

7/7/93



## Board of Dentistry

EXECUTIVE OFFICE  
2700 UNIVERSITY AVENUE WEST  
SUITE 70  
ST. PAUL, MINNESOTA 55114-1055  
(612) 642-0579

August 20, 1993

TO: Bruce J. Reddeman, Director  
Budget Operations  
Department of Finance

FROM: Richard W. Diercks *AWD*  
Executive Director

RE: PROPOSED FEE CHANGES

The Minnesota Board of Dentistry has completed a review of the fee structure as contained in Minnesota Rules, Chapter 3100.2000, Fees. Accordingly, the Board is recommending that Application fees, Annual license or registration fees, Licensure by credentials fees, Reinstatement fees and Sponsor renewal fees be adjusted to meet the requirements of Minnesota Statutes, Chapter 214.06(1992). This statute requires that the Board... assess a sufficient amount so that the total fees collected by each Board will as closely as possible equal anticipated expenditures during the fiscal biennium. In addition, this statute requires that approval for any fee adjustment must be obtained from the Commissioner of Finance (Minnesota Statutes, Chapter 16A.128, subdivision 1 (a), 1992).

The above mentioned rules, Chapter 3100.2000 should be changed to reflect the recommendation of the Board. A copy of the Departmental Earnings Reporting/Approval Form, a fee comparison, and the proposed fee rule changes are attached. The basis for this request is as follows:

1. Without the increase, the provisions of Minnesota Statutes, Chapter 214 could not be met.
2. The revenues produced are consistent with those proposed by the Board, recommended by the Governor, and adopted by the Legislature for the 1993-1995 biennium.

It is the Board's intention to publish the proposed fee changes in the State Register as soon as possible since board revenues are largely driven by a license renewal process that begins in November. With this in mind, the Board would appreciate your response as soon as possible.

Thank you for your consideration.

cc: Tom St. Martin  
Josie Ashton

MN Relay Operator  
Metro Area: 297-5353  
Outside Metro Area:  
1-800-627-3529

# Office Memorandum

Department: of Finance

Date: August 23, 1993

To: George Beck, Administrative Law Judge Supervisor  
office of Administrative Hearings

From: Thomas St. Martin  
Budget Operations



Phone: 296-7404

Subject: Departmental Earnings Change: Dentistry Licensure



Pursuant to provisions of Laws 1993, sec. 56, subd. 5 (MS 16A.1285), the department of finance has reviewed and approved the attached departmental earnings proposal as submitted by the board of dentistry. If you have any questions or concerns, please call.

cc: Richard W. Diercks  
Josie Ashton  
Patricia S. Nolte, Attorney General's Office

Department of Finance  
**Departmental Earnings: Reporting/Approval**

**Part A: Explanation**

<b>Earnings Title:</b> Board of Dentistry— <i>Various Licensing Fees</i>	<b>Statutory Authority:</b> 150A	<b>Date:</b> August 20, 1993
<b>Brief Description of Item:</b> The proposed change in fees reflects the Board of Dentistry's plan as submitted to the Governor, the Governor's recommendation, and the final action of the Legislature in 1993.		
<b>Earnings Type (check one):</b> 1. <input type="checkbox"/> Service/User      2. <input type="checkbox"/> Business/Industry Regulating      3. <input checked="" type="checkbox"/> Occupational Licensure 4. <input type="checkbox"/> Special Tax/Assessment      5. <input type="checkbox"/> Other (specify):		
<b>Submission Purpose (check one):</b> 1. <input checked="" type="checkbox"/> Chap. 14 Review and Comment      2. <input type="checkbox"/> Approval of Allowable Inflationary Adjustment 3. <input type="checkbox"/> Reporting of Agency Initiated Change in Departmental Earnings Rate 4. <input type="checkbox"/> Other (specify):		
If reporting an agency initiated action (option 3 above), does agency have explicit authority to retain and spend receipts? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, cite pertinent statutes:		
<b>Impact of Proposed Change (change in unit rate, number of payees impacted, etc.):</b> An attached sheet shows a comparison of all Board of Dentistry fees, the number of payers, and the total revenue for fiscal years 1993, 1994, and 1995.		

*OK - Jay 8-23-93*  
*John P. [unclear]*

Department of Finance

Departmental Earnings: Reporting/Approval (Cont.)

(\$1,000,000 = 1,000)

Part B: Fiscal Detail

APID: 21507:00-17		AID: 939835		Rev. Codes(s): See Attached		<input type="checkbox"/> Dedicated <input checked="" type="checkbox"/> Non-Dedicated <input type="checkbox"/> Both	
Item	F.Y. 1991	F.Y. 1992	F.Y. 1993	F.Y. 1994 As Shown in Biennial Budget	F.Y. 1995 As Shown in Biennial Budget	F.Y. 1994 As Currently Proposed	F.Y. 1995 As Currently Proposed
Revenues:							
See Attachment							
Current fees				883	913	883	913
Proposed fee increase				127	112	116	105
Total Revenues				1010	1025	999	1018
Expenditures:							
Direct							
Indirect							
Total							
Current Deficit/Excess							
Accumulated Excess/Deficit*							

As necessary, attach detailed schedule/listing of proposed changes in departmental earnings rates.

Agency Signature: *Richard W. Jacobs*

\* F.Y. 1991 beginning accumulated balance to include amount of accumulated excess/deficit (if any) carried forward from F.Y. 1990.

BOARD OF DENTISTRY  
DEPARTMENTAL EARNINGS: REPORTING/APPROVAL  
Part B

REVENUE CODE	FEE CATEGORY	F.Y. 91	F.Y. 92	F.Y. 93	/-----BUDGET-----\ F.Y. 94 F.Y. 95		/-----PROPOSED-----\ F.Y. 94 F.Y. 95	
<b>DENTIST</b>								
100-001	Renewal	312	427	460	485	499	542	549
100-002	Penalty	9	10	11	12	12	12	13
100-003	Duplicate Certificate	2	3	4	3	3	4	4
100-004	License by Exam	9	8	11	13	13	14	12
100-005	License by Credential	7	7	15	11	11	11	15
100-006	Reinstatement	1	1	1	1	1	1	1
100-007	Duplicate License	1	1	2	2	2	2	2
100-008	Prior Year Renewal	1	0	1	1	1	1	1
100-009	Prior Year Penalty	0	0	0	0	0	0	0
<b>HYGIENIST</b>								
200-001	Renewal	83	113	129	135	140	149	154
200-002	Penalty	3	3	3	4	4	4	4
200-003	Duplicate Certificate	1	1	1	1	1	1	1
200-004	License by Exam	5	5	7	5	5	5	7
200-005	License by Credential	2	2	3	3	3	4	3
200-006	Reinstatement	1	1	1	1	1	1	1
200-007	Duplicate License	0	1	0	0	0	0	0
200-008	Prior Year Renewal	0	0	0	0	0	0	0
200-009	Prior Year Penalty	0	0	0	0	0	0	0
<b>DENTAL ASSISTANT</b>								
300-001	Renewal	77	106	126	136	146	154	157
300-002	Penalty	4	5	7	5	5	8	8
300-003	Duplicate Certificate	1	2	2	1	1	2	2
300-004	Initial Registration	7	10	10	9	9	11	11
300-006	Reinstatement	2	2	2	1	1	2	2
300-008	Prior Year Renewal	2	2	2	1	1	1	2
300-009	Prior Year Penalty	1	1	1	1	1	1	1
<b>CORPORATIONS</b>								
400-001	Renewal	18	18	18	18	18	18	18
400-004	Initial Registration	1	2	2	1	1	2	2
400-008	Prior Year Renewal	0	2	1	0	0	1	1
<b>CDE SPONSORS</b>								
600-001	Renewal	5	2	1	4	5	7	2
600-004	Initial Approval	1	2	1	0	0	1	1
<b>MISCELLANEOUS</b>								
500-001	Affidavits, Other Fees	22	5	7	5	5	6	7
500-002	License Verification	2	3	3	1	1	3	3
500-003	Fines, Misc. Receipts	3	13	38	23	23	35	35
<b>PROPOSED FEE INCREASE</b>					127	112		
<b>TOTAL REVENUE</b>		<b>583</b>	<b>758</b>	<b>868</b>	<b>1,010</b>	<b>1,025</b>	<b>999</b>	<b>1,018</b>
<b>-DIRECT EXPENDITURES</b>		<b>421</b>	<b>429</b>	<b>539</b>	<b>665</b>	<b>652</b>	<b>665</b>	<b>652</b>
<b>-INDIRECT EXPENDITURES</b>		<b>163</b>	<b>303</b>	<b>266</b>	<b>367</b>	<b>367</b>	<b>339</b>	<b>407</b>
<b>TOTAL EXPENDITURES</b>		<b>584</b>	<b>732</b>	<b>805</b>	<b>1,032</b>	<b>1,019</b>	<b>1,004</b>	<b>1,059</b>
<b>CURRENT DEFICIT/EXCESS</b>		<b>(1)</b>	<b>26</b>	<b>63</b>	<b>(22)</b>	<b>7</b>	<b>(5)</b>	<b>(41)</b>
<b>ACCUMULATED EXCESS/DEFICIT</b>		<b>3</b>	<b>2</b>	<b>28</b>	<b>91</b>	<b>70</b>	<b>91</b>	<b>86</b>
<b>END-OF-YEAR BALANCE</b>		<b>2</b>	<b>28</b>	<b>91</b>	<b>70</b>	<b>76</b>	<b>86</b>	<b>45</b>

*The Board will propose another fee increase to cover costs in FY95, if necessary.*

*Andrew M. Dirsch*  
OK-2A 8-23-93

DENTAL BOARD FEES

FEE CATEGORY	-----F.Y. 1993-----			-----F.Y. 1994-----			-----F.Y. 1995-----		
	FEE	# PAYING	REVENUE	ESTIMATED FEE	PROPOSED # PAYING	PROPOSED REVENUE	ESTIMATED FEE	PROPOSED # PAYING	PROPOSED REVENUE
<b>DENTIST</b>									
Renewal	\$120	3,832	\$459,810	\$138	3,925	\$541,650	\$138	3,975	\$548,550
Penalty	\$60	181	\$10,855	\$69	180	\$12,420	\$69	181	\$12,489
Duplicate Certificate	\$10	360	\$3,600	\$10	350	\$3,500	\$10	360	\$3,600
License by Exam	\$125	88	\$11,026	\$140	100	\$14,000	\$140	88	\$12,320
License by Credential	\$700	21	\$14,700	\$725	15	\$10,875	\$725	21	\$15,225
Reinstatement	\$125	9	\$1,125	\$125	7	\$875	\$125	9	\$1,125
Duplicate License	\$20	80	\$1,590	\$20	75	\$1,500	\$20	80	\$1,600
Prior Year Renewal	\$110	5	\$596	\$110	5	\$550	\$110	5	\$550
Prior Year Penalty	\$55	5	\$298	\$55	5	\$275	\$55	5	\$275
<b>HYGIENIST</b>									
Renewal	\$45	2,869	\$129,090	\$50	2,975	\$148,750	\$50	3,081	\$154,050
Penalty	\$22.5	146	\$3,285	\$25	150	\$3,750	\$25	146	\$3,650
Duplicate Certificate	\$10	129	\$1,290	\$10	125	\$1,250	\$10	129	\$1,290
License by Exam	\$55	128	\$7,040	\$55	90	\$4,950	\$55	128	\$7,040
License by Credential	\$150	18	\$2,700	\$175	20	\$3,500	\$175	18	\$3,150
Reinstatement	\$55	9	\$495	\$55	10	\$550	\$55	9	\$495
Duplicate License	\$20	22	\$440	\$20	20	\$400	\$20	22	\$440
Prior Year Renewal	\$40	8	\$305	\$40	10	\$400	\$40	8	\$320
Prior Year Penalty	\$20	8	\$153	\$20	10	\$200	\$20	8	\$160
<b>DENTAL ASSISTANT</b>									
Renewal	\$30	4,214	\$126,408	\$34	4,521	\$153,714	\$34	4,621	\$157,114
Penalty	\$15	476	\$7,140	\$17	475	\$8,075	\$17	476	\$8,092
Duplicate Certificate	\$10	188	\$1,880	\$10	175	\$1,750	\$10	188	\$1,880
Initial Registration	\$30	320	\$9,600	\$35	300	\$10,500	\$35	320	\$11,200
Reinstatement	\$30	66	\$1,980	\$30	60	\$1,800	\$30	66	\$1,980
Prior Year Renewal	\$26	60	\$1,563	\$26	50	\$1,300	\$26	60	\$1,560
Prior Year Penalty	\$13	58	\$759	\$13	50	\$650	\$13	58	\$754
<b>CORPORATIONS</b>									
Renewal	\$25	723	\$18,075	\$25	720	\$18,000	\$25	723	\$18,075
Initial Registration	\$100	21	\$2,100	\$100	15	\$1,500	\$100	21	\$2,100
Prior Year Renewal	\$25	42	\$1,050	\$25	20	\$500	\$25	42	\$1,050
<b>CDE SPONSORS</b>									
Renewal	\$75	18	\$1,350	\$95	75	\$7,125	\$95	20	\$1,900
Initial Approval	\$75	7	\$525	\$75	7	\$525	\$75	7	\$525
<b>MISCELLANEOUS</b>									
Affidavits, Other Fees	\$10	683	\$6,831	\$10	600	\$6,000	\$10	683	\$6,830
License Verification	\$5	652	\$3,260	\$5	600	\$3,000	\$5	652	\$3,260
Fines, Misc. Receipts	NA		\$37,500	NA		\$35,000	NA		\$35,000
			\$868,419			\$998,834			\$1,017,649

STATE OF MINNESOTA

BEFORE THE MINNESOTA

COUNTY OF RAMSEY

BOARD OF DENTISTRY

In the Matter of Proposed  
Amendment to the Board of  
Dentistry Rules Relating to  
Fees, Minnesota Rules,  
3100.2000.

STATEMENT OF NEED AND  
REASONABLENESS

Pursuant to Minnesota Statute 14.23 (1992), the Minnesota Board of Dentistry (hereinafter "Board"), hereby affirmatively presents the need for and facts establishing the reasonableness of the proposed amendments to Minnesota Rules part 3100.2000, subp. 2 relating to license and registration renewal fees.

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

#### I. STATUTORY AUTHORITY

The statutory authority of the Board to adopt these rules is as follows:

1. Minnesota Statutes section 150A.04, subd. 5 (1992), authorizes the Board to promulgate rules necessary to carry out the provisions and purposes of the Minnesota Dental Practices Act, Minnesota Statutes chapter 150A.

2. Minnesota Statutes sections 150A.04, subd. 5 (1992); 150A.06, subds. 1, 2, 2(a), and 4 (1992); and 150A.08, subd. 3 (1992) authorize the Board to adopt fees by rule.

3. Minnesota Statutes sections 16A.128 and 214.06 (1992) require the Board to adjust any fee which the Board is empowered to assess a sufficient amount so that the total fees collected will as closely as possible equal anticipated expenditures during the fiscal biennium plus the agency's general costs, statewide indirect costs, and Attorney General costs attributable to the fee function.

## II. COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS

### Requirements in General.

The Board, at its meeting on Saturday, June 12, 1993, determined that the above-captioned rules are noncontroversial and has elected to follow the procedures set forth in Minnesota Statutes sections 14.05 to 14.12 and 14.22 to 14.28 (1992), which provide for the adoption of noncontroversial rules without the holding of a public hearing, and Minnesota Statutes section 214.06, subd. 3 which allows health-related licensing boards to raise fees to cover anticipated expenditures in a biennium without a public hearing being held.

Pursuant to Minnesota Statutes section 14.23 (1992), the Board has prepared this Statement of Need and Reasonableness and made it available to the public as of September 3, 1993.

The Board will publish in the State Register the proposed rules and the Notice of Intent to Adopt Rules Without a Public Hearing. The Board will also mail copies of the Notice to persons registered with the Board pursuant to Minnesota Statute section 14.22 (1992), as well as to others whom the Board believes will have an interest in the rules. The notice will comply with the requirements of Minnesota Statute section 14.22 (1992) and Minnesota Rules part 2010.0300 E (1991).



These rules will become effective five working days after publication of a Notice of Adoption in the State Register pursuant to Minnesota Statutes section 14.27 (1992).

### III. 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. See Minnesota Statutes section 14.07, subd. 4 (1992). The adoption of these rules will not require expenditure of public money greater than \$100,000 by local public bodies in either of the two years following promulgation, nor do the rules have any impact on agricultural land. See Minnesota Statutes section 14.11 (1992). A fiscal note as required by Minnesota Statutes section 3.982 (1992) is not required because the proposed rules will not result in local agencies or school districts incurring costs mandated by the state. Pursuant to Minnesota Statutes section 16A.128, subd. 2a (1992), the Board sent a copy of the Notice of Intent to Adopt Rules Without a Public Hearing and the proposed rules to the chairs of the Ways and Means Committee of the Minnesota House of Representatives and the Finance Committee of the Minnesota Senate before the Board submitted the Notice to the State Register for publication.

#### B. Approval of the Commissioner of Finance

Pursuant to Minnesota Statutes section 16A.128, subd. 1a (1992), if a fee is required to be fixed by rule, the Commissioner of Finance must approve the fee and the Commissioner's approval must be in the Statement of Need and Reasonableness. The Commissioner's approval of fees established in the proposed rules is contained in the attached addendum, which is incorporated into

this Statement of Need and Reasonableness as Addendum A.

C. Small Business Considerations

It is the position of the Board that Minnesota Statutes section 14.115 (1992), relating to small business considerations in rulemaking, does not apply to these proposed rule amendments, or Board rules generally. Minnesota Statutes section 14.115, subd. 7(2) (1992), 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 for the purposes of public protection 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 are prohibited from being involved in the operation of a dental business. Instead, the Board's position is that non-dentists may not interfere with or have any control over the dentists when it comes to any aspect of the practice which could affect the providing of professional services to patients. Thus, the Board regulates the provision of dental services and not the dental business per se. As such, it is exempt under Minnesota Statutes section 14.115, subd. 7(2) (1992).

The Board is also exempt from the provisions of section 14.115, pursuant to its subdivision 7(3) 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 regulates them 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 thinks not, for two reasons. First, the provision specifically refers to regulation by "government bodies." Second, and most significantly, some of the examples listed in subdivision 7(3) of service businesses 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 regulates them for costs. If the legislature had intended to exempt from the scope of section 14.115 only those rules addressing 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 exemptions.

Based on the foregoing, it is clear that section 14.115 is not intended to apply to rules promulgated by the Board.

#### **IV. NEED FOR AND REASONABLENESS OF THE PROPOSED RULES**

In order to amend administrative rules, an agency must demonstrate that the proposed rules are needed and reasonable. The proposed changes more clearly delineate the provisions of the Minnesota Dental Practices Act and have a rational basis in law and dentistry as detailed below.

##### **A. Statement of Need**

Given the past experience and projections for the future,

including a projection of total Board costs for fiscal year 1994 of \$1,004,000, remedial action must be taken for the 1994 fees to avoid incurring a deficit. Accordingly, it is necessary to increase application fees, annual renewal fees, licensure by credentials fees, reinstatement fees and sponsor renewal fees to assure that revenues and expenditures match as nearly as possible. This action is also mandated by Minnesota Statutes sections 16A.128, subd. 1a and 214.06, subd. 1 (1992).

B. Statement of Reasonableness

The recommended increases are based on the budgetary actions and appropriations of the 1993 Legislature. The budget adopted by the Legislature appropriates money to the Board for the costs of its continuing functions, including licensure, registration, renewal, complaints and discipline, continuing education, rules, and the activities of the Board itself. In addition, legislative appropriations to the Board were increased to reflect the costs of new and higher levels of activity in the areas of infection control, complaint processing and disciplinary action, and technology development. Furthermore, increases in appropriations by the Legislature to the Attorney General's Office for increased legal services and to another board for coordinated and centralized administrative services establish new and increased costs that the Board of Dentistry must legally support with fee revenue. Lastly, costs of the legal services of the Attorney General's Office in the last biennium increased more than had been anticipated in the projections used to establish current fees, thereby necessitating an increase in fee revenue in fiscal year 1994 that was included in the budget adopted by the Legislature for

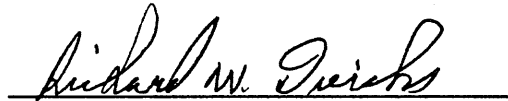
the Board.

As a result of these budgetary actions of the 1993 Legislature, the fees of the Board of Dentistry have been proposed for adjustment so as to produce \$998,834 in revenue in fiscal year 1994. This level of revenue is within, and approximately equal to, the level of revenue anticipated in the fiscal year 1994 budget adopted for the Board by the 1993 session of the Legislature.

It is the Board's judgement that all of the proposed amendments are both needed and reasonable and in the best interest of the dental profession and the public.

Dated: September 3, 1993

STATE OF MINNESOTA  
BOARD OF DENTISTRY

A handwritten signature in cursive script, reading "Richard W. Diercks", is written over a horizontal line.

Richard W. Diercks  
Executive Director



# Board of Dentistry

EXECUTIVE OFFICE

2700 UNIVERSITY AVENUE WEST • SUITE 70

ST. PAUL, MINNESOTA 55114-1055

(612) 642-0579

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

September 3, 1993

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

Dear Ms. Hruby:

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

Pursuant to Minnesota Statutes 14.23 (1992) we are providing you a copy of a Statement of Need and Reasonableness relating to the proposed amendment of Minnesota Rules 3100.2000, Fees. Our Notice of Intent to Adopt Rules Without a Public Hearing will be published in the State Register on September 7, 1993.

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

Sincerely,

A handwritten signature in cursive script that reads "Richard W. Diercks".

Richard W. Diercks  
Executive Director

Encl.