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**BOARD OF DENTISTRY**

**PROPOSED PERMANENT RULES RELATING TO  
DENTISTS, HYGIENISTS AND ASSISTANTS**

**STATEMENT OF NEED AND REASONABLENESS**

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**BACKGROUND INFORMATION**

**Purpose of Amendments**

The proposed rules eliminate the special provisions for licensing graduates of nonaccredited schools, provide additional detail about the requirements for licensure by credentials, add a new requirement to licensure by credentials that requires candidates to have earned at least five hours in infection control continuing dental education in the preceding five years, require dentists, hygienists and assistants to comply with existing requirements on hazardous waste and ionizing radiation, allow dental hygienists and registered dental assistants to remove and place arch wires on orthodontic appliances, and revise the provisions on limited registration for dental assistants with equivalent education by adding requirements on fees and continuing dental education.

**Statutory Authority**

Minnesota Statutes, section 150A.04, subdivision 5 provides that "the board may promulgate rules as are necessary to carry out and make effective the provisions and purposes of sections 150A.01 to 150A.12, in accordance with sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.57 to 14.62."

Minnesota Statutes, section 150A.06, subdivision 1 provides that an applicant to practice as a dentist "may be examined by the board or by an agency pursuant to section 150A.03, subdivision 1, in a manner to test the applicant's fitness to practice dentistry."

Minnesota Statutes, section 150A.06, subdivision 2 provides that an applicant to practice as a dental hygienist "may be examined by the board or by an agency pursuant to section 150A.03, subdivision 1, in a manner to test the applicant's fitness to practice dental hygiene."

Minnesota Statutes, section 150A.06, subdivision 2a provides that an applicant to practice as a registered dental assistant "may be examined by the board or by an agency pursuant to section 150A.03, subdivision 1, in a manner to test the applicant's fitness to perform as a registered dental assistant."

Minnesota Statutes, section 150A.06, subdivision 2b provides that "an examination which the board requires as a condition of

licensure or registration must have been taken within the five years before the board receives the application for licensure or registration."

Minnesota Statutes, section 150A.06, subdivision 4 provides that an applicant for licensure by credentials "shall, upon payment of the fee established by the board, be interviewed by the board. ... If the applicant demonstrates the minimum knowledge in dental subjects required for licensure under subdivisions 1 and 2 and meets the other requirements of this subdivision, a license shall be granted to practice in this state, if the applicant passes an examination on the laws of Minnesota relating to dentistry and the rules of the board of dentistry."

Minnesota Statutes, section 150A.08, subdivision 1, clause (6) establishes as one of the grounds for the board to suspend, revoke, limit, modify, or deny any license to practice dentistry or dental hygiene or the registration of any dental assistant "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, as such conduct is defined by the rules of the board."

Minnesota Statutes, section 150A.08, subdivision 3 provides that "any licensee or registrant whose license or registration has been suspended or revoked may have the license or registration reinstated or a new license or registration issued, as the case may be, when the board deems the action is warranted."

Minnesota Statutes, section 150A.10, subdivision 1 provides that a "licensed dental hygienist may perform those services which are educational, diagnostic, therapeutic, or preventive in nature and are authorized by the board of dentistry."

Minnesota Statutes, section 150A.10, subdivision 2 provides that "the board may also define by rule the scope of practice of registered and nonregistered dental assistants. The board by rule may require continuing education for differing levels of dental assistants, as a condition to their registration or authority to perform their authorized duties."

Minnesota Statutes, section 214.06, subdivision 1 provides that "all health-related licensing boards and all non-health-related licensing boards shall by rule, with the approval of the commissioner of finance, adjust any fee which the commissioner of health or the board is empowered to 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, as provided in section 16A.128."

Minnesota Statutes, section 214.06, subdivision 2 provides

that "each health-related and non-health-related licensing board shall 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."

### **Rule Development Process**

The board began the process of developing the proposed rules by publishing in the April 5, 1993 edition of the *State Register* a notice that the board is seeking information or opinions from sources outside the board in preparing to propose non-controversial amendments.

The board developed the proposed amendments on the basis of needs identified by the board. After having compiled a list of suggested changes, the board surveyed the Minnesota Dental Association, the Minnesota Dental Hygienists' Association, and other dentistry-related groups and organizations and asked them to indicate, with respect to each proposed change, whether in their opinion the change was needed and whether it would be controversial. The board's Rules Committee subsequently held a public meeting on July 16, 1993 to review the proposed changes and the survey responses. Based on the input provided by the various groups, the survey results, and the comments received at the meeting, the committee placed the proposed changes into several categories. The amendments now being proposed were classified as category 1 changes, which are those deemed to be needed and noncontroversial.

The Rules Committee invited interested parties to submit additional written comments by September 3, 1993. On September 17, 1993, the Rules Committee held another public meeting at which it considered a draft of the rules provisions. Based on the written comments submitted, the comments received at the September 17 meeting, and the deliberations of the Rules Committee members, the committee approved the draft, with some modifications.

The revised draft was approved at a public meeting of the Board of Dentistry held on September 25, 1993.

Pursuant to Minnesota Statutes, section 14.23, the board has prepared this Statement of Need and Reasonableness and made it available to the public as of October 8, 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 Statutes, section 14.22 as well as to others who the board believes will have an interest in the rules. The Notice will comply with the

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requirements of Minnesota Statutes, section 14.22 and Minnesota Rules, part 2010.0300, item E.

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.

**DISCUSSION OF SPECIFIC PROVISIONS**

**Part 3100.0100 Definitions.**

**Subp. 4. Assistant.** This amendment makes no substantive changes; it is for purposes of clarification only. The amendment changes "the" dentist to "a" dentist to clarify that the provision does not refer to a particular dentist, but to any dentist.

**Subp. 8. Commission on Accreditation.** This amendment changes the nomenclature to accurately reflect the current correct name of the Commission on Accreditation. The proper name, as indicated by the amendment, is "Commission on Dental Accreditation of the American Dental Association."

**Part 3100.1100 Applications for License to Practice Dentistry.**

**Subp. 3. Graduates of nonaccredited schools.** There are three changes being made to this provision:

1. The first requires graduates of nonaccredited schools to submit the required information by July 1, 1996.

2. The second is to state that after the effective date of this part, persons may not submit applications for licensure under this subpart.

3. The repealer repeals the entire subpart on July 1, 1996.

When this rule was originally adopted, there was only about one applicant a year who sought licensure in this manner. The number of applicants has risen since that time to about 50-60 per year. The rule requires that in order to be licensed, these applicants must have clinical proficiency in dentistry comparable to that of a student who has graduated from the University of Minnesota, School of Dentistry. The University of Minnesota, School of Dentistry determines whether or not applicants have such proficiency.

The University of Minnesota does not have the resources to satisfactorily review the dramatically increased number of applicants choosing this route. By deleting the entire provision, the board will be in effect requiring that such individuals go

through an alternative route for licensure. They could do so by applying for a diploma from an accredited institution and then apply for licensure either by examination under part 3100.1100, subpart 2, or by credentials under part 3100.1400.

In fairness to applicants who have begun the process of applying for licensure under part 3100.1100, subpart 3 prior to the effective date of the rule, the board decided to defer repeal of the provision until July 1, 1996 and to allow such applicants to continue the application process. If they meet the specified requirements by July 1, 1996, they can be licensed under this provision; after that date, they cannot.

**Subpart 3100.1400 Application for Licensure by Credentials.**

The amendment in the first paragraph makes no substantive changes; it is for purposes of clarification only. It is intended to make clear that the purpose of the stated requirements is to give the board a basis for determining the applicant's knowledge of dental subjects and ability to practice dentistry.

A. This amendment makes no substantive changes; it is for purposes of clarification only. The amendment deletes the words "on forms" as being unnecessary to understand the requirement.

C. This amendment makes no substantive changes; it is for purposes of clarification only. The change makes the provision more grammatically correct and makes it more consistent with similar language in item D.

I. This amendment is intended to change the language of the provision in order to make it more consistent with the current practice of the board. The board already asks applicants for licensure by credentials as a dentist to submit complete records on a sample of patients treated by the applicant. The amendment makes clear to applicants that they will be required to do so.

The board now asks for records on three patients. The amendment does not specify an exact number in order to give the board the option to ask for a different number, if it decides to do so, without going through the rulemaking process. The amendment requires the board to establish the number of records requested by resolution to ensure that applicants will be treated uniformly.

J. This amendment makes no substantive changes; it is for purposes of clarification only. The change is in response to concern that the terminology "personal interview" is ambiguous; the change makes clear that the board will ask applicants questions designed to determine their knowledge of dental subjects and ability to practice dentistry or dental hygiene.

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L. The board is currently examining the feasibility of using simulated dental patient examinations as a part of its application process. The amendment is intended to inform applicants that they will be required to take such examinations if the examinations are adopted by the board.

M. This amendment requires that individuals seeking licensure by credentials must provide satisfactory evidence that during the five years preceding the date of application, the applicant has completed a minimum of five clinical hours of continuing dental education in the subject of infection control, including blood borne diseases. The intent is to require dentists and dental hygienists who have been practicing out of Minnesota to meet the same infection control continuing education requirements they would have had to meet if they had been practicing in Minnesota.

The infection control continuing education requirements are contained in part 3100.4100, subpart 2a. The provision requires that "during each five-year cycle, licensees and registrants must complete a minimum of five clinical hours of CDE in the subject of infection control, including blood borne diseases."

**Part 3100.2000 Fees.**

**Subpart 1. Application fees.** Part 3100.2000, subpart 7, requires that "a person applying for permission to take dental X-rays pursuant to part 3100.8500, subpart 3" must pay an application fee of \$10. Part 3100.8500, subpart 3 provides for limited registration as a dental assistant. The changes in subpart 1, taken together with the repeal of part 3100.2000, subpart 7 in the repealer, are intended to clarify that the persons required to pay the fee are applicants for a limited registration as a dental assistant.

The amendment also changes the amount of the application fee from \$10 to \$15. The increase is intended to more accurately reflect the costs to the board of processing such applications.

**Subpart 2. Annual license or registration fees.** The board has had no annual renewal fee for dental assistants with a limited registration in the past. The amendment establishes such a fee and sets the amount at \$12. The fee is being required so that dental assistants with a limited registration are paying for the costs to the board of processing their applications in the same manner as do other dental health care workers. The fee is lower than the application fee to reflect the fact that the costs for processing renewals are somewhat lower than are the costs for processing applications.

**Part 3100.4100 Continuing Dental Education.**

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**Subp. 2. Minimum hours.** In the past the board has not required dental assistants with a limited registration to complete courses in continuing dental education. The amendments require them to do so in the same manner as other dental health care workers. The number of hours they are required to complete is less due to the nature of their clinical responsibilities.

**Subp. 2a. Required credit hours on infection control.** The amendment requires dental assistants with a limited registration to complete, during each five-year cycle, a minimum of five clinical hours of CDE in the subject of infection control, including bloodborne diseases. Credit hours on infection control that a dental assistant with a limited registration completes because of a requirement of another board can count these hours towards the Board of Dentistry's requirement as well. The amendment is consistent with the board's policy to require all dental health care workers to complete five clinical hours of CDE in infection control, regardless of the number of total credit hours they are required to complete.

**Part 3100.6300 Adequate Safety and Sanitary Conditions for Dental Offices.**

**Subpart 1. Minimum conditions.** This amendment is a technical change, reflecting the fact that with the other changes in part 3100.6300, there are now 15 rather than 13 subparts.

**Subp. 12. Sharps and infectious waste.** This amendment is a technical change. The change reflects the fact that the statutory provisions cited, sections 116.76 to 116.83, use the term "infectious" rather than "contaminated."

**Subp. 14. Hazardous waste.** The intent of this amendment is to inform dentists, dental hygienists, and registered dental assistants that they must comply with the requirements on hazardous waste the Minnesota Pollution Control Agency has established by rule. If a dentist, dental hygienist, or registered dental assistant does not comply with the requirements, the amendment gives the board authority to suspend, revoke, limit, modify, or deny a license. The board has such authority under Minnesota Statutes 150A.08, subdivision 1, clause (10), which establishes as one ground for doing so the "failure to maintain adequate safety and sanitary conditions for a dental office in accordance with the standards established by the rules of the board."

**Subp. 15. Ionizing radiation.** The intent of this amendment is to inform dentists, dental hygienists, and registered dental assistants that they must comply with the requirements on ionizing radiation the Minnesota Department of Health has established by rule. If a dentist, dental hygienist, or registered dental assistant does not comply with the requirements, the amendment

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gives the board authority to suspend, revoke, limit, modify, or deny a license. The board has such authority under Minnesota Statutes 150A.08, subdivision 1, clause (10), which establishes as one ground for doing so the "failure to maintain adequate safety and sanitary conditions for a dental office in accordance with the standards established by the rules of the board."

**Part 3100.8500 Registered Dental Assistants.**

**Subpart 1. Duties under indirect supervision.** The amendment to the introductory paragraph makes no substantive changes; it is for purposes of clarification only. The amendment changes "the" dentist to "a" dentist to clarify that the provision does not refer to a particular dentist, but to any dentist.

F. This amendment makes no substantive changes; it is for purposes of clarification only. The amendment changes "the" dentist to "a" dentist to clarify that the provision does not refer to a particular dentist, but to any dentist.

H. This amendment makes no substantive changes; it is for purposes of clarification only. The amendment changes "packs" to "dressings" to more accurately reflect the correct terminology. Although the term "periodontal packs" is commonly used by dental health care workers, "periodontal dressings" is the proper phrase.

L. This amendment is designed to bring the rule into conformity with current practice. The effect of the amendment is to allow registered dental assistants and dental hygienists (the latter by virtue of part 3100.8700, subpart 1, item A) to remove and place arch wires on orthodontic appliances. Although registered dental assistants and dental hygienists commonly perform this activity, the rule as presently written technically does not permit them to do so. The board determined that registered dental assistants and dental hygienists are capable of performing this activity and thus the rule should be changed to explicitly authorize them to do so. The revision will not require registered dental assistants and dental hygienists to obtain additional education, as they already receive training on removing and placing arch wires.

The board also determined, though, that only a dentist is capable of selecting the arch wires prior to placement, and that if it is necessary to adjust the arch wires, only a dentist is qualified to do so.

**Subp. 1a. Duties under direct supervision.** This amendment makes no substantive changes; it is for purposes of clarification only. The amendment changes "the" dentist to "a" dentist to clarify that the provision does not refer to a particular dentist, but to any dentist.



**Subp. 3. Limited registration.** These amendments are technical. The first change, striking "on a form," deletes words that are unnecessary for the meaning of the provision to be clear.

The reference to part 3100.2000, subpart "7" is changed to "1" to reflect the changes discussed earlier under part 3100.2000, subpart 1.

**Part 3100.8700 Dental Hygienists.**

**Subpart 1. Duties under general supervision.** This amendment makes no substantive changes; it is for purposes of clarification only. The amendment changes "the" dentist to "a" dentist to clarify that the provision does not refer to a particular dentist, but to any dentist.

**Subp. 2. Duties under indirect supervision.** This amendment makes no substantive changes; it is for purposes of clarification only. The amendment changes "the" dentist to "a" dentist to clarify that the provision does not refer to a particular dentist, but to any dentist.

**Subp. 2a. Duties under direct supervision.** This amendment makes no substantive changes; it is for purposes of clarification only. The amendment changes "the" dentist to "a" dentist to clarify that the provision does not refer to a particular dentist, but to any dentist.

**Repealer.** The repeal of part 3100.2000, subpart 7 is discussed above under part 3100.2000, subpart 1.

The repeal of part 3100.1100, subpart 3 is discussed above under part 3100.1100, subp. 3.

**ADDITIONAL INFORMATION**

**Expenditure of Public Money by Local Public Bodies**

Minnesota Statutes, section 14.11, subdivision 1 requires that "if the adoption of a rule by an agency will require the expenditure of public money by local public bodies, the appropriate notice of the agency's intent to adopt a rule shall be accompanied by a written statement giving the agency's reasonable estimate of the total cost to all local public bodies."

The board does not anticipate that the proposed amendments will require the expenditure of public money by local public bodies.

**Impact on Agricultural Land**

Minnesota Statutes, section 14.11, subdivision 2 requires that "if the agency proposing the adoption of the rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the agency shall comply with the requirements of sections 17.80 to 17.84."

The board does not anticipate that the proposed amendments will have a direct and substantial adverse impact on agricultural land in the state.

#### **Small Business Considerations**

Minnesota Statutes, section 14.115, subdivision 2 requires that when an agency proposes new or amended rules, it must consider "methods for reducing the impact of the rule on small business" and "document how it has considered these methods"; subdivision 4 requires the agency to "provide an opportunity for small businesses to participate in the rulemaking process."

The board's position is that the requirements of section 14.115 do not apply to the proposed rules, because subdivision 7, clause (2) provides that the section does not apply to "agency rules that do not affect small business directly." The board's authority relates only to the qualifications of dentists, dental hygienists, and registered dental assistants to provide dental services; the board has no authority over the dental businesses in which they practice. Therefore the rules do not affect dental businesses as such, and the board is exempt from the requirements of section 14.115.

#### **Fees**

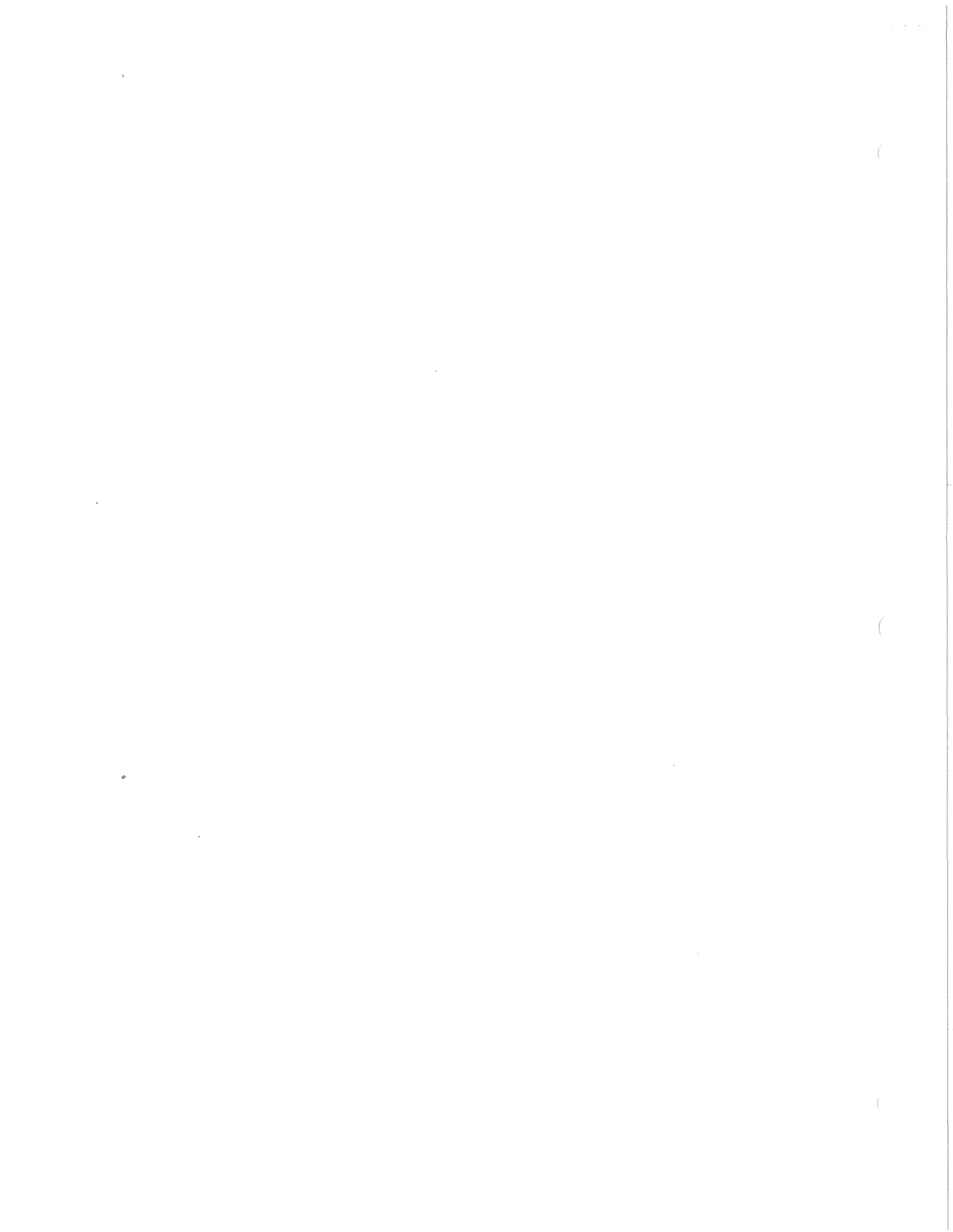
Minnesota Statutes, section 16A.128, subdivision 1a requires that "fees for accounts for which appropriations are made may not be established or adjusted without the approval of the commissioner [of finance]"; subdivision 2a requires that "before an agency submits notice to the State Register of intent to adopt rules that establish or adjust fees, the agency must send a copy of the notice and the proposed rules to the chairs of the house ways and means committee and senate finance committee."

The board has determined that the effect of the proposed amendments on fees will be negligible, amounting to perhaps \$750 per year.

#### **Expert Witnesses**

Minnesota Rules, part 1400.0500, subpart 1 requires that if rules are adopted with a public hearing, the statement of need and reasonableness must include "a list of any witnesses to be called by the agency to testify on its behalf."

The board does not anticipate that it will be necessary to have a public hearing on the proposed amendments.





# Board of Dentistry

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October 8, 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 amendments to Minnesota Rules, Chapter 3100. Our Notice of Intent to Adopt Rules Without a Public Hearing will be published in the State Register on September 11, 1993.

If you have any questions concerning the proposed rules, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, reading "Richard W. Diercks".

Richard W. Diercks  
Executive Director

Encl.

