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MINNESOTA BOARD OF DENTISTRY

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June 28, 2006

Legislative Reference Library
645 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Re: In The Matter Of The Proposed Permanent Rules Relating to Terms and Renewal of Licensure and Registration, Administration of General Anesthesia, Conscious Sedation, and Nitrous Oxide Inhalation Analgesia, Professional Development, Audit Process of Portfolio, Registered Dental Assistants, and Dental Hygienists; Governor's Tracking Number AR241

Dear Librarian:

The Minnesota Board of Dentistry intends to adopt rules relating to licensure by credentials, renewal procedures, administration of general anesthesia, conscious sedation, and nitrous oxide, professional development, auditing of professional development portfolios, duties and levels of supervision relating to dental hygienists, registered dental assistants, and dental assistants with a limited registration, and other minor technical corrections in existing rules. We plan to publish a Dual Notice in the July 10, 2006 State Register.

The Board has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Board is sending the Library a copy of the Statement of Need and Reasonableness at the time we are mailing our Dual Notice of Intent to Adopt Rules.

If you have any questions, please contact me at (612) 617-2554.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kathy T. Johnson".

Kathy T. Johnson
Legal Analyst Liaison
Minnesota Board of Dentistry

Enclosures: Statement of Need and Reasonableness
Dual Notice of Intent to Adopt Rules

Minnesota Board of Dentistry

STATEMENT OF NEED AND REASONABLENESS

Proposed Permanent Rules Relating to Terms and Renewal of Licensure and Registration, Administration of General Anesthesia, Conscious Sedation, and Nitrous Oxide Inhalation Analgesia, Professional Development, Audit Process of Portfolio, Registered Dental Assistants, and Dental Hygienists, Minnesota Rules 3100.0100, 3100.1400, 3100.1700, 3100.3600, 3100.5100, 3100.5300, 3100.8100, 3100.8500, and 3100.8700.

INTRODUCTION

The Minnesota Board of Dentistry is the state agency authorized to establish permanent rules for regulating dental professionals to include dentists, dental hygienists, registered dental assistants, and dental assistants with a limited registration. Through the establishment of rules, the Board may obtain optimal results towards protecting the public with regard to the practice of dentistry.

The Board is seeking to amend the rules governing a number of different components relating to the practice of dentistry and dental licensure. The amendments that are under consideration add new or modify existing language in the following areas: definitions; licensure by credentials; renewal procedures; administration of general anesthesia, conscious sedation, and nitrous oxide; professional development; auditing of professional development portfolios; duties and levels of supervision relating to dental hygienists, registered dental assistants, and dental assistants with a limited registration; and other minor technical corrections in certain rules.

The process used to draft these amendments to the rules started with multiple open meetings involving the Board, various standing and task force committees of the Board, Board staff, professional association representatives, dental professionals and specialists, and the public. The rules in need of change or clarification were identified and amended, resolutions were proposed to supplement the provisions of statutory language, and proposed resolutions were presented by way of a petition. All of these amendments and proposed resolutions were heard before the Board and given approval to proceed with the rulemaking process. Over the course of multiple open meetings involving the aforementioned groups and individuals, drafts and proposals of the rules were discussed and created.

Based on recommendations from various standing and task force committees of the Board, the Board's staff published a draft copy of the proposed rule changes being considered on the Board's website. In addition, a copy of the Board's Request for Comments regarding these proposed rules was included in the Board's on-line newsletter (Vol. 21, No. 1, Fall 2005) which is located on the Board's website. Thereafter, a Board staff member sent a broadcast e-mailing to licensees and registrants notifying them of the Board's most current online newsletter. Furthermore, the formal Request for Comments was published in the State Register on December 5, 2005 and mailed to all known interested persons on the Board's rulemaking mailing list at least three days before publication. All comments received by the Board regarding the proposed ruled changes will be reviewed and subsequent changes will be made through open meetings.

The decisions of the Board to propose an amendment to a rule in this rulemaking proceeding are explained and justified in the Rule-By-Rule Analysis section of this statement.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Kathy Johnson at the Minnesota Board of Dentistry, 2829 University Avenue SE, Suite 450, Minneapolis, Minnesota 55414, (612) 617-2554 or (888) 240-4762 (outside metro). TTY users may call (800) 627-3529.

STATUTORY AUTHORITY

The Board of Dentistry's statutory authority to adopt the rules set forth is found in Minnesota Statutes section 150A.04, subdivision 5, which provides:

"150A.04 RULES OF THE BOARD.

Subdivision 5. **Rules.** The Board may promulgate rules as are necessary to carry out and make effective the provisions and purposes of sections 150A.01 to 150A.12, in accordance with Chapter 14."

Under this statute, the Board of Dentistry has the necessary statutory authority to adopt the proposed rules. All sources of statutory authority were adopted and effective prior to January 1, 1996, and so Minnesota Statutes, section 14.125 does not apply. See Minnesota Laws 1995, chapter 233, article 2, section 58.

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out six factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below state these factors and then give the Board of Dentistry's responses.

(1) A description of the classes of persons who probably will be affected by the proposed rules, including classes that will bear the costs of the proposed rules and classes that will benefit from the proposed rules is as follows:

- the classes of affected persons will include primarily those individuals who are regulated by the Board of Dentistry (dentists, dental hygienists, registered dental assistants, and dental assistants with a limited registration); and the general public;
- the costs of the proposed rules will be borne by those dentists who desire to administer general anesthesia and/or conscious sedation through certain fees and required equipment; and
- regulated dental professionals and the general public will benefit from the proposed rules.

(2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues are as follows:

- the primary costs to the Board to implement and enforce the proposed rules will be administrative costs involving the revising of current procedures and forms to accommodate the proposed rules relating to general anesthesia / conscious sedation. These costs are anticipated to be minimal since the underlying foundation to implement the proposed rules has general similarities to other administrative functions already in place;
- the Board does not anticipate any probable costs to any other agency in the implementation and enforcement of the proposed rules; and
- the Board does not anticipate any net effect on state revenues.

(3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule is as follows:

- no less costly methods are known to the Board of Dentistry; or
- no less intrusive methods are known to the Board of Dentistry.

(4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule is as follows:

- discussions between the Board, various standing and task force committees of the Board, Board staff, professional association representatives, dental professionals and specialists, and the general public involved only slight variations from the actual proposed rules. Nothing substantial as far as alternative methods for achieving the purpose of the proposed rules were seriously considered.
For the proposed rules involving general anesthesia / conscious sedation, there was discussion about onsite inspections being conducted by Board members only; however, with the limited number of members this would not be feasible. Otherwise, no other alternatives were considered because the Board believes this change will increase public protection for those undergoing general anesthesia / conscious sedation.

(5) The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals are as follows:

- the probable costs of complying with the proposed rules pertaining to general anesthesia / conscious sedation [for those dentists who choose to provide this service] are the training costs, certificate fee of \$50 payable to the Board, the on-site inspection fee payable to the individual or organization/agency conducting the inspection, and any costs associated with the purchase of certain required equipment for each office facility to be in compliance with the proposed rules; and

- the portion of costs to be borne by those dentists who desire to administer general anesthesia and/or conscious sedation shall be those costs as stated within this paragraph. The Board believes that any costs borne by dentists who choose to administer general anesthesia and/or conscious sedation will be outweighed by the benefit to patients in ensuring that general anesthesia and/or conscious sedation will be administered only by certificate holders who are appropriately trained and properly equipped to administer such anesthesia and/or sedation.

(6) The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals are as follows:

- the probable costs or consequences of not adopting the proposed rules relating to general anesthesia / conscious sedation are increasing administrative costs incurred by the Board and adverse consequences that may effect the general public;
- the probable consequences of not adopting the proposed rules relating to duties for dental hygienists and registered dental assistants is the negative impact on access for various dental services resulting from restrictions within the existing rules; and
- the portion of those costs borne by the Board for the administrative review of applications for administering general anesthesia/conscious sedation and the issuance of a certificate letter are increasing due to the increase in the number of dentists seeking to provide this service. Currently, these costs are being absorbed by the Board. As for adverse consequences, the Board believes that the health, safety, and welfare of the general public could be adversely affected unless more definitive regulations are implemented for administering general anesthesia and/or conscious sedation.

(7) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference is as follows:

- there are no existing federal regulations relating to these proposed rules.

PERFORMANCE-BASED RULES

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

For these proposed rules, the Board decided to perform the above analysis on a rule-by-rule basis and included the required information regarding the Board's objectives and flexibility into the section entitled "Rule-By-Rule Analysis" of this statement.

ADDITIONAL NOTICE PLAN and NOTICE PLAN

Additional Notice Plan

Minnesota Statutes, sections 14.131 and 14.23, require that this statement contain a description of the Board of Dentistry's efforts to provide additional notice to persons who may be affected by the proposed rules.

1. Since October 2004, various standing and task force committees of the Board have held monthly public meetings to develop these proposed rules. The Board has disseminated notice of these public meetings to those directly affected by the rules or who have expressed an interest in the rules. Drafts of the proposed rules have been distributed and reviewed during these public meetings to all individuals in attendance.
2. The Board of Dentistry posted a draft copy of the proposed rule changes on the Board's website on December 5, 2005. On December 22, 2005, the Board posted its on-line newsletter (Vol. 21, No. 1, Fall 2005) on the Board's website making it accessible to the following individuals: all registered or licensed dentists, dental hygienists, dental assistants; state legislators; other health boards; and members of the general public. This on-line newsletter indicated the Board rules that will be affected by the Board's proposed rule changes. On January 2, 2006, a Board staff member sent a broadcast e-mailing to licensees and registrants notifying them of the posting of the Board's online newsletter on its website.
3. The Request for Comments was mailed to all persons on the Board's rulemaking mailing list on November 30, 2005, prior to the publication of the Request for Comments on December 5, 2005, in the State Register.
4. Information regarding publication of the Request for Comments in the State Register was included in the Board of Dentistry's on-line newsletter (Vol. 21, No. 1, Fall 2005) which was posted on the Board's website on December 22, 2005. This newsletter is accessible to the following individuals: all registered or licensed dentists, dental hygienists, dental assistants; state legislators; other health boards; and members of the general public.
5. The Board of Dentistry has also placed a draft of the Statement of Need and Reasonableness on the Board's website. The above documents can be accessed from the Board of Dentistry's website at www.dentalboard.state.mn.us. All future notices involving these proposed rules will also be posted on the Board of Dentistry's website.
6. The Board of Dentistry acknowledges that the Minnesota Dental Association distributed its newsletter dated January 12, 2006, to all dental members which included a complete summary of the Board's proposed rule changes.

Notice Plan

The Board of Dentistry's Notice Plan includes the following mandated statutory actions:

1. Copy of Notice of Intent to Adopt and proposed rules shall be mailed to everyone who has registered to be on the Board of Dentistry's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a; and
2. Copy of Notice of Intent to Adopt, proposed rules, and this Statement of Need and Reasonableness shall be mailed to the Legislature according to Minnesota Statutes, section 14.116. The following is a list of these legislators: House Health Policy and Finance Committee Chair, Finance Lead, and Policy Lead; Senate Health and Human Services Budget Division Chair and Ranking Minority Member; and Senate Health and Family Security Committee Chair and Ranking Minority Member.

CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board of Dentistry shall consult with the Commissioner of Finance. We did this by sending to the Commissioner of Finance copies of the same documents sent to the Governor's Office for review and approval prior to the Board publishing the Notice of Intent to Adopt. On May 25, 2006, the Board sent copies of the documents to Doug Green, the Board's Executive Budget Officer (EBO). The documents included: the Governor's Office Proposed Rule and SONAR Form; the draft rules; and this SONAR.

LIST OF WITNESSES

If these rules go to a public hearing, the Board of Dentistry anticipates having the following witnesses testify in support of the need for and reasonableness of the proposed rules:

1. Ronald King, D.D.S., Member of the Minnesota Board of Dentistry, will testify about the process and rationale for recommending the proposed rules relating to expanded duties for registered dental assistants and dental hygienists and professional development.
2. Freeman Rosenblum, D.D.S., Former member of the Minnesota Board of Dentistry, will testify about the process and rationale for recommending the proposed rules relating to general anesthesia, conscious sedation, and nitrous oxide inhalation analgesia.
3. Richard Weisbecker, D.D.S., Oral and Maxillofacial Surgeon, will testify about the rationale for recommending the proposed rules relating to general anesthesia, conscious sedation, and nitrous oxide inhalation analgesia.
4. James Swift, D.D.S., Oral and Maxillofacial Surgeon, will testify about the rationale for recommending the proposed rules relating to general anesthesia, conscious sedation, and nitrous oxide inhalation analgesia.
5. Leo Sinna, D.D.S., Orthodontist, Representative from the Minnesota Association of Orthodontists, will testify about the rationale for recommending the proposed rules relating to expanded duties for registered dental assistants and dental hygienists.
6. Rosemary Stokke, D.H., Minnesota Dental Hygienists Association, will support the proposed rules relating to expanded duties for dental hygienists.

7. Brenda Spanovich, R.D.A., Minnesota Dental Assistants Association, will support the proposed rules relating to expanded duties for registered dental assistants.
8. Natalie Kaweckyj, R.D.A., Minnesota Dental Assistants Association, will support the proposed rules relating to expanded duties for registered dental assistants.
9. Counsel from the Attorney General's Office.
10. Board of Dentistry Staff:
Marshall Shragg, Executive Director, Minnesota Board of Dentistry, will testify about the Board's operational considerations for supporting the proposed rules.
Joyce Nelson, Licensing and Professional Development Administrator, Minnesota Board of Dentistry, will testify about licensure with the Board and professional development.

RULE-BY-RULE ANALYSIS

SPECIFIC PROPOSED RULE CHANGES

3100.0100 Definitions.

The proposed amendments within this part provide new definitions and make changes to other current definitions. The proposed amendments define or re-define the following terms for purposes of the Board's rules: "advanced cardiac life support or ACLS;" "analgesia;" "anxiolysis;" "conscious sedation;" "CPR;" "enteral;" "general anesthesia;" "inhalation;" "parenteral;" and "transdermal/transmucosal" in order to clarify their meaning as used in part 3100.3600. The proposed definitions for the terms "advanced cardiac life support or ACLS" and "CPR" were derived from information published by the American Heart Association and the American Red Cross. All of the proposed definitions for the remaining aforementioned terms were derived from the following published resources: the American Association of Oral and Maxillofacial Surgeons, *Office Anesthesia Evaluation Manual*, 6th Edition 2000 and the American Association of Oral and Maxillofacial Surgeons, *Parameters and Pathways: Clinical Practice Guidelines for Oral and Maxillofacial Surgery (AAOMS ParPath 01)*, Version 3.0 Supplement to the Journal of Oral and Maxillofacial Surgery, 2001.

In addition, the proposed amendments re-define the term "general supervision" in order to clarify its meaning as used in parts 3100.8500 and 3100.8700. The proposed amendment is designed to bring the rule into conformity with current practice as interpreted by the Board and other dental professionals.

Based on all the aforementioned resources from nationally recognized organizations, the Board considers the proposed amendments of this part of definitions to be necessary and reasonable.

3100.1400 Application for Licensure by Credentials.

Items C and D.

The proposed amendments to these items of this part are technical changes serving to properly coordinate rule language with the statute language found within Minnesota Statutes, section 150A.06, subdivision 4(a)(1). Therefore, it is considered by the Board to be necessary and reasonable.

Item M.

The proposed amendments to this item of this part properly reflect the current simplified request for documentation of professional development for the past five years when pursuing licensure by credentials. The restrictive requirements relating to infection control have been eliminated from this item as they have been in other repealed rules of the same substance. Therefore, it is considered by the Board to be necessary and reasonable.

3100.1700 Terms and Renewal of Licensure and Registration; General.

Subpart 2. Renewal applications.

The proposed amendments to subpart 2 are technical changes that properly restore the actual deadline for submitting a renewal application to the Board which is the last day of the licensee's or registrant's birth month. Since, the last day of the licensee's or registrant's birth month is when their license or registration technically expires, it is against Board rules to allow a period beyond this date for the applicant to submit their renewal application to the Board. For this reason, the Board considers the amendments to this subpart necessary and reasonable.

3100.3600 Administration of General Anesthesia, Conscious Sedation, and Nitrous Oxide Inhalation Analgesia.

The proposed amendments to the title of this rule are technical changes that properly reflect the major subject matters encompassed within this rule, so it clarifies that the rules are not limited to only training and educational requirements. Therefore, it is considered to be necessary and reasonable by the Board.

The Policy Committee of the Board proceeded with a panel of oral surgery experts who administer general anesthesia and conscious sedation to review existing regulations - specifically part 3100.3600 - for necessary changes or recommendations to make them consistent with current standards regarding the administration of general anesthesia, conscious sedation, and nitrous oxide inhalation analgesia. The Policy Committee then held several open public meetings where the recommendations were discussed and decisions made about which changes / recommendations to implement. Most of the changes / recommendations to this part have been derived from the American Association of Oral and Maxillofacial Surgeons, *Office Anesthesia Evaluation Manual*, 6th Edition 2000 and the American Association of Oral and Maxillofacial Surgeons, *Parameters and Pathways: Clinical Practice Guidelines for Oral and Maxillofacial Surgery (AAOMS ParPath 01)*, Version 3.0 Supplement to the *Journal of Oral and Maxillofacial Surgery*, 2001. The Board believes it is prudent for the protection of the public to keep abreast of new concepts in patient care, including these published resources of the American Association of Oral and Maxillofacial Surgeons.

In 1992 when the original rules relating to general anesthesia and conscious sedation were published, the Board established specific training and educational requirements to regulate the administration of general anesthesia and conscious sedation by dentists. At that time, the Board considered proposing rules that would include on-site inspections and specific requirements relative to equipment for the site of the clinic of administration for the dentist. However, the Board rejected these considerations based on administrative complexity and associated costs.

Over the past five years, there has been a substantial increase in the number of dentists who administer general anesthesia and/or conscious sedation to apprehensive patients and an increase in concern with risks associated with these types of procedures. Thus, the Board believes that the anesthesia/sedation rules currently in place have been outgrown. Within the past two years, the Board has reconsidered issues related to on-site inspections and equipment requirements and determined that regulation in this area of practice continues to be necessary to protect members of the general public.

Subpart 2. General anesthesia: educational training requirements.

Subpart 3. Conscious sedation: educational training requirements.

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

For subparts 2, 3, and 4, the proposed amendments relating to an advanced cardiac life support course or a CPR course are consistent with the proposed changes found in part 3100.0100 pertaining to definitions, making it necessary and reasonable.

For subparts 2 and 3, the proposed amendments relating to the act of discharging and assessing a patient by the dentist and/or person administering the general anesthesia were clarification changes as to who is responsible for appropriate monitoring of the patient prior to being discharged since the dentist may utilize other licensed healthcare professionals to administer general anesthesia. In addition, the changes clarify the possible risk to the patient and the need to discharge the patient into the care of a responsible adult to manage any unforeseeable complications. The Board believes that these proposed amendments were developed with the patient's best interest in mind making them necessary and reasonable.

For subparts 3 and 4, the proposed amendments relating to the educational training requirements for conscious sedation or nitrous oxide inhalation analgesia reflect the current critical curricula for conscious sedation or nitrous oxide inhalation analgesia and provide proof to the Board that the dentist, dental hygienist, or registered dental assistant, as applicable, has successfully completed the course. These amendments are warranted to administer conscious sedation or nitrous oxide safely and effectively to the patient, making them necessary and reasonable.

For subpart 4, the proposed amendment establishes the authority for the administration of nitrous oxide inhalation analgesia by a dental hygienist or registered dental assistant under the appropriate level of supervision and requires that the dentist is also current with all the requirements in rule to administer nitrous oxide inhalation analgesia. This proposed amendment reflects the current duties found in rules for dental hygienists and registered dental assistants to administer nitrous oxide. Moreover, the proposed amendment makes the dentist equally responsible for becoming educated as required in the administration of nitrous oxide for patient safety. This amendment is considered to be necessary and reasonable by the Board.

Within subparts 2, 3, and 4, any other proposed amendments not specifically mentioned were minor technical changes for clarification purposes and do not change the substance of the rules. Therefore, they are considered by the Board to be necessary and reasonable.

Subpart 5. Notice to board.

The proposed amendments within this subpart relating to an advanced cardiac life support course or a CPR course are consistent with the proposed changes found in part 3100.0100 pertaining to definitions, making it necessary and reasonable.

Any other proposed amendments within this subpart not specifically mentioned were minor technical changes for clarification purposes and do not change the substance of the rules. Therefore, they are considered by the Board to be necessary and reasonable.

Subpart 6. Analgesia.

Subpart 7. Anxiolysis.

The proposed amendments within these subparts were minor technical changes and do not change the substance of the rules. Therefore, the Board considers these amendments to be necessary and reasonable.

Subpart 8. Reporting of incidents required.

The proposed amendment for this subpart to include registered dental assistants is consistent with the allowable duty of administering nitrous oxide inhalation analgesia in rules. Therefore, the registered dental assistant shall also be held responsible for reporting incidents to the Board arising from the administration of nitrous oxide inhalation analgesia. The Board considers this amendment to be necessary and reasonable.

Item B.

The proposed amendment for this item establishes another scenario that may arise when administering pharmacological or non-pharmacological methods for the purpose of anxiolysis. If a patient's anxiolysis state unintentionally becomes general anesthesia or conscious sedation and the dentist fails to have a certificate for administering general anesthesia or conscious sedation, the dentist must report this incident to the Board. The Board believes that to ensure that a reasonable standard of care is maintained for the public the dentist should be required to report this type of incident as a precautionary measure to decrease the chances of severe, adverse outcomes in the administration of pharmacological or non-pharmacological methods. For this reason, this amendment is considered to be necessary and reasonable by the Board.

The proposed amendment following Item B provides clarification as to the dental professionals who are required to submit a report to the Board even when another licensed healthcare professional is administering the analgesia or pharmacological or non-pharmacological methods. In addition, failure to comply with reporting of incidents will allow the Board to proceed with disciplinary action. The Board believes that the scope of the proposed amendment appropriately expands the current rules with more detailed information as to dental professionals who are required to report an incident and the consequences of failing to submit a report to the Board. Therefore, the Board considers this amendment to be necessary and reasonable.

Subpart 9. General anesthesia / conscious sedation certificate.

The proposed amendments of this subpart establish the protocol for a dentist who desires to administer general anesthesia and/or conscious sedation to obtain an initial or renewal certificate from the Board. A dentist shall be required to complete an application form and undergo an on-site inspection and/or a review of anesthesia/sedation credentials along with submitting an

appropriate nonrefundable fee to receive a certificate. A dentist who fails to obtain a certificate prior to administering general anesthesia and/or conscious sedation shall be subject to disciplinary action. If a certificate is issued to a dentist by the Board, the dentist must properly display a board-issued certificate in every office where general anesthesia and/or conscious sedation is administered by that dentist.

With the increasing number of dentists who administer general anesthesia and/or conscious sedation to apprehensive patients and the increased concern with risks associated with these types of procedures, the Board believes that the general anesthesia / conscious sedation certificate requirement articulated in the proposed amendments of this subpart are necessary to ensure compliance with the minimum standards established within part 3100.3600. The Board believes that the certificate requirement will help to ensure that only those dentists who are appropriately trained will be administering pharmacological or non-pharmacological methods or combination thereof to achieve general anesthesia and/or conscious sedation of patients. In addition, the Board asserts that a dentist must possess a certificate in order to properly handle any unforeseen complications the patient may experience during a general anesthesia and/or conscious sedation procedure. Furthermore, the Board believes that any economic burden to dentists, or administrative burden to the Board, will be outweighed by the safety benefits to patients in ensuring that only dentists who have satisfied the minimum standards articulated in rules are allowed to administer such methods. For these reasons, the Board considers these proposed amendments to be necessary and reasonable.

Subpart 10. Practice and equipment requirements.

The proposed amendments of this subpart establish the practice and equipment requirements for dentists who administer general anesthesia and/or conscious sedation and who provide dental services to patients under general anesthesia and/or conscious sedation. The practice requirements relate to the following: a dentist who employs or contracts another licensed healthcare professional to administer general anesthesia and/or conscious sedation must notify the Board of this and be responsible for maintaining the facilities, equipment, supplies, and recordkeeping; any individual qualified to administer general anesthesia and/or conscious sedation must remain in the operatory to directly monitor the patient and remain chairside until the patient returns to a level one consciousness; and a dentist administering general anesthesia and/or conscious sedation must have in attendance additional personnel currently certified in CPR.

The proposed amendments outlining equipment requirements include the following: an automated external defibrillator ("AED") or full function defibrillator; positive pressure oxygen delivery system and a backup system; functional suctioning device and a backup suction device; auxiliary lighting; gas storage facility; recovery area; method to monitor respiratory function; and board-approved emergency cart or kit.

Given the ever-evolving nature of pharmacological or non-pharmacological methods or combination thereof and the risks their use can pose to patients, the Board believes that minimum equipment requirements, as well as minimum practice requirements concerning the utilization of other licensed healthcare professionals, proper patient monitoring, and supportive personnel are necessary to ensure patient safety. The Board also believes that patients will be better served by

the establishment of certain requirements which must be followed by dentists who administer general anesthesia and/or conscious sedation in their dental practices. Therefore, these proposed amendments are considered necessary and reasonable by the Board.

Subpart 11. On-site inspection: requirements and procedures.

The proposed amendments of this subpart establish the requirements and procedures relating to on-site inspections of dental offices conducting general anesthesia and/or conscious sedation in order to enforce the provisions of other proposed rules within this part. The proposed requirements for on-site inspections relate to the following: a dentist must comply with proposed practice and equipment requirements; a dentist must have an inspection done within 12 months after receiving an initial certificate, thereafter its once every 5 years; a dentist holding an existing certificate must have an inspection done within 2 years of these rules or provide proof of this, thereafter its once every 5 years; and a dentist must have an inspection done if subject to disciplinary action due to violation of this part. If a dentist fails to meet the on-site inspection requirements, an extension of time may be requested by the dentist for determination by the Board.

The proposed procedures for on-site inspections relate to the following: dentist notified by Board of required inspection along with other pertinent information; inspection fee paid by the dentist to individual or organization conducting inspection; the dentist shall cause the individual or organization to notify the Board of results of inspection; and failure of an inspection results in suspension of certificate and/or disciplinary action.

The Board believes that the proposed requirements and procedures set forth for on-site inspections are necessary and reasonable time periods and regulations based upon received information found within the American Association of Oral and Maxillofacial Surgeons, *Office Anesthesia Evaluation Manual*, 6th Edition 2000. In addition, the Board believes that such on-site inspections will help to ensure that only those dentists who have been properly trained and who adhere to practice and equipment requirements are authorized to offer general anesthesia and/or conscious sedation to patients.

3100.5100 Professional Development.

Subpart 3. Professional development activities.

Item A, subitem (1).

The proposed amendment to this subitem allows the Board to accept college courses pertaining to basic sciences as a fundamental activity for professional development. Due to an oversight by the Board, the activity of college courses was incorrectly listed under the elective activities section of the rules for professional development. Historically, the Board has always considered college courses pertaining to basic sciences to be a clinical subject which is a fundamental activity. Therefore, it is considered by the Board to be necessary and reasonable.

Item A, subitem (2)(f).

The proposed amendment to this subitem strikes the words “(for dentists only)” from the current rule language relating to the core subject of “treatment and diagnosis” under fundamental activities. This change broadens the scope of professional development for other dental

professionals who may find "treatment and diagnosis" applicable to their profession. Therefore, the amendment is considered necessary and reasonable by the Board.

Item B, subitem (6).

The proposed amendment to this subitem deletes the entire subitem from Item B and moves it to Item A, subitem (1) of this subpart. The purpose of this amendment has been described in part 3100.5100, subpart 3, item A (1), above.

3100.5300 Audit Process of Portfolio.

Subpart 1. Auditing for compliance.

The proposed amendment of this subpart allows the Board to also audit the portfolios of licensees and registrants who are the subject of any complaint, investigation, or proceeding under Minnesota Statutes, sections 150A.08 and 214.10. During the Board's disciplinary process, the Board finds it essential to request and audit the portfolios of licensees and registrants in order to properly determine any correlation between the lack of professional development/continuing education in a certain subject matter and the violation(s) committed by the licensee or registrant. This is also a time that the Complaint Committee of the Board could offer suggestions or recommendations to the licensee or registrant regarding portfolio contents or proper documentation. For these reasons, the Board finds this proposed language necessary and reasonable.

In addition, there are proposed amendments to this subpart that change the timing of when a notification for a portfolio audit will be sent to the licensee or registrant. The change will allow the Board to notify the licensee or registrant of the audit at the same time of mailing the licensee's or registrant's biennial renewal application. By doing this, the licensee or registrant will benefit from being put on notice of the audit prior to the end of their professional development cycle; thus, they will have some time to address any deficiencies they may have with professional development requirements. Moreover, this proposed change will result in cost savings to the Board by eliminating a separate mailing of the audit notification. For these reasons, the Board finds these amendments necessary and reasonable.

3100.8100 Employing, Assisting, or Enabling Unlicensed Practice.

Item A

The proposed amendment to strike "(9)" and change it to "(11)" is a technical change and only serves to properly coordinate rule language with the statute language found within Minnesota Statutes, section 150A.08, subdivision 1(11). Therefore, it is considered by the Board to be necessary and reasonable.

3100.8500 Registered Dental Assistants.

Subpart 1. Duties under general supervision.

The proposed amendment to the introductory paragraph is designed to bring the rule into conformity with current practice as interpreted by the Board and other dental professionals. The changes simply clarify the intent of the rule language by stating that a registered dental assistant may perform the duties listed under general supervision without the dentist being present in the dental office or on the premises, if the procedures being performed are with prior knowledge and consent of the dentist. Therefore, it is considered by the Board to be necessary and reasonable.

Subpart 1, Items F, G, and H.

For Items F and G, the proposed amendment is not new rule language, but previous language that has been moved to this subpart (general supervision) from part 3100.8500, subpart 1a., items A and B, relating to duties under indirect supervision for registered dental assistants. Moreover, Item H is a proposed amendment that establishes an additional duty (delivery of vacuum-formed orthodontic retainers) for registered dental assistants.

The following addresses Items F, G, and H: A representative of the Minnesota Association of Orthodontics ("MAO") presented a petition to the Board requesting consideration towards changing the level of supervision from "indirect" to "general" for the following duties already established in rule: taking radiographs; and taking impressions for casts and appropriate bite registration, not to include impressions and bite registrations for final prostheses. An objection has been brought forward to this supervision change, suggesting it would lead to an increased number of radiograph retakes and a decline in the quality of diagnostic materials, causing faulty decision-making in orthodontic treatment planning. The MAO contacted Craniofacial Imaging, a business which has been engaged in producing diagnostic records for orthodontists for about 30 years, and inquired about their incidence of retakes and quality assurance and control. Craniofacial Imaging reported retakes of one or two per year which clearly represents an acceptable level of performance by dental auxiliaries. In addition, the quality assurance and control programs reported by Craniofacial Imaging are precisely those required to be operational throughout Minnesota and are clearly adequate to maintain the reported level of exemplary performance. Therefore, the training currently provided to dental assistants involving the taking of radiographs and impressions and the mandatory quality assurance and control programs substantiate a change in the level of supervision as being feasible, safe, and justified.

In addition, the MAO's petition requested consideration towards including the following new duty under general supervision: deliver vacuum-formed orthodontic retainers. Following the removal of orthodontic appliances, this type of retainer can be fabricated using a transparent or semi-transparent plastic with minimal thickness. The plastic is vacuum-formed over the working cast of the patient with precision and then it is properly trimmed. In most orthodontic offices, the registered dental assistant already performs the task of fabricating vacuum-formed orthodontic retainers for the patients thereby gaining the knowledge into the proper fit of this retainer. When orthodontic appliances are removed, the patient is expected to return to the dental office within a matter of days to receive a retainer. For reasons of orthodontic relapse and convenience for the patient in rural areas where satellite offices are common, it would be practical and beneficial in the scheme of providing orthodontic services to allow registered dental assistants to deliver vacuum-formed orthodontic retainers under general supervision. With all these proposed expanded duties under general supervision, the MAO also asserted that delegation describes a transfer of duty without alteration in the original relationship between the dentist and the patient. In all instances of delegation, the delegating party or dentist remains fully responsible and liable; therefore, delegation is a management function which can be determined by the dentist who establishes the criteria for allowing a duty to be performed by a registered dental assistant.

After thoroughly reviewing the matter, the Board determined that registered dental assistants are capable of performing these duties under general supervision and no further education would be required to perform these duties. For this reason, the Board considers these rule changes to be necessary and reasonable.

Subpart 1a. Duties under indirect supervision.

The proposed amendment to the introductory paragraph makes no substantive changes; it is for purposes of clarification only. The amendment clarifies the identity of the term "assistant" by including the language "as described under 3100.8400, subpart 1." Therefore, it is considered by the Board to be necessary and reasonable.

Subpart 1a., Items A, B, C, and N.

For Items A and B, the proposed amendments delete these items or duties from this subpart and move these items or duties to subpart 1 of this part renaming them as Items F and G. The purpose of these amendments has been described in part 3100.8500, subpart 1, items F and G, above.

For Item C which relates to the application of topical medications, the proposed amendment provides a technical change to the language by deleting "that are physiologically reversible" and inserting "in appropriate dosages or quantities." Since, it is highly difficult for the dental professional to determine whether a topical medication when applied will be physiologically reversible, the Board has determined that making a technical correction to follow the appropriate dosages or quantities is a better resolution. For this reason, this amendment is considered by the Board to be necessary and reasonable.

For Item N, the proposed amendment reflects the delegated duty of restorative procedures as permitted under Minnesota Statutes, section 150A.10, subdivision 4, making it necessary and reasonable.

Subpart 1b. Duties under direct supervision:

Items A, B, H, and I.

For Item A, the proposed amendment deletes the following language "with hand instruments" from the current rules. The Board has determined that this particular language is obsolete since the registered dental assistant has been given the authority through part 3100.8500, subpart 1b., item B, to remove bond material from teeth with a rotary instrument following the successful completion of a course as described within that rule. Therefore, the Board finds this change to be necessary and reasonable.

For Item B, the proposed amendment to strike "excess" as related to bond material is a technical change to delete a word that is unnecessary for the meaning of the provision to be clear. The Board considers this change to be necessary and reasonable.

For Items H and I, the proposed amendment establishes additional duties under direct supervision for the registered dental assistant as follows: attach pre-fit and pre-adjusted orthodontic appliances; and remove fixed orthodontic bands and brackets.

The MAO's petition also requested consideration by the Board to include the following duties: attach pre-fit and pre-adjusted orthodontic appliances; and remove fixed orthodontic bands and brackets, under direct supervision. In regard to attaching orthodontic appliances, the MAO contends that: excellent band/bracket placement will never over-ride an inappropriate treatment plan or a poorly monitored or poorly managed treatment execution. Further, mediocre or even poor band/bracket placement can produce an excellent treatment result in a disciplined and experienced treatment environment. In addition, the MAO provided its intentions as to the actual steps that would be performed by the registered dental assistant for the duty of attaching pre-fit and pre-adjusted orthodontic appliances, as follows:

- Pre-banding/bonding procedures to be performed by the registered dental assistant ("RDA") include pre-selecting orthodontic bands, etching appropriate surfaces, and applying the primer.
- After the bands are checked for proper fit and position by the orthodontist, the RDA will cement the bands and have the orthodontist check the cementation.
- Adhesive, as prescribed by orthodontist, will be placed on bracket bases by RDA.
- RDA initially places bracket(s) in standard position on the tooth, as described by the orthodontist, then the orthodontist establishes the final bracket(s) position by adjusting position of bracket(s), as necessary.
- Orthodontist directs RDA to proceed with light curing of adhesive for bracket(s).

The orthodontist will check and approve final appliance construction before the placement of arch wires. Any other steps or procedures associated with the attaching of orthodontic appliances that have not been listed above will continue to be performed by the orthodontist. The Board stands behind and supports these limited duties (as listed above) that the RDA will perform in the process of attaching pre-fit and pre-adjusted orthodontic appliances because they are non-invasive procedures that can be safely and properly performed by the RDA under direct supervision.

In regard to removing fixed orthodontic bands and brackets, the MAO provided a number of research articles on this matter to the Board and made the following conclusion: modern orthodontic bonding materials and current bracket base design provide multiple levels of safety in the de-bonding procedure.¹ The choice of materials is a treatment decision made by the orthodontist before appliance construction that will directly affect the de-bonding procedure. Thus, the registered dental assistant's ability to properly remove fixed orthodontic bands and brackets when proper choices are made by the dentist warrants allowing delegation of these procedures.

The Board believes it is necessary and reasonable to include the following duties under direct supervision: attach pre-fit and pre-adjusted orthodontic appliances; and remove fixed orthodontic bands and brackets. The Board concludes that no further education would be required to perform these duties. Furthermore, under direct supervision, the patient is protected in several ways by the dentist being in full control of the treatment rendered by the registered

¹ The choice of materials used in a de-bonding technique that will not produce a cohesive failure on de-bonding are clearly inappropriate and dangerous, and predictably produce fractures and enamel damage.

dental assistant in that: the dentist must remain in the dental office while the duty is being performed; the dentist must personally diagnose the condition to be treated; the dentist must personally authorize the procedure; and the dentist must personally evaluate the performance of the registered dental assistant before dismissing the patient.

Subpart 3. Limited registration.

The proposed amendment to this subpart changes the language from "indirect" to "general" relating to the taking of radiographs by a dental assistant with a limited registration. This change is consistent with the proposed changes found elsewhere in these rules making it necessary and reasonable.

3100.8700 Dental Hygienists.

Subpart 1. Duties under general supervision.

The proposed amendment to the introductory paragraph is designed to bring the rule into conformity with current practice as interpreted by the Board and other dental professionals. The changes clarify the intent of the rule by stating that a dental hygienist may perform the duties listed under general supervision without the dentist being present in the dental office or on the premises, if the procedures being performed are with prior knowledge and consent of the dentist. In addition, the proposed amendment would allow hygienists the ability to evaluate and/or treat new patients before the dentist has personally examined or "seen" the patient. As to public protection, hygienists are trained to identify those situations when it is more appropriate for the dentist to evaluate or "see" the patient before any treatment or evaluation is initiated by the hygienist. Therefore, it is considered by the Board to be necessary and reasonable.

Subpart 1., Items C, I, J, and K.

For Items C and I, the proposed amendments establish additional duties for dental hygienists under general supervision as follows: perform initial and periodic examinations and assessments to make a dental hygiene diagnosis of periodontal status; formulate a dental hygiene treatment plan in coordination with a dentist's treatment plan; and make referrals to dentists, physicians, and other practitioners in consultation with a dentist. These amendments are designed to reflect the ongoing changes in prevailing standards and practices of what duties dental hygienists are already qualified to perform through their dental hygiene education. Moreover, it allows dentists greater flexibility in delegating appropriate responsibilities to hygienists. These amendments will also be considered essential services when a dental hygienist participates in a collaborative agreement with a dentist to treat patients in a health care facility, program, or nonprofit organization. For these reasons, the Board believes these additional duties are necessary and reasonable.

For Items J and K, the proposed amendments are existing language that has been moved to this subpart from part 3100.8500, subpart 2., items A and B, relating to duties of administering local anesthesia and administering nitrous oxide inhalation analgesia for dental hygienists. The Board believes that these duties can be performed by the dental hygienist in a safe and competent manner to the public under general supervision without the presence of the dentist in the office. No complaints have ever been received by the Board to demonstrate otherwise, and the dentist must have prior knowledge and provide consent for these duties to be performed by the hygienist. Therefore, the Board considers these amendments to be necessary and reasonable.

Subpart 2. Duties under indirect supervision.

Items A and B.

For Items A and B, the proposed amendments delete these items or duties from this subpart (indirect supervision) and move these items or duties to subpart 1 (general supervision) of this part, renaming them as Items J and K. The purpose of these amendments has been described in part 3100.8700, subpart 1, items J and K, above.

In addition, the proposed amendment reflects the delegated duty of restorative procedures under indirect supervision as permitted under Minnesota Statutes, section 150A.10, subdivision 4, making it necessary and reasonable.

Subpart 2a. Duties under direct supervision.

Items E, F, and G.

For Item E, the proposed amendment to strike the term "excess" is a technical change to delete a word that is unnecessary for the meaning of the provision to be clear. The Board considers this change to be necessary and reasonable.

For Items F and G, the proposed amendment establishes additional duties under direct supervision for the dental hygienist as follows: attach pre-fit and pre-adjusted orthodontic appliances; and remove fixed orthodontic bands and brackets. For an analysis of these proposed additional duties for dental hygienists, see part 3100.8500, subpart 1b., items H and I, above. The same analysis will apply to the dental hygienist as it does for the registered dental assistant in this matter.

LIST OF EXHIBITS

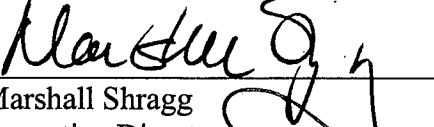
In support of the need for and reasonableness of the proposed rules, the Board anticipates that it will enter the following exhibits into the hearing record:

- 1) Reports to the Minnesota Board of Dentistry from the Minnesota Association of Orthodontists; May 2004. [These non-published reports are available to the public for review and are located at the office of the Minnesota Board of Dentistry.]

CONCLUSION

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

May 25TH, 2006
Date


Marshall Shragg
Executive Director
Minnesota Board of Dentistry

BIBLIOGRAPHY

- 1) American Association of Oral and Maxillofacial Surgeons, *Office Anesthesia Evaluation Manual*, 6th Edition 2000

- 2) American Association of Oral and Maxillofacial Surgeons, *Parameters and Pathways: Clinical Practice Guidelines for Oral and Maxillofacial Surgery (AAOMS ParPath 01)*, Version 3.0 Supplement to the Journal of Oral and Maxillofacial Surgery, 2001.

[These published materials are available to the public for review and are located at the office of the Minnesota Board of Dentistry.]

Minnesota Board of Dentistry

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, And Notice of Hearing If 25 or More Requests For Hearing Are Received

Proposed Permanent Rules Relating to Terms and Renewal of Licensure and Registration, Administration of General Anesthesia, Conscious Sedation, and Nitrous Oxide Inhalation Analgesia, Professional Development, Audit Process of Portfolio, Registered Dental Assistants, and Dental Hygienists, *Minnesota Rules*, parts 3100.0100, 3100.1400, 3100.1700, 3100.3600, 3100.5100, 3100.5300, 3100.8100, 3100.8500, and 3100.8700

Introduction. The Minnesota Board of Dentistry intends to adopt rules without a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on Wednesday, August 9, 2006, a public hearing will be held in 4th Floor Conference Room A, University Park Plaza, 2829 University Avenue SE, Minneapolis, Minnesota 55414, starting at 9:00 a.m. on Friday, September 1, 2006. To find out whether the rules will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after August 9, 2006 and before September 1, 2006.

Agency Contact Person. Comments or questions on the rules and written requests for a public hearing on the rules must be submitted to the agency contact person. The agency contact person is: Kathy Johnson at Minnesota Board of Dentistry, University Park Plaza, 2829 University Avenue SE, Suite 450, Minneapolis, Minnesota 55414-3249, phone: (612) 617-2554 or (888) 240-4762 (outside metro), Fax: (612) 617-2260. Minnesota Relay Service for hearing impaired: (800) 627-3529.

Subject of Rules and Statutory Authority. The proposed rules involve the following areas: definitions; licensure by credentials; renewal procedures; administration of general anesthesia, conscious sedation, and nitrous oxide; professional development; auditing of professional development portfolios; duties and levels of supervision relating to dental hygienists, registered dental assistants, and dental assistants with a limited registration; and other minor technical corrections in existing rules.

The statutory authority to adopt the rules is *Minnesota Statutes*, section 150A.04, subdivision 5. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed. A free copy of the rules is available upon request from the agency contact person listed above.

Comments. You have until 4:30 p.m. on Wednesday, August 9, 2006, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to

propose any change desired. Any comments that you would like to make on the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on Wednesday, August 9, 2006. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules to which you object or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and cannot be counted by the agency when determining whether a public hearing must be held. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to affect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format/Accommodation. Upon request, this Notice can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Modifications. The proposed rules may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must be supported by data and views submitted to the agency or presented at the hearing and the adopted rules may not be substantially different than these proposed rules, unless the procedure under *Minnesota Rules*, part 1400.2110, has been followed. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

Cancellation of Hearing. The hearing scheduled for Friday, September 1, 2006, will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rules. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also call the agency contact person at (612) 617-2554 after August 9, 2006, to find out whether the hearing will be held.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The hearing will be held on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Barbara L. Neilson is assigned to conduct the hearing. Judge Barbara Neilson can be

reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, telephone (612) 341-7604, and Fax (612) 349-2665.

Hearing Procedure. If a hearing is held, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the close of the hearing record. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Following the comment period, there is a five-working-day rebuttal period during which the agency and any interested person may respond in writing to any new information submitted. No additional evidence may be submitted during the five-day rebuttal period. All comments and responses submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. Questions about procedure may be directed to the Administrative Law Judge.

The agency requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the agency contact person. This statement contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. The statement may also be reviewed and copies obtained at the cost of reproduction from the agency.

A copy of the Dual Notice and proposed rules shall be mailed to everyone who has registered to be on the Board of Dentistry's rulemaking mailing list under *Minnesota Statutes*, section 14.14, subdivision 1a; and

A copy of the Dual Notice, proposed rules, and the Statement of Need and Reasonableness shall be mailed to the Legislature according to *Minnesota Statutes*, section 14.116.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 296-5148 or 1-800-657-3889.

Adoption Procedure if No Hearing. If no hearing is required, the agency may adopt the rules after the end of the comment period. The rules and supporting documents will then be

submitted to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rules are submitted to the office. If you want to be so notified, or want to receive a copy of the adopted rules, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Adoption Procedure After a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date when the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date on which the agency adopts the rules and the rules are filed with the Secretary of State, and can make this request at the hearing or in writing to the agency contact person stated above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

Date: June 27, 2006

Marshall Shragg, Executive Director
Minnesota Board of Dentistry