



MINNESOTA BOARD OF DENTISTRY

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September 9, 2014

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 Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules* 3100.0100, 3100.0300, 3100.1100, 3100.1150, 3100.1160, 3100.1200, 3100.1300, 3100.1400, 3100.1850, 3100.3300, 3100.3400, 3100.3500, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8500, 3100.8700, and 3100.9600; Revisor's ID # 4228

Dear Librarian:

The Minnesota Board of Dentistry intends to adopt rules relating to the following: clarifying the appropriate training required for advanced cardiac life support and CPR; providing proper notification for reinstatement of license; notifying the Board of nitrous oxide form for dental therapists; changing the audit fee; adding new duties regarding informed consent and retraction material for dental hygienists and licensed dental assistants; and including the task of informed consent by allied dental personnel within the record keeping regulations.

We plan to publish a Dual Notice of Intent to Adopt Rules in the September 15, 2014, 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 cursive script, appearing to read "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 Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules* 3100.0100, 3100.0300, 3100.1100, 3100.1150, 3100.1160, 3100.1200, 3100.1300, 3100.1400, 3100.1850, 3100.3300, 3100.3400, 3100.3500, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8500, 3100.8700, and 3100.9600

INTRODUCTION

The Minnesota Board of Dentistry is the state agency authorized to establish permanent rules for regulating all dentists, dental therapists, dental hygienists, and licensed dental assistants in the State of Minnesota. The nature of the proposed rules of the Board is to amend its current rules that generally pertain to all licensees.

The proposed rules will modify existing language in the following areas: clarifying the appropriate training required for advanced cardiac life support and CPR; providing proper notification for reinstatement of license; notifying the Board of nitrous oxide form for dental therapists; changing the audit fee; adding new duties regarding informed consent and retraction material for dental hygienists and licensed dental assistants; and including the task of informed consent by allied dental personnel within the record keeping regulations. The proposed rules also include amendments that are housekeeping in nature. These housekeeping modifications do not make any substantive changes to requirements for licensure or renewal, but rather make minor technical corrections and rewrite sections for clarity and uniformity.

In recent years, these proposed changes to existing rules have been brought forward to the Board from Board members, Board staff, professional association representatives, dental professionals and specialists, and the general public. These proposed changes have been distributed to various Board committees including the Executive Committee, the Policy Committee, the Professional Development Committee, and the Allied Dental Education Committee. These Committees have held a number of public meetings with all interested parties in attendance to thoroughly discuss and present scenarios regarding these proposed changes. Thereafter, all proposed changes to rules were heard before the Board and given approval to proceed with the rulemaking process.

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 eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) 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 rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule"

- The classes of affected persons are the general public and the following regulated dental professionals: dentists, dental therapists, dental hygienists, and licensed dental assistants;
- For the procedure involving placement of nonsurgical retraction material, those dental hygienists and licensed dental assistants who choose to perform the proposed new duty will bear the costs of attending a continuing education course for this procedure (unless it is incorporated into their allied dental professional curricula); and
- All licensees and the general public will benefit from the proposed rules through improvements, advancements, and clarification of language and duties. In particular, dental hygienists and licensed dental assistants will professionally benefit from having additional delegated duties, and dentists may practice in more than one specialty area after completing certain specified requirements.

"(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"

- By adopting these proposed rules, it is not anticipated that the Board will incur any increased costs beyond those currently associated with operation under existing rules;
- 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”

- The Board has provided its proposed rules for scrutiny during the “Request for Comments” period, along with posting the proposed rules on the Board’s website. Additionally, the professional associations representing the professional interests of the licensees received the proposed rules and have had numerous opportunities at open committee and Board meetings to make recommendations to modify the rules. To date, no additional information has been presented which suggests less costly or intrusive methods for accomplishing the purposes of the proposed rules. Therefore, the Board does not believe there are any less costly or intrusive methods for achieving this purpose.

“(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”

- The status quo was considered, but determined to be insufficient.
- The collaborative discussions led to the proposed language submitted. There were no additional alternative methods considered by the Board for achieving the purpose of the proposed rules due to the fact that other methods would not have the force and effect of law.
- Additionally, alternatives to the proposed rules have been considered and failed to provide the clarity necessary for the rules to be effective.

“(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”

- The majority of the proposal includes minor language changes that clarify existing rules, but do not significantly change them.
- For the new duty of placing nonsurgical retraction material, the dental hygienists and licensed dental assistants who choose to pursue specific training to perform this duty will be totally responsible for the educational costs through a particular program which will cost an unknown amount.
- No other classes of government units, businesses, or individuals are expected to bear costs associated with the proposed rules. However, certain businesses may incur minimal costs associated with affiliating with the American Heart Association and the American Red Cross for certifying dental professionals in CPR and ACLS.

“(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”

- The probable consequences of not adopting the proposed rules include keeping outdated and confusing language in the rules. Outdated and confusing rules and language causes confusion for licensees, staff, and the general public.

- No other classes of government units or businesses will be affected 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”

- There are no existing federal regulations relating to these proposed rules. Regulation of dental professionals is primarily a function of state government.

“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

- The proposed rules cover areas that are not addressed by federal law or other Minnesota state laws. Therefore, this consideration is not applicable for 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 SONAR contain a description of the Board of Dentistry’s efforts to provide additional notice to persons who might be affected by the proposed rules or explain why these efforts were not made. Additional notice has been provided by the Board, as follows:

1. Over the last few years, the Executive Committee, the Policy Committee, the Professional Development Committee, and the Allied Dental Education Committee of the Board have held frequent public meetings to discuss and to develop these proposed rules. The Board has disseminated official notice of these public meetings to all licensed dental professionals, association representatives, and the general public. Drafts of the proposed rules have been distributed and reviewed during these public meetings by all individuals in attendance and input has been invited.

2. On January 3, 2014, the Board posted a draft copy of the proposed rule changes on the Board's website at www.dentalboard.state.mn.us making it accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general public. This draft copy identified the Board rules that will be affected by the Board's proposed rule changes.
3. On January 8, 2014, the Board posted a copy of the Request for Comments for publication in the State Register on the Board's website at www.dentalboard.state.mn.us. This website is accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general public.
4. On January 8, 2014, the Board posted a draft copy of the Statement of Need and Reasonableness ("SONAR") on the Board's website at www.dentalboard.state.mn.us.
5. On January 9, 2014, 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 January 9, 2014, the Board contacted the representatives of the Minnesota Dental Association (Dentists), the Minnesota Dental Hygienists' Association (Dental Hygienists), and the Minnesota Dental Assistants Association (Dental Assistants) with a request to publish in each organization's newsletter or post on each organization's website for its members the following information:

MINNESOTA BOARD OF DENTISTRY – NEW PROPOSED RULES

RE: Proposed Amendments to Permanent Rules Relating to Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules* 3100.0100, 3100.0300, 3100.1100, 3100.1150, 3100.1160, 3100.1200, 3100.1300, 3100.1400, 3100.1850, 3100.3300, 3100.3400, 3100.3500, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8500, 3100.8700, and 3100.9600

The Minnesota Board of Dentistry is considering some amendments to its existing rules. The amendments that are under consideration in the Board's proposed rules focus on the following areas: advanced cardiac life support; CPR; reinstatement of license; nitrous oxide form from dental therapists; audit fee; new duties regarding informed consent and retraction material for dental hygienists and licensed dental assistants; and record keeping. The proposed rules also include amendments that are "housekeeping" in nature and do not make any substantive changes to requirements for licensure or renewal.

Please check the Board's website at www.dentalboard.state.mn.us for the

entire text of these proposed rules and to review the Statement of Need and Reasonableness (SONAR) for these proposed rules.

7. On January 13, 2014, the Board's Request for Comments was published in the State Register, requesting that all comments be submitted to the Board by March 14, 2014. All comments received by the Board regarding the proposed rules shall be reviewed and any suggested changes shall be considered by the Board.
8. On January 29, 2014, the Board sent a broadcast electronic mailing to nearly 10,000 licensees including, dentists, dental therapists, dental hygienists, and licensed dental assistants, containing the following information:

MINNESOTA BOARD OF DENTISTRY – NEW PROPOSED RULES

RE: Proposed Amendments to Permanent Rules Relating to Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, Minnesota Rules 3100.0100, 3100.0300, 3100.1100, 3100.1150, 3100.1160, 3100.1200, 3100.1300, 3100.1400, 3100.1850, 3100.3300, 3100.3400, 3100.3500, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8500, 3100.8700, and 3100.9600

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Please check the Board's website at www.dentalboard.state.mn.us for the entire text of these proposed rules and to review the Statement of Need and Reasonableness (SONAR) for these proposed rules.

9. By March 14, 2014, the end of the 60-day Request for Comments period, the Board had only received the following two comments regarding its proposed rules.
 - a. On February 11, 2014, the Board received correspondence from Ralph Shenefelt of the Health and Safety Institute ("HSI"). The HSI opposed the Board's proposed rules where certain language had been eliminated regarding an "equivalent course" for CPR and ACLS. The HSI also suggested specifically naming, the American Safety & Health Institute, a division of HSI, in the Board's proposed rules concerning CPR and ACLS.

After reviewing the correspondence from the HSI, the Board continues to stand by its original conclusion that it is too difficult and onerous for the Board to review each alternative course, and ultimately equivalence cannot be determined by the Board. The Board now realizes

that organizations offering CPR and ACLS courses are completely unregulated by any federal, state, or local agency, which means there is no national accreditation process to vouch for the legitimacy of any organization. Based upon this information, the Board finds that it lacks the ability without having any regulated resources or guidelines to make any type of determination of equivalence for these alternative courses, and that it is in the public's interest to rely solely on those organizations that have established the gold standard in emergency response training, the American Heart Association and the American Red Cross.

b. On March 10, 2014, the Board received correspondence from Cynthia Durley of the Dental Assisting National Board, Inc. ("DANB"). The DANB wanted to inform the Board about a current examination, the Isolation Exam, which is offered through DANB consisting of isolation procedures, including gingival retraction.

After reviewing DANB's correspondence, the Board acknowledges that its proposed rules include the new duty of placing nonsurgical retraction material for gingival displacement for dental hygienists and licensed dental assistants. Additionally, the Board's proposed rules for this new duty require that the licensee successfully complete a nonsurgical retraction material for gingival displacement course at a dental, dental hygiene, or dental assisting school accredited by the Commission on Dental Accreditation. Therefore, DANB's Isolation Exam will not be utilized by the Board at this time.

10. On August 8, 2014, the Board posted a copy of its proposed rules dated April 22, 2014 (latest version) and a final copy of its SONAR dated August 8, 2014, on the Board's website making this information accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general public.
11. Prior to publication of the Dual Notice in the State Register, the Board will send by electronic mail a copy of the Dual Notice of Intent to Adopt Rules, the Proposed Rules, and the Statement of Need and Reasonableness to the representatives of the Minnesota Dental Association, the Minnesota Dental Hygienists' Association, the Minnesota Dental Hygiene Educators Association, the Minnesota Dental Assistants Association, and the Minnesota Educators of Dental Assistants.

The Board of Dentistry believes that this Additional Notice Plan complies with the statute because the notification pathways described above provide the principal representatives of the affected parties and affected parties through electronic mailings with ample notice and opportunity to provide suggestions, proposals, and comments regarding the proposed rule amendments.

The listed persons and organizations receiving the Additional Notice together represent the vast majority of persons interested in these rules. They represent several classes and a number of different positions in the spectrum of the dental workforce, which is the central purpose of the rulemaking process.

Notice Plan

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

1. According to Minnesota Statutes, section 14.14, subdivision 1a, 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. This mailing shall be accomplished by sending an electronic copy via e-mail to all persons on the list.

2. According to Minnesota Statutes, section 14.116, a copy of the Dual Notice, proposed rules, and this Statement of Need and Reasonableness shall be mailed to:

a. The committee members of the Legislature with jurisdiction over the subject matter of the proposed rules. The following is a possible list of these Legislative Committees:

1) House: Health and Human Services Policy Committee Chair and Lead; and Health and Human Services Finance Committee Chair and Lead; and

2) Senate: Health and Human Services Committee Chair and Ranking Minority Member.

b. The members of the Legislative Coordinating Commission.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board of Dentistry will consult with the office of Minnesota Management and Budget ("MMB"). We will do this by sending MMB copies of the same documents that we send to the Governor's Office for review and approval on or about 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.

Specifically, the Board will send copies of the required documents to Susan Melchionne, the Board's Executive Budget Officer (EBO), at MMB and later provide Ms. Melchionne's response to the OAH/ALJ.

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 to 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. Teri Youngdahl, L.D.A., Board Member
2. Joan Sheppard, D.D.S., Board Member
3. Paul Walker, D.D.S., Board Member
4. Nancy Kearns, D.H., Board Member
5. Neal Benjamin, D.D.S., Board Member
6. David Gesko, D.D.S., Board Member
7. Counsel from the Attorney General's Office
8. 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 DEFINITIONS.

Subpart 2a. **Advanced cardiac life support or ACLS.** In the last sentence of this definition, the Board deleted "the American Red Cross, or an equivalent course." The Board has learned that the American Red Cross does not offer an advanced cardiac life support course. Therefore, the Board decided to delete this organization from its definition. Additionally, for the language about an equivalent course, the Board has conducted public meetings through the Professional Development Committee and the Executive Committee about the difficulty of determining equivalence of an ACLS course. It was concluded that it is too difficult and onerous for the Board to review each alternative course, and ultimately equivalence cannot be determined by the Board. Additionally, the inclusion of an option for an equivalent course has created some degree of confusion as to what the Board would accept, sometimes resulting in applicants or licensees taking an unacceptable course and finding that they must retake a course and may be out of compliance. Some courses are offered strictly online with no hands-on component, while others vary considerably from class to class. The focus on a single, nationally recognized standard ensures clarity and consistency. Thus, the Board considers these changes to be necessary and reasonable.

Subpart 8. **Commission on accreditation.** This subpart has been repealed due to the fact that this organization stands alone as the Commission on Dental Accreditation and shall not be associated as an organization under the corporate business structure of the American Dental Association. With this repeal, a minor editorial change will be made by adding “Dental” to various other parts or subparts throughout Minnesota Rules chapter 3100 to properly identify the Commission on Dental Accreditation, and to ensure that there is consistency throughout Board rules and statues. Thus, the Board considers these changes to be necessary and reasonable.

Subpart 9a. **CPR.** To this subpart added the term hands-on and deleted “or an equivalent course” within the existing language of a CPR course following a public meeting through the Professional Development Committee. It was determined that requiring a hands-on component to a CPR course is mandatory to gain the experience and exposure to actually performing the act of CPR on a manikin in a classroom setting and where a professional trainer can observe and critique the actions of a student performing CPR. CPR courses that do not have a hands-on component are unacceptable as they do not prepare a dental professional adequately to respond to a potential emergency. As for the equivalent course, the Board concluded that it is too difficult and onerous for the Board to review each alternative course, and ultimately equivalence cannot be determined by the Board. Additionally, the inclusion of an option for an equivalent course has created some degree of confusion as to what the Board would accept, sometimes resulting in applicants or licensees taking an unacceptable course and finding that they must retake a course and may be out of compliance. Some courses are offered strictly online with no hands-on component, while others vary considerably from class to class. The focus on a nationally recognized standard offered through the American Heart Association or the American Red Cross provides ready availability, and ensures clarity and consistency. Thus, the Board considers these changes to be necessary and reasonable.

Subpart 15c. **Pediatric advanced life support or PALS.** In this subpart the same language “or an equivalent course” has been deleted for the same reasons indicated above. The Board concluded that it is too difficult and onerous for the Board to review each alternative course, and ultimately equivalence cannot be determined by the Board. Thus, the Board considers this change to be necessary and reasonable.

3100.0300 MEETINGS.

Subpart 4. **Parliamentary procedure.** In this subpart, the reference to Sturgis has been deleted and replaced with the American Institute of Parliamentarians regarding meeting procedures. Following the death of the original author, Alice Sturgis, this book of rules of order had been revised by a committee of the American Institute of Parliamentarians and a newly renamed edition had been released in April 2012. Therefore, the Board considers this change to be necessary and reasonable.

3100.1850 REINSTATEMENT OF LICENSE.

Subpart 1. **Requirements.** In this subpart, some language has been deleted, the whole section reformatted, and new language added allowing the Board to review the requirements of this subpart and notify the applicant by letter as to whether the reinstatement of a license has been denied or granted by the Board and the process that follows. If the applicant cannot satisfy all of the requirements for reinstatement, the Board must have the option to deny the applicant's reinstatement of license due to non-compliance. The Board is responsible for licensing only qualified applicants as a matter of public protection. Without this change, the Board has found that they have no option other than to accept all applications for reinstatement. For this reason, the Board considers these changes to be necessary and reasonable.

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

Subpart 2. **General anesthesia or deep sedation; educational training requirements.**

Subpart 3. **Moderate sedation; educational training requirements.**

Subpart 2, Item A, Subitem (3) and Subpart 3, Item A, Subitem (2): Some existing language has been deleted and some added to specify the acceptable options available for advanced courses to the ACLS or PALS, as follows: ~~an appropriate dental sedation/anesthesia emergency management course such as the~~ ACLS or PALS course and maintain current ~~dental sedation/anesthesia emergency management~~ advanced certification thereafter. These changes are intended to provide specific options to dentists as to which courses meet acceptable standards of advanced training for the dentist providing sedation services. Additionally, the dentist must maintain current advanced certification thereafter with no lapsed periods between each certification. Patient safety is critical whenever sedation medications are being administered requiring that the dentist be trained to respond appropriately in an emergency situation. For these reasons, the Board considers these changes to be necessary and reasonable.

Subpart 5. **Notice to board.**

Subpart 5, Item B: In this item the same language "or an equivalent course" has been deleted for the same reason. The Board concluded that it is too difficult and onerous for the Board to review each alternative advanced course, and ultimately equivalence cannot be determined by the Board. The options remaining provide licensees with a standard that has been accepted nationally and is readily available to all licensees and applicants. Thus, the Board considers this change to be necessary and reasonable.

Subpart 5, Item C, Subitem (2) and Subpart 5, Item D, Subitem (2): Some existing language has been deleted and some added regarding maintaining consecutive and current CPR certification, as follows: ~~shall submit on the license renewal application or other form provided by the board a statement of the most recent course completed in~~ must attest to maintaining consecutive and current CPR certification at the time of each license renewal. These subitems have been updated

to reflect that the Board is now utilizing a computerized renewal system and the Board continues to expect all licensees to attest to having maintained consecutive and current CPR certification when renewing their license every two years. This means that there should be no lapse or gap in time between each CPR certificate obtained by the licensee. This change clarifies the Board's expectation regarding the CPR certificate and is not meant to be a new requirement for the licensee. Therefore, the Board considers this change to be necessary and reasonable.

Subpart 5, Item E: This entire item contains new language describing how the dental therapist must initially submit to the Board certain information on a form regarding nitrous oxide inhalation analgesia including their education and completing CPR. If the dental therapist graduated from an accredited institution in Minnesota prior to August 1, 2013, that dental therapist is required to file a nitrous oxide form with the Board. On the other hand, if the dental therapist graduated from an accredited institution in Minnesota after the date of August 1, 2013, that dental therapist is not required to file a nitrous oxide form with the Board. The purpose was to eliminate the submission of unnecessary paperwork to the Board, since nitrous oxide training has been incorporated into the curriculum of all applicable accredited institutions in Minnesota. However, a dental therapist who does not meet the specified criteria must submit their nitrous oxide information to the Board, if they have not already done so. For this reason, the Board considers this change to be necessary and reasonable.

Subpart 9a. Expiration or termination of general anesthesia or moderate sedation certificate; requirements.

Subpart 9a, Item A, Subitem (4) and Subpart 9a, Item B, Subitem (4): Within each of these subitems some existing language has been deleted, as follows: ~~an equivalent dental sedation/anesthesia emergency management course~~. The ACLS and PALS courses remain as the only Board-approved options for dentists who are seeking to complete advanced educational courses in life support. The reference to an equivalent course had to be deleted, since the Board concluded that it is too difficult and onerous for the Board to review each alternative course, ultimately equivalence cannot be determined by the Board, and the option of equivalence caused undue confusion amongst licensees. Patient safety is critical whenever sedation medications are being administered requiring that the dentist be trained to respond in an emergency situation appropriately according to an established and controlled standard. Thus, the Board considers this change to be necessary and reasonable.

3100.5100 PROFESSIONAL DEVELOPMENT.

Subpart 3. Professional development activities.

Subpart 3, Item A, Subitem (3): In this subitem the same language "equivalent to" has been deleted for the same reason. The Board concluded that it is too difficult and onerous for the Board to review each alternative CPR course, and ultimately equivalence cannot be determined by the Board. Additionally, the limitation to specific certification programs makes it very clear

to applicants and licensees what is acceptable to the Board. Thus, the Board considers this change to be necessary and reasonable.

Subpart 4. Acceptable documentation of professional development activities.

Subpart 4, Item B: In this item deleted “or certificate” and “or other equivalent organization” within the existing language regarding completing a CPR course. The reason for deleting “or certificate” is because the certificate sometimes lacks certain information regarding the name of the sponsor, the type of CPR course, and the renewal period. Alternatively, the CPR card validates that: the CPR course was sponsored by an acceptable organization; the course was a healthcare provider course; and the issue date with the recommended renewal date. Thus, a copy of the front and back of a CPR card is the only acceptable documentation as proof of completing the correct CPR course. Moreover, the certificate should still be maintained by the licensee to validate the number of credit hours for the CPR course. As for the equivalent organization, the Board concluded that it is too difficult and onerous for the Board to review each alternative organization, and ultimately equivalence cannot be determined by the Board. Thus, the Board considers these changes to be necessary and reasonable.

3100.5300 AUDIT PROCESS OF PORTFOLIO.

Subpart 3. Failure of an audit.

Subpart 3, Item A: In this item deleted and replaced the existing language, as follows: “. . . the appropriate board committee may ~~either~~ grant the licensee up to six months. . . in professional development compliance ~~or~~ and initiate disciplinary proceedings . . .” Through the Professional Development Committee, these changes were made to facilitate one or both resolutions of granting additional time *and* initiating disciplinary action when a licensee has failed their portfolio audit, instead of just one or the other. Accordingly, the resolution shall be determined on a case-by-case basis by the Board. Thus, the Board considers these changes to be necessary and reasonable.

Subpart 6. **Audit fee.** In this subpart, the word “consecutive” has been deleted regarding the failure of a professional development portfolio audit. After performing numerous audits, the Board has learned that a high number of licensees still continue to fail their audit, so by eliminating the word “consecutive” this will allow the Board to charge an audit fee after only two failures, instead of two consecutive failures. Unfortunately, the Board has seen that some licensees fail to recognize the importance of maintaining professional development throughout their careers, and disregard the rules that have been established to have them focus additional training on the practice areas that have been demonstrated to be the most problematic. The Board hopes to persuade these licensees to assume more professional responsibility, to be more organized with their portfolio, and to ask more questions to avoid careless mistakes. The Board considers this change to be necessary and reasonable.

3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.

Subpart 1. **Specialty areas.**

Subpart 1, Items A to I: In these items, various changes have been made to the existing language to properly update these specialty areas to correlate with dental terms that have evolved over time. The list of recognized specialty areas has also been organized alphabetically for ease of use. For these reasons, the Board considers these changes to be necessary and reasonable.

Subpart 2. ~~Postdoctoral course completion~~ **Specialty announcement.** In this subpart, several changes have been made to the existing language regarding specialty dentistry. These changes simply permit a dentist to promote their practice in one *or more* recognized specialty areas in dentistry. Without this change, the language limits qualified specialists to selecting a single area of specialty practice to promote and practice. Moreover, the latter part of this subpart has been reformatted using the same existing rules, except these organizations have been placed in a list, rather than narrative form. The Board considers these changes to be necessary and reasonable.

3100.8500 LICENSED DENTAL ASSISTANTS.

Subpart 1. **Duties under general supervision.**

Subpart 1, Item M: In this subpart, a new duty has been added, as follows: M. obtain informed consent, according to part 3100.9600, subpart 9, for treatments authorized by the supervising dentist pursuant to the licensed dental assistant's scope of practice. A licensed dental assistant may perform this new duty under general supervision. Through the Board's Policy Committee, a number of public meetings were held with all interested parties in attendance to thoroughly discuss and present scenarios regarding this new duty. All parties agreed to support adding this language as a new duty for the licensed dental assistant. It was acknowledged that having a licensed dental assistant obtain informed consent is worthwhile when her/his scope of treatment needs to be thoroughly explained to the patient in order to determine the willingness of the patient to participate in that treatment. It is every patient's right to possess knowledge that will allow shared decision making with the licensed dental assistant as well as an ethical duty to involve the patient in their own dental care. The recommendation for this change was brought by the Policy Committee to the full Board for additional public discussion, and was adopted by the Board. For these reasons, the Board considers this new duty to be necessary and reasonable.

Subpart 1b. **Duties under direct supervision.**

Subpart 1b, Item K: In this subpart, a new duty has been added, as follows: K. place nonsurgical retraction material for gingival displacement. Before placing nonsurgical retraction material, a licensed dental assistant must have successfully completed a course in nonsurgical retraction material for gingival displacement at a dental, dental hygiene, or dental assisting school accredited by the Commission on Dental Accreditation. A licensed dental assistant may perform this new duty under direct supervision after either: completing an acceptable continuing education course on placing nonsurgical retraction material for gingival displacement; or

completing an accredited dental assisting program that has incorporated this new duty, place nonsurgical retraction material for gingival displacement, into the curriculum of the program.

After several meetings of the Allied Dental Education Committee and hearing testimony from all interested parties about this new duty, it was agreed upon to support adding this new duty—place nonsurgical retraction material for gingival displacement—for the licensed dental assistant. During these meetings, the following information was collected as to explain the reason for selecting each term used for this new duty, as follows: use of the word “nonsurgical” to disallow any cautery procedures; use of the words “retraction material” to allow for cord and new technology that may not include a cord; and use of the words “gingival displacement” to describe the desired outcome before a final impression is obtained by the dentist. As a procedure under direct supervision, the dentist maintains responsibility for directing the procedure and checking the results prior to proceeding.

After receiving the appropriate education for this duty, the licensed dental assistant may place nonsurgical retraction material on patients, which is also an allowable duty in forty-five other states in the United States. The delegation of a new duty always serves to enhance the professional recognition and growth of the licensed dental assistant leading to a common mission of providing quality care to patients. With the licensed dental assistant performing more delegated duties, the dentist can improve efficiency within the dental practice. At this time, there are no known reported adverse events or complaints that would substantiate patient safety concerns for this new duty. For these reasons, the Board considers this new duty to be necessary and reasonable.

3100.8700 DENTAL HYGIENISTS.

Subpart 1. Duties under general supervision.

Subpart 1, Item L: In this subpart, a new duty has been added, as follows: L. obtain informed consent, according to part 3100.9600, subpart 9, for treatments authorized by the supervising dentist pursuant to the dental hygienist’s scope of practice. A dental hygienist may perform this new duty under general supervision. Through the Board’s Policy Committee, a number of public meetings were held with all interested parties in attendance to thoroughly discuss and present scenarios regarding this new duty. All parties agreed to support adding this language as a new duty for the dental hygienist. It was acknowledged that having a dental hygienist obtain informed consent is worthwhile when her/his scope of treatment needs to be thoroughly explained to the patient in order to determine the willingness of the patient to participate in that treatment. It is every patient’s right to possess knowledge that will allow shared decision making with the dental hygienist as well as an ethical duty to involve the patient in their own dental care. The recommendation for this change was brought by the Policy Committee to the full Board for additional public discussion, and was adopted by the Board. For these reasons, the Board considers this new duty to be necessary and reasonable.

Subpart 2a. **Duties under direct supervision.**

Subpart 2a, Item I: In this subpart, a new duty has been added, as follows: I. place nonsurgical retraction material for gingival displacement. Before placing nonsurgical retraction material, a dental hygienist must have successfully completed a course in nonsurgical retraction material for gingival displacement at a dental, dental hygiene, or dental assisting school accredited by the Commission on Dental Accreditation. A dental hygienist may perform this new duty under direct supervision after either: completing an acceptable continuing education course on placing nonsurgical retraction material for gingival displacement; or completing an accredited dental hygiene program that has incorporated this new duty, place nonsurgical retraction material for gingival displacement, into the curriculum of the program.

After several meetings of the Allied Dental Education Committee and hearing testimony from all interested parties about this new duty, it was agreed upon to support adding this new duty—place nonsurgical retraction material for gingival displacement—for the dental hygienist. During these meetings, the following information was collected as to explain the reason for selecting each term used for this new duty, as follows: use of the word “nonsurgical” to disallow any cautery procedures; use of the words “retraction material” to allow for cord and new technology that may not include a cord; and use of the words “gingival displacement” to describe the desired outcome before a final impression is obtained by the dentist. As a procedure under direct supervision, the dentist maintains responsibility for directing the procedure and checking the results prior to proceeding.

After receiving the appropriate education for this duty, the dental hygienist may place nonsurgical retraction material on patients. The delegation of a new duty always serves to enhance the professional recognition and growth of the dental hygienist leading to a common mission of providing quality care to patients. With the dental hygienist performing more delegated duties, the dentist can improve efficiency within the dental practice. At this time, there are no known reported adverse events or complaints that would substantiate patient safety concerns for this new duty. For these reasons, the Board considers this new duty to be necessary and reasonable.

3100.9600 RECORD KEEPING.

Subpart 9. **Informed consent.**

Subpart 9, Item A: In this item, some new language has been added, as follows: A. the dentist, advanced dental therapist, ~~or dental therapist,~~ dental hygienist, or licensed dental assistant discussed with the patient the treatment options and the prognosis, benefits, and risks of each treatment that is within the scope of practice of the respective licensee. These changes are directly connected to the aforementioned new duty regarding informed consent for licensed dental assistants in Minnesota Rules 3100.8500, subpart 1, item M, and for dental hygienists in Minnesota Rules 3100.8700, subpart 1, item L.

Through the Policy Committee, a number of public meetings were held with all interested parties in attendance to thoroughly discuss and present scenarios regarding this new language. All parties agreed to support adding this new language to include the dental hygienist and licensed dental assistant. It was acknowledged that having a dental hygienist or licensed dental assistant obtain informed consent is worthwhile when her/his scope of treatment needs to be thoroughly explained to the patient in order to determine the willingness of the patient to participate in that treatment. It is every patient's right to possess knowledge that will allow shared decision making with the dental hygienist or licensed dental assistant as well as an ethical duty to involve the patient in their own dental care. The recommendation for the changes to this rule was brought by the Policy Committee to the full Board, and the proposed change was adopted by the Board. For these reasons, the Board considers this new language to be necessary and reasonable.

For parts 3100.1100 to 3100.8700 indicated below, a minor editorial change has been made by adding Dental to the Commission on Accreditation due to the repeal of Minnesota Rules 3100.0100, subpart 8, and to properly reflect the name of the organization as the Commission on Dental Accreditation. The Board considers these changes to be necessary and reasonable.

3100.1100 APPLICATIONS FOR LICENSE TO PRACTICE DENTISTRY.

- Subpart 1, Item B.

3100.1150 LICENSE TO PRACTICE DENTISTRY AS A FACULTY DENTIST.

- Subpart 1, Item B, Subitem (3), and Subpart 1, Item C.

3100.1160 LICENSE TO PRACTICE DENTISTRY AS A RESIDENT DENTIST.

- Subpart 1, Item B, Subitem (4), and Subpart 2, Items A and B.

3100.1200 APPLICATION FOR LICENSE TO PRACTICE DENTAL HYGIENE.

- Item D.

3100.1300 APPLICATION FOR LICENSE TO PRACTICE DENTAL ASSISTING.

- Item B.

3100.1400 APPLICATION FOR LICENSURE BY CREDENTIALS.

- Item B.

3100.3300 EXAMINATION OF DENTISTS.

- Subpart 4a.

3100.3400 EXAMINATION OF DENTAL HYGIENISTS.

- Subpart 3a.

3100.3500 EXAMINATION OF LICENSED DENTAL ASSISTANTS.

- Subpart 2a.

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

- Subpart 2, Item A, Subitem (1).
- Subpart 4, Items B and E.
- Subpart 5, Items C and D.

3100.8500 LICENSED DENTAL ASSISTANTS.

- Subpart 1a, Item L.
- Subpart 1b, Item B.

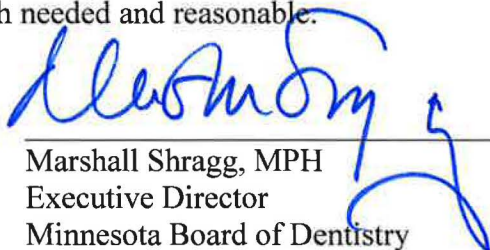
3100.8700 DENTAL HYGIENISTS.

- Subpart 1, Item J.
- Subpart 2a, Item E.

CONCLUSION

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

Dated: August 9TH 2014



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