



Minnesota Board of Dentistry

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August 22, 2018

Legislative Reference Library
645 State Office Building
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St. Paul, Minnesota 55155-1050
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Re: Proposed Amendments to Permanent Rules Relating to Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules* 3100.1160, 3100.3600, 3100.8500, 3100.8700, and 3100.9600; Revisor's ID Number 4507

Dear Librarian:

The Minnesota Board of Dentistry intends to adopt rules relating to the following: simplify the documentation requirements for education regarding nitrous oxide and for CPR certification; modify some delegated procedures for licensed dental assistants, including impressions, ligature ties and arch wires, topical fluoride, and managing medications; restructure into different categories all of the delegated procedures for dental hygienists; and supplement the recordkeeping requirements for a dental/medical history and nitrous oxide in the progress notes.

We plan to publish a Dual Notice of Intent to Adopt Rules in the August 27, 2018, 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 as we are mailing our Dual Notice.

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

Yours very truly,

Kathy T. Johnson
Legal Analyst
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 Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules* 3100.1160, 3100.3600, 3100.8500, 3100.8700, and 3100.9600; Revisor's ID Number 4507

INTRODUCTION

The Minnesota Board of Dentistry is the state agency authorized to establish permanent rules for regulating all dentists, dental therapists, dental hygienists, and licensed dental assistants in the State of Minnesota.

The proposed rules will modify existing language in the following areas: simplify the documentation requirements for education regarding nitrous oxide inhalation analgesia and for CPR certification; modify some delegated procedures for licensed dental assistants, including impressions, ligature ties and arch wires, topical fluoride, and managing medications; restructure into different categories all of the delegated procedures for dental hygienists; and supplement the recordkeeping requirements for a dental/medical history and nitrous oxide in the progress notes.

Over the past year, various Committees of the Board have held a number of public meetings with all interested parties in attendance to thoroughly discuss and present scenarios regarding these proposed rule changes. Thereafter, all proposed changes to rules were heard before the Board and given approval to proceed with the rulemaking process.

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 quote 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 are the following regulated dental professionals: dentists, dental therapists, dental hygienists, and licensed dental assistants;
- The training courses are NOT new requirements and considered elective training for interested dental professionals who want to perform those procedures; therefore, regulated dental professionals have already incurred costs prior to this rulemaking and should not be financially impacted by these changes; and
- All regulated dental professionals will benefit from the changes made because if needed a copy of the Licensee’s CPR card can now be provided relative to registering for nitrous oxide, instead of a certified transcript regarding CPR from an institution. In addition, dentists will benefit from the changes as they will now have the option of attestation to satisfy the education requirements for nitrous oxide, instead of having to provide documentation from the distant past that is no longer available from an institution.

“(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”

- Regarding the proposed rules changes, the Board will NOT incur any increased costs beyond those currently associated with operation under existing rules;
- 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 change to 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”

- The Board has held a number of open public meetings with all interested parties (e.g., regulated dental professionals, association representatives, and the general public) in attendance and an opportunity to thoroughly discuss, present scenarios, and make recommendations regarding these proposed rules changes. To date, no additional information has been presented which suggests less costly or intrusive methods for accomplishing the purposes of the proposed rules. Therefore, the Board does not believe there are any less costly or intrusive methods for achieving this purpose.

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

- The Board did NOT consider any alternative methods to achieve the purpose of the proposed rules because the impact of the proposed rules to regulated dental professionals does not involve additional costs, has not proven to be controversial, and does not require regulated dental professionals to make significant changes.

“(5) the probable costs of complying with the proposed rules, 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 allied training courses that include delegated duties are NOT new requirements and considered elective training for interested dental professionals who want to perform those procedures; therefore, regulated dental professionals have already incurred costs prior to this rulemaking and should not be financially impacted by these changes; and
- No other classes of government units, businesses, or individuals are expected to bear costs associated with the proposed rules.

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

- The probable consequences of not adopting the proposed rules are that regulated dental professionals will remain overburdened by having to provide additional documentation as evidence of nitrous oxide training and CPR certification to the Board. In addition, the dental hygiene programs will continue to struggle with their curriculum and the existing list of delegated procedures for dental hygienists; and
- No other classes of government units or businesses will be affected 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. Regulation of dental professionals is primarily a function of state government.

“(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. Throughout 2016 and 2017, both the Policy and Allied Dental Education Committees of the Board have held a number of public meetings with all interested parties in attendance to thoroughly discuss and present scenarios regarding these proposed rule changes. Official notices of these public meetings were electronically sent by the Board to all licensed dental professionals, association representatives, and the general public, as well as doing a website posting of meetings. From and during those public meetings, these proposed rules were drafted, distributed, and reviewed by all individuals in attendance and input has been encouraged from all attendees. Thereafter, all proposed changes to rules were heard before the Board and the Board gave approval to proceed with the rulemaking process.
2. On January 29, 2018, the Board posted a draft copy of the proposed rule changes on the Board’s website at www.mn.gov/boards/dentistry making it accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general

public. This draft copy identified the Board rules that will be affected by the Board's proposed rule changes.

3. On January 29, 2018, the Board posted a copy of the Request for Comments for publication in the State Register on the Board's website at www.mn.gov/boards/dentistry. This website is accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general public.
4. On January 30, 2018, 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.
5. On January 30, 2018, the Board contacted the representatives of the Minnesota Dental Association (Dentists), the Minnesota Dental Therapy Association (Dental Therapists), the Minnesota Dental Hygienists Association (Dental Hygienists), and the Minnesota Dental Assistants Association (Dental Assistants) with a request to notify its members about the Board's Request for Comments period and the proposed rules.
6. On January 30, 2018, the Board sent a broadcast electronic mailing to nearly 17,000 licensees including, dentists, dental therapists, dental hygienists, and licensed dental assistants, regarding the Board's Request for Comments period and the proposed rules.
7. On February 5, 2018, the Board's Request for Comments was published in the State Register, requesting that all comments be submitted to the Board by April 6, 2018. All comments received by the Board regarding the proposed rules shall be reviewed and any suggested changes shall be considered by the Board.
8. By April 6, 2018, the end of the 60-day Request for Comments period, the Board had not received any comments in opposition to its proposed rules.
9. On April 12, 2018, the Board posted a final version of its Statement of Need and Reasonableness ("SONAR") dated April 10, 2018, on the Board's website at www.mn.gov/boards/dentistry making this information accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; 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 (Dentists), the Minnesota Dental Therapy Association (Dental Therapists), the Minnesota Dental Hygienists Association (Dental Hygienists), and the Minnesota Dental Assistants Association (Dental Assistants).

The Board of Dentistry believes that this Additional Notice Plan complies with the statute because the notification pathways described above provide 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 the dental workforce, 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 Finance and Policy Committee Chair and Ranking Minority Member; and Human Services Reform Finance and Policy 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 Minnesota Management and Budget ("MMB"). We will do this by sending MMB copies of the 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 of Intent to Adopt. 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 OAH at the hearing or with the documents it submits for ALJ review.

Specifically, the Board will send copies of the required documents to Chardae Kimber, the Board's Executive Budget Officer (EBO), at MMB and later provide Chardae Kimber'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 to 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. Douglas Wolff, D.D.S., Board Member
2. Christy Jo Fogarty, D.H., A.D.T. Board Member
3. Bridgett Anderson, L.D.A., M.B.A., 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:

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

Subpart 4. Nitrous oxide inhalation analgesia; educational training requirements.

Subpart 4, item A: In this item, some existing language has been deleted and replaced with the following: “~~Prior to~~ As of January 1, 1993, a licensed dentist who is currently administering nitrous oxide inhalation analgesia may register that fact with the board according to subpart 5, item A.” This change is intended to clarify that by that date a licensed dentist should have registered with the Board that he has been administering nitrous oxide to patients. Thus, the Board considers this change necessary and reasonable.

Subpart 5. Notice to board.

Subpart 5, item C, subitems (2) and (3): Regarding a dentist, the Board made the following changes below:

(2) the dentist’s written attestation regarding successfully completing the education to administer nitrous oxide inhalation analgesia through an institution accredited by the Commission on Dental Accreditation; and

~~(2) (3) a certified copy of the dentist’s transcript and other official record from the institution verifying that the dentist has successfully completed~~ documentation of current CPR certification as required by subpart 4, item C.

Regarding subitem (2) above, the Board found that some MN dentists, who had not previously provided proper Notice to the Board about administering nitrous oxide to patients, and credential candidates seeking licensure, who would like to administer nitrous oxide to patients, these individuals were having difficulty obtaining the necessary documentation of their prior education of nitrous oxide from their attended dental institution due lack of retention of ancient information. Therefore, the Board decided to create this new language that allows this particular dentist or credential candidate to instead provide their written attestation regarding their prior nitrous oxide education to the Board to make the process easier. The Board determined that a written attestation from the dentist would be an acceptable alternative since these dentists have been administering nitrous oxide to their patients for many years. Thus, the Board considers this change necessary and reasonable.

Regarding subitem (3) above, the Board decided that it was unnecessary to obtain a copy of the dentist’s transcript as proof of completing CPR certification. Therefore, the Board has amended the existing language to allow the dentist to provide documentation of current CPR certification, which means providing a copy of the front and back of their current CPR card to the Board. The Board believes in making the process easier and considers this change necessary and reasonable.

Subpart 5, item D, subitem (2): Regarding a dental hygienist and licensed dental assistant, the Board made the following change below:

~~(2) a certified copy of the dental hygienist’s or licensed dental assistant’s transcript and other official record from the institution verifying that the dental hygienist or licensed dental assistant has successfully completed~~ documentation of current CPR certification as required by subpart 4, item C.

Regarding subitem (2) above, the Board decided that it was unnecessary to obtain a copy of the dental hygienist's or licensed dental assistant's transcript as proof of completing CPR certification. Therefore, the Board has amended the existing language to allow the dental hygienist or licensed dental assistant to provide documentation of current CPR certification, which means providing a copy of the front and back of their current CPR card to the Board. The Board believes in making the process easier and considers this change necessary and reasonable.

Subpart 5, item E, subitem (2): Regarding a dental therapist, the Board made the following change below:

(2) ~~a certified copy of the dental therapist's transcript and other official records from the institution verifying that the dental therapist has successfully completed~~ documentation of current CPR certification as required by subpart 4, item C.

Regarding subitem (2) above, the Board decided that it was unnecessary to obtain a copy of the dental therapist's transcript as proof of completing CPR certification. Therefore, the Board has amended the existing language to allow the dental therapist to provide documentation of current CPR certification, which means providing a copy of the front and back of their current CPR card to the Board. The Board believes in making the process easier and considers this change necessary and reasonable.

3100.8500 LICENSED DENTAL ASSISTANTS.

Subparts 1, 1a, 1b, 1c, and 2 below: The Board decided to replace the word "duties" with the word "procedures" because use of the word "procedures" seemed more appropriate indicating a series of actions.

Subpart 1. **Duties Procedures under general supervision.** A licensed dental assistant may perform the following procedures without the dentist being present in the dental office or on the premises if the procedures being performed are with prior knowledge and consent of the dentist:

G. take impressions ~~for casts and appropriate bite registration, not to include impressions and bite registrations for final construction of fixed and removable prostheses;~~

Subpart 1, item G: After many months of discussions at Allied Dental Education Committee meetings between dental educators, dentists, licensed dental assistants, dental hygienists, and Board members, it was decided to remove the language above that referenced the taking of impressions and bite registrations relative to the final construction of prostheses. With the development of new scanner technology being used to take digital dental impressions, the trends in dentistry are moving toward having the licensed dental assistant take the digital dental impressions for fixed and removable prostheses, as the process is less invasive and user-friendly with greater accurate results. This change will also broaden the scope of impressions to allow for future technology advancements in dentistry. As always with procedures under general supervision, the dentist will have prior knowledge and give consent before the licensed dental assistant can perform this procedure. For these reasons, the Board considers this change necessary and reasonable.

N. remove and place ligature ties and remove and replace existing arch wires on orthodontic appliances.

Subpart 1, item N: Following multiple meetings and discussions between the Minnesota Orthodontist Association, Board members, dentists, dental hygienists, and licensed dental assistants, it was decided to add this language above to the procedures a licensed dental assistant can perform under general supervision. The licensed dental assistant would be allowed to remove ligature ties and existing arch wires on orthodontic patients who needed to have their arch wires removed prior to having other dental treatment, such as a prophylaxis, digital impressions, or restorations completed by the patient's general dentist. Thereafter, the licensed dental assistant would replace the ligature ties and existing arch wires for the patient. The licensed dental assistant would not need any additional training to perform this procedure since this procedure is already part of the curriculum of dental assisting programs, because a similar procedure already exists under indirect supervision as seen below. As always with procedures under general supervision, the dentist will have prior knowledge and give consent before the licensed dental assistant can perform this procedure. For these reasons, the Board considers this change necessary and reasonable.

O. apply topical fluoride, including foam, gel, or varnish.

Subpart 1, item O: This existing procedure regarding applying topical fluoride has been moved from indirect supervision to general supervision for licensed dental assistants. In addition, the language for topical fluoride has been expanded to identify the general types of fluoride that may be applied with the intent of not limiting the possibilities for future types of topical fluoride as technology and research advance in fluoride substances over time. Along with applying topical fluoride to patients in the dental office under general supervision, the licensed dental assistant is also allowed to apply topical 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 topical fluoride 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. Moreover, this will remove any barriers for the licensed dental assistant to participate in fluoride varnish programs in public settings. For these reasons, the Board considers the change to be necessary and reasonable.

Subpart 1a. **Duties Procedures under indirect supervision.** A licensed dental assistant, in addition to the services performed by an assistant described in part 3100.8400, subpart 1, may perform the following services if a dentist is in the office, authorizes the procedures, and remains in the office while the procedures are being performed:

A. apply topical medications such as, but not limited to, ~~topical fluoride~~, bleaching agents, and cavity varnishes in appropriate dosages or quantities prescribed by a dentist;

Subpart 1a, item A: The medication "topical fluoride" has been deleted from indirect supervision

and moved to general supervision for licensed dental assistants. The procedure of applying topical fluoride to patient's teeth is considered a safe and harmless procedure that is taught to all dental assisting students. The licensed dental assistant will still be under general supervision by the dentist in all situations. Therefore, the Board considers this change necessary and reasonable.

I. ~~remove and place ligature ties and~~ initial arch wires on orthodontic appliances. A dentist must select and, if necessary, adjust arch wires prior to placement;

Subpart 1a, item I: Following multiple meetings and discussions between the Minnesota Orthodontist Association, Board members, dentists, dental hygienists, and licensed dental assistants, it was decided to change the language for this procedure that a licensed dental assistant can perform under indirect supervision. Some of the language for this existing procedure dealing with ligature ties and arch wires was moved to general supervision as a new procedure. The remaining part of this procedure was changed to specify the placement of "initial" arch wires on orthodontic appliances. As a currently existing procedure, it was determined that licensed dental assistants have the knowledge and capability to place initial arch wires through the training provided by the orthodontist at the practice. In addition, the licensed dental assistant already receives orthodontic training as part of the curriculum of dental assisting programs. As a procedure under indirect supervision, the dentist is responsible for authorizing the procedure and remaining in the office while the procedure is being performed by the licensed dental assistant. For these reasons, the Board considers this change necessary and reasonable.

Subpart 1b. **Duties Procedures under direct supervision.** A licensed dental assistant may perform the following services if a dentist is in the dental office, personally diagnoses the condition to be treated, personally authorizes the procedure, and evaluates the performance of the licensed dental assistant before dismissing the patient:

J. initiate and place an intravenous ~~infusion~~ line in preparation for intravenous medications and sedation while under direct supervision of a dentist who holds a valid general anesthesia or moderate sedation certificate. Before initiating and placing an intravenous ~~infusion~~ line, a licensed dental assistant must have successfully completed board-approved allied dental personnel courses comprised of intravenous access and general anesthesia and moderate sedation training; and

Subpart 1b, item J: The word "infusion" was deleted because the word was found as an unnecessary component when referring to an intravenous line, which technically speaks for itself without further descriptors. For this reason, the Board considers this change necessary and reasonable.

Subpart 1c. **Duties Procedures under personal supervision.** A licensed dental assistant may concurrently perform supportive services if the dentist holds a valid general anesthesia or moderate sedation certificate, is personally treating a patient, and authorizes the licensed dental assistant to aid in ~~treatment~~ the physical management of medications, including the preparation and administration of medications into an existing intravenous line, an enteral agent, or emergency medications in an emergent situation. Before administering any medications or agents, a licensed

dental assistant must have successfully completed board-approved allied dental personnel courses comprised of general anesthesia and moderate sedation training.

Subpart 1c: The following phrases “the physical management of medications” and “the preparation” were added to the existing language to attempt to simplify what the licensed dental assistant is permitted to do regarding medications and intravenous lines. Basically, the licensed dental assistant is allowed to prepare or draw-up the medications and administer medications into the patient’s intravenous line under the personal supervision of the dentist who is presently treating the patient and authorizes the licensed dental assistant to assist him/her with these procedures. Additionally, the phrase “an enteral agent or emergency medications in an emergent situation” was deleted from the existing language because it seemed to only confuse the reader about what type of medications could be administered through the intravenous line which was not the intent. For these reasons, the Board considers these changes necessary and reasonable.

Subpart 2. **Other ~~duties~~ procedures prohibited.** A licensed dental assistant may not perform any dental treatment or procedure on patients not otherwise authorized by this chapter.

Subpart 2: The heading of this subpart has been changed by replacing the word “duties” with the word “procedures” because use of the word “procedures” seemed more appropriate indicating a series of actions.

3100.8700 DENTAL HYGIENISTS.

Over the course of many years, the Board has been adding new delegated duties or procedures to the list for dental hygienists to perform through the rulemaking process. As a result, all of the four-year and two-year dental hygienist programs have chosen not to include all of the delegated procedures in the list as part of their curriculum, since the list has been growing over time and it would be impossible to teach all of these procedures to students. In April 2015, the dental hygiene educators explained to the Board that a new CODA proposed Standard 2-18, which was part of the Accreditation Standards for Dental Hygiene Programs from the Commission on Dental Accreditation, would require that all accredited dental hygiene programs would have to teach every delegated procedure outlined in either statutes or rules to clinical competency. This new proposal from CODA inspired the dental hygiene educators to restructure the current list of delegated procedures, so it is now clear that the delegated procedures in subpart 1 known as “principal procedures” are required to be taught as part of a dental hygiene curriculum for initial licensure in dental hygiene programs.

Additionally, the remaining delegated procedures were separated into other categories such as restorative procedures in subpart 2, orthodontic procedures in subpart 3, and sedation monitoring and intravenous procedures in subpart 4. For each of these latter categories, a list of delegated procedures are indicated under each appropriate supervision level as well as the educational training requirement needed by the dental hygienist to perform any of these delegated procedures.

All of the subparts below have been restructured and reorganized compared to the original version, so it may appear that lots of new procedures have been added to the delegated procedures list for dental hygienists, which has not happened. The following is a breakdown of the procedure changes that were made and the analysis for each subpart, item, and supervision level, plus the existing procedures that still remain under each subpart and supervision level:

“Principal Procedures Under General Supervision”

Subpart 1. ~~Duties~~ Principal procedures under general supervision.

Subpart 1: The heading of this subpart has been changed to reflect the new category of principle procedures that can be performed by a dental hygienist under general supervision. These procedures will also be included in the training curriculum for dental hygiene students in dental hygiene programs.

Two New Principal Procedures Under General Supervision:

The following two new principal procedures below are now part of the list of delegated procedures for dental hygienists under general supervision. These two new procedures are highly recommended for dental hygienists to perform since nutritional counseling is an important foundation for every patient toward having healthy hard and soft tissues of the mouth and overall a healthy body. As for placing subgingival medicaments, the dental hygienist is already very familiar with performing procedures that involve the subgingival area surrounding a patient’s teeth with debridement and scaling. Therefore, this procedure of placing a medicament subgingivally along with the appropriate education will enhance the realm of delegated procedures for dental hygienists. Both of these new procedures will be part of the curriculum in dental hygiene programs and taught to a competent level to students. As always with procedures under general supervision, the dentist will have prior knowledge and give consent before the dental hygienist can perform these procedures. For these reasons, the Board considers these new procedures to be necessary and reasonable.

L. Place subgingival medicaments.

O. Nutritional counseling.

Existing Procedures Currently Under Direct Supervision, But The Change Involved Moving The Same Procedure To Principle Procedures Under General Supervision:

These three principle procedures below currently exist as delegated procedures for a dental hygienist. With the proposed changes, the three procedures will be moved from the level of direct supervision to general supervision. Dental hygienists have been performing the first two procedures regarding temporary crowns/restorations and matrix systems/wedges since 1996 and 2003, respectively. With this lengthy background of performing these two procedures and having no known reported adverse events or complaints that would substantiate patient safety concerns, it would be considered reasonable to move these procedures regarding temporary

crowns/restorations and matrix systems/wedges from direct supervision to general supervision for dental hygienists.

As for the last principle procedure regarding nonsurgical retraction material, a dental hygienist may perform this procedure under general supervision after either: completing an acceptable continuing education course on placing nonsurgical retraction material for gingival displacement; or completing an accredited dental hygiene program that has incorporated into the curriculum of the program placing nonsurgical retraction material for gingival displacement. From the continuing education course or as part of the curriculum in a dental hygiene program, the dental hygienist will be instructed how to place nonsurgical retraction material on patients to a competent level. As always with procedures under general supervision, the dentist will have prior knowledge and give consent before the dental hygienist can perform the aforementioned procedures. For these reasons, the Board considers these proposed changes to be necessary and reasonable.

X. Remove temporary crowns or restorations with hand instruments only.

Y. Place and remove matrix systems and wedges.

Z. Place nonsurgical retraction material for gingival displacement. Before placing nonsurgical retraction material, a dental hygienist must have successfully completed a course in nonsurgical retraction material for gingival displacement at a dental, dental hygiene, or dental assisting school accredited by the Commission on Dental Accreditation.

Existing Procedures Currently Under General Supervision That Will Remain Under General Supervision:

All of the principle procedures indicated below currently exist as delegated procedures under general supervision for dental hygienists. The only changes made to the procedures were to rearrange the order of the procedures under general supervision to create a better layout. Therefore, no further analysis is necessary for the following procedures and the Board finds these proposed changes to be necessary and reasonable.

A. Preliminary charting of the oral cavity and surrounding structures to include case histories, perform initial and periodic examinations and assessments to determine periodontal status, and formulate a dental hygiene treatment plan in coordination with a dentist's treatment plan.

B. Obtain informed consent, according to part 3100.9600, subpart 9, for treatments authorized by the supervising dentist pursuant to the dental hygienist's scope of practice.

C. Take photographs extraorally or intraorally.

D. Take vital signs such as pulse rate and blood pressure.

E. Make referrals to dentists, physicians, and other practitioners in consultation with a dentist.

F. Complete debridement, prophylaxis, and non-surgical periodontal therapy.

G. Etch appropriate enamel surfaces, application and adjustment of pit and fissure sealants.

H. Administer local anesthesia. Before administering local anesthesia, a dental hygienist must have successfully completed a didactic and clinical program sponsored by a dental or dental hygiene school accredited by the Commission on Dental Accreditation, resulting in the dental hygienist becoming clinically competent in the administration of local anesthesia.

I. Administer nitrous oxide inhalation analgesia according to part 3100.3600, subparts 4 and 5.

J. Take radiographs.

K. Apply topical medications such as topical fluoride, bleaching agents, cavity varnishes, and desensitizing agents.

M. Take impressions and appropriate bite registration.

N. Fabrication and delivery of custom fitted trays.

P. Salivary analysis.

Q. Remove marginal overhangs.

R. Remove sutures.

S. Place and remove periodontal dressings.

T. Place and remove isolation devices or materials for restorative purposes.

U. Polishing of restorations.

V. Remove excess cement from inlays, crowns, bridges, or orthodontic appliances.

W. Fabrication, placement, replacement, cementation, and adjustment of temporary crowns or restorations.

“Restorative Procedures Under Indirect Supervision”

Subpart 2. **Duties Restorative procedures under indirect supervision.**

Subpart 2: The heading of this subpart has been changed to reflect the new category of restorative procedures that can be performed by a dental hygienist under indirect supervision. Since 2003, the ability to perform restorative procedures after completing the appropriate training currently

exists under indirect supervision and will remain the same. To perform restorative procedures, a dental hygienist must either: (1) successfully graduate from a Minnesota dental hygiene program accredited by CODA that included training for restorative procedures and the dental hygienist received a restorative procedures certificate from the program; or (2) complete a board-approved course comprised of restorative procedures and received a restorative procedures certificate from the course sponsor. These same educational training options have already been available for dental hygienists to complete and thereafter provide restorative procedures. The changes to this part are mainly to rearrange currently existing restorative procedures language. For these reasons, the Board considers these proposed changes to be necessary and reasonable.

“Orthodontic Procedures Under General, Indirect, or Direct Supervision”

Subpart 2a 3. **Duties Orthodontic procedures under general, indirect, or direct supervision.**

Subpart 3: The heading of this subpart has been changed to reflect the new category of orthodontic procedures that can be performed by a dental hygienist under general, indirect, or direct supervision. To perform these orthodontic procedures, a dental hygienist must have fulfilled either: (1) been granted a Minnesota dental hygiene license from the Board prior to September 1, 2019; (2) successfully graduated from a Minnesota dental hygiene program accredited by CODA after September 1, 2019, that included training for orthodontic procedures and the dental hygienist received an orthodontic procedures certificate from the program; or (3) successfully completed a board-approved course comprised of orthodontic procedures and received an orthodontic procedures certificate from the course sponsor. Since orthodontic procedures has become a separate category, the Board created the language in option (1) above to grandfather in all currently licensed dental hygienists in Minnesota prior to the specified date, which would allow them to continue to perform these orthodontic procedures without further training. Moreover, the Board created additional training criteria above to inform other dental hygienists who are interested in performing orthodontic procedures in the future how to achieve that goal through the stated options.

All of the following orthodontic procedures below were delegated procedures that dental hygienists had previously received the necessary training on through their dental hygiene programs and hygienists were already allowed to perform these orthodontic procedures under these same levels of supervision. The only changes made to the orthodontic procedures were to move the procedures to this subpart as a new orthodontic category. Therefore, no further analysis is necessary for the following procedures and the Board finds these proposed changes to be necessary and reasonable.

Orthodontic procedures under general supervision:

- (a) Cut arch wires on orthodontic appliances.
- (b) Remove loose bands on orthodontic appliances.
- (c) Remove loose brackets on orthodontic appliances.
- (d) Remove excess bond material from orthodontic appliances.
- (e) Preselect orthodontic bands.

- (f) Place and remove elastic orthodontic separators.
- (g) Remove and place ligature ties and remove and replace existing arch wires on orthodontic appliances.
- (h) Deliver vacuum-formed orthodontic retainers.

Orthodontic procedures under indirect supervision:

Place initial arch wires on orthodontic appliances. A dentist must select and, if necessary, adjust arch wires prior to placement.

Orthodontic procedures under direct supervision:

- (a) Etch appropriate enamel surfaces before bonding of orthodontic appliances by a dentist.
- (b) Remove bond material from teeth with rotary instruments after removal of orthodontic appliances.
- (c) Attach prefrit and preadjusted orthodontic appliances.
- (d) Remove fixed orthodontic bands and bracket.

“Sedation Monitoring and Intravenous Procedures Under Indirect, Direct, or Personal Supervision”

Subpart 2b 4. **Duties** Sedation monitoring and intravenous procedures under indirect, direct, or personal supervision.

Subpart 4: The heading of this subpart has been changed to reflect the new category of sedation monitoring and intravenous procedures that can be performed by a dental hygienist under indirect, direct, or personal supervision. To perform sedation monitoring and intravenous procedures, a dental hygienist must have successfully completed board-approved allied dental personnel courses comprised of intravenous access and general anesthesia and moderate sedation training and submitted to the Board documentation of completion to receive a certificate from the Board. These same educational training courses have already been available for dental hygienists to complete and thereafter provide sedation monitoring and intravenous procedures.

Since 2010, the ability to perform sedation monitoring and intravenous procedures after completing the appropriate training currently exists under indirect, direct, or personal supervision and will remain the same, as follows:

Sedation monitoring and intravenous procedures under indirect supervision:

- (a) Maintain and remove intravenous lines.
- (b) Monitor a patient during preoperative, intraoperative, and postoperative phases of general anesthesia or moderate sedation using noninvasive instrumentation such as pulse oximeters, electrocardiograms, blood pressure monitors, and capnography.

Sedation monitoring and intravenous procedures under direct supervision:

Initiate and place an intravenous line in preparation for intravenous medications

and sedation.

Sedation monitoring and intravenous procedures under personal supervision:

Aid in the physical management of medications, including the preparation and administration of medications into an existing intravenous line.

The only changes made to the sedation monitoring and intravenous procedures were to move the procedures to this subpart as a new sedation monitoring and intravenous category. Therefore, no further analysis is necessary for the following procedures and the Board finds these proposed changes necessary and reasonable.

Subpart 3 5. **Other duties procedures prohibited.** A dental hygienist may not perform any dental treatment or procedure on patients not authorized by this chapter.

Subpart 5: The heading of this subpart has been changed by replacing the word “duties” with the word “procedures” because use of the word “procedures” seemed more appropriate indicating a series of actions.

3100.9600 RECORD KEEPING.

Subpart 5. **Dental and medical history.** Dental records must include information from the patient or the patient's parent or guardian on the patient's dental and medical history. The information must include a sufficient amount of data to support the recommended treatment plan. The dental and medical history must be updated to reflect the current status of the patient.

Subpart 5: For this subpart, the sentence regarding updating the dental and medical history has been added to the existing language. It is important for the dentist to obtain updated dental and medical information for patient safety from the patient regarding changes to their current health status, such as recent dental issues and treatment, recent medical illnesses and care, and any alterations to medications. This updated dental and medical information must be documented in some form as determined by the dentist in the patient's record. Therefore, the Board finds these proposed changes necessary and reasonable.

Subpart 10. **Progress notes.** 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. all medications used and materials placed;
- C. the treatment provider by license number, name, or initials; ~~and~~
- D. when applicable, the identity of the collaborating dentist authorizing treatment by license number; and
- E. administration information for nitrous oxide inhalation analgesia, including indication for use, dosage, duration of administration, post-treatment oxygenation period prior to discharge.


and patient status at discharge.

Subpart 10: For this subpart, item “E” has been added regarding nitrous oxide to the existing language under progress notes. Specifically, whenever nitrous oxide inhalation analgesia is administered to a patient, the following information must be documented within the progress notes in the patient’s record: the indication for use, dosage, duration of administration, post-treatment oxygenation period prior to discharge, and patient status at discharge. Before this rulemaking, the use of nitrous oxide was considered as a “medication used” (indicated above as item “B”), which was previously required to be documented within the patient’s progress notes in the patient’s record. Since this previous requirement was unclear to some regulated dental professionals, the Board decided to specifically list under progress notes the administration of nitrous oxide and the required nitrous oxide information as part of this subpart to clarify any confusion as to what exactly is required to be documented whenever nitrous oxide is administered to a patient. Nitrous oxide must be properly administered to a patient and adequate documentation should support the administration process on the patient for this procedure. For these reasons, the Board finds these proposed changes necessary and reasonable.

CONCLUSION

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

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