

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
BOARD OF DENTISTRY

In the Matter of Proposed
Amendments to Dentistry Rules
Relating to Applications and
Renewal of Licenses and
Registrations, Parts 3100.1100 to
3100.1400 and 3100.1700, subparts 1 and 2;
Terminations for Failure to Submit the
Annual Renewal Application,
Pay Renewal Fee, or Meet Continuing
Education Requirements, Parts 3100.1700,
subparts 3 to 5; Reinstatement of
License or Registration, parts 3100.1850;
Clarification of Existing Rules,
parts 3100.3300 and 3100.3400; and Repealing
parts 3100.1800, 3100.1900, and
3100.4700

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The Minnesota Board of Dentistry (hereinafter "Board"), pursuant to the rulemaking provisions of the Administrative Procedure Act, Minn. Stat. ch. 14 (1984), hereby affirmatively presents the need for and facts establishing the reasonableness of the above-captioned proposed amendments to the Board's rules. Terms used in this Statement have the meanings given them in Minn. Rules part 3100.0100 (1983).

In order to adopt the proposed amendments, the Board must demonstrate that it has complied with all the procedural and substantive requirements of rulemaking. Those requirements are that: 1) there is statutory authority to adopt the rule; 2) all necessary procedural steps have been taken; 3) any additional requirements imposed by law have been satisfied; 4) the rules are needed; and 5) the rules are reasonable. This statement demonstrates that the Board has met these requirements.

II. STATUTORY AUTHORITY

The basic authority to adopt the above subject amendments is contained in Minn. Stat. § 150A.04, subd. 5 (1984), which authorizes the Board to "promulgate rules as are necessary to carry out and make effective the provisions and purposes of sections 150A.01 to 150A.12." In addition, with respect to how long a license or registration is in effect, the renewal thereof, and related matters, Minn. Stat. § 214.06, subd. 2 (1984) provides specific rulemaking authority. See, also, Minn. Stat. §§ 150A.08, subd. 3, and 150A.09, subd. 1 (1984).

III. COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS

A. Requirements in General

The Board has determined that the above captioned amendments are noncontroversial, and has elected to follow the procedures set forth in Minn. Stat. §§ 14.05 to 14.12 and 14.22 to 14.28 (1984), which provide for the adoption of noncontroversial rules without the holding of a public hearing. However, if during the 30-day comment period 25 or more people request a hearing, one must be held. In order to expedite the hearing, should the requisite number of people request one, the hearing is being noticed at the same time, and as part of the same Notice by which the Board is announcing its intent to adopt the rules via the noncontroversial process. Therefore, the procedures for adopting rules after a hearing as specified in Minn. Stat. §§ 14.131 to 14.20 (1984) and in Minn. Rules pts. 1400.0200 to 1400.1200 (1983), as amended in 9 S.R. 2279 (April 8, 1985), will also be met. The hearing, of course, will be canceled if the Board does not receive a request for one from 25 or more people.

Pursuant to Minnesota Statutes, sections 14.131 and 14.23 (1984) and Minn. Rules pt. 1400.0500, the Board has prepared this statement of need and reasonableness, which is available to the public. It contains the verbatim affirmative presentation in support of the above captioned rule amendments pursuant to Minn. Rules pt. 1400.0500,

subp. 3 (1983) as amended in 9 S.R. 2279 (April 8, 1985). If a hearing is held, this Statement of Need and Reasonableness will be introduced into the record as an exhibit and copies will be available for review at the hearing. Because the Statement of Need and Reasonableness contains the Board's complete presentation, the Board will not call any witnesses to testify on its behalf. Dr. Robert Hoover and Kathleen Lapham, RDA, the current and former chairpersons of the Board's rules committee, and Dale Forseth, the Board Executive Secretary, will be present at the hearing to summarize all or portions of this Statement of Need and Reasonableness, if requested by the Administrative Law Judge, to answer questions, and to respond to concerns that may be raised.

The Board will publish in the State Register the proposed amendments and notice of its intention to amend the rules without a public hearing in combination with its notice of intent to amend its rules with a public hearing if 25 or more persons request a hearing. The Board will also mail copies of the combined notices to persons registered with the Board pursuant to Minn. Stat. § 14.14, subd. 1a (1984), as well as to others whom the Board believes will have an interest in the amendments.

These rules, with the exception of part 3100.1700, will become effective five work days after publication of a notice of adoption in the State Register, pursuant to Minn. Stat. §§ 14.12 and 14.27 (1984). Part 3100.1700 will be effective on January 1, 1986.

B. Notice of Intent to Solicit Information from Non-Agency Sources

Minn. Stat. § 14.10 (1984) requires an agency which seeks information or opinions from sources outside the agency, in preparing to propose the amendment of rules, to publish a notice of its action in the State Register and afford all interested persons an opportunity to submit data or comments on the subject of concern in writing or orally. In the State Register issue of Monday, February 1, 1982, at page 1386, the Board published a

notice entitled "Notice of Intent to Solicit Information or Opinions from Non-agency Sources on Rule Revisions."

The Notice stated that the Board was reviewing its rules to determine if there was a need to amend them, and was therefore soliciting information and opinions from sources outside the Board. After a series of meetings of the Board's Rules Committee, it identified a number of subject areas for potential rule amendment. The Board then held a "Forum" on September 9, 1983, notice of which was sent to everyone on file with the Board who wanted to be informed of Board rulemaking activities, pursuant to Minn. Stat. § 14.14, subd. 1a (1980), including the various dental associations, as well as to others who may have had an interest in the rules, but who had not filed with the Board. The purpose of the Forum was to give interested persons an opportunity to comment on various proposals, including proposals covered by the above subject amendments.

As a result of the comments received at the Forum, the Board's Rules Committee continued to meet. Many of its meetings were attended by representatives of the various dental associations and other interested parties. Written comments were also received during the entire process. Those comments will be placed into the rulemaking record. Drafts of amendments were submitted to the entire Board on several occasions, at which times interested persons were permitted to comment. Finally, on June 22, 1985, the Board directed that the formal rulemaking proceeding be started with respect to the above captioned rules.

IV. COMPLIANCE WITH OTHER RULEMAKING REQUIREMENTS

A. Miscellaneous Requirements

These rules do not incorporate by reference text from any other law, rule, or available text or book. Minn. Stat. § 14.07, subd. 4 (1984). These rules minimize the duplication of statutory language. Minn. Stat. § 14.07, subd. 3(1) (1984). The adoption of these rules will not require the expenditure of public money by local public bodies of

greater than \$100,000 in either of the two years following promulgation, nor do the rules have any impact on agricultural land. Minn. Stat. § 14.11 (1984). Finally, a fiscal note referenced in Minn. Laws 1985, Ex. Sess., ch. 10, §§ 34 to 36 and 38, is not required because these rules do not mandate that a local agency or school district take an action which would force them to incur costs.

B. Small Business Considerations

It is the position of the Board that Minn. Stat. § 14.115 (1984), relating to small business considerations in rulemaking, does not apply to the rules it promulgates. Minn. Stat. § 14.115, subd. 7(b) (1984), states that section 14.115 does not apply to "agency rules that do not affect small businesses directly." The Board's authority relates only to dentists and not to the dental businesses they operate. While someone cannot operate a dental business without being licensed as a dentist by the Board, the license runs primarily to the technical ability to provide dental services and not to the business aspects. This is graphically illustrated in recent dealings with non-dentists who are involved with dental franchise offices. The Board has not taken the position that non-dentists can have no involvement in operating a dental business. Instead, its position is that non-dentists may not interfere with or have any control over the dentist when it comes to any aspect of the practice which could affect the providing of professional services to a patient. Thus, the Board regulates the provision of dental services and not the dental business per se. As such, it is exempt under Minn. Stat. § 14.115, subd. 7(b) (1984).

The Board is also exempt from the provisions of section 14.115, pursuant to subdivision 7(c), which states that section 14.115 does not apply to "service businesses regulated by government bodies, for standards and costs, such as . . . providers of medical care." Dentists provide medical care, and are regulated for standards and costs. The

Board regulates dentists for standards and the Minnesota Department of Human Services for costs.

The question might be raised as to whether the same government body has to regulate the service business for standards and costs in order for the exemption to apply. The Board's position is that the question should be answered in the negative. First, the provision specifically refers to regulation by "government bodies." Second, and most significantly, some of the examples of service businesses given in the subdivision where the rules governing them would be exempt from the considerations of section 14.115 actually would not qualify for the exemption if the same government body had to regulate for standards and costs. For example, nursing homes and hospitals are regulated by different government bodies for standards and costs. The Minnesota Department of Health regulates them for standards and the Minnesota Department of Human Services for costs. If the legislature had intended to exempt from the scope of section 14.115 only those rules which address service businesses regulated by one government body for standards and costs, then it could not have included nursing homes and hospitals in its list of examples.

Based on the foregoing, it is clear that section 14.115 is not intended to apply to rules promulgated by the Board. However, because there is no determination addressing the issue from a court, the Attorney General's office, or Office of Administrative Hearings, the Board will briefly address the five methods listed in Minn. Stat. § 14.115, subd. 2 (1984), for reducing the impact of rules on small business.

The suggested methods are largely inapplicable to the proposed rules, which do not contain compliance schedules or deadlines or design or operational standards. The methods which may be arguably applicable, the establishment of less stringent reporting or compliance requirements and the exemption of small business from any or all requirements of the rules, cannot be incorporated into the proposed amendments. To do

so would be contrary to the statutory objectives that are the basis of the proposed rulemaking.

V. NEED FOR AND REASONABLENESS OF THE PROPOSED AMENDMENTS

A. General Need for Reasonableness of the Proposed Amendments

The above captioned amendments are primarily a result of a Board review of its rules, which began in 1982. The purpose of the review was to determine which rules needed to be updated and otherwise improved. That is the main reason behind the proposed amendments.

The proposed amendments are in keeping with the provisions of Minn. Stat. ch. 150A (1984), and as the following rule by rule justification will demonstrate, are both needed and reasonable.

B. Rule by Rule Justification

1. Part 3100.1100 Applications for License to Practice Dentistry (formerly 7 MCAR § 3.011)

Subpart 2. Minn. Stat. § 150A.03, subd. 1 (1984), permits the Board to participate with regional and national testing agencies for the purpose of conducting examinations for licensure and registration. Based on this statute, the Board previously adopted Minn. Rules pts. 3100.1100, subp. 2, and 3100.1200C (1983) to specify the Central Regional Dental Testing Services, Inc. (CRDTS), as the testing agency relating to applicants for licenses as dentists and dental hygienists. The Board now finds that specifying a specific testing agency in its rules could be detrimental to the Board's responsibility to provide an examination which is sufficient enough to test an applicant's fitness to practice in this state as required by Minn. Stat. § 150A.06, subds. 1 and 2 (1984). If the examination offered by CRDTS deteriorated, the Board could not carry out its statutory responsibility until after the rule was changed. Also, if CRDTS should go out of business, the Board would be without a testing agency until a new rule was adopted to

permit the Board to affiliate with another testing agency. Thus, the Board's proposed amendments to parts 3100.1100, subp. 2 and 3100.1200C would eliminate reference to a specific testing agency. This change would allow the Board to quickly identify and approve a different testing agency or examination for licensure purposes with its discretion controlled by the standard specified in the rule, to wit, that the examination be designed "to determine the applicant's level of clinical skills."

2. Part 3100.1200 Application for License to Practice Dental Hygiene (formerly 7 MCAR § 3.012)

Part 3100.1200C. The amendment to part 3100.1200C is proposed for the same reasons given in paragraph 1, supra at 7, in support of the proposed amendment to part 3100.1100, subpart 2.

3. Part 3100.1300 Application for Registration as a Registered Dental Assistant (formerly 7 MCAR § 3.013)

a. Part 3100.1300A. The proposed amendment to part 3100.1300A is editorial only, intended to eliminate unnecessary words. The meaning of the rule is unchanged.

b. Part 3100.1300C. Minn. Stat. § 150A.03, subd. 1 (1984), permits the Board to affiliate with regional and national testing agencies for the purpose of examining applications for registration as dental assistants. Currently part 3100.1300C states that assistants applying for registration must complete a specific Minnesota registration examination. In fact, while the examination is developed by a consulting agency employed by the Board and administered periodically throughout the state, it is not called "the Minnesota registration examination." In addition, it is entirely possible that in the future the Board may approve an examination which could be administered as a regional or national examination that may not be referred to as "the Minnesota registration examination." Thus, deleting the reference to "Minnesota" is more of an editorial change so that the rule would accurately reflect the actual practice and assure

that in the future the Board could exercise the authority given it by Minn. Stat. § 150A.03, subd. 1 (1984).

4. Part 3100.1400 Application for Licensure by Credentials (formerly 7 MCAR § 3.014)

a. Part 3100.1400A. This part is being amended because the credential verification questionnaire is not necessary. The information previously required from the questionnaire is now incorporated into the Board's regular application for licensure.

b. Part 3100.1400C. Three changes are being proposed to this part. First, the rule presently reads that an applicant must have been in practice for at least three years "immediately preceding" application. Over the years the Board has been faced with the question of the meaning of the word "immediately." By using the word immediately, the Board wanted to convey to potential applicants that licensure by credentials was available only to those whose clinical skills were being maintained by actual practice for a reasonable period of time prior to applying for a Minnesota license. The Board had trouble in applying that principle because of the word "immediate." For example, the Board was faced with questions of whether it could license people otherwise qualified when the applicants had been out of practice for a period of time prior to applying for licensure in Minnesota. In most instances, the time out of practice was caused by such events as a move from another state to Minnesota, or by a pregnancy and subsequent time at home caring for a newborn child. The Board did not want to "penalize" people solely because of natural events of life that could keep them away from a dental practice for a period of time which was not long enough to cause their clinical skills to deteriorate. Consequently, the Board is proposing an amendment to the rule to remove the strict sense of the word "immediately" and to replace it with a standard that reflects the "reasonable period of time" policy underlying the original purpose of the rule.

The second change addresses the requirement that licensure by credentials applicants submit references from dentists. The amendment would require that the references come from dentists who are in practice. Dentists who are not practicing may not have kept abreast of the knowledge and responsibilities required of dentists in practice and thus would not be in a valid position to comment upon the applicant.

The third change deletes the last sentence of the rule. However, the substance of the rule is being restated in part 3100.1400F.

c. Part 3100.1400D. The amendment to this rule does the same thing and for the same reasons as the amendment to the first sentence of part 3100.1400C. The justification for that change is incorporated here by reference (see paragraph 4b, supra at 9 in support of the proposed amendment to part 3100.1400D.

d. Part 3100.1400E. Minn. Stat. § 150A.06, subd. 4 (1984), provides a means for dentists and dental hygienists who are licensed by other states or Canadian provinces to be licensed in Minnesota when the Board determines that the standards of examination and laws regulating the practice are substantially equivalent to Minnesota's standards and laws. In order for the Board to determine whether the standards or examinations are substantially equivalent, it is necessary to require applicants for licensure by credentials to submit evidence of having passed a clinical examination for licensure in another state or Canadian province because a clinical examination is a critical aspect of the licensing process for those seeking their initial dentist or dental hygienist license in Minnesota.

e. Part 3100.1400F. The provision in part 3100.1400F relating to the submission of a physician's statement is transferred from part 3100.1400C. Added to the provision is the requirement that the applicant also submit a statement concerning his/her visual acuity. It is recognized that a person's physical condition includes the person's

ability to see. Thus, in a sense, the rule is not being changed. However, by including "visual acuity" the Board is stating that vision must be specifically addressed.

It is reasonable for the Board to require statements on the applicant's physical and mental condition and visual acuity to assist the Board in determining the applicant's fitness to practice in the state. An example of the need for these requirements is evidenced by a recent incident involving a dentist applicant who was working in a federal institution where a state license was not required. The facility's quality assurance committee was seeking to discharge the dentist based on the person's incompetency over a period of time. However, the dentist's excuse for this poor quality dental service was a continued vision problem which, of course, even if the problem existed, is no excuse at all. In other words, a dentist cannot be permitted to practice below acceptable standards even if the reason for the poor performance is a physical problem.

These requirements will thus aid the Board in determining whether the applicants' physical, mental and visual health prevent them from practicing dentistry at an acceptable level. The amendments are in keeping with 1983 legislative enactments which increase the Board's authority to deny a license for physical, mental, or emotional reasons. Minn. Stat. § 150A.08, subs. 1(8), 5, and 6 (1984).

5. Part 3100.1700 Renewal of License and Registration (formerly 7 MCAR § 3.016)

a. Background. The statutory authority to promulgate these rules is contained in Minn. Stat. § 214.06, subd. 2 (1984), which directs the Board to "promulgate rules providing for the renewal of licenses. The rules shall specify the period of time for which a license is valid, procedures and information required for renewal, and renewal fees to be set pursuant to subdivision 1." (Emphasis added.)

The current rule requires licensees and registrants to submit an application for renewal along with a renewal fee. However, the rules do not directly address the issue of

how long the license or registration is valid. As a result, the Board has treated the license or registration as valid until it has been revoked after a contested case proceeding. The Board has found this process to be expensive, time consuming, and inefficient. This conclusion is highlighted by the fact that well over 100 licenses and registrations are revoked each year for failure to renew and in each instance, except once, the revocation has been the result of a default proceeding in which the individual has not appeared at the hearing or responded to the notice of hearing. In the one instance where the person appeared for the hearing, she did not contest the allegation that she had failed to comply with the requirements in question. Instead, she objected to the requirement. In other words, she admitted noncompliance and justified it on the basis that she did not like the requirement. Her license was revoked.

To illustrate the need for a new procedure, it will be helpful to review the procedure that the Board followed when it revoked a number of licenses and registrations for failure to pay the 1980 renewal fee or to meet the continuing dental education requirements for a five-year period ending June 30, 1979. The 1980 story is typical, since the Board goes through this process each year.

The account began in the spring of 1979, when the Board mailed all licensees and registrants whose five-year continuing dental education cycle was going to expire that June 30 and who had not yet submitted information evidencing compliance with the requirement notices reminding them of the need to submit the necessary documentation. In the fall of 1979, each person whose five year continuing dental education cycle had expired and who had not filed with the Board evidence of compliance with the continuing dental education requirement was sent another notice. This notice informed the non-complying licensees and registrants that their license or registration would be revoked or suspended if they did not either submit evidence of having attended the

requisite number of continuing dental education course hours, take certain specified examinations, or voluntarily terminate their license or registration.

In addition to the notices regarding continuing dental education, in the fall of 1979, every licensee and registrant was mailed a 1980 renewal application and told that it, along with the renewal fee, had to be submitted by December 31, 1979. In early 1980, yet another renewal application was mailed to all licensees and registrants who had yet to renew for the year 1980. The application informed them that they could pay the fee, voluntarily terminate, or do nothing and face revocation. In May of 1980, the Board authorized the initiation of the hearing process regarding all the licensees and registrants who still were not in compliance. There were seven separate categories of cases, each requiring development of a separate Notice of and Order for Hearing. (Separate notices were drafted for dentists, dental hygienists, and registered dental assistants who had not paid the renewal fee, had not met the continuing education requirement, and/or had not complied with either requirement.) While a standard notice was developed for each category, a separate, individualized notice was mailed to each of the 380 plus licensees or registrants who had not complied with the renewal requirements. Only one person went through a hearing. Supra, at 12. The remaining hearings were all default proceedings. Nevertheless, the evidence had to be formalized and presented. The hearing examiner issued his report which was mailed to approximately 200 people. The 180 others who had received the Notice of Hearing submitted evidence of having met the requirements or had voluntarily terminated their licenses or registrations. After the Board voted to revoke the licenses and registrations, the Board's Order had to be sent to each person affected.

The foregoing process cost the Board just under \$1,800 for legal services for 70 hours of work. There were additional costs for the Hearing Examiner, and approximately \$100 for postage. In addition, there was a significant commitment of secretarial time to individualize each Notice of Hearing, Hearing Examiner Report, and final Board

Order; to stuff the envelopes; and to mail them. Because only one person out of 380 who received hearing notices appeared and went through the hearing, and this is the only person who has ever actually appeared for a hearing in all the years the Board has followed this process, one can safely call the process an expensive, time consuming, paperwork exercise. See, supra, at 12 for an explanation about the one person who went through a hearing. Given that the Board had many other disciplinary matters pending before it which were of much greater import, alternative procedures are an absolute necessity.

The approach which is incorporated in the proposed rule is to treat the failure to renew a license as a licensure issue rather than a disciplinary action requiring a contested case proceeding. Minn. Stat. § 214.06, subd. 2 (1984) also treats licensure renewal as licensure question since it authorizes the Board to specify the period of time for which a license is valid.

The issue of whether a renewal is a licensure requirement or a disciplinary action requiring a hearing was addressed in Pease v. Clayton, 566 F. Supp. 699 (N.D. Ill. 1983). In that case, the plaintiff alleged that the medical board's placing of his license in a non-renewed status because of failure to comply with continuing education requirements without granting him a hearing violated his constitutional rights to equal protection and due process. The court held that the notice and hearing requirements of the statute applied only to disciplinary proceedings and not to renewal of a license. The court noted that notice and hearing requirements are necessary in a disciplinary action to afford a licensee an opportunity to clear himself of unfounded allegations. In contrast, licensure requirements are known in advance, and thus, notice and hearing are not necessary. The proposed dental rule and the Minnesota Statute on which it is based follow this approach.

It is in the context of this background information that the specific justification of each subpart should be read.

b) Subpart 1. Proposed subpart 1 would eliminate the need to initiate a contested case hearing in every case by defining the period of time for which the license or registration is valid. The rule defines the license or registration as valid until renewed or terminated through the procedures specified in the remaining subparts of part 3100.1700.

Subpart 1 sets forth the basic framework for the licensure system. Underlying the licensure system is the basic concept that failure to comply with the steps required for license or registration annual renewal will not lead to a disciplinary hearing but merely to an expiration of the active term of the license or registration. In keeping with the expiration concept, a simple reinstatement process is set forth in part 3100.1850 for the licensee or registrant who, for whatever reason, does not renew. (For further discussion of the reinstatement provision, see paragraph 7, infra at 19, relating to part 3100.1850.)

c. Subpart 2. There are two substantive changes proposed for subpart 2. The first answers the question of when is a renewal application timely received by the Board. This issue is important in determining whether a late fee should be assessed pursuant to part 3100.2000, subpart 4. The renewal application and fee are to be submitted no later than December 31. Each year the Board receives several renewal applications and the accompanying fee several days past the deadline with the applicant blaming the mail for the late delivery. The proposed amendment sets forth a clear, easy to follow rule to govern the situation. The rule provides that the Board must have either received the renewal application by December 31 or it must be postmarked by then. If the postmark is illegible, the application must be received the first workday after December 31, which could be as early as January 2 or as late as January 4. This is a reasonable amount of time because the Christmas mail rush is past, meaning that letters

mailed by December 31 should be delivered by January 2. Furthermore, given that licensees and registrants are obligated to have the application submitted by December 31 and they will have had over 30 days advanced notice from the Board, a longer grace period is not dictated by fairness.

The second change to subpart 2 adds to the list of information which the rule states the Board will seek from licensees and registrants on the renewal applications as authorized by Minn. Stat. § 150A.09, subd. 1 (1984). The requested new information pertains only to those licensees and registrants whose five-year continuing dental education cycle expired the previous June 30 and who had not yet submitted evidence of compliance with the continuing education requirements. These individuals will be asked to submit the information evidencing compliance and will be told that renewal is dependent on receipt of the information.

By placing the continuing education information on the renewal application, it makes compliance with the continuing dental education requirements a licensure or registration matter. It also sets the stage for expiration of the license or registration as contemplated by Minn. Stat. §§ 150A.09, subd. 1, and 214.06, subd. 2 (1984).

d. Subpart 3. In 1976 following the amendments to Minn. Stat. § 150A.09, subd. 1, and the enactment of Minn. Stat. § 214.06, subd. 2 (see Minn. Laws 1976, ch. 222, §§ 70 and 3, respectively), the Board proposed a rule change which called for an automatic expiration of any license or registration on January 1 if a renewal application and fee had not been received the previous December 31. Because of testimony objecting to the harshness of the rule and examples of how people could inadvertently forget to mail in the renewal application and fee, the Board decided not to adopt the rule. Instead, it continued with the process of holding contested case hearings to revoke the licenses or registrations of those who had not applied for renewal or met the continuing dental education requirement. However, as pointed out above, supra at 11

to 14, the existing process is just too cumbersome and costly. Accordingly, the Board has decided that it has to once again propose an automatic expiration process but this time with some modifications to meet the concerns of those who objected in 1976.

Under Minn. Stat. § 150A.09, subd. 1 (1984), the Board must send the renewal applications and notice of the fees to every licensee and registrant at least 30 days before the expiration date of December 31. However, to address the objections raised in 1976, the Board is adding a grace period after December 31 and a second notice requirement. Thus, after January 1, the Board will send a notice to all licensees and registrants who have failed to renew informing them of what they must do to renew and the date by which it must be accomplished. Failure to comply with the renewal requirements by the specified date, which must be at least 33 days after the notice is mailed, will result in license or registration expiration.

The benefits from this system are at least threefold. First, a licensee or registrant who neglected, for whatever reason, to file an application, pay renewal fees, or submit continuing dental education credit information will be protected from having his/her license or registration expire on December 31, and will be given another chance to comply. Second, the new procedure will avoid the costly and unnecessary expense to the Board and ultimately to all licensees and registrants of initiating a contested case proceeding in every case. And third, those who let their license or registration expire will no longer have a disciplinary mark on their record of a revocation. Instead, the expiration will merely be an administrative action noted in the Board's files. This is particularly appropriate because the vast majority who have faced revocation in the past did so for reasons such as moving from Minnesota, retirement, or leaving the profession. The license or registration expiration is a much more fitting way of handling these types of situations.

e. Subpart 4. In keeping with the administrative expiration concept, this subpart merely indicates that the reinstatement procedures of part 3100.1850 apply to persons whose license or registration expired. Those procedures lack the disciplinary overtones applicable to reinstatement of those who have experienced revocation or suspension.

f. Subpart 5. The proposed addition of part 3100.1700, subp. 5 allows the Board to initiate a contested case proceeding for failure to pay fees or submit required continuing dental education or renewal information instead of following the procedure in 3100.1700, subpart 3. This alternative procedure could be used in instances where the Board is also bringing disciplinary action against a licensee or registrant for some other reason. Since disciplinary action is already being brought, the consolidation of these two matters is an efficient method of handling this.

This is also a necessary corollary to proposed part 3100.6325. The Board is proposing adoption of this rule in a separate rulemaking proceeding captioned "In the Matter of Proposed Amendments to Dentistry Rules Relating to Definitions, parts 3100.0100, 3100.3100, and 3100.3200, and Professional Corporations, parts 3100.9100 to 3100.9300 and 3100.9500; Adding New Rules Relating to Voluntary Termination of License or Registration, part 3100.6325, and Cooperation by Those Under Investigation, parts 3100.6200 and 3100.6350; and Repealing part 3100.0100, subparts 12 and 19." This separate proceeding was initiated concurrently with the proceeding on the rules here under consideration. Part 3100.6325 authorizes the Board to refuse to accept a voluntary termination of a license if disciplinary action is a possibility. Subpart 5 would likewise prevent a licensee or registrant from escaping disciplinary action by merely failing to pay the renewal fee or to meet the continuing education requirements. See the Statement of Need and Reasonableness for part 3100.6325, which applies by analogy and is incorporated herein, for further justification of subpart 5.

g. Effective Date. Once part 3100.1700 is in effect, the Board will have to significantly modify the renewal notices it sends out each year. It is estimated that this rule could go into effect in the fall of 1985, yet late enough so as not to give sufficient time to change the renewal notices and make other necessary administrative modifications. Thus, this rule is being made effective January 1, 1986, which means that it will not apply to the 1986 renewal process. The notice and related changes will be made during 1986 so that they will apply for the first time to the 1987 renewal process.

6. Part 3100.1800 Display of Name and Certificates (formerly 7 MCAR § 3.046A)

See Repealer Section, paragraph 10 a, infra at 25.

7. Part 3100.1850 Reinstatement of Licensure or Registration (new rule)

Proposed part 3100.1850 is needed to provide a means for the reinstatement of a license or registration while at the same time ensuring that the public will not be harmed if the license or registration is reinstated. This part applies not only to those whose license or registration expired pursuant to proposed part 3100.1700 but also to those who voluntarily terminated or were revoked or suspended.

a. Subpart 1. Part 3100.1850 is organized with subpart 1 setting forth general requirements applying to all former licensees and registrants who want their license or registration reinstated. The remaining subparts identify various classes of applicants for reinstatement and specify the requirements one must meet, depending upon the class in which they fall. Subpart 1 makes clear that the license or registration will be reinstated upon complying with all applicable requirements of the entire part.

Part 3100.1850, subpart 1A, requires an applicant for reinstatement to submit an application. This is essential so that the Board is aware of the applicant's current status in terms of name, address, whether or not the applicant had disciplinary action

taken against him or her by another state, or by a court, and whether or not there are other matters that would affect an applicant's ability to practice in the state.

Proposed part 3100.1850, subpart 1B, merely informs an applicant of the requirement for paying the reinstatement fee specified in existing part 3100.2000, subpart 6.

In proposed part 3100.1850, subpart 1C, the Board is requesting that an applicant submit a letter stating the reasons for applying for reinstatement. This requirement is necessary to assure the Board that the reason for reinstatement is not because of a health or disciplinary problem which would prevent the person from practicing in another state.

Part 3100.1850, subpart 1D, reiterates that all reinstatement applicants must comply with the requirements of the remaining subparts which are applicable to them. It also specifies in which continuing education cycle they will be placed upon reinstatement. The cycle will be the same as the one they would have been in if they had not been without a license. While this means that some people being reinstated will have much less than the normal five years, this is not viewed as a problem. The number of continuing dental education hours a licensee or registrant has to take over a five-year period really is minimal and, with the availability of continuing dental education courses, could easily be completed within a very short period of time. Furthermore, if a person has been out of practice for awhile, as will be the case with anyone seeking reinstatement and who had not been licensed and practicing in a different state, having to take all their continuing dental education courses in less than five years will be beneficial to them and their patients. For those who had been practicing in another state, and are seeking a return of their Minnesota license, presumably they will have taken continuing dental education courses elsewhere. The Board's continuing dental education rules specifically provide for approval of individual continuing dental education courses. Minn. Rules part 3100.4300

(1983). Thus, those courses could apply toward the Minnesota requirements, which would be helpful, especially if the cycle in which they are placed would soon expire. On the other hand, if such a person had not attended any continuing dental education courses, there would be a definite need to do so, and if that had to be done in a short period of time, so much the better, at least for the patients, which is the real reason continuing dental education is required.

b. Subpart 2. Proposed part 3100.1850, subpart 2, provides requirements for reinstatement of dental personnel whose licenses or registrations have been in a lapsed state for less than five years either because of expiration under part 3100.1700 or voluntary termination. The rule is needed to spell out necessary reinstatement requirements that are not contained elsewhere in the rules.

The first sentence of subpart 4A recognizes that a person's license or registration could have expired only because of failure to pay the renewal fee. At the time of reinstatement application, the person may still be within their five-year continuing dental education cycle and thus need only to pay the required fees. On the other hand, the person's license or registration may have expired because of failure to comply with the continuing dental education requirement, or the person's continuing dental education cycle may have expired during the period of expiration or voluntary termination. The rule will require for reinstatement that the person has met the continuing dental education requirements as if the license or registration had remained in effect. Otherwise, a person could avoid the continuing education requirements entirely simply by not paying the renewal fee or voluntarily terminating and then applying for reinstatement. In order to avoid that situation, continuing education must still be maintained during a time of license or registration expiration in order to be reinstated. This is in keeping with the Board policy, as expressed by the establishment of the continuing dental education requirement, that continuing dental education is important.

In fact, it is probably even more important for the person who discontinues practice for awhile and then wants to return.

For the person whose license or registration is expired or terminated and who is out of compliance with the continuing dental education requirements, reinstatement is dependent upon taking an examination which tests the applicant's knowledge of clinical skills. These are the skills which a licensee or registrant must possess to safely and competently treat a patient. As such, they are appropriate for reinstatement purposes.

The dentist and dental hygienist applicant must choose between two examinations, one of which is written and the other clinical. However, both of them are designed to test clinical knowledge. (It should be noted that for registered dental assistants there is only a written examination that they must pass.) The written examinations (part II of the national board examination for dentists and the national board examination for dental hygienists) are also the ones currently required by the Board for reinstatement. See Minn. Rules part 3100.4700, subpart 2 (1983). The written examination addresses clinical issues (as opposed to scientific aspects of dentistry such as anatomy).

Besides the written examinations currently required and being continued as an optional requirement for reinstatement, the Board is adding an alternative examination, the clinical examination. The clinical examination involves the actual performance of certain dental services for patients.

The Board has decided that for those persons who have been without a license for less than five years, taking either examination would provide a sufficient check of current clinical knowledge so as to constitute a safeguard against the return to practice of an individual whose skills had deteriorated below an acceptable level.

The assessment of back fees at the time of reinstatement is necessary to cover the administrative costs of reconstructing past records, especially records relating

to the recording of continuing education credits, and to discourage persons from terminating licensure or registration to avoid paying annual fees or meeting continuing education requirements. The Board's cost of maintaining a file on a terminated or expired license or registration and for reinstating a license or registration is no less than the cost of annually renewing a license.

c. Subpart 3. Proposed part 3100.1850, subpart 3, provides requirements for reinstatement of dental personnel whose licenses or registrations have been in a lapsed state for more than five years either because of expiration under part 3100.1700 or voluntary termination. The rule is needed to spell out necessary reinstatement requirements that are not contained elsewhere in the rules. In general, the requirements are more stringent than for those whose licenses or registrations have lapsed for less than five years. The different handling of lapsed licenses or registrations based upon length of the expiration or termination recognizes that more skills are lost as time passes.

Much of what supports promulgation of subpart 2 applies with equal force to subpart 3. However, subpart 3 goes further, in that it requires for reinstatement that the dentist and dental hygienist applicant pass both the written and clinical examinations. (As previously noted only a written examination exists for the registered dental assistant applicant.) Given that people's skills and knowledge deteriorate with lack of use and deterioration increases with time, it is only logical to require the applicant who has been longer away from practice to demonstrate to a greater degree that his/her skills and knowledge are at an acceptable level. The examinations thus provide the Board with some reasonable assurance that the applicant is fit to practice as required for licensure by Minn. Stat. § 150A.06, subd. 1, 2, and 2a (1984).

The fees to be paid are justified on the same basis as the fees for those applying for reinstatement with terminated or expired licenses or registrations of less than five years. See paragraph 7b, supra at 21. However, cutting off the fee

accumulation at five years is to keep the amount from being prohibitive and therefore unreasonable. Furthermore, the reason for requiring payment of the fees for the five years immediately preceding application for reinstatement rather than for some other five-year period is that the longer the period of termination or expiration the more difficult it might be to identify what the fees were for years preceding the most recent ones.

d. Subpart 4. Proposed part 3100.1850, subpart 4, applies to applicants for reinstatement who had their license or registration suspended or revoked. It would require them to provide evidence of being rehabilitated from the offense which formed the basis for the disciplinary action. This rule is necessary to prove fitness to practice, which is a requirement of licensure or registration spelled out in Minn. Stat. § 150A.06, subds. 1, 2, and 2a (1984), which will ensure that the public welfare is protected. Subpart 2 also makes it clear to applicants for reinstatement that if the license or registration was revoked or suspended for failure to comply with continuing education requirements, they must fulfill the requirements of part 3100.1850, subparts 2 and 3, which applies the same standard as is applied to those whose licenses or registrations expired.

e. Subpart 5. Part 3100.1850, subpart 5, would give a dentist and dental hygienist who was formerly licensed in Minnesota and who is currently licensed in another state, and in active practice in that state, an alternative method for relicensure. The Board has always recognized this alternative option but thought it would be helpful to specifically state it in its rules.

8. Part 3100.1900 Address Change Notification (formerly 7 MCAR § 3.046B)

See Repealer Section, paragraph 10a, infra, at 25.

9. Part 3100.3300 Examination of Dentists; and Part 3100.3400 Examination of Dental Hygienists (formerly 7 MCAR §§ 3.024 and 3.025)

Subpart 2 of each of these rules is being amended by deleting the word "the" and inserting instead the word "a" before the phrase "national board examination." The change is editorial so as to conform to the amendments proposed for parts 3100.1100, subpart 2, and 3100.1200C, respectively. See, paragraphs 1 and 2, supra, at 7 and 8, respectively.

10. Repealer Section

- a. Part 3100.1800 Display of Name and Certificates; and Part 3100.1900 Address Change Notification (formerly 7 MCAR S 3.046A and B, respectively)

Minn Stat. § 14.07, subd. 3(1) (1984) requires that duplication of statutory language be minimized in rules. The Board finds that the language in 3100.1800 and 3100.1900 is a duplication of the language in Minn. Stat. §§ 150A.06, subd. 6, and 150A.09, subd. 3 (1984). For this reason, the Board proposes that parts 3100.1800 and 3100.1900 be repealed.

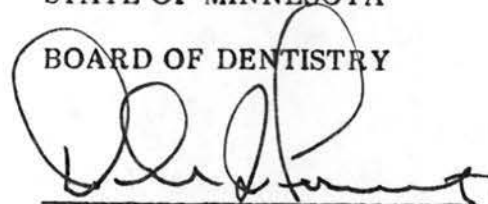
- b. Part 3100.4700 Noncompliance (formerly 7 MCAR § 3.054)

This part was under a portion of the Board's rules dealing with continuing dental education. It addressed the effect of a licensee's or registrant's failure to comply with the continuing dental education requirements and, if disciplined, how to have the license or registration reinstated. The substance of this rule is being transferred to proposed parts 3100.1700 and 3100.1850. The proposed rules explain in detail the effect of failure to comply with the continuing dental education requirements and how to be reinstated. Accordingly, part 3100.4700 is no longer needed.

Dated: August 6, 1985

STATE OF MINNESOTA

BOARD OF DENTISTRY



DALE J. FORSETH
Executive Secretary