



## MINNESOTA BOARD OF DENTISTRY

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May 25, 2011

Legislative Reference Library  
645 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, Minnesota 55155-1050

**Re: Proposed Amendments to Permanent Rules Relating to Dental Therapists and Advanced Dental Therapists, *Minnesota Rules*, Chapter 3100; Governor's Tracking Number AR592**

Dear Librarian:

The Minnesota Board of Dentistry intends to adopt rules relating to dental therapists and advanced dental therapists. We plan to publish a Dual Notice of Intent to Adopt Rules in the June 6, 2011 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 an electronic copy of the Statement of Need and Reasonableness about the same time we are mailing our Dual Notice.

If you have any questions, please contact me at (612) 548-2134.

Yours very truly,

A handwritten signature in blue ink that reads "Kathy T. Johnson".

Kathy T. Johnson  
Legal Analyst Liaison  
Minnesota Board of Dentistry

Enclosures: Statement of Need and Reasonableness

## **Minnesota Board of Dentistry**

### **STATEMENT OF NEED AND REASONABLENESS**

#### **Proposed Amendments to Permanent Rules Relating to Dental Therapists and Advanced Dental Therapists, *Minnesota Rules*, Chapter 3100**

### **INTRODUCTION**

The Minnesota Board of Dentistry is the state agency authorized to establish permanent rules for regulating dental therapists and advanced dental therapists. 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 considering rule amendments that would include dental therapists and advanced dental therapists into its existing rules for licensees regarding licensure requirements, reinstatement requirements, examination conduct, nitrous oxide administration, disciplinary action, and professional development requirements.

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 general public. The rules in need of change were identified and amend. All of these amendments 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.

The Board shall post a draft copy of the proposed rule changes being considered on the Board's website. On December 9, 2010, a copy of the Board's Request for Comments regarding these proposed rules was posted on the Board's website. In addition, the formal Request for Comments was published in the State Register on December 13, 2010, and an electronic copy was e-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 rules shall be reviewed and subsequent changes shall be considered by the Board.

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 audio. To make a request, contact Kathy Johnson at the Minnesota Board of Dentistry, 2829 University Avenue SE, Suite 450, Minneapolis, Minnesota 55414, (612) 548-2134, (612) 617-2250 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 seven factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below state these factors and then provide 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 dental therapists and advanced dental therapists who are regulated by the Board of Dentistry; and the general public;
- the costs of the proposed rules will be borne by dental therapists and advanced dental therapists to maintain their licenses and professional development requirements and possibly reinstatement requirements; 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 and significant costs to the Board to implement and enforce the proposed rules for dental therapists and advanced dental therapists will be administrative costs involving the revising of current procedures, forms, and database processes. However, the legislature has already appropriated the necessary funds to manage the aforementioned costs to the Board;
- 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; and
- 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 no alternative methods than the actual proposed rules. All parties involved found that the Board's existing rules for other regulated dental professionals should apply to the dental therapists and advanced dental therapists where applicable, since the Board believes that accountability and continued education are the foundation for public protection. Dental therapists and advanced dental therapists are new members of the professional dental team, and it is appropriate to incorporate them into the board's rules regulating all dental professionals.

**(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:**

- 100 % of the probable costs will be borne by the dental therapists and advanced dental therapists. The probable costs of complying with the proposed rules for dental therapists and advanced dental therapists are described within Minnesota Statutes, section 150A.091, as follows: initial license - \$10 times the number of months of the initial term; biennial license renewal - \$180; and possible reinstatement if license terminated - \$85. As for the cost of maintaining professional development requirements, the dental therapist and advanced dental therapist will be responsible for the cost of obtaining and maintaining the following: a healthcare provider CPR course – at least \$60; and the required number of professional development credits offered through various resources which range from complimentary to selected higher fee-based activities; and
- no other classes of government units, businesses, or individuals are expected to bear the probable costs associated with the proposed rules.

**(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 dental therapists and advanced dental therapists are the adverse consequences that may affect

- the general public's health, safety and welfare unless more definitive regulations are implemented for the dental therapists and advanced dental therapists; and
- no other classes of government units or businesses will be effected by not adopting the proposed rules.

**(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. Additional notice provided as follows:

1. Since August 2009, various standing and task force committees of the Board have held monthly public meetings to make operational statutory requirements for these new professions and to develop these proposed rules. The Board has disseminated notice of these public meetings to regulated dental professionals and the general public. Drafts of the proposed rules have been distributed and reviewed during these public meetings to all individuals in attendance.
2. On December 8, 2010, the Board mailed copies of the Request for Comments to Suzanne Beatty, D.D.S. at Normandale Community College for distribution to all dental therapy students who are enrolled in their dental therapy program.
3. On December 8, 2010, the Board mailed the Request for Comments by sending an electronic copy via e-mail to Karl Self at the University of Minnesota for distribution to all dental therapy students who are enrolled in their dental therapy program.

4. On December 9, 2010, the Board posted a draft copy of the proposed rule changes on the Board's website at [www.dentalboard.state.mn.us](http://www.dentalboard.state.mn.us) making it accessible to the following individuals: all dentists; dental therapy students; dental hygienists; dental assistants; state legislators; other health boards; and members of the general public. This draft copy indicated the Board rules that will be affected by the Board's proposed rule changes.
5. On December 9, 2010, the Board mailed the Request for Comments to all persons on the Board's rulemaking mailing list by sending an electronic copy via e-mail to all persons on the list.
6. On December 9, 2010, the Board posted a copy of the publication of the Request for Comments in the State Register on the Board's website at [www.dentalboard.state.mn.us](http://www.dentalboard.state.mn.us). This website is accessible to the following individuals: all dentists; dental therapy students; dental hygienists; dental assistants; state legislators; other health boards; and members of the general public.
7. On December 9, 2010, the Board posted a draft of the Statement of Need and Reasonableness on the Board's website at [www.dentalboard.state.mn.us](http://www.dentalboard.state.mn.us). All future notices involving these proposed rules shall be posted on the Board of Dentistry's website.
8. On December 13, 2010, the Board's Request for Comments was published in the State Register.

#### Notice Plan

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

1. A copy of the Dual Notice and proposed rules shall be mailed to all persons who have registered to be on the Board of Dentistry's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. This mailing shall be accomplished by sending an electronic copy via e-mail to all persons on the list; and
2. A copy of the Dual Notice, proposed rules, and this Statement of Need and Reasonableness shall be mailed to the appropriate committee members of the Legislature according to Minnesota Statutes, section 14.116. The following is a possible list of these legislative committees:
  - a. House: Housing Finance and Policy and Public Health Finance Division Committee Chair and Lead; and Health Care and Human Services Policy and Oversight Committee Chair and Lead; and
  - b. Senate: Health and Human Services Budget Division Committee Chair and Ranking Minority Member; and Health, Housing and Family Security Committee Chair and Ranking Minority Member.

## **CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT**

As required by Minnesota Statutes, section 14.131, the Board of Dentistry will consult with the Minnesota Management and Budget (“MMB”). We will do this by sending the MMB copies of the same documents that we send to the Governor’s Office for review and approval on the same day we send them to the Governor’s Office. We will do this before the Board publishes its Dual Notice. The documents will include: the Governor’s Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Board will submit a copy of the cover correspondence and any response received from MMB to the OAH at the hearing or with the documents it submits for ALJ review.

Therefore, the Board shall send copies of the required documents to Lisa Barnidge, the Board’s Executive Budget Officer (EBO), at MMB.

## **DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION**

As required by Minnesota Statutes, section 14.128, subdivision 1, the Board of Dentistry has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Board of Dentistry has determined that the local units of government would not be required to adopt or amend an ordinance or regulation because the proposed rules do not require local implementation. All of the Board’s proposed rules are intended to provide guidelines and requirements limited to the individual dental professional who must comply with these rules.

## **COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

As required by Minnesota Statutes, section 14.127, the Board of Dentistry has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Board of Dentistry has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. The Board of Dentistry has made this determination based on the probable costs of complying with the proposed rules, as previously described in the Regulatory Analysis section of this SONAR on pages 2 through 4.

## **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. Candace Mensing, D.D.S., Board Member – rule requirements for dental therapists;
2. Nancy Kearn, D.H., Board Member – rule requirements for dental therapists;
3. Counsel from the Attorney General’s Office; and
4. Marshall Shragg, Executive Director.

## **RULE-BY-RULE ANALYSIS**

### **PROPOSED RULE CHANGES**

All of the rule parts hereafter include supportive information relative to the rule-by-rule analysis as follows:

**3100.0100 to 3100.9600:** Throughout these parts, new terms such as “advanced dental therapist,” “dental therapist,” and “dental therapy” were added to various existing rules where appropriate based upon existing statutes. The Board needed to include in rule the advanced dental therapist and the dental therapist as another dental professional regulated by the Board following the enactment of legislation regarding advanced dental therapists and dental therapists within Minnesota Statutes, chapter 150A in 2009. This inclusion of the advanced dental therapist and the dental therapist in rules will properly coordinate rule language with current statute language which became effective on August 1, 2009. Therefore, the aforementioned additions are considered by the Board to be necessary and reasonable.

### **3100.0100 DEFINITIONS**

Subpart 9c. **Dental assistant with a limited-license permit.** This is a new definition created for the dental assistant with a limited-license permit for editorial purposes only. The Board wanted to appropriately list this dental assistant within its definitions and provide citation information of existing rules regarding the dental assistant with a limited-license permit. Moreover, this dental assistant is considered a “licensee” which editorially is commonly used throughout the rules. For these reasons, the Board considers this definition to be necessary and reasonable.

### **3100.1170 LICENSE TO PRACTICE AS A RESIDENT DENTAL THERAPIST OR RESIDENT DENTAL HYGIENIST.**

Subparts 1 and 2 – this entire part is new language that allows the dental therapist or dental hygienist to practice clinical dentistry as a resident graduate student or student of an advanced education program while enrolled at the institution or program. Like the resident dentist, this type of license is issued to students enrolled in a certain program to allow the student to practice clinical dentistry on patients. A resident license provides the hands-on experience needed to become a qualified licensed dental professional. This type of license is also terminated when the person is no longer a student enrolled in a certain institution or program since the student’s next step would be to pursue a more standard type of licensure. For these reasons, the Board considers this change to be necessary and reasonable.

### **3100.1700 TERMS AND RENEWAL OF LICENSE OR PERMIT; GENERAL.**

#### **Subpart 2. Renewal applications.**

This change involved deleting the phrase “a dentist, dental hygienist, licensed dental assistant, or dental assistant with a permit under part 3100.8500, subpart 3” and replacing with “each licensee.” This change has been made for editorial purposes only based upon the following: under definitions, the dental therapist has been included in the definition of “Licensee”; and also



under definitions, a separate definition for a “dental assistant with a limited-license permit” has been created to allow the removal of this individual from this subpart. Hereafter, the term of “Licensee” will include the dental professionals indicated under the definition of “Licensee.” For these reasons, the Board considers this change to be necessary and reasonable.

### **3100.1850 REINSTATEMENT OF LICENSE.**

#### **Subpart 3. Expiration or voluntary termination of 24 months or more.**

Item B, subitem (1) – this change involved adding the advanced dental therapist and dental therapist to this particular reinstatement option of retaking appropriate clinical examinations. This subitem references the two clinical examinations from statutes that would need to be completed by these dental professionals. This change is consistent with the reinstatement requirements for other dental professionals within this subitem. If a dental professional has had an expired/terminated license for a period of two years or more, the Board is responsible for determining if the dental professional is competent by requiring completion of the specified examination by the dental professional. Therefore, this change is considered by the Board to be necessary and reasonable.

Item B, subitem (2) – this change involved adding the advanced dental therapist and dental therapist to this particular reinstatement option of completing applicable board-approved coursework. This change is consistent with the reinstatement requirements for other dental professionals within this subitem. If a dental professional has had an expired/terminated license for a period of two years or more, the Board is responsible for determining the applicable coursework that is needed for the dental professional to be able to practice at a proficient level. Therefore, this change is considered by the Board to be necessary and reasonable.

### **3100.3350 EXAMINATION OF DENTAL THERAPISTS AND ADVANCED DENTAL THERAPISTS.**

Subparts 1 to 5 – this entire part is new language regarding the applicant who desires to become a dental therapist or advanced dental therapist. In subparts 1, 2, 3, 4, and 5, the new language regarding scope, clinical examination, additional examination content, additional education for two failed clinical examinations, and examination for continued licensure for the dental therapist or advanced dental therapist applicant is consistent with language used for other dental professionals. In subpart 4, the language addresses the situation if the dental therapist or advanced dental therapist applicant should fail the clinical examination twice. The applicant would be required to complete additional remedial education through an accredited institution and provide proof of having completed the education, whereupon the applicant would be allowed to retake the clinical examination. The applicant must comply with this rule each time the applicant fails the clinical examination twice. The Board acknowledges that this required remediation for an applicant is essential to assist the applicant in being prepared to successfully retake the examination. Thus, the Board believes this part is needed and reasonable.

**3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION, MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE INHALATION ANALGESIA.**

Subparts 1, 4, and 8 – throughout these subparts the dental therapist has been added based upon existing statutory authority which allows the qualified dental therapist to administer nitrous oxide inhalation analgesia. Thus, the Board considers these changes to be needed and reasonable.

**3100.5100 PROFESSIONAL DEVELOPMENT.**

**Subpart 2. Professional development requirements.**

Item B – this change adds the dental therapist to existing language regarding the required number of professional development hours. The Board determined that the dental therapist will be required to obtain 50 hours of professional development activities in a biennial cycle. This amount of required hours is the same for that of a dentist. The Board determined that 50 hours is a comparative and highly attainable level of continuing education for the dental therapist. An appropriate number of hours are minimally necessary to maintain currency in a professional dental career to properly provide care and treatment to the public.

Additionally, the Board has the authority to promulgate by rule requirements for renewal of licenses designed to promote the continuing professional competence of licensees under Minnesota Statutes section 214.12, subdivision 1. This section states that the requirements shall not exceed an average attendance requirement of 50 clock hours per year. The Board has not exceeded this limitation of requirements. For these reasons, the Board considers the change to be necessary and reasonable.

**3100.9600 RECORDKEEPING.**

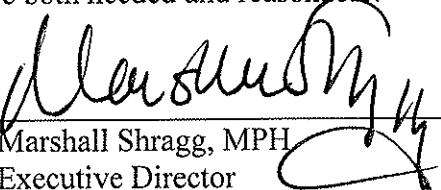
**Subpart 9. Informed consent.**

Item A – this change adds the dental therapist when addressing the subject of informed consent. Since the dental therapist may be providing dental services at a facility without the dentist present, the dental therapist will be responsible for discussing with the patient the treatment options and the prognosis, benefits, and risks of each treatment. The requirement of obtaining informed consent from the patient prior to providing treatment still remains an important and necessary component of patient care and adequate recordkeeping. Thus, the Board considers the change to be necessary and reasonable.

**CONCLUSION**

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

Dated: December 8, 2010

  
Marshall Shragg, MPH  
Executive Director  
Minnesota Board of Dentistry