STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

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

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 pt. 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, other than those pertaining to professional corporations, 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 15A.12." In addition,

with respect to disciplinary matters, the Board is authorized to define by rule "conduct unbecoming a person licensed to practice dentistry or dental hygiene or registered as a dental assistant, or conduct contrary to the best interest of the public." Minn. Stat. § 150A.08, subd. 1(6) (1984).

With respect to the professional corporation rules, the Board is authorized pursuant to Minn. Stat. § 319A.18 (1984) to "make such rules . . . as are necessary to carry out the provisions of sections 319A.01 to 319A.22," which is The Minnesota Professional Corporations Act.

III. COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS

A. Requirements in General

The Board has determined that the abovecaptioned 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 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 cancelled if the Board does not receive a request for one from 25 or more people.

Pursuant to Minn. Stat. §§ 14.131 and 14.23 (1984) and Minn. Rule 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's 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 will become effective five work days after publication of a notice of adoption in the State Register pursuant to Minn. Stat. §§ 14.18 and 14.27 (1984).

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 (1984), 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 rule 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 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 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 its 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 the 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 conditions 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 rule amendments which do not contain compliance schedules or deadlines or design or operational standards. The methods which might arguably be 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 and Reasonableness of the Proposed Amendments

The above captioned amendments are primarily a result of two events. First, the Board began in 1982 a review of all of its rules to determine which needed to be updated and otherwise improved. Second, the legislature during the 1982 session amended Minn. Stat. ch. 150A in many significant ways, particularly with respect to disciplinary matters by giving the Board expanded powers. Minn. Laws 1983, ch. 70; see especially sections 5 to 10. Furthermore, in winter of 1984-85, the Legislature conducted hearings with respect to the disciplinary activity of another board and thereafter greatly increased its disciplinary activities. This continued interest of the legislature in licensing board disciplinary activity, which started with the 1976 encactment of Minn. Stat. §§ 214.10 and 214.11, gave basis to the Board examining and then proposing new provisions to further improve its ability to investigate complaints filed against licensees, registrants, and applicants and to take disciplinary action thereafter when justified.

The proposed amendments are in keeping with the provisions of Minn. Stat. chs. 150A and 319A (1984), and as the following rule by rule justification will demonstrate, are both needed and reasonable.

B. Rule by Rule Justification

1. Part 3100.0100 Definitions (formerly 7 MCAR § 3.002)

a. Subpart 1. The language added to subpart 1 is routine language for a definition section. There is at least one area in the rules where the proposed language would remove the possibility of a misunderstanding. Subpart 2 defines the word "act" as referring to the Dental Practice Act. However, part 3100.8300 refers to the "act" or "acts" of auxiliary personnel which clearly refers to the conduct of an auxiliary as opposed the Dental Practice Act.

b. Subparts 9a and 12. Subpart 9a is not entirely new language but reorganized from subpart 12 by the addition of the word "dental" to more clearly define the position and to conform with professional, academic and statutory language. Subpart 12 is therefore repealed.

c. Subpart 19. This subpart defines the term "Registry" and relates to the Board's rules on continuing dental education. Up until July 1, 1984, the Board had a cooperative agreement with the American Dental Association's Continuing Education Registry. Licensees and registrants were to send documentation of their attending continuing dental education courses to the Registry. The Registry recorded the information on its computer and periodically sent reports to the Board, licensees, and registrants. In other words, the Registry acted as a recordkeeping agent of the Board with respect to continuing dental education. However, on July 1, 1984, the Board started maintaining all continuing education records in its own offices. Accordingly, the reference to the Registry in the Board's rules relating to continuing education is being repealed thus necessitating and justifying repeal of the definition of the term "Registry."

2. Part 3100.3100 Conduct of Examinations; and Part 3100.3200 Clinical Examinations (formerly 7 MCAR §§ 3.021 and 3.022 respectively)

The only change to these parts is to add the word "dental" before the word "hygienist." The change is to parallel the relevant amendments to the definitions section of the Board rules. The Board is repealing part 3100.0100, subpart 12, the definition of "hygienist," and replacing it with the definition of "dental hygienist" which will be codified in part 3100.0100, subpart 9a. The change to parts 3100.3100 and 3100.3200 is to bring the applicable terms into conformity with the terms as used in the definitions section. See paragraph 1b, supra at 8.

3. Part 3100.6200 Conduct Unbecoming a Licensee or Registrant (formerly 7 MCAR § 3.042)

a. Introductory language. The need to change the statutory citation in the first paragraph in part 3100.6200 arises from 1983 legislative amendments to Minn. Stat. § 150A.08, subd.1 which moved clause 5 to clause 6. See Minn Laws 1983, ch. 70, § 5. The language relating to drugs is deleted because in 1983 the legislature clarified the Board's powers in the area of drugs. The powers regarding the misuse of drugs is now contained in Minn. Stat. § 150A.08, subd. 1(5) (1984).

b. Item J. The proposed amendment in part 3100.6200J requiring cooperation in an investigation is necessary to carry out and make effective the new rule proposed in part 3100.6350. The need and reasonableness for part 3100.6350 is spelled out below in paragraph 5, infra at 11. The justification for part 3100.6350 embodies the support for part 3100.6200J.

c. Item K. The language relating to safety and sanitary conditions is simply moved to item K, thus constituting a nonsubstantive, editorial change.

4. Part 3100.6325 Voluntary Termination of Licensure or Registration (new rule)

The statutory authority to promulgate this rule is contained in Minn. Stat. § 150A.04, subd. 5 (1984) which permits the Board to promulgate rules necessary to carry out the provisions of the statute. Minn. Stat. § 150A.08, subd. 1 (1984), gives the Board express authority to suspend, revoke, limit, or modify by imposing conditions, any license or registration. In order for the Board to adequately carry out its authority to disicipline licensees or registrants (hereinafter "licensee"), the proposed rule is necessary to prevent a licensee from avoiding a disciplinary action by voluntarily relinquishing his license when the Board has reason to believe that the licensee has violated a statute or rule which the Board is empowered to enforce.

In discussing the need for the proposed rule, it is useful to examine how the Minnesota Supreme Court and courts in other states have treated requests by attorneys for voluntary termination of licensure.

In 1976 the Minnesota Supreme Court adopted a rule which requires court approval of any request for resignation from practice. Rule 11, Rules of Lawyers Professional Responsibility. However, even prior to adoption of this rule, the Minnesota Supreme Court had refused to allow an attorney to resign under threat of disciplinary action. The court reasoned that to allow a resignation would not act as a deterrent to legal misconduct. In re Streater, 262 Minn. 538, 115 N.W.2d 729 (1962). In applying this principle, the Court has denied requests for voluntary resignation if the attorney had violated professional duties which would otherwise justify discipline. Matter of Discipline of Peck, 302 N.W.2d 356 (Minn. 1981); and Application of Hetland, 275 N.W.2d 582 (Minn. 1978).

Courts in other jurisdictions have also refused to allow voluntary resignation from the practice of law when the resignation would allow the attorney to evade or forestall disciplinary action. Louisana State Bar Assoc. v. Powell, 196 So.2d 280 (La. 1967); Peter v. State Bar of California, 21 Cal.2d 866, 136 P.2d 561 (1943); Exparte Thompson, 32 Or. 499, 52 P.570 (1898) (voluntary resignation would prevent the court from enforcing the profession's established standards of conduct); see generally Annot., 54 A.L.R.2d 1280 (1957). In addition, some courts have required an admission of culpability as a condition to approval of voluntary resignation from practice. Matter of Nixon, 385 N.Y.S.2d 305, 53 A.D.2d 178 (1976). Other courts have allowed resignation but have conditioned it upon the attorney's agreement not to apply for reinstatement. Application of Harper, 84 So.2d 700 (Fla. 1956).

The issue of a licensing board's authority to reject a voluntary surrender of a license was addressed in Cross v. Colorado State Board of Dental Examiners, 522 P.2d 38

(Colo. 1976). In that case, the court held that a licensee was not entitled to resign or surrender his license as a matter of right during the pendency of a disciplinary proceeding. The court held that the board's authority to accept or reject a licensee's tendered surrender of his license "must be implied" from the board's authority to grant a license. Id. at 41. The court also noted that the board approval for termination of licensure was important to protect the public interest. If a licensee were to resign and then years later reapply for licensure, the board would have a right to consider the reasons for resignation. However, resignation without board approval would preclude the preservation of an adequate record of the alleged unprofessional conduct. Id. at 41. Thus, the board's function of protecting the public through disciplinary proceedings would be defeated.

The Minnesota Board of Dentistry is proposing part 3100.6500 for a similar reason. A rule requiring Board approval for surrender of license would prevent a licensee from avoiding discipline through resignation, would preserve evidence, would protect the public, and would protect the profession by maintaining established standards of conduct.

5. Parts 3100.6200 J and 3100.6350 Required Cooperation (new rules)

The statutory authority to promulgate parts 3100.6200J and 3100.6350 is set forth in Minn. Stat § 150A.04 (1984) which allows the Board to promulgate rules necessary to carry out and make effective the provisions and purposes of the statute. In addition, Minn. Stat. § 214.10, subd. 3 (1984), gives the Board express authority to issue subpoenas, and compel the attendance of witnesses and the production of all necessary papers, books, records, documents and other evidentiary materials in matters related to the Board's regulatory activities.

Each of the provisions of the proposed rules is within the Board's express authority under Minn. Stat. § 214.10, subds. 2 and 3 (1984). Requiring a licensee, registrant, and applicant to furnish designated papers, documents, and tangible objects falls within the Board's subpoena power. Requiring a licensee, registrant, and applicant to

furnish in writing a full and complete explanation of the matter and to appear for conferences and hearings is within the Board's authority to compel the attendance of witnesses and to schedule conferences and hearings under Minn. Stat. § 214.10, subds. 2 and 3 (1984).

Minnesota Statute § 214.10, subd. 3 (1984), not only gives the Board authority to compel witnesses to appear, give testimony and produce records, it also imposes an implied corollary duty on a licensee, registrant, and applicant to appear when requested and give testimony, both written and oral. The existence of such an implied duty was recognized by the United States Supreme Court when it reviewed a similar statute of the Internal Revenue Service (IRS). The Court held that the IRS' authority to examine taxpayers' books and records and summon individuals placed a duty on the taxpayer to appear and testify. U.S. v. Euge, 444 U.S. 707, rehearing denied, 446 U.S. 913 (1980).

The Board is proposing part 3100.6350 to clearly indicate to licensees, registrants and applicants that they have a duty to cooperate with the Board and to delineate the scope of that duty. To make the rule effective, the Board, pursuant to Minn. Stat. § 150A.08, subd. 1(6) (1984), is making the refusal to cooperate a violation of part 3100.6200 and including within the definition of "conduct unbecoming" in part 3100.6200 the failure to cooperate in new subpart J.

This duty to provide information when requested by a responsible authority is well recognized in common law even where no express statutory authority exists. The rationale for the imposition of this duty is based on the public's interest in the effective operation of government. The only exception to such a duty is the presence of a substantial individual interest which would outweigh the public interest. U.S. v. Euge, supra, at 712 citing United States v. Bryan, 339 U.S. 323, 331 (1950). One of the primary individual interests which, if present, could outweigh the public interest in compelling testimony or producing documents is the assertion of the Fifth Amendment privilege

against self-incrimination. Although the Fifth Amendment right against self-incrimination can be invoked in civil cases, the right is not absolute. It can only be invoked when testimony in a civil case would enhance the threat of criminal prosecution such that reasonable grounds exist to comprehend its danger. Parker v. Hennepin County Dist. Ct., 4th Jud. Dist., 386 N.W.2d 81 (Minn. 1979), citing Hoffman v. United States, 341 U.S. 479 (1951). In addition, the mere requirement to appear and respond to a summons does not violate an individual's Fifth Amendment rights since the individual may assert the privilege, if appropriate, when individual questions are asked. In re C.I.R., 216 F. Supp. 90 (D. Mich. 1963). In fact, even requiring individuals to report that they have violated a statute (e.g., requiring a report that a company has discharged oil into public water) does not violate the Fifth Amendment privilege against self-incrimination as long as the report is only used to impose a civil penalty. U.S. v. Ward, 448 U.S. 42, rehearing denied, 448 U.S. 916 (1980).

Even in cases where criminal prosecution could result from compelled testimony in a civil proceeding, an individual may still be compelled to testify or produce records if a statute or the court grants immunity from criminal prosecution. Minnesota State Bar Ass'n v. Divorce Assistance Ass'n, 248 N.W.2d 733, 738 (Minn. 1976). The Minnesota Legislature in 1983 provided just such immunity in the Dental Practices Act. Minnesota Statute § 150A.08, subd. 7 (1984) provides that a person is not excused from attending or testifying at a Board proceeding or from producing any document on the grounds of self-incrimination. This section also allows immunity from criminal prosecution for any crime related to the testimony given or evidence produced if the person first claims the privilege.

A similar rule requiring attorneys to cooperate with an investigation or proceeding of the Board of Professional Responsibility or its staff has been adopted by the Minnesota Supreme Court. Violation of the rule is unprofessional conduct and a ground

for discipline. Rule 25, Rules of Lawyers Professional Responsibility. In fact, part 3100.6350 is patterned after Rule 25. Even before adoption of Rule 25, the Minnesota Supreme Court had long recognized that an attorney must cooperate with disciplinary authorities in their investigation and resolution of complaints. See, Matter of Cartwright, 282 N.W.2d 548, 551 (Minn. 1979).

More recently, the principle as now expressed in Rule 25 has successfully withstood a challenge that it was unconstitutionally void for vagueness. In re Charges of Unprofessional Conduct Against N.P., 361 N.W.2d 386 (Minn. 1985). In upholding the rule, the Court stated that, although not contained within the express wording of the rule, it should be interpreted so as to allow for good faith challenges. The Court also named the district court in which motions could be brought to challenge requests. In view of those modifications to the lawyer's rule, the Board has included within its proposed rule a specific statement recognizing that good faith challenges will not constitute a failure to cooperate and has noted that those challenges shall be brought before the appropriate agency or court. This recognizes that the appropriate jurisdiction with which to raise a challenge will vary based upon the nature of the request and the stage of the proceeding. For example, failure to respond to the request of an investigator would simply be noted at that time and addressed later either in a disciplinary conference before the Board's complaint committee or during a contested case. If the refusal to comply related to a Board issued investigative subpoena, the challenge would be brought in district court pursuant to Minn. Stat. § 214.10, subd. 3 (1984). Challenges raised during a contested case would be decided by the Administrative Law Judge assigned to the matter from the Office of Administrative Hearings. In any event part 3100.6350 comports with the requirements set out by the Minnesota Supreme Court.

Courts in other states have also imposed a duty upon attorneys to cooperate in investigations of alleged professional misconduct. See, In re Draper, 317 A.2d 106 (Del.

1974); In re Talbot, 78 Wash.2d 295, 474 P.2d 88 (1970); In the Matter of Disciplinary Proceedings Against Elliot, 83 Wisc.2d 904, 266 N.W.2d 430 (1978). Some courts, as is now the case in Minnesota pursuant to Rule 25, Rules of Lawyers Professional Responsibility, have adopted rules requiring an attorney who is under investigation to cooperate and providing that failure to do so constitutes a separate act of misconduct. See, e.g., Rule 2.8, Rules for Lawyer Discipline, Washington Court Rules (1983); Rule 21.03(4), Wisconsin Supreme Court Rules (1983). The Washington Supreme Court explained the rationale for a requirement of cooperation in Matter of McMurray, 99 Wash.2d 920, 665 P.2d 1352 (1983) as follows:

> We view such failure to cooperate with the investigation of charges of misconduct as a serious violation of an attorney's duties. The sanctions imposed for such violations must reflect the purpose of attorney discipline: protection of the public and preservation of confidence in the legal system. Public confidence in the legal profession, and the deterrence of misconduct, require thorough and effective investigation of charges of unprofessional conduct. The resources of the profession being limited, such investigations depend upon the cooperation of attorneys. Lack of cooperation can only impede the investigation of complaints and undermine the public's confidence in the profession. Moreover, unless non-cooperation brings severe sanctions, attorneys guilty of unprofessional conduct might be tempted to "stonewall" to prevent serious violations coming to light.

Id. at ____, 665 P.2d at 1357-1358.

The Board is proposing a rule requiring cooperation and making failure to cooperate a basis for discipline for similar reasons. The proposed rule is necessary and reasonable to assist the Board in assuring that only those who are qualified will be licensed or allowed the right to continued full use of their license. In many instances, the information needed to determine whether a licensee should be disciplined is contained in records and in other information in the possession of the licensee. Since the disciplinary process is one of self-regulation to maintain a high standard in the dental profession, cooperation by licensees is necessary to achieve this goal.

6. Part 3100.9100 Annual Reports (formerly 7 MCAR § 3.061)

a. Item C. The authority to adopt rules on professional corporations is contained in Minn. Stat. § 319A.18 (1984). Minn. Stat. § 319A.16 (1984) permits only licensed dentists to be officers of professional dental corporations except that the secretary and treasurer may be someone other than a dentist if the bylaws of the corporation so provide. The amendment to Item C would require that the corporate title of each officer be included on the annual reports to the Board. This amendment is necessary to assist the Board in carrying out its responsibility to assure that the corporation is in compliance with section 319A.16.

b. Item E. Minn. Stat. § 319A.21 (284) specifies the filing fees that professional corporations must submit when filing annual reports with the Board. The Board, therefore, proposes that subpart E be deleted because it is repetitious and therefore unnecessary. Minn. Stat. § 14.07, subd. 3 (1984) requires that duplication of statutory language be minimized in the rules.

c. The remainder of the changes in this part are nonsubstantive, editorial, or stylistic.

7. Part 3100.9200 Cerificate of Registration (formerly 7 MCAR § 3.062)

a. The need to amend this rule arises out of the Board's determination that the issuance of annual certificates of registration to professional corporations is not necessary. There are no statutory requirements for the issuance of certificates, and other health-related licensing boards do not issue them. The Minnesota Secretary of State issues a certificate to do business in the state, which is the only certificate that a corporation is required to have by statute. Further, the Board does not have any requirement to post a certificate or provide evidence of possession of one. Therefore, the issuance of a certificate is an unnecessary burden for the Board, and the elimination of the requirement would reduce Board costs. Because the Board proposes that reference to

the certificate be deleted, it proposes that the title of the part be changed to "Review of Annual Report" to conform with the substance of the rule.

b. Minn. Laws 1976, ch. 222, § 74, removed the position of secretary-treasurer and created the position of executive secretary. The Board proposes to amend the rule to reflect this change.

c. The other changes in the part are nonsubstantive, editorial, or stylistic.

8. Part 3100.9300 Revocation of Certificate (formerly 7 MCAR § 3.065)

Since the Board is proposing an amendment to part 3100.9200 to delete reference to the "certificate of registration," (see paragraph 7a, supra at 16), the proposed amendments to this rule would also delete reference to the "certificate" and make other nonsubstantive, editorial, or stylistic changes.

9. Part 3100.9500 Corporation Names (formerly 7 MCAR § 3.063)

The amendments to this rule are nonsubstantive, editorial, or stylistic.

Dated: August 6, 1985

STATE OF MINNESOTA

BOARD OF DENTISTRY

DALE J. FORSETH
Executive Secretary