maintain a limited license; and by individual dentists, dental therapists, dental hygienists, and licensed dental assistants who continuously fail their professional development portfolio audits; and
- Regulated dental professionals and the general public will benefit from the proposed rules.

"(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues"

- The primary costs to the Board to implement and enforce the proposed rules to create a new license for the limited general dentist are significant administrative costs of approximately \$45,000 relating to revising current procedures, forms, and database processes;
- The Board does not anticipate any probable costs to any other agency in the implementation and enforcement of the proposed rules; and
- The Board does not anticipate any net effect on state revenues.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

- No less costly methods are known to the Board of Dentistry; and
- No less intrusive methods are known to the Board of Dentistry.

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”

- Discussions between the Board, various standing and task force committees of the Board, Board staff, professional association representatives, dental professionals and specialists, and the general public involved only slight variations from the actual proposed rules. Nothing substantial as far as alternative methods for achieving the purpose of the proposed rules were seriously considered by the Board.

“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

- The entire amount of the known and anticipated costs will be borne by the limited general dentist in compliance with the proposed rules regarding a credential review and licensure. These costs are within Minnesota Statutes, section 150A.091, as follows: \$200-credential review (subd. 9a); \$140-initial application for limited license if qualified (subd. 9b); \$155-renewal application for limited license if qualified (subd. 9b); and \$140-application for dental license if qualified (subd. 2).
In addition, the entire cost amount of \$250, within Minnesota Statutes, section 150A.091, subdivision 16, will be borne by the dentist, dental therapist, dental hygienist, and licensed dental assistant to be in compliance with the proposed rules regarding continuously failing the professional development portfolio audit; and
- No other classes of government units, businesses, or individuals are expected to bear the probable costs associated with the proposed rules.

“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”

- The probable costs or consequences of not adopting the proposed rules relating to limited general dentists are the adverse consequences that may affect the general public's health, safety and welfare unless more definitive regulations are implemented for limited general dentists; and
- No other classes of government units or businesses will be effected by not adopting the proposed rules.

“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”

- There are no existing federal regulations relating to these proposed rules.

“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

- The proposed rules cover areas that are not addressed by federal law or other Minnesota state laws. Therefore, this consideration is not applicable for these proposed rules.

PERFORMANCE-BASED RULES

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

For these proposed rules, the Board decided to perform the above analysis on a rule-by-rule basis and included the required information regarding the Board's objectives and flexibility into the section entitled “Rule-By-Rule Analysis” of this statement.

ADDITIONAL NOTICE PLAN and NOTICE PLAN

Additional Notice Plan

Minnesota Statutes, sections 14.131 and 14.23, require that this SONAR contain a description of the Board of Dentistry's efforts to provide additional notice to persons who might be affected by the proposed rules or explain why these efforts were not made. Additional notice has been provided by the Board, as follows:

1. Since March 2009, various standing and task force committees of the Board have held monthly public meetings to make operational statutory requirements for these new professions and to develop these proposed rules. The Board has disseminated notice of these public meetings to regulated dental professionals and the general public.

Drafts of the proposed rules have been distributed and reviewed during these public meetings to all individuals in attendance.

2. On March 21, 2012, the Board posted a draft copy of the proposed rule changes on the Board's website at www.dentalboard.state.mn.us making it accessible to the following individuals: all limited general dentists; dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; and members of the general public. This draft copy indicated the Board rules that will be affected by the Board's proposed rule changes.
3. On March 21, 2012, the Board mailed the Request for Comments to all persons on the Board's rulemaking mailing list by sending an electronic copy via e-mail to all persons on the list.
4. On March 21, 2012, the Board posted a copy of the Request for Comments for publication in the State Register on the Board's website at www.dentalboard.state.mn.us. This website is accessible to the following individuals: all limited general dentists; dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; and members of the general public.
5. On March 21, 2012, the Board posted a draft of the Statement of Need and Reasonableness ("SONAR") on the Board's website at www.dentalboard.state.mn.us. All future notices involving these proposed rules shall be posted on the Board of Dentistry's website.
6. On March 26, 2012, the Board's Request for Comments was published in the State Register.
7. On August 2, 2012, the Board contacted the representatives of the Minnesota Dental Association (Dentists), the Minnesota Dental Hygiene Association (Dental Hygienists), and the Minnesota Dental Assistants Association (Dental Assistants) with a request to publish in each organization's newsletter or post on each organization's website for it's members the following information:

MINNESOTA BOARD OF DENTISTRY – NEW PROPOSED RULES

RE: Proposed Amendments to Permanent Rules Relating to Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.9600*

The Minnesota Board of Dentistry is considering some amendments to its existing rules. The amendments that are under consideration in the Board's proposed rules focus on the following areas: the requirements and terms of licensure for a limited general dentist; add "consecutive" to

the CPR requirement for licensure; add an interview option when reinstating; expand professional development elective activities; add professional development portfolio audit fee; add another recognized specialty area; allow assistants to apply fluoride varnish; allow dental hygienists and licensed dental assistants to complete preliminary charting, take photographs, and take vital signs; and in recordkeeping properly identify the collaborating dentist and transfer adequate radiographs.

Please check the Board's website at www.dentalboard.state.mn.us for the entire text of these proposed rules and to review the Statement of Need and Reasonableness (SONAR) for these proposed rules.

8. On October 31, 2012, the Board posted a copy of its proposed rules dated October 31, 2012 and SONAR dated October 31, 2012, on the Board's website making this information accessible to the following individuals: all limited general dentists; dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; and members of the general public.
9. On November 1, 2012, the Board will send a broadcast electronic mailing to nearly 10,000 licensees including, dentists, limited license dentists, dental therapists, dental hygienists, and licensed dental assistants, notifying them of the Board's Newsletter (Vol. 26, November 2012). This on-line newsletter included information about the Board rules that will be affected by the Board's proposed rule changes, which is also described in paragraph 7 above. Additionally, the Board's Newsletter will be posted on the Board's website making it accessible to the following individuals: all limited general dentists; dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; and members of the general public.
10. Prior to publication of the Dual Notice in the State Register, the Board will send by electronic mail a copy of the Dual Notice of Intent to Adopt Rules, the Proposed Rules, and the Statement of Need and Reasonableness to the representatives of the Minnesota Dental Association, the Minnesota Dental Hygiene Association, and the Minnesota Dental Assistants Association.

The Board of Dentistry believes that this Additional Notice Plan complies with the statute because the notification pathways described above, provides the principal representatives of the affected parties and affected parties through electronic mailings with ample notice and opportunity to provide suggestions, proposals, and comments regarding the proposed rule amendments.

The listed persons and organizations receiving the Additional Notice together represent the vast majority of persons interested in these rules. They represent several classes and a number of different positions in the spectrum of dentistry, which is the central purpose of the rulemaking process.

Notice Plan

The Board of Dentistry's Notice Plan includes the following mandated statutory actions:

1. According to Minnesota Statutes, section 14.14, subdivision 1a, a copy of the Dual Notice and proposed rules shall be mailed to all persons who have registered to be on the Board of Dentistry's rulemaking mailing list. This mailing shall be accomplished by sending an electronic copy via e-mail to all persons on the list.
2. According to Minnesota Statutes, section 14.116, a copy of the Dual Notice, proposed rules, and this Statement of Need and Reasonableness shall be mailed to:
 - a. The committee members of the Legislature with jurisdiction over the subject matter of the proposed rules. The following is a possible list of these Legislative Committees:
 - 1) House: Health and Human Services Reform Committee Chair and Lead; and Health and Human Services Finance Committee Chair and Lead; and
 - 2) Senate: Health and Human Services Committee Chair and Ranking Minority Member.
 - b. The members of the Legislative Coordinating Commission.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board of Dentistry will consult with the Minnesota Management and Budget ("MMB"). We will do this by sending the MMB copies of the same documents that we send to the Governor's Office for review and approval on or about the same day we send them to the Governor's Office. We will do this before the Board publishes its Dual Notice. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Board will submit a copy of the cover correspondence and any response received from MMB to the OAH at the hearing or with the documents it submits for ALJ review.

Specifically, the Board will send copies of the required documents to Susan Melchionne, the Board's Executive Budget Officer (EBO), at MMB and later provide Ms. Melchionne's response to the OAH/ALJ.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the Board of Dentistry has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Board of Dentistry has determined that the local units of government would not be required to adopt or amend an ordinance or regulation because the proposed rules do not require local implementation. All of the Board's proposed rules are intended to provide guidelines and requirements limited to the individual dental professional who must comply with these rules.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

As required by Minnesota Statutes, section 14.127, the Board of Dentistry has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Board of Dentistry has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. The Board of Dentistry has made this determination based on the probable costs of complying with the proposed rules, as previously described in the Regulatory Analysis section of this SONAR on pages 2, 3, and 4.

LIST OF WITNESSES

If these rules go to a public hearing, the Board of Dentistry anticipates having the following witnesses testify in support of the need for and reasonableness of the proposed rules:

1. Neal Benjamin, D.D.S., Board Member – rules regarding new duties for allied dental personnel, professional development, and recordkeeping;
2. Candace Mensing, D.D.S., Board Member – rules regarding limited license dentist, reinstatement of license, and recordkeeping;
3. Nancy Kearn, D.H., Board Member – rules regarding limited license dentist, and reinstatement of license;
4. Counsel from the Attorney General's Office; and
5. Marshall Shragg, Executive Director.

RULE-BY-RULE ANALYSIS

PROPOSED RULE CHANGES

All of the rule parts hereafter include supportive information relative to the rule-by-rule analysis as follows:

3100.1130 LICENSE TO PRACTICE DENTISTRY AS A LIMITED GENERAL DENTIST. This is a new part with language regarding the regulatory requirements for a person who has graduated from a non-accredited dental program and desires to become a limited general dentist to practice dentistry. Moreover, this part addresses the limited general dentist following the enactment of legislation regarding graduates of non-accredited dental programs as outlined within Minnesota Statutes, section 150A.06, subdivision 9, which became effective on August 1, 2008. Therefore, the Board considers this new language to be necessary and reasonable.

Subpart 1. **Initial requirements for limited licensure.** For this new subpart, the new language states a list of initial requirements in items A to E that will need to be followed by the applicant. In summary, the requirements or information for the applicant pertain to the following: for a credential review certain listed documentation is required; notification from the Board about either denying or granting permission to take regional clinical examination; taking the Board-approved regional clinical examination by a certain deadline; failing the clinical examination more than once and what will happen; and the requirements indicated within a limited license application.

Specifically, within this subpart, the Board requires that the applicant must provide an acceptable written agreement that includes, among other things, any practice limitations, and an acknowledgement that the applicant agrees to practice clinical dentistry in Minnesota at least 1,100 hours annually, for a period of three consecutive years. The Board felt that the 1,100 hours annually is a reasonable amount of hours in which the applicant can combine previously learned clinical skills into a well-organized and systemic approach to the comprehensive dental treatment of patients, or in other words, gain experience in total patient management and care over three consecutive years. The annual requirement is to ensure that the applicant practices clinical dentistry on an annual basis and not postpone the hour requirement until the latter portion of the three consecutive years. The Board intends that the three-year time period would begin when clinical practice in Minnesota is initiated, not at the time the Limited General License is issued by the Board.

The Board decided that the requirements listed within this subpart will allow the Board to make an accurate determination regarding the applicant's qualification to practice dentistry and pursue a limited license. Moreover, the Board believes that the general public deserves the assurance that only qualified and competent individuals are allowed to enter the practice of dentistry. For these reasons, the Board considers this new language to be necessary and reasonable.

Subpart 2. Terms of limited licensure. For this new subpart, the new language states the terms listed in items A to F that the limited license dentist will have to comply with for three consecutive years. In summary, the requirements for the limited license dentist are as follows: pay an annual renewal fee; maintain a consecutive and current CPR certification; submit request for approval of subsequent supervising dentist and written agreement; inform the Board about unforeseen circumstances that have interrupted the three consecutive years; maintain current addresses; and maintain a professional development portfolio. The Board decided that these requirements are consistent with some similar requirements made of other dental professionals regarding a renewal fee, CPR certification, current address, and professional development portfolio. As for other requirements like requesting approval for a subsequent supervising dentist or experiencing unforeseen circumstances, the Board decided that these requirements support the need for continual communication between the limited license dentist and the Board about various factors that may occur during the three year period. Overall, the Board found these requirements to be minimally necessary to maintain consistency between the limited license dentist and other dental professionals, and to assist the limited license dentist to make the transition from a supervised environment to the unsupervised practice of dentistry. For these reasons, the Board considers this new language to be necessary and reasonable.

Subpart 3. Terms of supervising dentist. For this new subpart, the new language states the terms listed in items A to I that the supervising dentist will have to comply with for three consecutive years. In summary, the supervising dentist is required to comply with the following: must be a Board-approved licensed dentist; no corrective or disciplinary action has been taken or is pending against the supervising dentist; must have an acceptable written agreement with a limited license dentist; no more than two limited license dentists allowed in one dental facility; submit to Board subsequent modifications to written agreement; inform Board about termination of written agreement; inform Board about disciplinary actions or malpractice reports against limited license dentist; and provide a written performance evaluation. If the supervising dentist is non-compliant with the aforementioned requirements, the supervising dentist will be subject to

disciplinary proceedings. The Board decided that these requirements are appropriate for the supervising dentist who will assume more responsibility for the safe and effective treatment of patients under the care of the limited license dentist and who will prepare the limited license dentist for the realities of practice. Moreover, the Board needs the supervising dentist to provide accurate and detailed evaluations to the Board regarding the limited license dentist, so the Board will be able to determine after the three year period, whether or not the limited license dentist is eligible for a dental license at that point. For these reasons, the Board considers this new language to be necessary and reasonable.

Subpart 4. **Requirements for licensure.** For this new subpart, the new language states the requirements listed in item A, subitems (1) to (6) for the limited license dentist to obtain a dental license following completion of the three consecutive years. In summary, the requirements for this applicant are as follows: complete a dental license application within a certain timeframe; pay fees; submit a consecutive and current CPR certification; provide a professional development portfolio; submit a written performance evaluation(s); and applicant cannot be subject to any corrective or disciplinary action by the Board. Moreover, an applicant who has been denied licensure may pursue a contested case hearing. The Board decided that these requirements will allow the Board to make an accurate determination regarding the applicant's qualifications to practice dentistry and whether or not to issue a dental license to the applicant. Moreover, the Board believes that the general public deserves the assurance that only qualified and competent applicants are allowed to enter the practice of dentistry. For these reasons, the Board considers this new language to be necessary and reasonable.

3100.1700 TERMS AND RENEWAL OF LICENSE OR PERMIT; GENERAL.

Subpart 2. **Renewal applications.** To this subpart added the term consecutive to the existing language regarding a current CPR certificate that has to be maintained by each licensee for renewal of their license. By adding the term consecutive, the Board hopes to resolve a problem with licensees having a lapse of time or interruption between their CPR certificates. The Board has always required that each licensee have a current CPR certificate, and when or prior to that certificate expiring, the licensee must promptly complete the requirements for a consecutive CPR certificate. There should be no lapse or gap in time between each CPR certificate. To clarify this concept, the Board is now requiring in rule language that each licensee have a consecutive and current CPR certificate which demonstrates that the licensee has repeatedly maintained their CPR certificate without having any interruption between each CPR certificate. This change should clarify the Board's expectation regarding the CPR certificate and is not meant to be a new requirement for the licensee; therefore the Board considers this change to be necessary and reasonable.

3100.1750 TERMS AND RENEWAL OF LICENSURE; LIMITED FACULTY AND RESIDENT DENTISTS.

Subpart 4. **Application fees.**

Items A and B – deleted the language regarding fees within these items and added new language to subpart 4 that references where the fees are now found in Minnesota Statutes, as follows: specified in Minnesota Statutes, section 150A.091, subdivision 2. Previously, the Board

was instructed by the Minnesota legislature to move all of the fees listed within the Board's rules into the Board's statutes. In 2005, the Board complied with the legislature by effectuating Minnesota Statutes, section 150A.91 that listed all of the Board's fees. Therefore, these items no longer serve a necessary regulatory purpose for the Board and the Board has now made the appropriate change of including the statutory reference regarding the fees within the subpart. For these reasons, the Board considers these changes to be necessary or reasonable.

Subpart 5. Annual license fees.

Items A and B – deleted the language regarding fees within these items and added new language to subpart 5 that references where the fees are now found in Minnesota Statutes, as follows: specified in Minnesota Statutes, section 150A.091, subdivision 4. Previously, the Board was instructed by the Minnesota legislature to move all of the fees listed within the Board's rules into the Board's statutes. In 2005, the Board complied with the legislature by effectuating Minnesota Statutes, section 150A.91 that listed all of the Board's fees. Therefore, these items no longer serve a necessary regulatory purpose for the Board and the Board has now made the appropriate change of including the statutory reference regarding the fees within the subpart. For these reasons, the Board considers these changes to be necessary or reasonable.

3100.1850 REINSTATEMENT OF LICENSE.

Subpart 3. Expiration or voluntary termination of 24 months or more.

Item C – this is a new item and the following language is added: be available for an interview with the appropriate Board committee to determine the applicant's knowledge of dental subjects and ability to practice dentistry, dental therapy, dental hygiene, or dental assisting under this subpart. The Board decided to add this interview component to this subpart to allow the Board the option of conducting an interview with an applicant who has not been licensed with the Board for a period of 24 months or more. When an applicant has not been licensed or practicing for a long period of time, the Board may have concerns regarding the applicant's awareness of current practice standards and ability to practice dentistry on patients safely. The Board has the duty of protecting the general public and sees the interview process as a way to properly assess an applicant's capability to perform to an adequate level of care. For these reasons, the Board considers this new language to be necessary and reasonable.

3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION, MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE INHALATION ANALGESIA.

Subpart 8. Reporting of incidents required.

Item B – to this item made a minor technical change of adding 9b, which refers to another subpart that should be included within this item. In the existing rules, this item includes a reference to subpart 9 that addresses having a certificate for administering anesthesia or moderate sedation. However, there is now another subpart, subpart 9b, that addresses having a certificate when using a contracted sedation provider. Therefore, it is appropriate to make this change and add subpart 9b to this item to cover both of these types of certificates. For this reason, the Board considers this change to be necessary and reasonable.

3100.5100 PROFESSIONAL DEVELOPMENT.

Subpart 3. Professional development activities.

Item A, subitem (3) – to this subitem added the term consecutive to the existing language regarding a current CPR certificate that has to be maintained by each licensee for renewal of their license under fundamental activities. By adding the term consecutive, the Board hopes to resolve a problem with licensees having a lapse of time or interruption between their CPR certificates. The Board has always required that each licensee have a current CPR certificate, and when or prior to that certificate expiring, the licensee must promptly complete the requirements for a consecutive CPR certificate. There should be no lapse or gap in time between each CPR certificate. To clarify this concept, the Board is now requiring in rule language that each licensee have a consecutive and current CPR certificate which demonstrates that the licensee has repeatedly maintained their CPR certificate without having any interruption between each CPR certificate. This change should clarify the Board's expectation regarding the CPR certificate and is not meant to be a new requirement for the licensee; therefore the Board considers this change to be necessary and reasonable.

Item B, subitem (6) – added this new subitem to elective activities which is leadership or committee involvement with the Board or a dental professional association for a maximum of three credit hours. From a discussion that occurred at a meeting of the Professional Development Committee, the Board agreed that regulated dental professionals who serve their community through participation in the Board or a dental professional association should be rewarded with a limited number of professional development credits for all the work these professionals contribute to the Board or association. It was determined that these particular regulated dental professionals could receive a maximum of three credit hours under elective activities in their professional development portfolio for each biennial cycle as long as the person was an active participant during that cycle. For this reason, the Board considers this change to be necessary and reasonable.

3100.5300 AUDIT PROCESS OF PORTFOLIO.

Subpart 6. **Audit fee.** This is a new subpart adding language regarding the charging of an audit fee. The new language is: The licensee shall submit to the Board the nonrefundable fee in Minnesota Statutes, section 150A.091, subdivision 16, after failing two consecutive professional development portfolio audits and thereafter for each failed professional development portfolio audit. The audit fee charged to licensees will not exceed the amount of \$250.00 according to the Minnesota Statutes. The licensee will be required to pay the audit fee to the Board, if the licensee fails two consecutive professional development portfolio audits; in addition, the licensee will be required to pay the audit fee for each and every failed portfolio audit thereafter, and no consideration shall be given as to whether any future failed audit is consecutive or not. For at least the past five years, the Board has been auditing professional development portfolios and has seen an increase in failed audits by licensees. Due to this increase, the Board decided to assess a fee to the licensee who is consistently noncompliant with the requirements of professional development as a possible means of discouraging ongoing noncompliant behavior from the licensee. For these reasons, the Board considers this new language to be necessary and reasonable.

3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.

Subpart 1. **Specialty areas.** To this subpart, the addition of the specialty practice known as Oral and Maxillofacial Radiology. The Board decided to include this specialty practice into its rules to be consistent with the American Dental Association. The Council on Dental Education of the American Dental Association has recognized Oral and Maxillofacial Radiology as a specialty practice area, as follows: Oral and maxillofacial radiology is the specialty of dentistry and discipline of radiology concerned with the production and interpretation of images and data produced by all modalities of radiant energy that are used for the diagnosis and management of diseases, disorders and conditions of the oral and maxillofacial region. (Adopted April 2001) For this reason, the Board considers this change to be necessary and reasonable.

3100.8400 ASSISTANTS WITHOUT A LICENSE OR PERMIT.

Subpart 1. **Permissible duties.** One new duty added to this subpart is: apply fluoride varnish in a community setting under the authorization and direction of a licensed practitioner with prescribing authority such as a dentist or physician, as long as the licensed practitioner authorizing the service or the facility at which the fluoride varnish is administered maintains appropriate patient records of the treatment. This new duty is intended to permit any person, including regulated dental professionals, to apply fluoride varnish to the teeth of a person being served in a community setting in accordance with a prescription and protocol issued and established by a dentist or physician, as long as the practitioner or facility maintains appropriate patient records of the treatment. The Board recognizes that: with proper training and protocols, any person has the ability to apply fluoride varnish; and fluoride varnish is an important preventive measure of treatment for people to prevent tooth decay and improve oral health as long as the service is provided under appropriate supervision and documentation. By allowing this service, the Board is attempting to remove any barriers to the expansion of fluoride varnish programs in public settings. For these reasons, the Board considers this new language to be necessary and reasonable.

3100.8500 LICENSED DENTAL ASSISTANTS.

Subpart 1. **Duties under general supervision.** New duties added to this subpart are:

J. complete preliminary charting of the oral cavity and surrounding structures with the exception of periodontal probing and assessment of the periodontal structure;

K. take photographs extraorally or intraorally; and

L. take vital signs such as pulse rate and blood pressure as directed by a dentist.

All three of these new duties will be performed under general supervision and are very low risk methods of data collection. The data collected through these new duties may only be used by a dentist for diagnosing and treatment planning future dental care. Delegation of these duties benefits patients by providing the comprehensive and efficient collection of patient data. Additionally, it is a benefit to the profession of dental assistants who have already received training and testing in the required skills through accredited dental assistant programs in Minnesota for the duties of charting and taking vital signs to use their training to the maximum allowable extent.

For photographs, the duty of taking extraoral photographs involves using some type of external

camera that is an inherently safe device commonly used by the general public for photographic purposes. For intraoral photographs, besides the camera, a photography mirror is placed inside the mouth. The mirror is manipulated in the same fashion as the dental assistant would retract the patient's cheek for suctioning purposes or use a mouth mirror to visualize the teeth for charting purposes. Both of these are clinical actions that the dental assistant is already competent to perform freely and safely on a patient. If a dental assistant has graduated from an accredited dental assisting program, the dental assistant may perform this duty with some in-office guidance. Otherwise, no additional training or testing is required to perform the duty of taking photographs.

For these reasons, the Board considers this new language for duties to be necessary and reasonable.

3100.9600 RECORDKEEPING.

Subpart 10. **Progress notes.** New language is added and the paragraph reformatted in this subpart, as follows:

Dental records must be legible and include a chronology of the patient's progress throughout the course of all treatment and postoperative visits. The chronology must include:

A. all treatment provided;

B. identify all medications used and materials placed ;

C. clearly identify the treatment provider by license number, name, or initials; ; and

D. when applicable, the identity of the collaborating dentist authorizing treatment by license number.

This new language added to the existing language will strengthen the regulation of having adequate progress notes in dental records by requiring that progress notes be legible or readable and requiring further identity through a professional's license number. Legibility of patient records is regarded as critical, recognizing that if the patient record cannot be readily interpreted, it is as though no documentation was provided in the record. In item C, the dental provider now has another option of documenting their license number, instead of their name or initials in the patient's progress notes. In item D, the actual dental provider will also be required to document in the patient's progress notes the license number of each collaborating dentist who is authorizing the dental treatment being provided to the patient through either a collaborative agreement with a dental hygienist or a collaborative management agreement with a dental therapist or advanced dental therapist. This new language was created due to the concern of possibly losing continuity between the actual dental providers, the patients, and the collaborating dentists through these agreements. Additionally, it is important as a long-term resource to clearly recognize and document the identity of all dental professionals involved in providing any or all dental treatment to a patient. Therefore, the Board considers these changes to be necessary and reasonable.

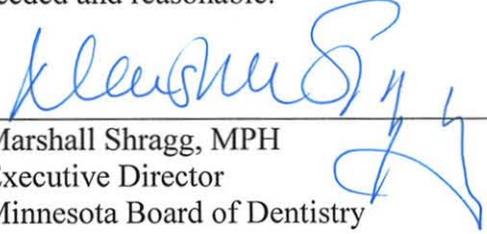
Subpart 13. **Transfer of records.** New language is added to this subpart, as follows: Digital radiographs shall be transferred by compact or optical disc, electronic communication, or printing on high-quality photographic paper. All transferred film or digital radiographs must reveal images of diagnostic quality using proper exposure settings and processing procedures. This language provides further direction for dental practitioners as to the possible procedures that must be utilized when transferring digital radiographs. Since the use of digital radiographs is relatively new technology, this is information that was not previously included within the

Board's existing rules. Additionally, the Board has been experiencing ongoing concerns regarding the improper transferring of radiographs by dental practitioners where by the practitioner has been simply copying radiographs on standard copying paper which lacks the necessary resolution to properly reproduce the image for diagnostic purposes for the subsequent dental practitioner. Transferred radiographs that are of poor diagnostic quality due to improper exposure settings and processing procedures are an unacceptable practice of care for the general public, and often require that the radiograph be retaken by a subsequent dental provider. For these reasons, the Board considers this new language to be necessary and reasonable.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

Dated: OCTOBER 31ST 2012



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