

**OFFICIAL RULEMAKING RECORD**  
**MINNESOTA BOARD OF DENTISTRY**  
**ADVANCED DENTAL THERAPISTS/DENTAL THERAPISTS RULES, CHAPTER 3100**  
**DECEMBER 2010 TO JANUARY 2012**  
**NOTICE OF ADOPTION PUBLISHED: DECEMBER 27, 2011**  
**EFFECTIVE DATE: JANUARY 4, 2012**

Under Minnesota Statutes, section 14.365, the Official Rulemaking Record contains:  
*[Documents are located within or linked to the bolded designated file number.]*

- (1) Copies of all publications in the State Register pertaining to the rules. State Register publications include:
  - a. Request for Comments dated December 13, 2010 (35 SR 893). **[File #5]**
  - b. Dual Notice: Notice of Intent to Adopt Rules dated June 6, 2011 (35 SR 1907), along with proposed rules dated April 18, 2011. **[File #13]**
  - c. Notice of Adoption dated December 27, 2011 (36 SR 738). **[File #34]**
- (2) All written petitions, requests, submissions, or comments received by the Board or the Administrative Law Judge after publication of the Notice of Intent to Adopt Rules in the State Register pertaining to the rules.

The Board received a total of 39 letters about these rules. Thirty-eight (38) of these letters requested a hearing. **[File #18]**

- (3) The Statement of Need and Reasonableness (SONAR) dated December 8, 2010. **[File #8b]**
- (4) Rules Hearing.

OAH Docket # 8-0902-22075-1

On August 5, 2011 at 9:00 am, the Board held its rules hearing before Administrative Law Judge Eric L. Lipman. The Exhibit Binder includes an Exhibit List, Exhibits A through K-2 (See paragraph (8) below), and Exhibits L, M, N, and O. **[File #20]**

The recording of the hearing is stored on a disc as part of the Official Record. **[File #21]**

On August 25, 2011, the Board sent its Preliminary Response Letter to Comments and Hearing Testimony to Judge Lipman. **[File #22]**

On September 1, 2011, the Board sent its Final Response/Rebuttal Letter to Comments to Judge Lipman. **[File #23]**

(5) The report of the Administrative Law Judge.

The Official Record contains the report of the Administrative Law Judge (Eric L. Lipman) dated October 3, 2011, and the report of the Chief Administrative Law Judge (Raymond Krause) dated October 11, 2011. **[File #25]**

The Administrative Law Judge recommended that the Board's proposed amended rules be adopted, except for one defective part in Minn. R. 3100.1170, subp. 2(C), as described on page 13 of the report.

(6) The rules in the form last submitted to the Administrative Law Judge under Minnesota Statutes, sections 14.14 to 14.20.

The rules as adopted, dated October 19, 2011, were last submitted to the Administrative Law Judge under Minnesota Statutes, sections 14.14 to 14.20. There is a copy of the adopted rules, dated October 19, 2011, in the file that contains: (a) the Revisor's approval for filing with the Secretary of State; (b) the Office of Administrative Hearing's stamp with the Administrative Law Judge's signature indicating approval of the rules; and (c) the Secretary of State's stamp indicating filing with that office. **[File #31]**

Another file contains the Notice of Adoption dated December 27, 2011, and a stripped version of the rules dated December 27, 2011. **[File #34]**

(7) The Administrative Law Judge's written statement of required modifications and of approval or disapproval by the Chief Administrative Law Judge.

The Administrative Law Judge's written statement of required modifications is dated October 3, 2011. The Chief Administrative Law Judge's written approval of the Report of the Administrative Law Judge is dated October 11, 2011. **[File #25]**

After the Board made the Judge's suggested amendment to Minn. R. 3100.1170, subp. 2(C), the Board submitted and received the Chief Administrative Law Judge's written Order dated November 10, 2011, approving the rules. **[File #29]**

(8) Any documents required by applicable rules of the Office of Administrative Hearings.

Documents required by OAH Rules part 1400.2220 to be included in the hearing record:

- A. Request for Comments published in the State Register; **[File #5]**
- B. Not enclosed - rulemaking petition(s);
- C. Proposed rules, including Revisor's approval, dated April 18, 2011; **[File #11]**
- D. Statement of Need and Reasonableness; **[File #8b]**
- E. Certificate and Letter - Legislative Reference Library; **[File#15]**
- F. Dual Notice of Hearing - State Register; **[File #13]**

- G. Certificate of Mailing the Dual Notice and Accuracy of Rulemaking Mailing List; **[File #14a]**
- H. Certificate of Additional Notice; **[File #14b]**
- I. Written Comments and Requests for Hearing received by Board; **[File #18]**
- J. Not enclosed: authorization to omit proposed rules text from Dual Notice in State Register;
- K-1. Notice to Legislators – Certificate and Letter; and **[File #16]**
- K-2. Consultation with MMB – Certificate, Letter, and Response. **[File #9b]**

(9) The Board's Order Adopting Rules.

The Board's Executive Director signed the Order Adopting Rules on November 2, 2011. **[File #28]**

(10) The Revisor's certificate approving the form of the rules.

The Revisor's approval of the form of the rules is contained on the November 23, 2010 **[File #8a]**, April 18, 2011 **[File #11]**, and October 19, 2011 **[File #30]**, rules drafts.

(11) Copy of the adopted rules as filed with the Secretary of State.

The adopted rules, dated October 19, 2011, were filed with the Secretary of State on or about November 21, 2011. **[File #31]**

In addition to documents required under Minnesota Statutes, section 14.365, the Official Rulemaking Record also contains documents to show compliance with rulemaking requirements and other important documents:

(12) Copy of the rulemaking outline/checklist for this rulemaking. **[File #38]**

(13) Governor's Office Review of Rules.

- a. Preliminary Proposal Form; **[File #2]**
- b. Proposed Rule and SONAR Form; and **[File #9a]**
- c. Final Rule Form. **[File #27]**

(14) Notice to Individuals Who Requested a Hearing – Certificate. **[File #19]**

(15) Governor's Veto of Adopted Rules.

On December 14, 2011, the Governor's office sent correspondence to the Board about not vetoing the Board's adopted rules. **[File #33]**

# 2010 Administrative Rule Preliminary Proposal Form

Administrative Rule Tracking #: \_\_\_\_\_  
(To be assigned by the Assistant Director)

Submitting Agency: Minnesota Board of Dentistry Date: November 17, 2010

Rule Contact: Kathy T. Johnson

E-mail Address: kathy.t.johnson@state.mn.us Phone #: 612-548-2134

Type of Rule (must be one of the following):

Exempt       Expedited       Permanent

Title: (Short descriptive title)	Proposed Amendments to Rules Governing Advanced Dental Therapists and Dental Therapists
Chapter Number(s):	Minnesota Rules Chapter 3100
Supporters, opponents and possible controversies:	Supporters: Board members, statewide dental organizations and associations, and individual licensees. Opponents: Unknown. Controversies: Unknown.
Agency impact:	The Board needs to include the advanced dental therapist and dental therapist into its existing rules for other licensees. Additionally, the Board along with its staff will be administratively and with proper authority handling all licensure and compliance issues with advanced dental therapists and dental therapists.
If Exempt or Expedited rule process:	Not applicable.
Describe the need for the rule and provide background information:	Based upon the new statutes (Minn. Stat. sections 150A.06, 150A.105, and 150A.106) relating to the advanced dental therapist and dental therapist instituted by the legislature last session, the Board is proposing rules that further regulate the advanced dental therapist and dental therapist in its existing rules for other licensees in the following areas: licensure requirements, reinstatement requirements, examination conduct, nitrous oxide administration, disciplinary action, and professional development requirements. The proposed rules provide additional regulations that do not contradict the provisions of the statutes.
Rulemaking authority and relevant statutes:	Minnesota Statutes, section 150A.04, subdivision 5, authorizes the board to adopt rules to carry out and make effective the provisions and purposes of sections 150A.01 to 150A.12, in accordance with Chapter 14.

Fiscal Impact:  Yes       No       Undetermined

      NOVEMBER 17<sup>th</sup>, 2010  
Executive Director's Signature      Date

\*\*\* THIS SECTION TO BE COMPLETED BY THE GOVERNOR'S OFFICE\*\*\*

I have reviewed the above information and approved the concept of this administrative rule.

\_\_\_\_\_  
Governor's Policy Advisor      Date

**Department of Commerce****Office of Energy Security****REQUEST FOR COMMENTS on Possible Amendment to Rules Governing Residential Thermal Insulation Standards, *Minnesota Rules* Part 7640.0120 and Part 7640.0130**

**Subject of Rules.** The Minnesota Department of Commerce requests comments on its possible amendment to rules governing residential thermal insulation standards. The department is considering rule amendments to 1) change ASTM standards referenced throughout Parts 7640.0120 and 7640.0130 to the most recent versions, 2) change references relating to acceptance criteria for foam plastic thermal insulation products published by the International Code Council and adopted by reference by Part 7640.0130, and 3) amend two definitions in part 7640.0120 to be consistent with the two aforementioned considered changes.

**Persons Affected.** The amendment to the rules would likely affect manufacturers, wholesalers and installers of residential thermal insulation.

**Statutory Authority.** *Minnesota Statutes*, sections 325F.20, subdivision 1, and 325F.21, subdivisions 1 and 2, require the commissioner of Commerce to establish standards for the product quality, safety, installation, and labeling of residential thermal insulation products.

**Public Comment.** Interested persons or groups may submit comments or information on this possible rule in writing or orally until further notice is published in the *State Register* that the Department intends to adopt or to withdraw the rules. The Department will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments. The department does not contemplate appointing an advisory committee to comment on the possible rule.

**Rules Drafts.** The department has prepared a draft of the possible rule amendment, which is available from the contact identified below.

**Agency Contact Person.** Written or oral comments, questions and requests for more information on this possible rule amendment should be addressed to: Bruce Nelson, Minnesota Department of Commerce, 85 - 7th Place E, Suite 500, St. Paul MN 55101-2198, **phone:** (651) 297-2313, **e-mail:** [bruce.nelson@state.mn.us](mailto:bruce.nelson@state.mn.us). TTY users may call the Department at (651) 297-3067.

**Alternative Format.** Upon request, this information can be made available in an alternative format, such as large print, Braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

**NOTE:** Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

**Minnesota Board of Dentistry****REQUEST FOR COMMENTS on Proposed Amendments to Permanent Rules Relating to Dental Therapists and Advanced Dental Therapists, *Minnesota Rules*, Chapter 3100**

**Subject of Rules.** The Minnesota Board of Dentistry requests comments on its proposed amendments to rules governing dental therapists and advanced dental therapists. 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.

## Official Notices

---

**Persons Affected.** The amendments to the rules would affect dental therapists and advanced dental therapists.

**Statutory Authority.** *Minnesota Statutes*, section 150A.04, subdivision 5, authorizes the Board to adopt rules to carry out and make effective the provisions and purposes of sections 150A.01 to 150A.12, in accordance with Chapter 14.

**Public Comment.** Interested persons or groups may submit comments or information to the Board's contact person listed below on these possible rules in writing until 4:30 p.m. on February 11, 2011. The contact person shall direct all comments to the Board's Executive Committee for review. Any open meetings held by the Board's Executive Committee will be properly announced to the public prior to the meeting.

**Rules Draft.** The Minnesota Board of Dentistry has prepared and posted a draft of the possible rule changes on the Board's official website. The website address is [www.dentalboard.state.mn.us](http://www.dentalboard.state.mn.us). Persons interested in a paper copy of the draft of rule changes should contact the Board's contact person directly.

**Board Contact Person.** Written comments, questions, or requests to receive a draft of the rules and requests for more information on these possible rules should be directed to: Kathy Johnson at Minnesota Board of Dentistry, University Park Plaza, 2829 University Avenue SE, Suite 450, Minneapolis, Minnesota 55414-3249, **phone:** (612) 548-2134 or (888) 240-4762 (outside metro), **fax:** (612) 617-2260, or directed by **e-mail:** [kathy.l.johnson@state.mn.us](mailto:kathy.l.johnson@state.mn.us). Minnesota Relay Service for hearing impaired: 1-800-627-3529.

**Alternative Format.** Upon request, this information can be made available in an alternative format, such as large print, Braille, or audio. To make such a request, please contact the Board contact person at the address or telephone number listed above.

**NOTE:** Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the Administrative Law Judge if and when a proceeding to adopt rules is started. The Board is required to submit to the Judge only those written comments received in response to the rules after they are proposed. If you submit comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Dated: December 6, 2010

Marshall Shragg, Executive Director  
Minnesota Board of Dentistry

## Minnesota Department of Human Services (DHS) Aging and Adult Services Division and Health Care Operations Unit Notice of Listening Session on PACE (Program for All-Inclusive Care of the Elderly) January 13, 2011

The Aging and Adult Services and Health Care Management Divisions Minnesota of Department of Human Services will hold a listening session on the development of the Program for All-Inclusive Care of the Elderly (PACE) in Minnesota on Thursday, January 13, 2011, from 10:00 am to 12:00 pm. This listening session will be held via video conference.

The purpose of this listening session is to broadly communicate information specific to the development of the Program for All-Inclusive Care of the Elderly (PACE) in Minnesota. Session presenters will include Shawn Bloom, CEO, National PACE Association, and from the Minnesota Department of Human Services Pam Parker, Director, Health Care Operations, and Rolf Hage, Director, Resource Development, Aging and Adult Services.

Individuals interested in participating in this listening session should register via the Aging and Adult Services Division Online Video Conference Registration at: <http://agingtraining.dhs.state.mn.us/>.

1.1 **Minnesota Board of Dentistry**

1.2 **Proposed Permanent Rules Relating to Advanced Dental Therapists and Dental**  
1.3 **Therapists**

1.4 **3100.0100 DEFINITIONS.**

1.5 [For text of subps 1 to 4, see M.R.]

1.6 Subp. 5. **Allied dental personnel.** "Allied dental personnel" means ~~a~~ an advanced  
1.7 dental therapist, dental therapist, dental hygienist, licensed dental assistant, dental assistant  
1.8 with a limited-license permit, assistant without a license or permit, and dental technician.

1.9 [For text of subps 5a to 9b, see M.R.]

1.10 Subp. 9c. **Dental assistant with a limited-license permit.** "Dental assistant with  
1.11 a limited-license permit" means a person holding a limited-license permit as a dental  
1.12 assistant under part 3100.8500, subpart 3.

1.13 Subp. ~~9e~~ 9d. **Dental health care personnel or DHCP.** "Dental health care  
1.14 personnel" or "DHCP" means individuals who work in a dental practice who may be  
1.15 exposed to body fluids such as blood or saliva.

1.16 Subp. ~~9d~~ 9e. **Dental hygienist.** "Dental hygienist" means a person holding a license  
1.17 as a dental hygienist issued by the board pursuant to the act.

1.18 [For text of subps 10 and 11, see M.R.]

1.19 Subp. 11a. **Elective activities.** "Elective activities" refers to those activities directly  
1.20 related to, or supportive of, the practice of dentistry, dental therapy, dental hygiene, or  
1.21 dental assisting.

1.22 [For text of subps 11b to 12e, see M.R.]

1.23 Subp. 13. **Licensee.** "Licensee" means a dentist, dental therapist, dental hygienist,  
1.24 licensed dental assistant, or dental assistant with a limited-license permit.

2.1 [For text of subps 13a to 22, see M.R.]

2.2 **3100.1170 LICENSE TO PRACTICE AS A RESIDENT DENTAL THERAPIST**  
2.3 **OR RESIDENT DENTAL HYGIENIST.**

2.4 **Subpart 1. Licensure.**

2.5 A. In order to practice dental therapy or dental hygiene as directly related to  
2.6 a respective graduate or advanced educational clinical experience, an enrolled graduate  
2.7 student or a student of an advanced education program must be licensed by the board.

2.8 B. The board must license a person to practice dental therapy or dental hygiene  
2.9 as a resident dental therapist or resident dental hygienist if:

2.10 (1) the person completes and submits to the board an application furnished  
2.11 by the board;

2.12 (2) the person provides evidence of being an enrolled graduate student or a  
2.13 student of an advanced dental education program approved by the board; and

2.14 (3) the person has not engaged in behavior for which licensure may be  
2.15 suspended, revoked, limited, modified, or denied on any of the grounds specified in  
2.16 Minnesota Statutes, section 150A.08.

2.17 **Subp. 2. Termination of licensure.**

2.18 A. A person's license to practice dental therapy or dental hygiene as a resident  
2.19 dental therapist or resident dental hygienist is terminated when the person is no longer an  
2.20 enrolled graduate student or a student of an advanced dental education program approved  
2.21 by the board.

2.22 B. A person licensed to practice dental therapy or dental hygiene as a resident  
2.23 dental therapist or resident dental hygienist must inform the board when the licensee  
2.24 is no longer an enrolled graduate student or a student of an advanced dental education  
2.25 program approved by the board.

3.1 C. A person who fails to inform the board as required in item B is deemed to  
3.2 have committed fraud or deception within the meaning of Minnesota Statutes, section  
3.3 150A.08, subdivision 1, clause (1).

3.4 **3100.1700 TERMS AND RENEWAL OF LICENSE OR PERMIT; GENERAL.**

3.5 [For text of subps 1 to 1b, see M.R.]

3.6 Subp. 2. **Renewal applications.** ~~A dentist, dental hygienist, licensed dental~~  
3.7 ~~assistant, or dental assistant with a permit under part 3100.8500, subpart 3,~~ Each licensee  
3.8 shall submit an application for biennial renewal of a license or permit together with  
3.9 the necessary fee no later than the last day of the licensee's birth month which is the  
3.10 application deadline. An application for renewal is deemed timely if received by the board  
3.11 or postmarked no later than the last day of the licensee's birth month. The application  
3.12 form must provide a place for the renewal applicant's signature certifying compliance with  
3.13 the applicable professional development requirements including holding a current CPR  
3.14 certification and information including the applicant's office address or addresses, the  
3.15 license number, whether the licensee has been engaged in the active practice of dentistry  
3.16 during the two years preceding the period for which renewal is sought as a licensee,  
3.17 and if so, whether within or without the state, and any other information which may be  
3.18 reasonably requested by the board.

3.19 [For text of subps 3 to 5, see M.R.]

3.20 **3100.1850 REINSTATEMENT OF LICENSE.**

3.21 [For text of subps 1 to 2a, see M.R.]

3.22 Subp. 3. **Expiration or voluntary termination of 24 months or more.** An  
3.23 applicant whose license has expired according to part 3100.1700, subpart 3, or who  
3.24 voluntarily terminated the license 24 months or more previous to the application for  
3.25 reinstatement must:

- 4.1 A. comply with subpart 2a; and
- 4.2 B. submit either:
- 4.3 (1) evidence of having successfully completed part II of the national
- 4.4 board examination or the clinical examination in part 3100.1100, subpart 2, for dentists;
- 4.5 the examinations in Minnesota Statutes, section 150A.106, subdivision 1, clauses (2)
- 4.6 and (6), for advanced dental therapists; the clinical examination in Minnesota Statutes,
- 4.7 section 150A.06, subdivision 1d, for dental therapists; the national board examination or
- 4.8 the clinical examination in part 3100.1200, item C, for dental hygienists; and the two
- 4.9 examinations in part 3100.1300, item C, for licensed dental assistants. The examination
- 4.10 must have been completed within 24 months prior to the board's receipt of the application;
- 4.11 or
- 4.12 (2) evidence of having successfully completed applicable board-approved
- 4.13 coursework with minimal hour requirements directly relating to the practice of dentistry,
- 4.14 advanced dental therapy, dental therapy, dental hygiene, or dental assisting as indicated in
- 4.15 the reinstatement application. The board-approved coursework must have been completed
- 4.16 within 24 months prior to the board's receipt of the application. The coursework
- 4.17 completed under this subpart may not be used to fulfill any of the applicable professional
- 4.18 development requirements in part 3100.5100.

4.19 [For text of subps 4 and 5, see M.R.]

4.20 **3100.3100 CONDUCT OF EXAMINATIONS.**

4.21 This part and parts 3100.3300 to 3100.3500 govern the conduct of examinations and

4.22 must be strictly adhered to throughout each entire examination given to those applicants for

4.23 licensure as a dentist ~~or, dental therapist, dental hygienist, or as a licensed dental assistant~~

4.24 ~~and must be strictly adhered to throughout the entire examination,~~ or for certification as

4.25 an advanced dental therapist. An examinee who violates any of the applicable rules or

4.26 instructions may be declared by the board to have failed the examination.

5.1 [For text of items A to M, see M.R.]

5.2 **3100.3200 CLINICAL EXAMINATIONS.**

5.3 Every dentist, advanced dental therapist, dental therapist, and dental hygienist  
5.4 applicant shall give a demonstration of skill in those operations appropriate for the level  
5.5 of licensure or certification prescribed by the board. Licensed dental assistant applicants  
5.6 may also be examined for licensure. All operations shall be performed in the presence  
5.7 of a board member qualified for the particular examination being given or consultant  
5.8 appointed by the board for that purpose.

5.9 **3100.3350 EXAMINATION OF DENTAL THERAPISTS AND ADVANCED**  
5.10 **DENTAL THERAPISTS.**

5.11 Subpart 1. **Scope.** This part provides that the examination of applicants for a license  
5.12 to practice dental therapy and become certified to practice advanced dental therapy in this  
5.13 state shall be sufficiently thorough to test the fitness of the applicant to practice dental  
5.14 therapy or advanced dental therapy.

5.15 Subp. 2. **Clinical examination.** An applicant must pass a board-approved clinical  
5.16 examination designed to determine the applicant's clinical competency.

5.17 Subp. 3. **Additional examination content.** All applicants shall be examined for  
5.18 general knowledge of the provisions of this part and the rules of the board. Additional  
5.19 written theoretical examinations may be administered by the board.

5.20 Subp. 4. **Additional education for two failed clinical examinations.** If an applicant  
5.21 fails twice any part of the clinical examination required by Minnesota Statutes, section  
5.22 150A.06, subdivision 1d, for dental therapists, or Minnesota Statutes, section 150A.106,  
5.23 subdivision 1, for advanced dental therapists, the applicant may not retake the examination  
5.24 until the applicant successfully completes additional education provided by an institution  
5.25 approved by the board. The education must cover all of the subject areas failed by the  
5.26 applicant in the clinical examination. The applicant may retake the examination only

6.1 after the institution provides information to the board specifying the areas failed in  
6.2 the previous examinations and the instruction provided to address the areas failed, and  
6.3 certifies that the applicant has successfully completed the instruction. The applicant must  
6.4 take the additional instruction provided above each time the applicant fails the clinical  
6.5 examination twice.

6.6 Subp. 5. Examination for continued licensure. The board may administer any  
6.7 other examination it deems necessary to determine qualifications for continued licensure.

6.8 **3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,**  
6.9 **MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE**  
6.10 **INHALATION ANALGESIA.**

6.11 Subpart 1. **Prohibitions.** A dental therapist, dental hygienist, or licensed dental  
6.12 assistant may not administer general anesthesia, deep sedation, moderate sedation, or  
6.13 minimal sedation.

6.14 [For text of subps 2 and 3, see M.R.]

6.15 Subp. 4. **Nitrous oxide inhalation analgesia; educational training requirements.**  
6.16 A dentist may administer nitrous oxide inhalation analgesia only according to items A  
6.17 to D and subpart 5, items A and C. A dental therapist may administer nitrous oxide  
6.18 inhalation analgesia only according to items C to F. A dental hygienist may administer  
6.19 nitrous oxide inhalation analgesia only according to items C to F and subpart 5, item  
6.20 D. A licensed dental assistant may administer nitrous oxide inhalation analgesia only  
6.21 after a maximum dosage has been prescribed by a dentist for a specific patient, and it is  
6.22 administered according to items C to F and subpart 5, item D.

6.23 [For text of items A and B, see M.R.]

6.24 C. A dentist, dental therapist, dental hygienist, or licensed dental assistant must  
6.25 complete CPR training and maintain current CPR certification thereafter.

7.1 D. A dentist, dental therapist, dental hygienist, or licensed dental assistant must  
7.2 only use fail-safe anesthesia equipment capable of positive pressure respiration.

7.3 E. A dental therapist, dental hygienist, or licensed dental assistant may  
7.4 administer nitrous oxide inhalation analgesia only after satisfactorily completing a course  
7.5 on the administration of nitrous oxide inhalation analgesia from an institution accredited  
7.6 by the Commission on Accreditation, and submitting to the board original documentation  
7.7 from the institution of successful completion of the course. The course must be a  
7.8 minimum of 12 hours total comprised of didactic instruction, personally administering and  
7.9 managing at least three individual supervised cases of analgesia, and supervised clinical  
7.10 experience using fail-safe anesthesia equipment capable of positive pressure respiration.

7.11 F. A dental therapist, dental hygienist, or licensed dental assistant may  
7.12 administer nitrous oxide inhalation analgesia under the appropriate level of supervision  
7.13 by a dentist who is current with the requirements to administer nitrous oxide inhalation  
7.14 analgesia according to items A to D and subpart 5, items A to C.

7.15 [For text of subps 5 to 7, see M.R.]

7.16 Subp. 8. **Reporting of incidents required.** A dentist, dental therapist, dental  
7.17 hygienist, or licensed dental assistant must report to the board any incident that arises from  
7.18 the administration of nitrous oxide inhalation analgesia, general anesthesia, deep sedation,  
7.19 moderate sedation, local anesthesia, analgesia, or minimal sedation that results in:

7.20 [For text of item A, see M.R.]

7.21 B. minimal sedation unintentionally becoming moderate sedation, deep  
7.22 sedation, or general anesthesia when the licensee does not have a certificate for  
7.23 administering general anesthesia or moderate sedation described in subpart 9.

7.24 The report must be submitted to the board on forms provided by the board within ten  
7.25 business days of the incident by the dentist, dental therapist, dental hygienist, or licensed  
7.26 dental assistant, even when another licensed health care professional who, under contract

8.1 or employment with the dentist, was the actual person administering the analgesia or  
8.2 pharmacological or nonpharmacological method. A licensee who fails to comply with  
8.3 reporting of incidents is subject to disciplinary proceedings on grounds specified in parts  
8.4 3100.6100 and 3100.6200 and Minnesota Statutes, section 150A.08, subdivision 1.

8.5 [For text of subps 9 to 11, see M.R.]

8.6 **3100.5100 PROFESSIONAL DEVELOPMENT.**

8.7 **Subpart 1. Professional development cycles.**

8.8 A. The initial professional development cycle must coincide with the initial  
8.9 licensure period for each dentist, dental therapist, dental hygienist, or licensed dental  
8.10 assistant. The initial cycle for each licensee begins on the date of initial licensure and ends  
8.11 on the last day of the licensee's birth month in either an even-numbered or odd-numbered  
8.12 year that corresponds with the licensee's year of birth. The initial cycle varies in the  
8.13 number of months depending on the date of initial licensure for each licensee.

8.14 B. A biennial professional development cycle coincides with the biennial  
8.15 licensure periods for each dentist, dental therapist, dental hygienist, or licensed dental  
8.16 assistant. Each biennial renewal cycle consists of a 24-month period beginning on the first  
8.17 day of the month following expiration of the previous professional development cycle. An  
8.18 established biennial cycle continues to apply even if the license is revoked, suspended,  
8.19 conditioned, or not renewed for any reason for any length of time.

8.20 **Subp. 2. Professional development requirements.**

8.21 A. For the initial professional development requirements, each dentist,  
8.22 dental therapist, dental hygienist, and licensed dental assistant shall establish a portfolio  
8.23 to record, monitor, and retain acceptable documentation of fundamental and elective  
8.24 professional development activities, CPR certification, and self-assessments.

9.1 B. The minimum number of required hours of fundamental and elective  
9.2 professional development for each biennial cycle is 50 hours for dentists and dental  
9.3 therapists, and 25 hours for dental hygienists and licensed dental assistants. Each dentist,  
9.4 dental therapist, dental hygienist, and licensed dental assistant shall establish a portfolio  
9.5 to record, monitor, and retain acceptable documentation of fundamental and elective  
9.6 professional development activities, CPR certification, and self-assessments. Any  
9.7 professional development hours earned in excess of the required hours for a biennial cycle  
9.8 must not be carried forward to the subsequent biennial cycle. The requirements for the  
9.9 fundamental and elective professional development activities are described in subitems  
9.10 (1) and (2).

9.11 (1) Each dentist, dental therapist, dental hygienist, and licensed dental  
9.12 assistant must complete a minimum of 60 percent of the required biennial hours in  
9.13 fundamental activities directly related to the provision of clinical dental services as  
9.14 follows: a minimum of 30 hours for dentists and dental therapists, and a minimum of 15  
9.15 hours for dental hygienists and licensed dental assistants. A licensee may earn all required  
9.16 biennial hours in fundamental activities only.

9.17 (2) Dentists, dental therapists, dental hygienists, and licensed dental  
9.18 assistants are allowed a maximum of 40 percent of the required biennial hours in elective  
9.19 activities directly related to, or supportive of, the practice of dentistry, dental therapy,  
9.20 dental hygiene, or dental assisting as follows: a maximum of 20 hours for dentists and  
9.21 dental therapists, and a maximum of ten hours for dental hygienists and licensed dental  
9.22 assistants.

9.23 [For text of items C and D, see M.R.]

9.24 Subp. 3. **Professional development activities.** Professional development activities  
9.25 include, but are not limited to, continuing education, community services, publications,  
9.26 and career accomplishments throughout a professional's life. Professional development

10.1 activities are categorized as fundamental or elective activities as described in items  
10.2 A and B.

10.3 [For text of item A, see M.R.]

10.4 B. Elective activities for an initial or biennial cycle include, but are not limited  
10.5 to, the examples described in subitems (1) to (6):

10.6 [For text of subitem (1), see M.R.]

10.7 (2) volunteerism or community service directly relating to the practice  
10.8 of dentistry, dental therapy, dental hygiene, or dental assisting such as international or  
10.9 national mission work, voluntary clinic work, or dental health presentations to students  
10.10 or groups;

10.11 (3) professional reading of published articles or other forms of self-study  
10.12 directly relating to the practice of dentistry, dental therapy, dental hygiene, or dental  
10.13 assisting;

10.14 (4) scholarly activities include, but are not limited to:

10.15 (a) teaching a professional course directly related to the practice of  
10.16 dentistry, dental therapy, dental hygiene, or dental assisting; or presenting a continuing  
10.17 dental education program;

10.18 (b) presenting a table clinic directly related to the practice of dentistry,  
10.19 dental therapy, dental hygiene, or dental assisting;

10.20 [For text of units (c) to (e), see M.R.]

10.21 [For text of subitem (5), see M.R.]

10.22 (6) the board shall approve other additional elective activities if the board  
10.23 finds the contents of the activity to be directly related to, or supportive of, the practice of  
10.24 dentistry, dental therapy, dental hygiene, or dental assisting.

11.1 [For text of subps 4 and 5, see M.R.]

11.2 **3100.6100 STATUTORY GROUNDS FOR DISCIPLINE.**

11.3 In general terms, the grounds for suspension or revocation of licenses of dentists,  
11.4 dental therapists, dental hygienists, and licensed dental assistants are in Minnesota  
11.5 Statutes, section 150A.08, subdivision 1.

11.6 **3100.6200 CONDUCT UNBECOMING A LICENSEE.**

11.7 "Conduct unbecoming a person licensed to practice dentistry, dental therapy, dental  
11.8 hygiene, or dental assisting, or conduct contrary to the best interests of the public," as used  
11.9 in Minnesota Statutes, section 150A.08, subdivision 1, clause (6), shall include the act of a  
11.10 dentist, dental hygienist, licensed dental assistant, or applicant in:

11.11 [For text of items A to E, see M.R.]

11.12 F. dental therapists, hygienists, or licensed dental assistants performing services  
11.13 not authorized by the dentist under this chapter or Minnesota Statutes, chapter 150A;

11.14 [For text of items G to L, see M.R.]

11.15 **3100.6300 ADEQUATE SAFETY AND SANITARY CONDITIONS FOR DENTAL**  
11.16 **OFFICES.**

11.17 [For text of subps 1 to 13, see M.R.]

11.18 Subp. 14. **Hazardous waste.** ~~Dentists, dental hygienists, and licensed dental~~  
11.19 ~~assistants~~ Dental health care personnel shall comply with the requirements for hazardous  
11.20 waste in chapter 7045.

11.21 Subp. 15. **Ionizing radiation.** ~~Dentists, dental hygienists, and licensed dental~~  
11.22 ~~assistants~~ Each licensee shall comply with the requirements for ionizing radiation in  
11.23 chapter 4732.

11.24 **3100.8200 UNLAWFUL PRACTICE BY ALLIED DENTAL PERSONNEL.**

12.1 An assistant, hygienist, dental therapist, or dental technician who assists a dentist in  
12.2 practicing dentistry in any capacity other than as an employee or independent contractor,  
12.3 who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor,  
12.4 or director of a dental office as a guise or subterfuge to enable the assistant, hygienist,  
12.5 dental therapist, or dental technician to engage directly in acts defined by the act as the  
12.6 "practice of dentistry," or who performs dental services within the meaning of Minnesota  
12.7 Statutes, section 150A.11, subdivision 1, for members of the public, other than as an  
12.8 employee or independent contractor for an employing dentist, shall be deemed to be  
12.9 practicing dentistry without a license.

12.10 **3100.8300 RESPONSIBILITIES OF LICENSED DENTIST.**

12.11 Nothing in this chapter relating to the scope of services rendered by assistants,  
12.12 technicians, ~~or~~ hygienists, or dental therapists shall diminish or abrogate the professional  
12.13 and legal responsibilities of employing dentists to their patients, to their profession, and to  
12.14 the state of Minnesota. Dentists employing assistants, technicians, ~~or~~ hygienists, or dental  
12.15 therapists shall be fully responsible for all acts or omissions of these personnel performed  
12.16 or omitted if the acts or omissions are within the normal scope of their employment. Acts  
12.17 or omissions of personnel means whether or not omitted or committed by personnel at the  
12.18 instance and request of the employing dentist if the omission or commission is within the  
12.19 normal scope of their employment.

12.20 **3100.9600 RECORD KEEPING.**

12.21 [For text of subps 1 to 8, see M.R.]

12.22 Subp. 9. **Informed consent.** Dental records must include a notation that:

12.23 A. the dentist or dental therapist discussed with the patient the treatment options  
12.24 and the prognosis, benefits, and risks of each; and

12.25 B. the patient has consented to the treatment chosen.

13.1

[For text of subps 10 to 14, see M.R.]

# Office of the Revisor of Statutes

## Administrative Rules



**TITLE:** Proposed Permanent Rules Relating to Advanced Dental Therapists and Dental Therapists

**AGENCY:** Minnesota Board of Dentistry

**MINNESOTA RULES:** Chapter 3100

The attached rules are approved for  
publication in the State Register

*Sandy Glass-Sirany*

Sandy Glass-Sirany  
Senior Assistant Revisor

# **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.**

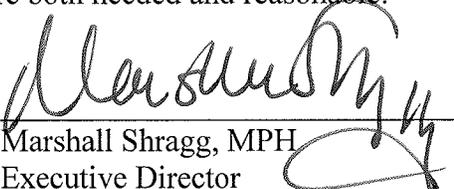
**Subpart 9. Informed consent.**

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

# 2010 Administrative Rule Proposed Rule and SONAR Form

Administrative Rule Tracking #: **AR592**

Submitting Agency:	<u>Minnesota Board of Dentistry</u>	Date:	<u>February 16, 2011</u>
Rule Contact:	<u>Kathy T. Johnson</u>		
E-mail Address:	<u>kathy.t.johnson@state.mn.us</u>	Phone #:	<u>612-548-2134</u>

Title: (Short descriptive title)	Proposed Amendments to Permanent Rules Relating to Dental Therapists and Advanced Dental Therapists.
Chapter number(s):	Minnesota Rules Chapter 3100
Comments received during Request for Comments:	Received one comment from Minnesota Dental Association – opposed to adding the dental therapist to Minn. R. 3100.9600, subp. 9, item A regarding informed consent.
Statement of Need and Reasonableness (SONAR) Executive Summary:	The Board's proposed rules regulate the dental therapist and advanced dental therapist in its existing rules for other licensees in the following areas: licensure requirements, reinstatement requirements, examination conduct, nitrous oxide administration, disciplinary action, and professional development requirements.
Supporters, opponents, and possible controversies:	<i>Supporters:</i> Board members, statewide dental organizations / associations, and individual licensees. <i>Opponents:</i> Minnesota Dental Association <i>Controversies:</i> Adding the dental therapist to Minn. R. 3100.9600, subp. 9, item A regarding informed consent.
List significant changes from preliminary proposal:	No significant changes from preliminary proposal.
Other:	Over the next few weeks, the Board will attempt an open discussion with representatives of the Minnesota Dental Association regarding their opposition to including the dental therapist within Minn. R. 3100.9600, subp. 9, item A regarding informed consent.

**2010 Administrative Rule  
Proposed Rule and SONAR Form**

Minnesota Board of Dentistry

February 16, 2011

Page 2

**Fiscal  
Impact:**

Yes

No

\*If the Fiscal Impact determination has changed, please explain above.\*

**AGENCY: Attach draft rules and SONAR.**



Executive Director's Signature



Date

\*\*\*THIS SECTION TO BE COMPLETED BY THE GOVERNOR'S OFFICE\*\*\*

I have reviewed the above information and have approved this administrative rule. The respective Agency may formally publish a Notice of Intent to Adopt Proposed Rules.

\_\_\_\_\_  
Governor's Policy Advisor

\_\_\_\_\_  
Date

## Kathy T Johnson

---

**From:** Wietgreffe, Brian (GOV) [Brian.Wietgreffe@state.mn.us]  
**Sent:** Monday, March 14, 2011 9:01 AM  
**To:** kathy.t.johnson@state.mn.us  
**Subject:** AR 592  
**Attachments:** 20110314084907377.pdf

Kathy,

The Governor's Office has reviewed and approves of the SONAR form for AR592 relating to Dental Therapists and Advanced Dental Therapists.

You may now proceed with the notice of intent to adopt rules.

Thank you,

Brian Wietgreffe  
Legislative Coordinator  
Office of the Governor  
651-201-3420

-----Original Message-----

**From:** [LACAScanner@state.mn.us](mailto:LACAScanner@state.mn.us) [mailto:[LACAScanner@state.mn.us](mailto:LACAScanner@state.mn.us)]  
**Sent:** Monday, March 14, 2011 8:49 AM  
**To:** Wietgreffe, Brian (GOV)  
**Subject:**

This E-mail was sent from "laca" (Aficio MP C3500).

Scan Date: 03.14.2011 08:49:07 (-0500)  
Queries to: [LACAScanner@state.mn.us](mailto:LACAScanner@state.mn.us)



# MINNESOTA BOARD OF DENTISTRY

University Park Plaza, 2829 University Avenue SE, Suite 450  
Minneapolis, MN 55414-3249 www.dentalboard.state.mn.us  
Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

---

## Minnesota Board of Dentistry

### CERTIFICATE OF CONSULTING WITH COMMISSIONER OF MINNESOTA MANAGEMENT AND BUDGET AS REQUIRED BY MINNESOTA STATUTES, SECTION 14.131

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

I certify that on March 14, 2011, at the City of Minneapolis, County of Hennepin, State of Minnesota, I consulted with the Commissioner of Minnesota Management and Budget in compliance with Minnesota Statutes, section 14.131, by mailing a letter with these enclosures:

1. The Governor's Office Proposed Rule and SONAR Form.
2. The November 23, 2010 Revisor's draft of the proposed rules
3. The December 8, 2010 copy of the SONAR.

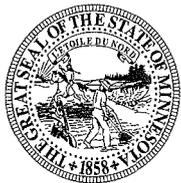
The mailing was done by placing a copy thereof in the State of Minnesota's central mail system for proper postage to be affixed and subsequently placed in the United States mail, properly enveloped and addressed to:

Lisa Barnidge  
Executive Budget Officer  
Minnesota Management and Budget  
658 Cedar St., Suite 400  
St. Paul, MN 55155

as their last known address.

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

Kathy T. Johnson  
Legal Analyst Liaison  
Minnesota Board of Dentistry



## MINNESOTA BOARD OF DENTISTRY

University Park Plaza, 2829 University Avenue SE, Suite 450  
Minneapolis, MN 55414-3249 www.dentalboard.state.mn.us  
Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

---

March 14, 2011

Lisa Barnidge  
Executive Budget Officer  
Minnesota Management and Budget  
658 Cedar St., Suite 400  
St. Paul, MN 55155

**Re: In The Matter of the Proposed Rules of the Minnesota Board Of Dentistry Relating to Dental Therapists and Advanced Dental Therapists; Governor's Tracking #AR 592**

Dear Ms. Barnidge:

Minnesota Statutes, section 14.131, requires that an agency engaged in rulemaking consult with the Commissioner of Minnesota Management and Budget, "to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government."

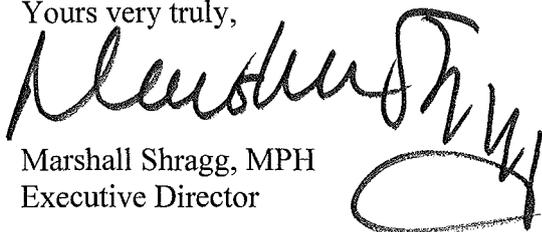
Enclosed for your review are copies of the following documents on proposed rules relating to dental therapists and advanced dental therapists.

1. The Governor's Office Proposed Rule and SONAR Form.
2. The November 23, 2010 Revisor's draft of the proposed rules.
3. The December 8, 2010 copy of the SONAR.

I also delivered copies of these documents to the Governor's Office on February 16, 2011, and received approval on March 11, 2011.

If you or any other representative of the Commissioner of Minnesota Management and Budget has questions about the proposed rule, please call me at (612) 548-2127. Please send any correspondence about this matter to me at the following address: Marshall Shragg, Minnesota Board of Dentistry, 2829 University Avenue SE, Suite 450, Minneapolis, MN 55414; or by e-mail: [marshall.shragg@state.mn.us](mailto:marshall.shragg@state.mn.us)

Yours very truly,

  
Marshall Shragg, MPH  
Executive Director



**Date:** September 30, 2011

**To:** Marshall Shragg, MPH  
Executive Director

**From:** Lisa Barnidge  
Executive Budget Officer

**Subject:** M.S. 14.131 Review of Proposed Rules of the Minnesota Board of Dentistry Relating to Dental Therapists and Advanced Dental Therapists

#### Background

The proposed rules of the Minnesota Board of Dentistry establish rules for regulating dental therapists and advanced dental therapists. The proposed rules create requirements for dental therapists and advanced dental therapists with regards to licensure, reinstatement, examination conduct, nitrous oxide administration, disciplinary action, and professional development for the Board's licensees. Pursuant to M.S. 14.131, the agency has asked the Commissioner of Minnesota Management and Budget to help evaluate the fiscal impacts and fiscal benefit these changes may have on local units of government.

#### Evaluation

On behalf of the Commissioner of Management and Budget, I have reviewed the proposed rule and related Statement of Need and Reasonableness (SONAR) to explore the potential impact these changes may have on local governments. My evaluation is summarized below:

The proposed rules establish requirements for the licensure as a dental therapist and certification as an advanced dental therapist. The proposed rules also include new language pertaining to the Board's responsibilities to approve dental therapy programs and review complaints and discipline dental therapists and advanced dental therapists. The rule changes pertain to individuals applying for licensure or certification and to individuals who already licensed or certified. Compliance with rules lies solely with the licensee and the Board.

In my opinion, the proposed changes will not impose a cost on local governments.

1.1 **Minnesota Board of Dentistry**  
1.2 **Proposed Permanent Rules Relating to Advanced Dental Therapists and Dental**  
1.3 **Therapists**

1.4 **3100.0100 DEFINITIONS.**

1.5 [For text of subps 1 to 4, see M.R.]

1.6 Subp. 5. **Allied dental personnel.** "Allied dental personnel" means ~~a~~ an advanced  
1.7 dental therapist, dental therapist, dental hygienist, licensed dental assistant, dental assistant  
1.8 with a limited-license permit, assistant without a license or permit, and dental technician.

1.9 [For text of subps 5a to 9b, see M.R.]

1.10 Subp. 9c. **Dental assistant with a limited-license permit.** "Dental assistant with  
1.11 a limited-license permit" means a person holding a limited-license permit as a dental  
1.12 assistant under part 3100.8500, subpart 3.

1.13 Subp. ~~9e~~ 9d. **Dental health care personnel or DHCP.** "Dental health care  
1.14 personnel" or "DHCP" means individuals who work in a dental practice who may be  
1.15 exposed to body fluids such as blood or saliva.

1.16 Subp. ~~9d~~ 9e. **Dental hygienist.** "Dental hygienist" means a person holding a license  
1.17 as a dental hygienist issued by the board pursuant to the act.

1.18 [For text of subps 10 and 11, see M.R.]

1.19 Subp. 11a. **Elective activities.** "Elective activities" refers to those activities directly  
1.20 related to, or supportive of, the practice of dentistry, dental therapy, dental hygiene, or  
1.21 dental assisting.

1.22 [For text of subps 11b to 12e, see M.R.]

1.23 Subp. 13. **Licensee.** "Licensee" means a dentist, dental therapist, dental hygienist,  
1.24 licensed dental assistant, or dental assistant with a limited-license permit.

2.1 [For text of subps 13a to 22, see M.R.]

2.2 **3100.1170 LICENSE TO PRACTICE AS A RESIDENT DENTAL THERAPIST**  
2.3 **OR RESIDENT DENTAL HYGIENIST.**

2.4 **Subpart 1. Licensure.**

2.5 A. In order to practice dental therapy or dental hygiene as directly related to  
2.6 a respective graduate or advanced educational clinical experience, an enrolled graduate  
2.7 student or a student of an advanced education program must be licensed by the board.

2.8 B. The board must license a person to practice dental therapy or dental hygiene  
2.9 as a resident dental therapist or resident dental hygienist if:

2.10 (1) the person completes and submits to the board an application furnished  
2.11 by the board;

2.12 (2) the person provides evidence of being an enrolled graduate student or a  
2.13 student of an advanced dental education program approved by the board; and

2.14 (3) the person has not engaged in behavior for which licensure may be  
2.15 suspended, revoked, limited, modified, or denied on any of the grounds specified in  
2.16 Minnesota Statutes, section 150A.08.

2.17 **Subp. 2. Termination of licensure.**

2.18 A. A person's license to practice dental therapy or dental hygiene as a resident  
2.19 dental therapist or resident dental hygienist is terminated when the person is no longer an  
2.20 enrolled graduate student or a student of an advanced dental education program approved  
2.21 by the board.

2.22 B. A person licensed to practice dental therapy or dental hygiene as a resident  
2.23 dental therapist or resident dental hygienist must inform the board when the licensee  
2.24 is no longer an enrolled graduate student or a student of an advanced dental education  
2.25 program approved by the board.

3.1 C. A person who fails to inform the board as required in item B is deemed to  
3.2 have committed fraud or deception within the meaning of Minnesota Statutes, section  
3.3 150A.08, subdivision 1, clause (1).

3.4 **3100.1700 TERMS AND RENEWAL OF LICENSE OR PERMIT; GENERAL.**

3.5 [For text of subps 1 to 1b, see M.R.]

3.6 Subp. 2. **Renewal applications.** ~~A dentist, dental hygienist, licensed dental~~  
3.7 ~~assistant, or dental assistant with a permit under part 3100.8500, subpart 3, Each licensee~~  
3.8 shall submit an application for biennial renewal of a license or permit together with  
3.9 the necessary fee no later than the last day of the licensee's birth month which is the  
3.10 application deadline. An application for renewal is deemed timely if received by the board  
3.11 or postmarked no later than the last day of the licensee's birth month. The application  
3.12 form must provide a place for the renewal applicant's signature certifying compliance with  
3.13 the applicable professional development requirements including holding a current CPR  
3.14 certification and information including the applicant's office address or addresses, the  
3.15 license number, whether the licensee has been engaged in the active practice of dentistry  
3.16 during the two years preceding the period for which renewal is sought as a licensee,  
3.17 and if so, whether within or without the state, and any other information which may be  
3.18 reasonably requested by the board.

3.19 [For text of subps 3 to 5, see M.R.]

3.20 **3100.1850 REINSTATEMENT OF LICENSE.**

3.21 [For text of subps 1 to 2a, see M.R.]

3.22 Subp. 3. **Expiration or voluntary termination of 24 months or more.** An  
3.23 applicant whose license has expired according to part 3100.1700, subpart 3, or who  
3.24 voluntarily terminated the license 24 months or more previous to the application for  
3.25 reinstatement must:

4.1 A. comply with subpart 2a; and

4.2 B. submit either:

4.3 (1) evidence of having successfully completed part II of the national  
4.4 board examination or the clinical examination in part 3100.1100, subpart 2, for dentists;  
4.5 the examinations in Minnesota Statutes, section 150A.106, subdivision 1, clauses (2)  
4.6 and (6), for advanced dental therapists; the clinical examination in Minnesota Statutes,  
4.7 section 150A.06, subdivision 1d, for dental therapists; the national board examination or  
4.8 the clinical examination in part 3100.1200, item C, for dental hygienists; and the two  
4.9 examinations in part 3100.1300, item C, for licensed dental assistants. The examination  
4.10 must have been completed within 24 months prior to the board's receipt of the application;  
4.11 or

4.12 (2) evidence of having successfully completed applicable board-approved  
4.13 coursework with minimal hour requirements directly relating to the practice of dentistry,  
4.14 advanced dental therapy, dental therapy, dental hygiene, or dental assisting as indicated in  
4.15 the reinstatement application. The board-approved coursework must have been completed  
4.16 within 24 months prior to the board's receipt of the application. The coursework  
4.17 completed under this subpart may not be used to fulfill any of the applicable professional  
4.18 development requirements in part 3100.5100.

4.19 [For text of subps 4 and 5, see M.R.]

#### 4.20 **3100.3100 CONDUCT OF EXAMINATIONS.**

4.21 This part and parts 3100.3300 to 3100.3500 govern the conduct of examinations and  
4.22 must be strictly adhered to throughout each entire examination given to those applicants for  
4.23 licensure as a dentist ~~or, dental therapist, dental hygienist, or as a licensed dental assistant~~  
4.24 ~~and must be strictly adhered to throughout the entire examination,~~ or for certification as  
4.25 an advanced dental therapist. An examinee who violates any of the applicable rules or  
4.26 instructions may be declared by the board to have failed the examination.

5.1 [For text of items A to M, see M.R.]

5.2 **3100.3200 CLINICAL EXAMINATIONS.**

5.3 Every dentist, advanced dental therapist, dental therapist, and dental hygienist  
5.4 applicant shall give a demonstration of skill in those operations appropriate for the level  
5.5 of licensure or certification prescribed by the board. Licensed dental assistant applicants  
5.6 may also be examined for licensure. All operations shall be performed in the presence  
5.7 of a board member qualified for the particular examination being given or consultant  
5.8 appointed by the board for that purpose.

5.9 **3100.3350 EXAMINATION OF DENTAL THERAPISTS AND ADVANCED**  
5.10 **DENTAL THERAPISTS.**

5.11 Subpart 1. **Scope.** This part provides that the examination of applicants for a license  
5.12 to practice dental therapy and become certified to practice advanced dental therapy in this  
5.13 state shall be sufficiently thorough to test the fitness of the applicant to practice dental  
5.14 therapy or advanced dental therapy.

5.15 Subp. 2. **Clinical examination.** An applicant must pass a board-approved clinical  
5.16 examination designed to determine the applicant's clinical competency.

5.17 Subp. 3. **Additional examination content.** All applicants shall be examined for  
5.18 general knowledge of the act and the rules of the board. Additional written theoretical  
5.19 examinations may be administered by the board.

5.20 Subp. 4. **Additional education for two failed clinical examinations.** If an applicant  
5.21 fails twice any part of the clinical examination required by Minnesota Statutes, section  
5.22 150A.06, subdivision 1d, for dental therapists, or Minnesota Statutes, section 150A.106,  
5.23 subdivision 1, for advanced dental therapists, the applicant may not retake the examination  
5.24 until the applicant successfully completes additional education provided by an institution  
5.25 approved by the board. The education must cover all of the subject areas failed by the  
5.26 applicant in the clinical examination. The applicant may retake the examination only

6.1 after the institution provides information to the board specifying the areas failed in  
6.2 the previous examinations and the instruction provided to address the areas failed, and  
6.3 certifies that the applicant has successfully completed the instruction. The applicant must  
6.4 take the additional instruction provided above each time the applicant fails the clinical  
6.5 examination twice.

6.6 Subp. 5. Examination for continued licensure. The board may administer any  
6.7 other examination it deems necessary to determine qualifications for continued licensure.

6.8 **3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,**  
6.9 **MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE**  
6.10 **INHALATION ANALGESIA.**

6.11 Subpart 1. **Prohibitions.** A dental therapist, dental hygienist, or licensed dental  
6.12 assistant may not administer general anesthesia, deep sedation, moderate sedation, or  
6.13 minimal sedation.

6.14 [For text of subps 2 and 3, see M.R.]

6.15 Subp. 4. **Nitrous oxide inhalation analgesia; educational training requirements.**

6.16 A dentist may administer nitrous oxide inhalation analgesia only according to items A  
6.17 to D and subpart 5, items A and C. A dental therapist may administer nitrous oxide  
6.18 inhalation analgesia only according to items C to F. A dental hygienist may administer  
6.19 nitrous oxide inhalation analgesia only according to items C to F and subpart 5, item  
6.20 D. A licensed dental assistant may administer nitrous oxide inhalation analgesia only  
6.21 after a maximum dosage has been prescribed by a dentist for a specific patient, and it is  
6.22 administered according to items C to F and subpart 5, item D.

6.23 [For text of items A and B, see M.R.]

6.24 C. A dentist, dental therapist, dental hygienist, or licensed dental assistant must  
6.25 complete CPR training and maintain current CPR certification thereafter.

7.1 D. A dentist, dental therapist, dental hygienist, or licensed dental assistant must  
7.2 only use fail-safe anesthesia equipment capable of positive pressure respiration.

7.3 E. A dental therapist, dental hygienist, or licensed dental assistant may  
7.4 administer nitrous oxide inhalation analgesia only after satisfactorily completing a course  
7.5 on the administration of nitrous oxide inhalation analgesia from an institution accredited  
7.6 by the Commission on Accreditation, and submitting to the board original documentation  
7.7 from the institution of successful completion of the course. The course must be a  
7.8 minimum of 12 hours total comprised of didactic instruction, personally administering and  
7.9 managing at least three individual supervised cases of analgesia, and supervised clinical  
7.10 experience using fail-safe anesthesia equipment capable of positive pressure respiration.

7.11 F. A dental therapist, dental hygienist, or licensed dental assistant may  
7.12 administer nitrous oxide inhalation analgesia under the appropriate level of supervision  
7.13 by a dentist who is current with the requirements to administer nitrous oxide inhalation  
7.14 analgesia according to items A to D and subpart 5, items A to C.

7.15 [For text of subps 5 to 7, see M.R.]

7.16 Subp. 8. **Reporting of incidents required.** A dentist, dental therapist, dental  
7.17 hygienist, or licensed dental assistant must report to the board any incident that arises from  
7.18 the administration of nitrous oxide inhalation analgesia, general anesthesia, deep sedation,  
7.19 moderate sedation, local anesthesia, analgesia, or minimal sedation that results in:

7.20 [For text of item A, see M.R.]

7.21 B. minimal sedation unintentionally becoming moderate sedation, deep  
7.22 sedation, or general anesthesia when the licensee does not have a certificate for  
7.23 administering general anesthesia or moderate sedation described in subpart 9.

7.24 The report must be submitted to the board on forms provided by the board within ten  
7.25 business days of the incident by the dentist, dental therapist, dental hygienist, or licensed  
7.26 dental assistant, even when another licensed health care professional who, under contract

8.1 or employment with the dentist, was the actual person administering the analgesia or  
8.2 pharmacological or nonpharmacological method. A licensee who fails to comply with  
8.3 reporting of incidents is subject to disciplinary proceedings on grounds specified in parts  
8.4 3100.6100 and 3100.6200 and Minnesota Statutes, section 150A.08, subdivision 1.

8.5 [For text of subps 9 to 11, see M.R.]

8.6 **3100.5100 PROFESSIONAL DEVELOPMENT.**

8.7 **Subpart 1. Professional development cycles.**

8.8 A. The initial professional development cycle must coincide with the initial  
8.9 licensure period for each dentist, dental therapist, dental hygienist, or licensed dental  
8.10 assistant. The initial cycle for each licensee begins on the date of initial licensure and ends  
8.11 on the last day of the licensee's birth month in either an even-numbered or odd-numbered  
8.12 year that corresponds with the licensee's year of birth. The initial cycle varies in the  
8.13 number of months depending on the date of initial licensure for each licensee.

8.14 B. A biennial professional development cycle coincides with the biennial  
8.15 licensure periods for each dentist, dental therapist, dental hygienist, or licensed dental  
8.16 assistant. Each biennial renewal cycle consists of a 24-month period beginning on the first  
8.17 day of the month following expiration of the previous professional development cycle. An  
8.18 established biennial cycle continues to apply even if the license is revoked, suspended,  
8.19 conditioned, or not renewed for any reason for any length of time.

8.20 **Subp. 2. Professional development requirements.**

8.21 A. For the initial professional development requirements, each dentist,  
8.22 dental therapist, dental hygienist, and licensed dental assistant shall establish a portfolio  
8.23 to record, monitor, and retain acceptable documentation of fundamental and elective  
8.24 professional development activities, CPR certification, and self-assessments.

9.1 B. The minimum number of required hours of fundamental and elective  
9.2 professional development for each biennial cycle is 50 hours for dentists and dental  
9.3 therapists, and 25 hours for dental hygienists and licensed dental assistants. Each dentist,  
9.4 dental therapist, dental hygienist, and licensed dental assistant shall establish a portfolio  
9.5 to record, monitor, and retain acceptable documentation of fundamental and elective  
9.6 professional development activities, CPR certification, and self-assessments. Any  
9.7 professional development hours earned in excess of the required hours for a biennial cycle  
9.8 must not be carried forward to the subsequent biennial cycle. The requirements for the  
9.9 fundamental and elective professional development activities are described in subitems  
9.10 (1) and (2).

9.11 (1) Each dentist, dental therapist, dental hygienist, and licensed dental  
9.12 assistant must complete a minimum of 60 percent of the required biennial hours in  
9.13 fundamental activities directly related to the provision of clinical dental services as  
9.14 follows: a minimum of 30 hours for dentists and dental therapists, and a minimum of 15  
9.15 hours for dental hygienists and licensed dental assistants. A licensee may earn all required  
9.16 biennial hours in fundamental activities only.

9.17 (2) Dentists, dental therapists, dental hygienists, and licensed dental  
9.18 assistants are allowed a maximum of 40 percent of the required biennial hours in elective  
9.19 activities directly related to, or supportive of, the practice of dentistry, dental therapy,  
9.20 dental hygiene, or dental assisting as follows: a maximum of 20 hours for dentists and  
9.21 dental therapists, and a maximum of ten hours for dental hygienists and licensed dental  
9.22 assistants.

9.23 [For text of items C and D, see M.R.]

9.24 Subp. 3. **Professional development activities.** Professional development activities  
9.25 include, but are not limited to, continuing education, community services, publications,  
9.26 and career accomplishments throughout a professional's life. Professional development

10.1 activities are categorized as fundamental or elective activities as described in items  
10.2 A and B.

10.3 [For text of item A, see M.R.]

10.4 B. Elective activities for an initial or biennial cycle include, but are not limited  
10.5 to, the examples described in subitems (1) to (6):

10.6 [For text of subitem (1), see M.R.]

10.7 (2) volunteerism or community service directly relating to the practice  
10.8 of dentistry, dental therapy, dental hygiene, or dental assisting such as international or  
10.9 national mission work, voluntary clinic work, or dental health presentations to students  
10.10 or groups;

10.11 (3) professional reading of published articles or other forms of self-study  
10.12 directly relating to the practice of dentistry, dental therapy, dental hygiene, or dental  
10.13 assisting;

10.14 (4) scholarly activities include, but are not limited to:

10.15 (a) teaching a professional course directly related to the practice of  
10.16 dentistry, dental therapy, dental hygiene, or dental assisting; or presenting a continuing  
10.17 dental education program;

10.18 (b) presenting a table clinic directly related to the practice of dentistry,  
10.19 dental therapy, dental hygiene, or dental assisting;

10.20 [For text of units (c) to (e), see M.R.]

10.21 [For text of subitem (5), see M.R.]

10.22 (6) the board shall approve other additional elective activities if the board  
10.23 finds the contents of the activity to be directly related to, or supportive of, the practice of  
10.24 dentistry, dental therapy, dental hygiene, or dental assisting.

11.1 [For text of subps 4 and 5, see M.R.]

11.2 **3100.6100 STATUTORY GROUNDS FOR DISCIPLINE.**

11.3 In general terms, the grounds for suspension or revocation of licenses of dentists,  
11.4 dental therapists, dental hygienists, and licensed dental assistants are in Minnesota  
11.5 Statutes, section 150A.08, subdivision 1.

11.6 **3100.6200 CONDUCT UNBECOMING A LICENSEE.**

11.7 "Conduct unbecoming a person licensed to practice dentistry, dental therapy, dental  
11.8 hygiene, or dental assisting, or conduct contrary to the best interests of the public," as used  
11.9 in Minnesota Statutes, section 150A.08, subdivision 1, clause (6), shall include the act of a  
11.10 dentist, dental hygienist, licensed dental assistant, or applicant in:

11.11 [For text of items A to E, see M.R.]

11.12 F. dental therapists, hygienists, or licensed dental assistants performing services  
11.13 not authorized by the dentist under this chapter or Minnesota Statutes, chapter 150A;

11.14 [For text of items G to L, see M.R.]

11.15 **3100.6300 ADEQUATE SAFETY AND SANITARY CONDITIONS FOR DENTAL**  
11.16 **OFFICES.**

11.17 [For text of subps 1 to 13, see M.R.]

11.18 Subp. 14. **Hazardous waste.** ~~Dentists, dental hygienists, and licensed dental~~  
11.19 ~~assistants~~ Dental health care personnel shall comply with the requirements for hazardous  
11.20 waste in chapter 7045.

11.21 Subp. 15. **Ionizing radiation.** ~~Dentists, dental hygienists, and licensed dental~~  
11.22 ~~assistants~~ Each licensee shall comply with the requirements for ionizing radiation in  
11.23 chapter 4732.

11.24 **3100.8200 UNLAWFUL PRACTICE BY ALLIED DENTAL PERSONNEL.**

12.1 An assistant, hygienist, dental therapist, or dental technician who assists a dentist in  
12.2 practicing dentistry in any capacity other than as an employee or independent contractor,  
12.3 who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor,  
12.4 or director of a dental office as a guise or subterfuge to enable the assistant, hygienist,  
12.5 dental therapist, or dental technician to engage directly in acts defined by the act as the  
12.6 "practice of dentistry," or who performs dental services within the meaning of Minnesota  
12.7 Statutes, section 150A.11, subdivision 1, for members of the public, other than as an  
12.8 employee or independent contractor for an employing dentist, shall be deemed to be  
12.9 practicing dentistry without a license.

12.10 **3100.8300 RESPONSIBILITIES OF LICENSED DENTIST.**

12.11 Nothing in this chapter relating to the scope of services rendered by assistants,  
12.12 technicians, ~~or~~ hygienists, or dental therapists shall diminish or abrogate the professional  
12.13 and legal responsibilities of employing dentists to their patients, to their profession, and to  
12.14 the state of Minnesota. Dentists employing assistants, technicians, ~~or~~ hygienists, or dental  
12.15 therapists shall be fully responsible for all acts or omissions of these personnel performed  
12.16 or omitted if the acts or omissions are within the normal scope of their employment. Acts  
12.17 or omissions of personnel means whether or not omitted or committed by personnel at the  
12.18 instance and request of the employing dentist if the omission or commission is within the  
12.19 normal scope of their employment.

12.20 **3100.9600 RECORD KEEPING.**

12.21 [For text of subps 1 to 8, see M.R.]

12.22 Subp. 9. **Informed consent.** Dental records must include a notation that:

12.23 A. the dentist, advanced dental therapist, or dental therapist discussed with the  
12.24 patient the treatment options and the prognosis, benefits, and risks of each; and

12.25 B. the patient has consented to the treatment chosen.

13.1

[For text of subps 10 to 14, see M.R.]

# Office of the Revisor of Statutes

## Administrative Rules

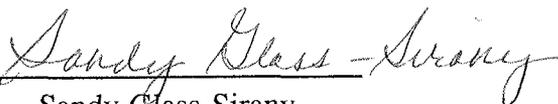


**TITLE:** Proposed Permanent Rules Relating to Advanced Dental Therapists and Dental Therapists

**AGENCY:** Minnesota Board of Dentistry

**MINNESOTA RULES:** Chapter 3100

The attached rules are approved for  
publication in the State Register



Sandy Glass-Sirany  
Senior Assistant Revisor

---

---

## Proposed Rules

### 1800.3600 REQUIREMENTS FOR ADMISSION TO EXAMINATION.

Subpart 1. **Authority to order examination.** The board may subject an applicant to such examinations as may be deemed necessary to establish the qualifications of the applicant. ~~Oral and~~ Written examinations shall be held at such times and places as the board may direct.

Subp. 2. **Land surveyor-in-training.** The Fundamentals of Land Surveying (FLS) examination may be taken upon meeting the requirements of part 1800.3505, subpart 2. The applicant shall submit an official transcript from the college or university the applicant is attending. An applicant taking the FLS examination must be notified of the applicant's score in writing. An applicant failing this examination shall retake the entire examination. A final official transcript showing the degree and the date awarded must be submitted to the board before the land surveyor-in-training certificate is released to the applicant. The passage of this examination and providing proof of the degree and the award date gives the applicant the status of land surveyor-in-training as defined in *Minnesota Statutes*, section 326.10, subdivision 7. The applicant shall take and pass the FLS examination before being permitted to take the professional examination.

Subp. 3. **Professional practice.** The applicant must have successfully completed the Fundamentals of Land Surveying (FLS) examination and have met the education and experience requirements in part 1800.3505, subpart 3. ~~After the applicant has submitted an application for admission to the professional practice examinations, the applicant may be required to appear before the board for an oral examination to determine the applicant's eligibility for admission to the professional examinations. The board shall conduct the examination to review evidence of personal qualifications and evaluate the educational and experience record of the applicant.~~

## Minnesota Board of Dentistry

### Proposed Permanent Rules Relating to Advanced Dental Therapists and Dental Therapists

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

**Introduction.** The Minnesota Board of Dentistry intends to adopt rules without a public hearing following the procedures 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, July 6, 2011, the board will hold a public hearing in the 4<sup>th</sup> Floor Conference Room A, University Park Plaza, 2829 University Avenue SE, Minneapolis, Minnesota 55414, starting at 9:00 a.m. on Friday, August 5, 2011. To find out whether the board will adopt the rules without a hearing or if the hearing will be held, you should contact the agency contact person after July 6, 2011 and before August 5, 2011.

**Agency Contact Person.** Submit any comments or questions on the rules or written requests for a public hearing 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, MN 55414-3249, phone: (612) 548-2134 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 are about dental therapists and advanced dental therapists. 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. The proposed rules are also available on the board's website at [www.dentalboard.state.mn.us](http://www.dentalboard.state.mn.us) or a free copy of the entire proposed rules is available upon request from the agency contact person listed above.

**Comments.** You have until 4:30 p.m. on Wednesday, July 6, 2011, 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 that you desire. You must also make any comments about the legality of the proposed rules during this comment period.

# Proposed Rules

---

**Request for a Hearing.** In addition to submitting comments, you may also request that the board hold a hearing on the rules. You must make your request for a public hearing in writing, which the agency contact person must receive by 4:30 p.m. on Wednesday, July 6, 2011. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the board cannot count that request when determining whether the board must hold a public hearing. 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, the board will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the board must give written notice of this to all persons who requested a hearing, explain the actions the board took to affect the withdrawal, and ask for written comments on this action. If a public hearing is required, the board will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Alternative Format/Accommodation.** Upon request, the board can make this Notice available in an alternative format, such as large print, Braille, or audio. 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 board may modify the proposed rules, 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 board or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the board follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the board encourages you to participate in the rulemaking process.

**Cancellation of Hearing.** The board will cancel the hearing scheduled for Friday, August 5, 2011, if the board does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the board will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at (612) 548-2134 after July 6, 2011, 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, the board will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The board will hold the hearing 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 Manuel J. Cervantes is assigned to conduct the hearing. Judge Cervantes can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, St. Paul, MN 55164-0620, **telephone:** (651) 361-7945, and **fax:** (651) 361-7936.

**Hearing Procedure.** If the board holds a hearing, 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 hearing record closes. 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. At the hearing, the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the board and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge 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. You may direct questions about the procedure to the Administrative Law Judge.

The board requests that any person submitting written views or data to the Administrative Law Judge before 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.** The statement of need and reasonableness summarizes 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. A free copy of the statement is now available from the agency contact person, if requested, or available on the board's website at [www.dentalboard.state.mn.us](http://www.dentalboard.state.mn.us).

A copy of the Dual Notice and proposed rules shall be mailed by sending an electronic mailing to everyone who has registered to be on

---

---

## Proposed Rules

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. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, **telephone:** (651) 2965148 or 1-800-657-3889.

**Adoption Procedure if No Hearing.** If no hearing is required, the board may adopt the rules after the end of the comment period. The board will submit the rules and supporting documents 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 either to receive notice of this, to receive a copy of the adopted rules, or to register with the board 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 that 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 that the board adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by 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.

Dated: 24 May 2011

Marshall Shragg, MPH, Executive Director  
Minnesota Board of Dentistry

### 3100.0100 DEFINITIONS.

[For text of subps 1 to 4, see M.R.]

Subp. 5. **Allied dental personnel.** "Allied dental personnel" means a an advanced dental therapist, dental therapist, dental hygienist, licensed dental assistant, dental assistant with a limited-license permit, assistant without a license or permit, and dental technician.

[For text of subps 5a to 9b, see M.R.]

Subp. 9c. **Dental assistant with a limited-license permit.** "Dental assistant with a limited-license permit" means a person holding a limited-license permit as a dental assistant under part 3100.8500, subpart 3.

Subp. 9c. 9d. **Dental health care personnel or DHCP.** "Dental health care personnel" or "DHCP" means individuals who work in a dental practice who may be exposed to body fluids such as blood or saliva.

Subp. 9d 9e. **Dental hygienist.** "Dental hygienist" means a person holding a license as a dental hygienist issued by the board pursuant to the act.

[For text of subps 10 and 11, see M.R.]

Subp. 11a. **Elective activities.** "Elective activities" refers to those activities directly related to, or supportive of, the practice of dentistry, dental therapy, dental hygiene, or dental assisting.

[For text of subps 11b to 12e, see M.R.]

Subp. 13. **Licensee.** "Licensee" means a dentist, dental therapist, dental hygienist, licensed dental assistant, or dental assistant with a limited-license permit.

[For text of subps 13a to 22, see M.R.]

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

#### Subpart 1. Licensure.

A. In order to practice dental therapy or dental hygiene as directly related to a respective graduate or advanced educational clinical experience, an enrolled graduate student or a student of an advanced education program must be licensed by the board.

B. The board must license a person to practice dental therapy or dental hygiene as a resident dental therapist or resident dental

# Proposed Rules

---

hygienist if:

(1) the person completes and submits to the board an application furnished by the board;

(2) the person provides evidence of being an enrolled graduate student or a student of an advanced dental education program approved by the board; and

(3) the person has not engaged in behavior for which licensure may be suspended, revoked, limited, modified, or denied on any of the grounds specified in *Minnesota Statutes*, section 150A.08.

## Subp. 2. Termination of licensure.

A. A person's license to practice dental therapy or dental hygiene as a resident dental therapist or resident dental hygienist is terminated when the person is no longer an enrolled graduate student or a student of an advanced dental education program approved by the board.

B. A person licensed to practice dental therapy or dental hygiene as a resident dental therapist or resident dental hygienist must inform the board when the licensee is no longer an enrolled graduate student or a student of an advanced dental education program approved by the board.

C. A person who fails to inform the board as required in item B is deemed to have committed fraud or deception within the meaning of *Minnesota Statutes*, section 150A.08, subdivision 1, clause (1).

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

[For text of subs 1 to 1b, see M.R.]

Subp. 2. **Renewal applications.** A dentist, dental hygienist, licensed dental assistant, or dental assistant with a permit under part 3100.8500, subpart 3. Each licensee shall submit an application for biennial renewal of a license or permit together with the necessary fee no later than the last day of the licensee's birth month which is the application deadline. An application for renewal is deemed timely if received by the board or postmarked no later than the last day of the licensee's birth month. The application form must provide a place for the renewal applicant's signature certifying compliance with the applicable professional development requirements including holding a current CPR certification and information including the applicant's office address or addresses, the license number, whether the licensee has been engaged in the active practice of dentistry during the two years preceding the period for which renewal is sought as a licensee, and if so, whether within or without the state, and any other information which may be reasonably requested by the board.

[For text of subs 3 to 5, see M.R.]

## 3100.1850 REINSTATEMENT OF LICENSE.

[For text of subs 1 to 2a, see M.R.]

Subp. 3. **Expiration or voluntary termination of 24 months or more.** An applicant whose license has expired according to part 3100.1700, subpart 3, or who voluntarily terminated the license 24 months or more previous to the application for reinstatement must:

A. comply with subpart 2a; and

B. submit either:

(1) evidence of having successfully completed part II of the national board examination or the clinical examination in part 3100.1100, subpart 2, for dentists; the examinations in *Minnesota Statutes*, section 150A.106, subdivision 1, clauses (2) and (6), for advanced dental therapists; the clinical examination in *Minnesota Statutes*, section 150A.06, subdivision 1d, for dental therapists; the national board examination or the clinical examination in part 3100.1200, item C, for dental hygienists; and the two examinations in part 3100.1300, item C, for licensed dental assistants. The examination must have been completed within 24 months prior to the board's receipt of the application; or

(2) evidence of having successfully completed applicable board-approved coursework with minimal hour requirements directly relating to the practice of dentistry, advanced dental therapy, dental therapy, dental hygiene, or dental assisting as indicated in the reinstatement application. The board-approved coursework must have been completed within 24 months prior to the board's receipt of

---

## Proposed Rules

the application. The coursework completed under this subpart may not be used to fulfill any of the applicable professional development requirements in part 3100.5100.

[For text of subs 4 and 5, see M.R.]

### 3100.3100 CONDUCT OF EXAMINATIONS.

This part and parts 3100.3300 to 3100.3500 govern the conduct of examinations and must be strictly adhered to throughout each entire examination given to those applicants for licensure as a dentist or, dental therapist, dental hygienist, or as a licensed dental assistant and must be strictly adhered to throughout the entire examination, or for certification as an advanced dental therapist. An examinee who violates any of the applicable rules or instructions may be declared by the board to have failed the examination.

[For text of items A to M, see M.R.]

### 3100.3200 CLINICAL EXAMINATIONS.

Every dentist, advanced dental therapist, dental therapist, and dental hygienist applicant shall give a demonstration of skill in those operations appropriate for the level of licensure or certification prescribed by the board. Licensed dental assistant applicants may also be examined for licensure. All operations shall be performed in the presence of a board member qualified for the particular examination being given or consultant appointed by the board for that purpose.

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

Subpart 1. Scope. This part provides that the examination of applicants for a license to practice dental therapy and become certified to practice advanced dental therapy in this state shall be sufficiently thorough to test the fitness of the applicant to practice dental therapy or advanced dental therapy.

Subp. 2. Clinical examination. An applicant must pass a board-approved clinical examination designed to determine the applicant's clinical competency.

Subp. 3. Additional examination content. All applicants shall be examined for general knowledge of the act and the rules of the board. Additional written theoretical examinations may be administered by the board.

Subp. 4. Additional education for two failed clinical examinations. If an applicant fails twice any part of the clinical examination required by *Minnesota Statutes*, section 150A.06, subdivision 1d, for dental therapists, or *Minnesota Statutes*, section 150A.106, subdivision 1, for advanced dental therapists, the applicant may not retake the examination until the applicant successfully completes additional education provided by an institution approved by the board. The education must cover all of the subject areas failed by the applicant in the clinical examination. The applicant may retake the examination only after the institution provides information to the board specifying the areas failed in the previous examinations and the instruction provided to address the areas failed, and certifies that the applicant has successfully completed the instruction. The applicant must take the additional instruction provided above each time the applicant fails the clinical examination twice.

Subp. 5. Examination for continued licensure. The board may administer any other examination it deems necessary to determine qualifications for continued licensure.

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

Subpart 1. **Prohibitions.** A dental therapist, dental hygienist, or licensed dental assistant may not administer general anesthesia, deep sedation, moderate sedation, or minimal sedation.

[For text of subs 2 and 3, see M.R.]

Subp. 4. **Nitrous oxide inhalation analgesia; educational training requirements.** A dentist may administer nitrous oxide inhalation analgesia only according to items A to D and subpart 5, items A and C. A dental therapist may administer nitrous oxide inhalation analgesia only according to items C to F. A dental hygienist may administer nitrous oxide inhalation analgesia only according to items C to F and subpart 5, item D. A licensed dental assistant may administer nitrous oxide inhalation analgesia only after a maximum dosage has been prescribed by a dentist for a specific patient, and it is administered according to items C to F and subpart 5, item D.

[For text of items A and B, see M.R.]

# Proposed Rules

---

C. A dentist, dental therapist, dental hygienist, or licensed dental assistant must complete CPR training and maintain current CPR certification thereafter.

D. A dentist, dental therapist, dental hygienist, or licensed dental assistant must only use fail-safe anesthesia equipment capable of positive pressure respiration.

E. A dental therapist, dental hygienist, or licensed dental assistant may administer nitrous oxide inhalation analgesia only after satisfactorily completing a course on the administration of nitrous oxide inhalation analgesia from an institution accredited by the Commission on Accreditation, and submitting to the board original documentation from the institution of successful completion of the course. The course must be a minimum of 12 hours total comprised of didactic instruction, personally administering and managing at least three individual supervised cases of analgesia, and supervised clinical experience using fail-safe anesthesia equipment capable of positive pressure respiration.

F. A dental therapist, dental hygienist, or licensed dental assistant may administer nitrous oxide inhalation analgesia under the appropriate level of supervision by a dentist who is current with the requirements to administer nitrous oxide inhalation analgesia according to items A to D and subpart 5, items A to C.

[For text of subs 5 to 7, see M.R.]

Subp. 8. **Reporting of incidents required.** A dentist, dental therapist, dental hygienist, or licensed dental assistant must report to the board any incident that arises from the administration of nitrous oxide inhalation analgesia, general anesthesia, deep sedation, moderate sedation, local anesthesia, analgesia, or minimal sedation that results in:

[For text of item A, see M.R.]

B. minimal sedation unintentionally becoming moderate sedation, deep sedation, or general anesthesia when the licensee does not have a certificate for administering general anesthesia or moderate sedation described in subpart 9.

The report must be submitted to the board on forms provided by the board within ten business days of the incident by the dentist, dental therapist, dental hygienist, or licensed dental assistant, even when another licensed health care professional who, under contract or employment with the dentist, was the actual person administering the analgesia or pharmacological or nonpharmacological method. A licensee who fails to comply with reporting of incidents is subject to disciplinary proceedings on grounds specified in parts 3100.6100 and 3100.6200 and *Minnesota Statutes*, section 150A.08, subdivision 1.

[For text of subs 9 to 11, see M.R.]

## **3100.5100 PROFESSIONAL DEVELOPMENT.**

### **Subpart 1. Professional development cycles.**

A. The initial professional development cycle must coincide with the initial licensure period for each dentist, dental therapist, dental hygienist, or licensed dental assistant. The initial cycle for each licensee begins on the date of initial licensure and ends on the last day of the licensee's birth month in either an even-numbered or odd-numbered year that corresponds with the licensee's year of birth. The initial cycle varies in the number of months depending on the date of initial licensure for each licensee.

B. A biennial professional development cycle coincides with the biennial licensure periods for each dentist, dental therapist, dental hygienist, or licensed dental assistant. Each biennial renewal cycle consists of a 24-month period beginning on the first day of the month following expiration of the previous professional development cycle. An established biennial cycle continues to apply even if the license is revoked, suspended, conditioned, or not renewed for any reason for any length of time.

### **Subp. 2. Professional development requirements.**

A. For the initial professional development requirements, each dentist, dental therapist, dental hygienist, and licensed dental assistant shall establish a portfolio to record, monitor, and retain acceptable documentation of fundamental and elective professional development activities, CPR certification, and self-assessments.

B. The minimum number of required hours of fundamental and elective professional development for each biennial cycle is 50 hours for dentists and dental therapists, and 25 hours for dental hygienists and licensed dental assistants. Each dentist, dental therapist, dental hygienist, and licensed dental assistant shall establish a portfolio to record, monitor, and retain acceptable documentation of fundamental and elective professional development activities, CPR certification, and self-assessments. Any professional development hours earned in

---

---

## Proposed Rules

excess of the required hours for a biennial cycle must not be carried forward to the subsequent biennial cycle. The requirements for the fundamental and elective professional development activities are described in subitems (1) and (2).

(1) Each dentist, dental therapist, dental hygienist, and licensed dental assistant must complete a minimum of 60 percent of the required biennial hours in fundamental activities directly related to the provision of clinical dental services as follows: a minimum of 30 hours for dentists and dental therapists, and a minimum of 15 hours for dental hygienists and licensed dental assistants. A licensee may earn all required biennial hours in fundamental activities only.

(2) Dentists, dental therapists, dental hygienists, and licensed dental assistants are allowed a maximum of 40 percent of the required biennial hours in elective activities directly related to, or supportive of, the practice of dentistry, dental therapy, dental hygiene, or dental assisting as follows: a maximum of 20 hours for dentists and dental therapists, and a maximum of ten hours for dental hygienists and licensed dental assistants.

[For text of items C and D, see M.R.]

Subp. 3. **Professional development activities.** Professional development activities include, but are not limited to, continuing education, community services, publications, and career accomplishments throughout a professional's life. Professional development activities are categorized as fundamental or elective activities as described in items A and B.

[For text of item A, see M.R.]

B. Elective activities for an initial or biennial cycle include, but are not limited to, the examples described in subitems (1) to (6):

[For text of subitem (1), see M.R.]

(2) volunteerism or community service directly relating to the practice of dentistry, dental therapy, dental hygiene, or dental assisting such as international or national mission work, voluntary clinic work, or dental health presentations to students or groups;

(3) professional reading of published articles or other forms of self-study directly relating to the practice of dentistry, dental therapy, dental hygiene, or dental assisting;

(4) scholarly activities include, but are not limited to:

(a) teaching a professional course directly related to the practice of dentistry, dental therapy, dental hygiene, or dental assisting; or presenting a continuing dental education program;

(b) presenting a table clinic directly related to the practice of dentistry, dental therapy, dental hygiene, or dental assisting;

[For text of units (c) to (e), see M.R.]

[For text of subitem (5), see M.R.]

(6) the board shall approve other additional elective activities if the board finds the contents of the activity to be directly related to, or supportive of, the practice of dentistry, dental therapy, dental hygiene, or dental assisting.

[For text of subs 4 and 5, see M.R.]

### 3100.6100 STATUTORY GROUNDS FOR DISCIPLINE.

In general terms, the grounds for suspension or revocation of licenses of dentists, dental therapists, dental hygienists, and licensed dental assistants are in *Minnesota Statutes*, section 150A.08, subdivision 1.

### 3100.6200 CONDUCT UNBECOMING A LICENSEE.

"Conduct unbecoming a person licensed to practice dentistry, dental therapy, dental hygiene, or dental assisting, or conduct contrary to the best interests of the public," as used in *Minnesota Statutes*, section 150A.08, subdivision 1, clause (6), shall include the act of a dentist, dental hygienist, licensed dental assistant, or applicant in:

[For text of items A to E, see M.R.]

F. dental therapists, hygienists, or licensed dental assistants performing services not authorized by the dentist under this chapter or *Minnesota Statutes*, chapter 150A;

[For text of items G to L, see M.R.]

# Proposed Rules

---

## 3100.6300 ADEQUATE SAFETY AND SANITARY CONDITIONS FOR DENTAL OFFICES.

[For text of subs 1 to 13, see M.R.]

Subp. 14. **Hazardous waste.** ~~Dentists, dental hygienists, and licensed dental assistants~~ Dental health care personnel shall comply with the requirements for hazardous waste in chapter 7045.

Subp. 15. **Ionizing radiation.** ~~Dentists, dental hygienists, and licensed dental assistants~~ Each licensee shall comply with the requirements for ionizing radiation in chapter 4732.

## 3100.8200 UNLAWFUL PRACTICE BY ALLIED DENTAL PERSONNEL.

An assistant, hygienist, dental therapist, or dental technician who assists a dentist in practicing dentistry in any capacity other than as an employee or independent contractor, who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor, or director of a dental office as a guise or subterfuge to enable the assistant, hygienist, dental therapist, or dental technician to engage directly in acts defined by the act as the "practice of dentistry," or who performs dental services within the meaning of Minnesota Statutes, section 150A.11, subdivision 1, for members of the public, other than as an employee or independent contractor for an employing dentist, shall be deemed to be practicing dentistry without a license.

## 3100.8300 RESPONSIBILITIES OF LICENSED DENTIST.

Nothing in this chapter relating to the scope of services rendered by assistants, technicians, or hygienists, or dental therapists shall diminish or abrogate the professional and legal responsibilities of employing dentists to their patients, to their profession, and to the state of Minnesota. Dentists employing assistants, technicians, or hygienists, or dental therapists shall be fully responsible for all acts or omissions of these personnel performed or omitted if the acts or omissions are within the normal scope of their employment. Acts or omissions of personnel means whether or not omitted or committed by personnel at the instance and request of the employing dentist if the omission or commission is within the normal scope of their employment.

## 3100.9600 RECORD KEEPING.

[For text of subs 1 to 8, see M.R.]

Subp. 9. **Informed consent.** Dental records must include a notation that:

A. the dentist, advanced dental therapist, or dental therapist discussed with the patient the treatment options and the prognosis, benefits, and risks of each; and

B. the patient has consented to the treatment chosen.

[For text of subs 10 to 14, see M.R.]



## MINNESOTA BOARD OF DENTISTRY

University Park Plaza, 2829 University Avenue SE, Suite 450  
Minneapolis, MN 55414-3249 www.dentalboard.state.mn.us  
Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

---

### Minnesota Board of Dentistry

#### **CERTIFICATE OF MAILING THE DUAL NOTICE OF INTENT TO ADOPT RULES TO THE RULEMAKING MAILING LIST AND OF ACCURACY OF THE RULEMAKING MAILING LIST**

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

I, Kathy T. Johnson, certify that on May 26, 2011, at least 33 days before the end of the comment period, at the City of Minneapolis, County of Hennepin, State of Minnesota, I mailed notification about the: (1) Dual Notice and (2) the proposed rules to persons on the Board's rulemaking mailing list established by Minnesota Statutes, section 14.14, subdivision 1a. I accomplished this mailing by sending an electronic mailing to all persons and associations on the list.

I, Kathy T. Johnson, certify that the list of persons and associations who have requested under Minnesota Statutes, section 14.14, subdivision 1a, that their names be placed on the Minnesota Board of Dentistry's rulemaking mailing list is accurate, complete, and current as of May 26, 2011.

Copies of the Dual Notice, the proposed rules, and the mailing list are attached to this Certificate.

A handwritten signature in cursive script that reads "Kathy T. Johnson".

Kathy T. Johnson  
Legal Analyst Liaison  
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 Amendments to Permanent Rules Relating to Dental Therapists and Advanced Dental Therapists, *Minnesota Rules*, Chapter 3100**

**Introduction.** The Minnesota Board of Dentistry intends to adopt rules without a public hearing following the procedures 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, July 6, 2011, the board will hold a public hearing in the 4<sup>th</sup> Floor Conference Room A, University Park Plaza, 2829 University Avenue SE, Minneapolis, Minnesota 55414, starting at 9:00 a.m. on Friday, August 5, 2011. To find out whether the board will adopt the rules without a hearing or if the hearing will be held, you should contact the agency contact person after July 6, 2011 and before August 5, 2011.

**Agency Contact Person.** Submit any comments or questions on the rules or written requests for a public hearing 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, MN 55414-3249, phone: (612) 548-2134 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 are about dental therapists and advanced dental therapists. 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. The proposed rules are also available on the board's website at [www.dentalboard.state.mn.us](http://www.dentalboard.state.mn.us) or a free copy of the entire proposed rules is available upon request from the agency contact person listed above.

**Comments.** You have until 4:30 p.m. on Wednesday, July 6, 2011, 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 that you desire. You must also make any comments about the legality of the proposed rules during this comment period.

**Request for a Hearing.** In addition to submitting comments, you may also request that the board hold a hearing on the rules. You must make your request for a public hearing in writing, which the agency contact person must receive by 4:30 p.m. on Wednesday, July 6, 2011. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the board cannot

count that request when determining whether the board must hold a public hearing. 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, the board will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the board must give written notice of this to all persons who requested a hearing, explain the actions the board took to affect the withdrawal, and ask for written comments on this action. If a public hearing is required, the board will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Alternative Format/Accommodation.** Upon request, the board can make this Notice available in an alternative format, such as large print, Braille, or audio. 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 board may modify the proposed rules, 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 board or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the board follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the board encourages you to participate in the rulemaking process.

**Cancellation of Hearing.** The board will cancel the hearing scheduled for Friday, August 5, 2011, if the board does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the board will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at (612) 548-2134 after July 6, 2011, 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, the board will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The board will hold the hearing 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 Manuel J. Cervantes is assigned to conduct the hearing. Judge Cervantes can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, St. Paul, MN 55164-0620, telephone (651) 361-7945, and FAX (651) 361-7936.

**Hearing Procedure.** If the board holds a hearing, 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 hearing record closes. 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. At the hearing, the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the board and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge 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. You may direct questions about the procedure to the Administrative Law Judge.

The board requests that any person submitting written views or data to the Administrative Law Judge before 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.** The statement of need and reasonableness summarizes 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. A free copy of the statement is now available from the agency contact person, if requested, or available on the board's website at [www.dentalboard.state.mn.us](http://www.dentalboard.state.mn.us).

A copy of the Dual Notice and proposed rules shall be mailed by sending an electronic mailing 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. Ask any questions about this requirement of 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 board may adopt the rules after the end of the comment period. The board will submit the rules and supporting documents 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 either to receive notice of this, to receive a copy of the adopted rules, or to register with the board 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 that 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 that the board adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by 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: May 24, 2011

Marshall Shragg, MPH  
Executive Director  
Minnesota Board of Dentistry

1.1 **Minnesota Board of Dentistry**

1.2 **Proposed Permanent Rules Relating to Advanced Dental Therapists and Dental**  
1.3 **Therapists**

1.4 **3100.0100 DEFINITIONS.**

1.5 [For text of subps 1 to 4, see M.R.]

1.6 Subp. 5. **Allied dental personnel.** "Allied dental personnel" means ~~a~~ an advanced  
1.7 dental therapist, dental therapist, dental hygienist, licensed dental assistant, dental assistant  
1.8 with a limited-license permit, assistant without a license or permit, and dental technician.

1.9 [For text of subps 5a to 9b, see M.R.]

1.10 Subp. 9c. **Dental assistant with a limited-license permit.** "Dental assistant with  
1.11 a limited-license permit" means a person holding a limited-license permit as a dental  
1.12 assistant under part 3100.8500, subpart 3.

1.13 Subp. 9e ~~9d~~. **Dental health care personnel or DHCP.** "Dental health care  
1.14 personnel" or "DHCP" means individuals who work in a dental practice who may be  
1.15 exposed to body fluids such as blood or saliva.

1.16 Subp. 9d ~~9e~~. **Dental hygienist.** "Dental hygienist" means a person holding a license  
1.17 as a dental hygienist issued by the board pursuant to the act.

1.18 [For text of subps 10 and 11, see M.R.]

1.19 Subp. 11a. **Elective activities.** "Elective activities" refers to those activities directly  
1.20 related to, or supportive of, the practice of dentistry, dental therapy, dental hygiene, or  
1.21 dental assisting.

1.22 [For text of subps 11b to 12e, see M.R.]

1.23 Subp. 13. **Licensee.** "Licensee" means a dentist, dental therapist, dental hygienist,  
1.24 licensed dental assistant, or dental assistant with a limited-license permit.

2.1 [For text of subs 13a to 22, see M.R.]

2.2 **3100.1170 LICENSE TO PRACTICE AS A RESIDENT DENTAL THERAPIST**  
2.3 **OR RESIDENT DENTAL HYGIENIST.**

2.4 **Subpart 1. Licensure.**

2.5 A. In order to practice dental therapy or dental hygiene as directly related to  
2.6 a respective graduate or advanced educational clinical experience, an enrolled graduate  
2.7 student or a student of an advanced education program must be licensed by the board.

2.8 B. The board must license a person to practice dental therapy or dental hygiene  
2.9 as a resident dental therapist or resident dental hygienist if:

2.10 (1) the person completes and submits to the board an application furnished  
2.11 by the board;

2.12 (2) the person provides evidence of being an enrolled graduate student or a  
2.13 student of an advanced dental education program approved by the board; and

2.14 (3) the person has not engaged in behavior for which licensure may be  
2.15 suspended, revoked, limited, modified, or denied on any of the grounds specified in  
2.16 Minnesota Statutes, section 150A.08.

2.17 **Subp. 2. Termination of licensure.**

2.18 A. A person's license to practice dental therapy or dental hygiene as a resident  
2.19 dental therapist or resident dental hygienist is terminated when the person is no longer an  
2.20 enrolled graduate student or a student of an advanced dental education program approved  
2.21 by the board.

2.22 B. A person licensed to practice dental therapy or dental hygiene as a resident  
2.23 dental therapist or resident dental hygienist must inform the board when the licensee  
2.24 is no longer an enrolled graduate student or a student of an advanced dental education  
2.25 program approved by the board.

3.1 C. A person who fails to inform the board as required in item B is deemed to  
3.2 have committed fraud or deception within the meaning of Minnesota Statutes, section  
3.3 150A.08, subdivision 1, clause (1).

3.4 **3100.1700 TERMS AND RENEWAL OF LICENSE OR PERMIT; GENERAL.**

3.5 [For text of subps 1 to 1b, see M.R.]

3.6 Subp. 2. **Renewal applications.** ~~A dentist, dental hygienist, licensed dental~~  
3.7 ~~assistant, or dental assistant with a permit under part 3100.8500, subpart 3, Each licensee~~  
3.8 shall submit an application for biennial renewal of a license or permit together with  
3.9 the necessary fee no later than the last day of the licensee's birth month which is the  
3.10 application deadline. An application for renewal is deemed timely if received by the board  
3.11 or postmarked no later than the last day of the licensee's birth month. The application  
3.12 form must provide a place for the renewal applicant's signature certifying compliance with  
3.13 the applicable professional development requirements including holding a current CPR  
3.14 certification and information including the applicant's office address or addresses, the  
3.15 license number, whether the licensee has been engaged in the active practice of dentistry  
3.16 during the two years preceding the period for which renewal is sought as a licensee,  
3.17 and if so, whether within or without the state, and any other information which may be  
3.18 reasonably requested by the board.

3.19 [For text of subps 3 to 5, see M.R.]

3.20 **3100.1850 REINSTATEMENT OF LICENSE.**

3.21 [For text of subps 1 to 2a, see M.R.]

3.22 Subp. 3. **Expiration or voluntary termination of 24 months or more.** An  
3.23 applicant whose license has expired according to part 3100.1700, subpart 3, or who  
3.24 voluntarily terminated the license 24 months or more previous to the application for  
3.25 reinstatement must:

4.1 A. comply with subpart 2a; and

4.2 B. submit either:

4.3 (1) evidence of having successfully completed part II of the national  
4.4 board examination or the clinical examination in part 3100.1100, subpart 2, for dentists;  
4.5 the examinations in Minnesota Statutes, section 150A.106, subdivision 1, clauses (2)  
4.6 and (6), for advanced dental therapists; the clinical examination in Minnesota Statutes,  
4.7 section 150A.06, subdivision 1d, for dental therapists; the national board examination or  
4.8 the clinical examination in part 3100.1200, item C, for dental hygienists; and the two  
4.9 examinations in part 3100.1300, item C, for licensed dental assistants. The examination  
4.10 must have been completed within 24 months prior to the board's receipt of the application;  
4.11 or

4.12 (2) evidence of having successfully completed applicable board-approved  
4.13 coursework with minimal hour requirements directly relating to the practice of dentistry,  
4.14 advanced dental therapy, dental therapy, dental hygiene, or dental assisting as indicated in  
4.15 the reinstatement application. The board-approved coursework must have been completed  
4.16 within 24 months prior to the board's receipt of the application. The coursework  
4.17 completed under this subpart may not be used to fulfill any of the applicable professional  
4.18 development requirements in part 3100.5100.

4.19 [For text of subps 4 and 5, see M.R.]

4.20 **3100.3100 CONDUCT OF EXAMINATIONS.**

4.21 This part and parts 3100.3300 to 3100.3500 govern the conduct of examinations and  
4.22 must be strictly adhered to throughout each entire examination given to those applicants for  
4.23 licensure as a dentist ~~or, dental therapist, dental hygienist, or as a licensed dental assistant~~  
4.24 ~~and must be strictly adhered to throughout the entire examination,~~ or for certification as  
4.25 an advanced dental therapist. An examinee who violates any of the applicable rules or  
4.26 instructions may be declared by the board to have failed the examination.

5.1 [For text of items A to M, see M.R.]

5.2 **3100.3200 CLINICAL EXAMINATIONS.**

5.3 Every dentist, advanced dental therapist, dental therapist, and dental hygienist  
5.4 applicant shall give a demonstration of skill in those operations appropriate for the level  
5.5 of licensure or certification prescribed by the board. Licensed dental assistant applicants  
5.6 may also be examined for licensure. All operations shall be performed in the presence  
5.7 of a board member qualified for the particular examination being given or consultant  
5.8 appointed by the board for that purpose.

5.9 **3100.3350 EXAMINATION OF DENTAL THERAPISTS AND ADVANCED**  
5.10 **DENTAL THERAPISTS.**

5.11 Subpart 1. Scope. This part provides that the examination of applicants for a license  
5.12 to practice dental therapy and become certified to practice advanced dental therapy in this  
5.13 state shall be sufficiently thorough to test the fitness of the applicant to practice dental  
5.14 therapy or advanced dental therapy.

5.15 Subp. 2. Clinical examination. An applicant must pass a board-approved clinical  
5.16 examination designed to determine the applicant's clinical competency.

5.17 Subp. 3. Additional examination content. All applicants shall be examined for  
5.18 general knowledge of the act and the rules of the board. Additional written theoretical  
5.19 examinations may be administered by the board.

5.20 Subp. 4. Additional education for two failed clinical examinations. If an applicant  
5.21 fails twice any part of the clinical examination required by Minnesota Statutes, section  
5.22 150A.06, subdivision 1d, for dental therapists, or Minnesota Statutes, section 150A.106,  
5.23 subdivision 1, for advanced dental therapists, the applicant may not retake the examination  
5.24 until the applicant successfully completes additional education provided by an institution  
5.25 approved by the board. The education must cover all of the subject areas failed by the  
5.26 applicant in the clinical examination. The applicant may retake the examination only

6.1 after the institution provides information to the board specifying the areas failed in  
6.2 the previous examinations and the instruction provided to address the areas failed, and  
6.3 certifies that the applicant has successfully completed the instruction. The applicant must  
6.4 take the additional instruction provided above each time the applicant fails the clinical  
6.5 examination twice.

6.6 Subp. 5. Examination for continued licensure. The board may administer any  
6.7 other examination it deems necessary to determine qualifications for continued licensure.

6.8 **3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,**  
6.9 **MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE**  
6.10 **INHALATION ANALGESIA.**

6.11 Subpart 1. **Prohibitions.** A dental therapist, dental hygienist, or licensed dental  
6.12 assistant may not administer general anesthesia, deep sedation, moderate sedation, or  
6.13 minimal sedation.

6.14 [For text of subps 2 and 3, see M.R.]

6.15 Subp. 4. **Nitrous oxide inhalation analgesia; educational training requirements.**  
6.16 A dentist may administer nitrous oxide inhalation analgesia only according to items A  
6.17 to D and subpart 5, items A and C. A dental therapist may administer nitrous oxide  
6.18 inhalation analgesia only according to items C to F. A dental hygienist may administer  
6.19 nitrous oxide inhalation analgesia only according to items C to F and subpart 5, item  
6.20 D. A licensed dental assistant may administer nitrous oxide inhalation analgesia only  
6.21 after a maximum dosage has been prescribed by a dentist for a specific patient, and it is  
6.22 administered according to items C to F and subpart 5, item D.

6.23 [For text of items A and B, see M.R.]

6.24 C. A dentist, dental therapist, dental hygienist, or licensed dental assistant must  
6.25 complete CPR training and maintain current CPR certification thereafter.

7.1 D. A dentist, dental therapist, dental hygienist, or licensed dental assistant must  
7.2 only use fail-safe anesthesia equipment capable of positive pressure respiration.

7.3 E. A dental therapist, dental hygienist, or licensed dental assistant may  
7.4 administer nitrous oxide inhalation analgesia only after satisfactorily completing a course  
7.5 on the administration of nitrous oxide inhalation analgesia from an institution accredited  
7.6 by the Commission on Accreditation, and submitting to the board original documentation  
7.7 from the institution of successful completion of the course. The course must be a  
7.8 minimum of 12 hours total comprised of didactic instruction, personally administering and  
7.9 managing at least three individual supervised cases of analgesia, and supervised clinical  
7.10 experience using fail-safe anesthesia equipment capable of positive pressure respiration.

7.11 F. A dental therapist, dental hygienist, or licensed dental assistant may  
7.12 administer nitrous oxide inhalation analgesia under the appropriate level of supervision  
7.13 by a dentist who is current with the requirements to administer nitrous oxide inhalation  
7.14 analgesia according to items A to D and subpart 5, items A to C.

7.15 [For text of subps 5 to 7, see M.R.]

7.16 Subp. 8. **Reporting of incidents required.** A dentist, dental therapist, dental  
7.17 hygienist, or licensed dental assistant must report to the board any incident that arises from  
7.18 the administration of nitrous oxide inhalation analgesia, general anesthesia, deep sedation,  
7.19 moderate sedation, local anesthesia, analgesia, or minimal sedation that results in:

7.20 [For text of item A, see M.R.]

7.21 B. minimal sedation unintentionally becoming moderate sedation, deep  
7.22 sedation, or general anesthesia when the licensee does not have a certificate for  
7.23 administering general anesthesia or moderate sedation described in subpart 9.

7.24 The report must be submitted to the board on forms provided by the board within ten  
7.25 business days of the incident by the dentist, dental therapist, dental hygienist, or licensed  
7.26 dental assistant, even when another licensed health care professional who, under contract

8.1 or employment with the dentist, was the actual person administering the analgesia or  
8.2 pharmacological or nonpharmacological method. A licensee who fails to comply with  
8.3 reporting of incidents is subject to disciplinary proceedings on grounds specified in parts  
8.4 3100.6100 and 3100.6200 and Minnesota Statutes, section 150A.08, subdivision 1.

8.5 [For text of subps 9 to 11, see M.R.]

8.6 **3100.5100 PROFESSIONAL DEVELOPMENT.**

8.7 Subpart 1. **Professional development cycles.**

8.8 A. The initial professional development cycle must coincide with the initial  
8.9 licensure period for each dentist, dental therapist, dental hygienist, or licensed dental  
8.10 assistant. The initial cycle for each licensee begins on the date of initial licensure and ends  
8.11 on the last day of the licensee's birth month in either an even-numbered or odd-numbered  
8.12 year that corresponds with the licensee's year of birth. The initial cycle varies in the  
8.13 number of months depending on the date of initial licensure for each licensee.

8.14 B. A biennial professional development cycle coincides with the biennial  
8.15 licensure periods for each dentist, dental therapist, dental hygienist, or licensed dental  
8.16 assistant. Each biennial renewal cycle consists of a 24-month period beginning on the first  
8.17 day of the month following expiration of the previous professional development cycle. An  
8.18 established biennial cycle continues to apply even if the license is revoked, suspended,  
8.19 conditioned, or not renewed for any reason for any length of time.

8.20 Subp. 2. **Professional development requirements.**

8.21 A. For the initial professional development requirements, each dentist,  
8.22 dental therapist, dental hygienist, and licensed dental assistant shall establish a portfolio  
8.23 to record, monitor, and retain acceptable documentation of fundamental and elective  
8.24 professional development activities, CPR certification, and self-assessments.

9.1 B. The minimum number of required hours of fundamental and elective  
9.2 professional development for each biennial cycle is 50 hours for dentists and dental  
9.3 therapists, and 25 hours for dental hygienists and licensed dental assistants. Each dentist,  
9.4 dental therapist, dental hygienist, and licensed dental assistant shall establish a portfolio  
9.5 to record, monitor, and retain acceptable documentation of fundamental and elective  
9.6 professional development activities, CPR certification, and self-assessments. Any  
9.7 professional development hours earned in excess of the required hours for a biennial cycle  
9.8 must not be carried forward to the subsequent biennial cycle. The requirements for the  
9.9 fundamental and elective professional development activities are described in subitems  
9.10 (1) and (2).

9.11 (1) Each dentist, dental therapist, dental hygienist, and licensed dental  
9.12 assistant must complete a minimum of 60 percent of the required biennial hours in  
9.13 fundamental activities directly related to the provision of clinical dental services as  
9.14 follows: a minimum of 30 hours for dentists and dental therapists, and a minimum of 15  
9.15 hours for dental hygienists and licensed dental assistants. A licensee may earn all required  
9.16 biennial hours in fundamental activities only.

9.17 (2) Dentists, dental therapists, dental hygienists, and licensed dental  
9.18 assistants are allowed a maximum of 40 percent of the required biennial hours in elective  
9.19 activities directly related to, or supportive of, the practice of dentistry, dental therapy,  
9.20 dental hygiene, or dental assisting as follows: a maximum of 20 hours for dentists and  
9.21 dental therapists, and a maximum of ten hours for dental hygienists and licensed dental  
9.22 assistants.

9.23 [For text of items C and D, see M.R.]

9.24 Subp. 3. **Professional development activities.** Professional development activities  
9.25 include, but are not limited to, continuing education, community services, publications,  
9.26 and career accomplishments throughout a professional's life. Professional development

10.1 activities are categorized as fundamental or elective activities as described in items  
10.2 A and B.

10.3 [For text of item A, see M.R.]

10.4 B. Elective activities for an initial or biennial cycle include, but are not limited  
10.5 to, the examples described in subitems (1) to (6):

10.6 [For text of subitem (1), see M.R.]

10.7 (2) volunteerism or community service directly relating to the practice  
10.8 of dentistry, dental therapy, dental hygiene, or dental assisting such as international or  
10.9 national mission work, voluntary clinic work, or dental health presentations to students  
10.10 or groups;

10.11 (3) professional reading of published articles or other forms of self-study  
10.12 directly relating to the practice of dentistry, dental therapy, dental hygiene, or dental  
10.13 assisting;

10.14 (4) scholarly activities include, but are not limited to:

10.15 (a) teaching a professional course directly related to the practice of  
10.16 dentistry, dental therapy, dental hygiene, or dental assisting; or presenting a continuing  
10.17 dental education program;

10.18 (b) presenting a table clinic directly related to the practice of dentistry,  
10.19 dental therapy, dental hygiene, or dental assisting;

10.20 [For text of units (c) to (e), see M.R.]

10.21 [For text of subitem (5), see M.R.]

10.22 (6) the board shall approve other additional elective activities if the board  
10.23 finds the contents of the activity to be directly related to, or supportive of, the practice of  
10.24 dentistry, dental therapy, dental hygiene, or dental assisting.

11.1 [For text of subps 4 and 5, see M.R.]

11.2 **3100.6100 STATUTORY GROUNDS FOR DISCIPLINE.**

11.3 In general terms, the grounds for suspension or revocation of licenses of dentists,  
11.4 dental therapists, dental hygienists, and licensed dental assistants are in Minnesota  
11.5 Statutes, section 150A.08, subdivision 1.

11.6 **3100.6200 CONDUCT UNBECOMING A LICENSEE.**

11.7 "Conduct unbecoming a person licensed to practice dentistry, dental therapy, dental  
11.8 hygiene, or dental assisting, or conduct contrary to the best interests of the public," as used  
11.9 in Minnesota Statutes, section 150A.08, subdivision 1, clause (6), shall include the act of a  
11.10 dentist, dental hygienist, licensed dental assistant, or applicant in:

11.11 [For text of items A to E, see M.R.]

11.12 F. dental therapists, hygienists, or licensed dental assistants performing services  
11.13 not authorized by the dentist under this chapter or Minnesota Statutes, chapter 150A;

11.14 [For text of items G to L, see M.R.]

11.15 **3100.6300 ADEQUATE SAFETY AND SANITARY CONDITIONS FOR DENTAL**  
11.16 **OFFICES.**

11.17 [For text of subps 1 to 13, see M.R.]

11.18 Subp. 14. **Hazardous waste.** ~~Dentists, dental hygienists, and licensed dental~~  
11.19 ~~assistants~~ Dental health care personnel shall comply with the requirements for hazardous  
11.20 waste in chapter 7045.

11.21 Subp. 15. **Ionizing radiation.** ~~Dentists, dental hygienists, and licensed dental~~  
11.22 ~~assistants~~ Each licensee shall comply with the requirements for ionizing radiation in  
11.23 chapter 4732.

11.24 **3100.8200 UNLAWFUL PRACTICE BY ALLIED DENTAL PERSONNEL.**

12.1 An assistant, hygienist, dental therapist, or dental technician who assists a dentist in  
12.2 practicing dentistry in any capacity other than as an employee or independent contractor,  
12.3 who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor,  
12.4 or director of a dental office as a guise or subterfuge to enable the assistant, hygienist,  
12.5 dental therapist, or dental technician to engage directly in acts defined by the act as the  
12.6 "practice of dentistry," or who performs dental services within the meaning of Minnesota  
12.7 Statutes, section 150A.11, subdivision 1, for members of the public, other than as an  
12.8 employee or independent contractor for an employing dentist, shall be deemed to be  
12.9 practicing dentistry without a license.

12.10 **3100.8300 RESPONSIBILITIES OF LICENSED DENTIST.**

12.11 Nothing in this chapter relating to the scope of services rendered by assistants,  
12.12 technicians, ~~or~~ hygienists, or dental therapists shall diminish or abrogate the professional  
12.13 and legal responsibilities of employing dentists to their patients, to their profession, and to  
12.14 the state of Minnesota. Dentists employing assistants, technicians, ~~or~~ hygienists, or dental  
12.15 therapists shall be fully responsible for all acts or omissions of these personnel performed  
12.16 or omitted if the acts or omissions are within the normal scope of their employment. Acts  
12.17 or omissions of personnel means whether or not omitted or committed by personnel at the  
12.18 instance and request of the employing dentist if the omission or commission is within the  
12.19 normal scope of their employment.

12.20 **3100.9600 RECORD KEEPING.**

12.21 [For text of subps 1 to 8, see M.R.]

12.22 Subp. 9. **Informed consent.** Dental records must include a notation that:

12.23 A. the dentist, advanced dental therapist, or dental therapist discussed with the  
12.24 patient the treatment options and the prognosis, benefits, and risks of each; and

12.25 B. the patient has consented to the treatment chosen.

13.1

[For text of subps 10 to 14, see M.R.]

# Office of the Revisor of Statutes

## Administrative Rules

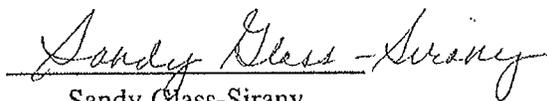


**TITLE:** Proposed Permanent Rules Relating to Advanced Dental Therapists and Dental Therapists

**AGENCY:** Minnesota Board of Dentistry

**MINNESOTA RULES:** Chapter 3100

The attached rules are approved for  
publication in the State Register



Sandy Glass-Sirany  
Senior Assistant Revisor

**a****Aafedt, David**

Winthrop & Weinstine, P.A.  
 David Aafedt, Esq.  
 225 South Sixth Street Ste. 35  
 Minneapolis, MN 55402  
 E-mail: daafedt@winthrop.com

**Abston-Coleman, Sharon**

Milwaukee Area Technical College  
 Dental Hygiene Program  
 Att: Sharon Abston-Coleman  
 700 West State Street  
 Milwaukee, WI 53233  
 E-mail: abstoncs@matc.edu

**Alveshere, Lorie**

E-mail: alvesherel@unitedwaytwincities.org

**Anderson, Jeanne**

Jeanne Anderson  
 4118 Burton Lane  
 Minneapolis, MN 55406  
 E-mail: ander006@umn.edu

**Anderson, Rebecca**

Dental Assisting National Board  
 c/o Rebecca Anderson  
 444 N. Michigan Ave.  
 Chicago, IL 60618  
 E-mail: randerson@danb.org

**b****Badanjak, Anne**

Hibbing Community College  
 Dental Assisting Program  
 c/o Anne Badanjak  
 1515 East 23rd Street  
 Hibbing, MN 55746  
 E-mail: annebadanjak@hibbing.edu

**Baudek, Marie**

U of M Dental Education Programs  
 c/o Marie Baudek  
 6-406 Moos Health Science  
 515 Delaware Street SE  
 Minneapolis, MN 55455  
 E-mail: baude001@umn.edu

**Bell, Karri**

Herzing College/Lakeland  
 Dental Assisting Program  
 c/o Karri Bell  
 5700 West Broadway  
 Crystal, MN 55428  
 E-mail: kbell@mpl.herzing.edu

**Bitting, John**

DOCS Education  
 John Bitting, Esq.  
 12360 Lake City Way NE., F  
 Seattle, WA 98125  
 E-mail: john@DOCSeducation.com

**Blue, Christine**

University of Minnesota/Dental Hygiene Department  
 c/o Christine Blue  
 9-436 Moos Tower  
 515 Delaware Street SE  
 Minneapolis, MN 55455  
 E-mail: bluex005@tc.umn.edu

**Boe, Thomas**

Minnesota State Comm/Tech College  
 Dental Hygiene/Dental Assisting Programs  
 c/o Dr. Thomas Boe  
 1900-28th Ave. South  
 Moorhead, MN 56560  
 E-mail: thomas.boe@minnesota.edu

**Brunik, Ann**

University of South Dakota  
 Dental Hygiene Program  
 c/o Ann Brunik  
 414 East Clark Street / 120 East Hall  
 Vermillion, SD 57069  
 E-mail: dh@usd.edu

**Bunn, Dinah**

Argosy University Twin Cities Campus  
 c/o Dinah Bunn  
 1515 Central Parkway  
 Eagan, MN 55121  
 E-mail: dbunn@argosy.edu

**c****Confeld, Kent**

Kent Confeld, D.D.S.  
 3152 Minnehaha Ave.  
 Minneapolis, MN 55406  
 E-mail: kconfeld@hotmail.com

**c****Crawford, Bonnie**

Rochester Community / Technical College  
 Dental Assisting Program  
 c/o Bonnie Crawford  
 851 - 30th Avenue SE  
 Rochester, MN 55904  
 E-mail: bonnie.crawford@roch.edu

**d****Diercks, Dick**

Minnesota Dental Association  
 Attn: Dick Diercks  
 1335 Industrial Blvd., Ste. 2  
 Minneapolis, MN 55413  
 E-mail: ddiercks@mndental.org

**Dokken, Julie**

NW Technical College-Bemidji  
 Dental Assisting Program  
 c/o Julie Dokken  
 905 Grant Avenue  
 Bemidji, MN 56601  
 E-mail: julie.dokken@ntcmn.edu

**e****Edwardson, Rhonda**

North Dakota State College of Science  
 Dental Hygiene Program  
 c/o Rhonda Edwardson  
 800- 6th Street North  
 Wahpeton, ND 58076  
 E-mail: rhonda.edwardson@ndscs.edu

**Engeswick, Lynette**

Minnesota State University  
 Dental Hygiene Education  
 Attn: Lynette Engeswick  
 3 Morris Hall  
 Mankato, MN 56001  
 E-mail: lynette.engeswick@mnsu.edu

**Enright, Tonya**

Hawkeye Community College  
 Dental Hygiene Program  
 c/o Tonya Enright  
 P.O. Box 8015  
 Waterloo, IA 50704  
 E-mail: tenright@hawkeyecollege.edu

**f****Frazier, Sharon**

North Central Technical College  
 Dental Hygiene Program  
 c/o Sharon Fraizier  
 1000 Campus Drive  
 Wausau, WI 54401  
 E-mail: frazier@ntc.edu

**g****Geller, Nicholas Steven**

Now Care Dental  
 Nicholas S. Geller, D.D.S.  
 1380 Duckwood Dr., Ste. 1  
 Eagan, MN 55123  
 E-mail: drg@nowcaredental.com

**Glasrud, Pat**

Minnesota Dental Association  
 Attn: Pat Glasrud  
 1335 Industrial Blvd., Ste. 2  
 Minneapolis, MN 55413  
 E-mail: pglasrud@mndental.org

**Goetsch, Lynn**

Madison Area Technical College  
 Dental Hygiene Program  
 c/o Lynn Goetsch  
 3550 Anderson Street  
 Madison, WI 53704-2599  
 E-mail: egoetsch@matcmadison.edu

**Gross, Sheila**

Northeast Wisconsin Technical College  
 Dental Hygiene Program  
 c/o Sheila Gross  
 2740 West Mason Street / P.O. Box 19042  
 Green Bay, WI 54307-5451  
 E-mail: sheila.gross@nwtc.edu

**Guenther, Sandy**

Government Affairs Association-AAOMS  
 Sandy Guenther  
 9700 Bryn Mawr Ave.  
 Rosemont, IL 60018  
 E-mail: sguenther@aaoms.org

**Gulbrandsen, Stephen R.**

Ridgepoint Medical Building  
 Stephen R. Gulbrandsen, D.D.S.  
 14050 Nicollet Ave. S.  
 Burnsville, MN 55337  
 E-mail: srgulbrandsen@embarqmail.com

**h****High, Ann**

Rochester Community/Technical College  
 Dental Hygiene Program  
 c/o Ann High  
 851-30th Ave. SE  
 Rochester, MN 55904  
 E-mail: Anne.High@roch.edu

**j****Johnson, Kathy**

E-mail: kathy.t.johnson@state.mn.us

**Johnson, Lucinda**

ND State College of Science  
 Dental Assisting Program  
 c/o Lucinda Johnson  
 800 - 6th Street North  
 Wahpeton, ND 58076  
 E-mail: lucinda.johnson@ndscs.edu

**Johnston, Sandra**

Herzing College/Lakeland  
 Dental Hygiene Program  
 c/o Sandra Johnston  
 5700 West Broadway  
 Crystal, MN 55428  
 E-mail: sjohnston@mpl.herzing.edu

**Jorgenson, Linda**

Century College  
 Dental Hygiene Program  
 c/o Linda Jorgenson  
 3300 Century Ave. North  
 White Bear Lake, MN 55110  
 E-mail: Linda.jorgenson@century.edu

**k****Kaweckyj, Natalie**

Natalie Kaweckyj  
 3107-68th Ave. N  
 Brooklyn Center, MN 55429  
 E-mail: nataliekaweckyj@hotmail.com

**Kimberly Lindquist, D. D. S.**

Kimberly Lindquist, D.D.S.  
 530 Medical Arts Building  
 324 West Superior Street  
 Duluth, MN 55802  
 E-mail: kadl@aol.com

**l****Lapham, Kathleen**

Minneapolis Community and Technical College  
 Dental Assisting Program  
 c/o Kathleen Lapham  
 1501 Hennepin Ave.  
 Minneapolis, MN 55403  
 E-mail: Kathleen.Lapham@minneapolis.edu

**Larkin, Clare**

Normandale Community College  
 c/o Clare Larkin  
 9700 France Ave. South  
 Bloomington, MN 55431  
 E-mail: clare.larkin@normandale.edu

**Leonard, Kathy**

Lake Superior College  
 c/o Kathy Leonard  
 2101 Trinity Road  
 Duluth, MN 55811  
 E-mail: k.leonard@lsc.edu

**Lundstrom, Daphne**

AGO Licensing Division  
 Bremer Tower, Ste. 1400  
 445 Minnesota Street  
 St. Paul, MN 55101-2131  
 E-mail: Daphne.Lundstrom@state.mn.us

**m****Mannie, Patricia**

St. Cloud Technical College  
 Dental Hygiene Program  
 c/o Patricia Mannie  
 1540 Northway Drive  
 St. Cloud, MN 56303  
 E-mail: pmannie@sctcc.edu

**Metz, Karon**

South Central College Mankato  
 Dental Assisting Program  
 c/o Karon Metz  
 1920 Lee Blvd., P.O. Box 1920  
 North Mankato, MN 56003  
 E-mail: karon.metz@southcentral.edu

**Michael Scandrett, JD**

LPaC Alliance  
 Michael Scandrett, JD  
 33 South Sixth Street, Ste. 3900  
 Minneapolis, MN 55402  
 E-mail: mscandrett@hh-lpac.com

**m****Moravetz, Mandy M.**

Mandy M. Moravetz  
 3926-191st Ave. NE  
 East Bethel, MN 55092  
 E-mail: mandymo10@hotmail.com

**n****Nadeau, Richard**

University of Minnesota School of Dentistry  
 Richard Nadeau, D.D.S.  
 9-436 Moos Tower  
 515 Delaware Street SE  
 Minneapolis, MN 55455  
 E-mail: nadea001@umn.edu

**Noyes, Teresa**

Minnesota West Community College  
 Dental Assisting Program  
 c/o Teresa Noyes  
 1011-1st Street West  
 Canby, MN 56220  
 E-mail: teresa.noyes@mnwest.edu

**p****Penny, Deborah**

Des Moines Area Community College  
 Dental Hygiene Program  
 c/o Deborah Penny  
 2006 South Ankeny Blvd. #9  
 Ankeny, IA 50021  
 E-mail: dapenny@dmacc.edu

**Peterson, Rita**

St. Cloud Technical College  
 Dental Assisting Program  
 c/o Rita Peterson  
 1540 Northway Drive  
 St. Cloud, MN 56303-1240  
 E-mail: rpeterson@sctc.edu

**r****Rynders, Beth**

Century College  
 Dental Assisting Program  
 c/o Beth Rynders  
 3300 Century Ave.  
 White Bear Lake, MN 55110  
 E-mail: beth.rynders@century.edu

**s****Schmidt, Gayla**

Hennepin Technical College  
 Dental Assisting Program  
 c/o Gayla Schmidt  
 9000 Brooklyn Blvd.  
 Brooklyn Park, MN 55445  
 E-mail: gayla.schmidt@hennepintech.edu

**Schoenle, Leann**

Central Lakes College  
 Dental Assisting Program  
 c/o Leann Schoenle  
 501 West College Drive  
 Brainerd, MN 56401  
 E-mail: lschoenl@clcmn.edu

**Sinna, Leo**

Leo Sinna, DDS  
 1068 South Lake Street, Ste. 2  
 Forest Lake, MN 55025  
 E-mail: lsinna@sinnagroup.com

**Spanovich, Brenda**

Brenda Spanovich  
 1825- 134th Ave. NE  
 Ham Lake, MN 55304  
 E-mail: gbspano@aol.com

**Stokke, Rosemary**

Rosemary Stokke  
 940 Crestview Lane  
 Owatonna, MN 55060  
 E-mail: rosemarystokke@hotmail.com

**Sullivan, Diana M.**

Dakota County Technical College  
 Dental Assisting Program  
 c/o Diana Sullivan  
 1300-145th Street East  
 Rosemount, MN 55068-2999  
 E-mail: diana.sullivan@dctc.edu

**Swift, James**

University of Minnesota  
 James Swift, D.D.S.  
 Moos Tower 7-174  
 515 Delaware St.  
 Minneapolis, MN 55455  
 E-mail: swift001@umn.edu



### **Thaemert, Susan**

Hennepin Technical College  
Dental Assisting Program  
c/o Susan Thaemert  
13100 College View Drive  
Eden Prairie, MN 55347  
E-mail: susan.thaemert@hennepintech.edu

### **Thoel, Merry Jo**

Minnesota Department of Health  
Dental Director-Oral Disease  
Merry Jo Thoele  
85 East 7th Place  
St. Paul, MN. 55101  
E-mail: Merry.jo.thoele@state.mn.us



**MINNESOTA BOARD OF DENTISTRY**  
University Park Plaza, 2829 University Avenue SE, Suite 450  
Minneapolis, MN 55414-3249 [www.dentalboard.state.mn.us](http://www.dentalboard.state.mn.us)  
Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

---

**Minnesota Board of Dentistry**

**CERTIFICATE OF GIVING ADDITIONAL NOTICE PURSUANT TO THE  
ADDITIONAL NOTICE PLAN**

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

I, Kathy T. Johnson, certify that, at the City of Minneapolis, County of Hennepin, State of Minnesota, I gave notice according to the Additional Notice Plan as described below. The Board's Additional Notice Plan was approved by the Office of Administrative Hearings on May 20, 2011.

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 dated November 23, 2010, 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.

**CERTIFICATE OF GIVING ADDITIONAL NOTICE PURSUANT TO THE  
ADDITIONAL NOTICE PLAN**

Page 2

7. On December 9, 2010, the Board posted a draft of the Statement of Need and Reasonableness dated December 8, 2010, 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.
9. On May 25, 2011, the Board posted a copy of the Proposed Permanent Rules Relating to Advanced Dental Therapists and Dental Therapists dated April 18, 2011, 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.
10. On May 25, 2011, the Board posted a copy of the Dual Notice of Intent to Adopt Rules to be published 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.
11. On May 26, 2011, the Board mailed copies of the Dual Notice of Intent to Adopt Rules and proposed rules 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.
12. On May 26, 2011, the Board mailed the Dual Notice of Intent to Adopt Rules and proposed rules by sending electronic copies 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.
13. On May 26, 2011, the Board mailed the Dual Notice of Intent to Adopt Rules and proposed rules to all persons on the Board's rulemaking mailing list by sending electronic copies via e-mail to all persons on the list.
14. On June 6, 2011, the Board's Dual Notice of Intent to Adopt Rules was published in the State Register.

  
Kathy T. Johnson  
Legal Analyst Liaison  
Minnesota Board of Dentistry



## MINNESOTA BOARD OF DENTISTRY

University Park Plaza, 2829 University Avenue SE, Suite 450  
Minneapolis, MN 55414-3249 www.dentalboard.state.mn.us  
Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

---

### Minnesota Board of Dentistry

#### CERTIFICATE OF MAILING AN ELECTRONIC COPY OF THE STATEMENT OF NEED AND REASONABLENESS TO THE LEGISLATIVE REFERENCE LIBRARY

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

I, Kathy T. Johnson, certify that on May 25, 2011, I mailed an electronic copy of the Board's Statement of Need and Reasonableness to the Legislative Reference Library using the e-mail address: [sonars@lrl.leg.mn](mailto:sonars@lrl.leg.mn). The copy of the Statement of Need and Reasonableness was electronically mailed to comply with Minnesota Statutes, sections 14.131 and 14.23.

A copy of the cover letter is attached to this Certificate.

A handwritten signature in cursive script that reads "Kathy T. Johnson".

Kathy T. Johnson  
Legal Analyst Liaison  
Minnesota Board of Dentistry



## MINNESOTA BOARD OF DENTISTRY

University Park Plaza, 2829 University Avenue SE, Suite 450  
Minneapolis, MN 55414-3249 www.dentalboard.state.mn.us  
Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

---

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 cursive script 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

University Park Plaza, 2829 University Avenue SE, Suite 450  
Minneapolis, MN 55414-3249 www.dentalboard.state.mn.us  
Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

---

**Minnesota Board of Dentistry**

### **CERTIFICATE OF SENDING THE NOTICE AND THE STATEMENT OF NEED AND REASONABLENESS TO LEGISLATORS**

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

I, Kathy T. Johnson, certify that on May 26, 2011, when the Minnesota Board of Dentistry mailed the Dual Notice under Minnesota Statutes, section 14.14 or 14.22, I sent a copy of the: (1) Dual Notice; (2) Statement of Need and Reasonableness; and (3) proposed rules, to certain Legislators by placing these documents in the State of Minnesota's central mail system for proper postage to be affixed and subsequently placed in the United States mail. I mailed these documents to comply with Minnesota Statutes, section 14.116.

A copy of the cover letter is attached to this Certificate.

A handwritten signature in cursive script that reads "Kathy T. Johnson".

Kathy T. Johnson  
Legal Analyst Liaison  
Minnesota Board of Dentistry



## MINNESOTA BOARD OF DENTISTRY

University Park Plaza, 2829 University Avenue SE, Suite 450  
Minneapolis, MN 55414-3249 www.dentalboard.state.mn.us  
Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

---

May 26, 2011

**Senate: Health and Human Services Committee**

Senator David W. Hann and Senator Linda Berglin

**House: Health and Human Services Reform Committee**

Representative Steve Gottwalt and Representative Tina Liebling

**House: Health and Human Services Finance Committee**

Representative Jim Abeler and Representative Thomas Huntley

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

Dear Legislators:

**Executive Summary:** the Minnesota Board of Dentistry intends to adopt proposed rules that would incorporate 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. 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.

Minnesota Statutes, section 14.116, states:

**"14.116 NOTICE TO LEGISLATURE.**

When an agency mails notice of intent to adopt rules under section 14.14 or 14.22, the agency must send a copy of the same notice and a copy of the statement of need and reasonableness to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules.

In addition, if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency shall make reasonable efforts to send a copy of the notice and the statement to all sitting legislators who were chief house and senate authors of the bill granting the rulemaking authority. If the bill was amended to include this rulemaking authority, the agency shall make reasonable efforts to send the notice and the statement to the chief house and senate authors of the amendment granting rulemaking authority, rather than to the chief authors of the bill."

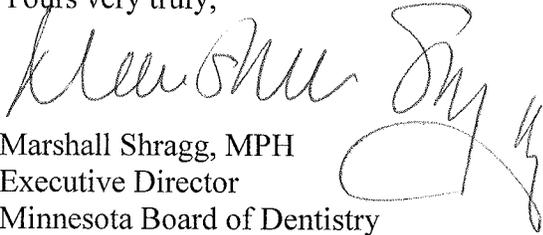
May 26, 2011  
Legislators  
Page 2

We plan to publish a Dual Notice of Intent to Adopt Rules in the June 6, 2011 State Register and are now mailing the Notice under section 14.14 or 14.22.

As required by section 14.116, the Minnesota Board of Dentistry is sending you a copy of the Dual Notice and the Statement of Need and Reasonableness. For your information, we are also enclosing a copy of the proposed rules.

If you have any questions about these rules, please contact me at (612) 548-2127 or [marshall.shragg@state.mn.us](mailto:marshall.shragg@state.mn.us).

Yours very truly,



Marshall Shragg, MPH  
Executive Director  
Minnesota Board of Dentistry

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



July 6, 2011

RECEIVED  
JUL 10 2011  
MINNESOTA DENTAL ASSOCIATION

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Ave SE  
Suite 450  
Minneapolis, MN 55414-3246

Dear Ms. Johnson:

Minnesota Rule 3100.9600, Subpart 9 (the "Informed Consent Rule") currently requires every dentist to "discuss with the patient the treatment options and the prognosis, benefits, and risks of each" and requires the patient to "consent to the treatment chosen." Under the Informed Consent Rule's current text, only a dentist may obtain a patient's informed consent.

The Minnesota Board of Dentistry has proposed an amendment to Subpart 9(A) of Minn. Rule 3100.9600 that purports to allow dental therapists and advanced dental therapists to obtain informed consent as part of the dental treatment process. The Minnesota Dental Association ("MDA") submits these comments in opposition to the proposed rule. The MDA believes that the proposed amendment to the Informed Consent Rule, along with the sample Collaborative Management Agreement for Advanced Dental Therapists recently approved by the Board, threatens to remove dentists from active participation in care provided by dental therapists and advanced dental therapists. The amendment would leave dentists in an untenable position of having to rubber-stamp already-completed treatment, including irreversible extractions of permanent teeth, and could expose patients to significant risk. The MDA further believes the proposed change undermines the purpose of the Informed Consent Rule and conflicts with the limits the Legislature placed on dental therapists and advanced dental therapists, in potential violation of Chapter 150A.

**I. Dental Therapists and Advanced Dental Therapists Cannot Obtain Complete Informed Consent Because They Cannot Diagnose Patients or Create a Treatment Plan.**

By law and by rule, informed consent requires both a diagnosis and proposed treatment plan. In addition, courts have made it clear that a diagnosis and treatment plan are required and integral components of informed consent, and must precede informed consent. See Jarvis v. Levine, 418 N.W.2d 139, 148 (Minn. 1988); Minn. R. 3100.9600, subp. 7, 8. While the Board has created a rule for the

process of obtaining informed consent, it is crucial to remember that the informed consent requirement exists independently of the Board's rule. The requirement comes from the common law, and it obligates medical professionals, including dentists, "to explain to the patient the diagnosis and proposed method of treatment." See Jarvis v. Levine, 418 N.W.2d 139, 148 (Minn. 1988). After these explanations, the "informed patient then decides whether to consent to the treatment in whole or in part." See id. See also Bang v. Charles T. Miller Hosp., 251 Minn. 425, 434, 88 N.W.2d 186, 190 (1958) (*quoting* Mohr v. Williams, 95 Minn. 261, 268, 104 N.W. 12, 14 (1905)) ("It cannot be doubted that ordinarily the patient must be consulted, and his consent given, before a physician may operate upon him.") (emphasis added).

In almost all cases, dental care in Minnesota requires a diagnosis and "an agreed upon written and dated treatment plan" followed by informed consent to the treatment. Minn. Stat. § 3100.9600, subp. 7, 8. Logically and, as the order of Rule 3100.9600 indicates, chronologically, a diagnosis and treatment plan are required and integral components of informed consent. Without a comprehensive examination, diagnosis, and formulation of possible treatment plans, the provider and patient cannot meaningfully discuss "the prognosis, benefits, and risks of each [treatment option]," nor can the patient fully consent to one of the treatment plans. Without the power to make a diagnosis and formulate a treatment plan, a provider cannot obtain informed consent.

However, by statute, only dentists can diagnose. Minn. Stat. § 150A.05, subd. 1(1) (4), (6). Allied dental personnel are generally prohibited from diagnosing patients and establishing treatment plans. See, e.g., Minn. Stat. § 150A.10 (services provided by dental hygienists "shall not include the establishment of a final diagnosis or treatment plan for a dental patient"). See also Proposed Minn. R. 3100.0100, subp. 5 (Minn. Bd. of Dentistry Apr. 18, 2011) ("'Allied dental personnel' means a an advanced dental therapist, dental therapist . . .").

It has been argued that since dental therapists have the ability to "provide oral health care services including preventive, oral evaluation and assessment," and advanced dental therapists to perform "an oral evaluation and assessment of dental disease," that this somehow bestows upon them the additional training and experience needed to obtain informed consent from a patient. See Minn. Stat. § 150A.05, subd. 1b(3); 150A.106, subd. 2(a)(1). However, these arguments ignore the Legislature's intent to restrict the practice of dental therapy to only those specific services "authorized under sections 150A.105 and 150A.106 and within the context of a collaborative management agreement." Minn. Stat. § 150A.05, subd. 1b(3). The argument also ignores the Legislature's intent to restrict the duty of diagnosing to dentists. In the one instance where the Legislature has authorized other dental licensees to perform these duties in place of a dentist, it said so in unmistakably clear language. See Minn. Stat. §§ 150A.10, subd. 1a (certain qualified dental hygienists allowed to perform specific procedures in limited settings "without a dentist's diagnosis and treatment plan, unless specified in the collaborative agreement").

Not only has the Legislature not given dental therapists and advanced dental therapists authority to diagnose and formulate treatment plans, it has in the past explicitly rejected proposals that would have authorized other allied dental personnel to do so. Compare Minn. Stat. §§ 150A.05, subd. 1b(3); 150A.106, subd. 2, with Minn. S.F. 1106, Second Engrossment, §§ 3, subd. 1b(3); 26, subd. 4(c)(1)(ii), (iii) (2009) (available at <https://www.revisor.mn.gov/bin/bldbill.php?bill=S1106.2.html&session=ls86>) (rejected legislation, which had proposed allowing an “oral health practitioner” to perform “primary diagnostic” services, including “formulation of a diagnosis and individualized treatment plan”). The Legislature specifically considered these alternatives and rejected them, and the Board should do likewise.

Moreover, the argument equating assessment and evaluation with diagnosis, despite the Legislature’s clear directive, ignores the fundamental purpose of diagnosing. Diagnosing is a separate activity from assessing and evaluating health status. The Legislature has agreed that diagnosing is a duty requiring the specialized training, skills and expertise only a dentist possesses. All references to “diagnosing” or a “diagnosis” in Chapter 150A reflect this understanding, as do the Board’s own rules. See Minn. Stat. §§ 150A.05, subd. 1(1), (4), (6); 150A.10, subd. 1, 1(a)(f). See also Minn. R. 3100.3300, subp. 4; 3100.3600, subp. 2(B), 3(B) (requiring dentists to be prepared to diagnose adverse reactions and emergencies involved in general anesthesia, deep sedation, or moderate sedation); 3100.8500, subp. 1b (“A licensed dental assistant may perform the following services if a dentist . . . personally diagnoses the condition to be treated”) (emphasis added); 3100.8700, subp. 2a (“A dental hygienist may perform the following procedures if a dentist . . . personally diagnoses the condition to be treated”) (emphasis added); 3100.9600, subp. 21(B) (requiring dentists to maintain dental records, which must include a diagnosis).

Given this statutory framework, the Board cannot expand the scope of practice or create subsets of different types of diagnoses. All of the information gathered at a visit goes into the diagnosis ultimately made by the dentist. The dentist is the proper person to make any and all diagnoses that occur as part of an examination and then use those diagnoses to obtain proper informed consent for any treatment plan. When the Legislature placed diagnosing within the exclusive scope of practice of dentists, it meant all types of diagnoses.

The Board has a mandate to carry out the legislative intent, and its rules may not authorize what the Legislature has rejected. Here, neither Chapter 150A nor Rule 3100 authorizes dental therapists to diagnose patients or formulate a treatment plan, nor can advanced dental therapists formulate treatment plans without the authorization of a dentist. Since the requirement of a diagnosis and treatment plan are inseparable parts of the informed consent process, the Board cannot authorize by rule what the Legislature has prohibited by statute, and allow dental therapists and advanced dental therapists to obtain informed consent.

Further, the proposed amendment to the Informed Consent Rule would not eliminate the requirement that a dentist must make a diagnosis and design a treatment plan.

Thus, the proposed amendment allowing dental therapists to obtain informed consent would create an absurd result, because patients would still first have to be seen by a dentist for a diagnosis and treatment plan before a dental therapist could secure the patient's informed consent. Moreover, the proposed amendment to the Informed Consent Rule may wrongly encourage dental therapists to believe they can perform a diagnosis and formulate a treatment plan, or advanced dental therapists to believe they can perform a diagnosis and formulate a treatment plan not authorized by a dentist, in violation of law prohibiting the unlawful practice of dentistry. The sample Collaborative Management Agreement authorized by the Board of Dentistry increases this danger, as discussed below.

## **II. General Supervision Requires a Dentist's Prior Knowledge of and Consent to All Tasks Done by Dental Therapists and Advanced Dental Therapists Including Informed Consent.**

Allowing advanced dental therapists and dental therapists to obtain informed consent would enlarge their scope of practice beyond that authorized by the Legislature. At a minimum, Minnesota statutes require dental therapists and advanced dental therapists to practice under the general supervision of a dentist. Minn. Stat. §§ 150A.105, subd. 4(c); 150A.106, subd. 2(b), 3(b). While general supervision represents the lowest level of supervision, under Minn. R. 3100.0100, subp. 21, certain procedures require dentists to supervise dental therapists at more intensive levels. Additionally, dentists may freely require more intensive supervision of dental therapists and advanced dental therapists under the terms of a collaborative management agreement. Minn. Stat. § 150A.105, subd. 3(a)(2). See *also* Minn. Stat. §§ 150A.105, subd. 4(c); 150A.106, subd. 3(e).

General supervision requires that "tasks be performed with the prior knowledge and consent of the dentist." Minnesota Rules, Section 3100, Subp. 21(D) (emphasis added). In other words, dentists must have knowledge of and give consent to care provided by advanced dental therapists and dental therapists before such care is provided. The general supervision requirement is part of the statute, and applies to all services and procedures performed by advanced dental therapists, including the "oral evaluation and assessment . . . and the formulation of an individualized treatment plan." Minnesota Statutes, Section 150A.106, Subd. 2(a)(1). The requirement also represents the minimum level of supervision authorized for dental therapists. Minnesota Statutes, Section 150A.105, subd. 4(c).

By statute, then, the standard of general supervision, which requires a dentist's "prior knowledge and consent," should also apply to the process of obtaining informed consent. Since informed consent must be treatment- and patient-specific, general supervision of this process requires that a dentist have prior knowledge of and give consent to the information provided to each individual patient. Just as there is no provision for blanket or implied consent by a patient, there can be no corresponding blanket or implied consent by a dentist to obtaining a patient's informed consent.

Again, the general supervision requirement applies to all services performed by dental therapists and advanced dental therapists. See Minn. Stat. §§ 150A.105, subd. 4(c); 150A.106, subd. 2(b). 9. Consequently, the general supervision requirement would necessarily include the informed consent process as well. Even if the proposed Informed Consent Rule purported to allow dental therapists and advanced dental therapists to obtain informed consent, this process would require a dentist's prior knowledge of and consent to determining treatment plans, discussing these plans with the patient, and securing the patient's consent. The proposed Rule would exempt informed consent from the general supervision requirement, in violation of the statute. The Board cannot by Rule reduce the level of supervision or enlarge the scope of practice of dental therapy to include obtaining informed consent without a "dentist's prior knowledge and consent" without exceeding its proper authority.

### **III. Proposed Informed Consent Rule, Plus the Collaborative Management Agreement, Would Allow Informed Consent and Other Treatment Without General Supervision.**

Finally, the Board should not consider the Proposed Rule in a vacuum. When taken with the sample Collaborative Management Agreement ("Agreement") approved by the Board, the proposed Informed Consent Rule change would potentially allow dental therapists to perform all types of procedures without a dentist's "prior knowledge and consent," in violation of the Legislature's general supervision requirement.

The sample Agreement purports to allow patients to "consent to episodic [or] limited . . . care with the advanced dental therapist." Board of Dentistry Advanced Dental Therapist Collaborative Management Agreement, Note to § 14.1. The Agreement does not define "episodic" or "limited" care, nor are these terms otherwise limited by statute or rule. At present, only the existing language of the Informed Consent Rule preserves the active and actual involvement of a dentist in a patient's care.

If the Board adopts the changes to the Informed Consent Rule, and authorizes "limited care" without ever defining the limits of such care, this exception would quickly become the rule, and swallow the restraints the Legislature placed on the advanced dental therapists' and dental therapists' practice. In practice, patients could complete treatment without ever seeing a dentist, and would have no reason to return for a dentist's comprehensive examination, diagnosis, and treatment plan after-the-fact.

The Legislature has directed that dental therapists' and advanced dental therapists' work requires the actual and active involvement of dentists in caring for individual patients. Consequently, dentists cannot enter into collaborative management agreements with more than five dental therapists or advanced dental therapists at any one time. Minnesota Statutes, Section 150A.105, Subd. 3. Dentists must authorize all services and procedures performed by dental therapists and advanced dental therapists. Minn. Stat. §§ 150A.105, subd. 4(a); 150A.106, Subd. 3(a), 3(b), 4(a). Dentists must also authorize individualized treatment plans. Minnesota Statutes, Section 150A.106, Subd. 2(a)(1). The requirement of actual and active involvement by

a dentist is also why the Legislature has specified that advanced dental therapists and dental therapists must practice under a dentist's general supervision and cannot generally perform tasks and procedures without the prior knowledge and consent of the dentist. As a result, the MDA does not believe that the Board can expand the ability of advanced dental therapists and dental therapists to obtain informed consent by rule unless the Legislature expands their scope of practice, by statute. However, the Proposed Rule, in conjunction with the sample Collaborative Management Agreement, would facilitate exactly that result.

#### **IV. Expanding the Scope of Practice of Dental Therapists and Advanced Dental Therapists to Include Informed Consent Undermines the Purpose of the Requirement and Puts Patients at Risk.**

The current Informed Consent Rule ultimately seeks to empower patients to make decisions about their treatment. This is accomplished by giving patients the fullest possible understanding of all treatment options and their possible benefits and risks in advance of any treatment. Providing only limited information or worse, depriving patients of relevant information before treatment begins, leaves patients less informed and prevents them from truly consenting to their treatment.

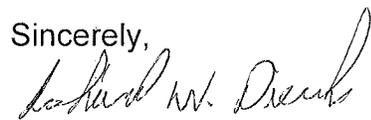
Further complicating the matter is the fact that informed consent not only considers the "dental treatments" a patient might or is considering to undergo, it also includes the associated overall health risks a patient may be exposed to because of having or not having a particular dental treatment. As such, the health care provider must have knowledge not only about the particulars of the "dental treatments," but about the attendant medical and psychosocial conditions patients have that could be aggravated by receiving or not receiving a particular dental treatment. Because a comprehensive health assessment is not within the scope of practice of the dental therapist and the advanced dental therapist, it is the dentist who has the responsibility to conduct such an assessment so that the patient can be fully and completely informed of all the associated risks and benefits, including medical, psychological, and dental, of each proposed dental treatment.

Making a patient's consent truly "informed" requires a caregiver to understand all possible treatments, their complications, benefits, outcomes, costs, and risks, and the full range of conditions which might affect these scenarios, not just those services and procedures for which advanced dental therapists and dental therapists are trained and authorized by law to perform. As this Board advised in its "Informed Consent" educational memorandum dated June 9, 2005, the information provided in the process "should *not* be limited to only those treatments provided in that dentist's practice or what that dentist personally thinks is appropriate." (emphasis in original). Such information helps ensure treatment of the whole patient and not just the most prominent symptom.

Finally, informed consent is only one part of the comprehensive, individualized evaluation, diagnosis and treatment plan required for each patient, and it cannot logically be separated from the other steps that are required for comprehensive dental

care. Only dentists have the training, experience and education required to diagnose and prepare a comprehensive final treatment plan. In addition, dentists are the only entity authorized by law to perform a comprehensive exam and treatment plan and make the diagnoses required to develop such information. To allow a dental therapist or advanced dental therapist the ability to perform informed consent, even if on a limited basis, is inconsistent with providing comprehensive, individualized dental care.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard W. Diercks".

Richard W. Diercks  
Executive Director



# River Valley Dental Care

Lois F. Duerst, DDS

1395 Curve Crest Boulevard • Stillwater, MN 55082 • (651) 430-0036 • Fax: (651) 430-0191  
www.rivervalleydental.com

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

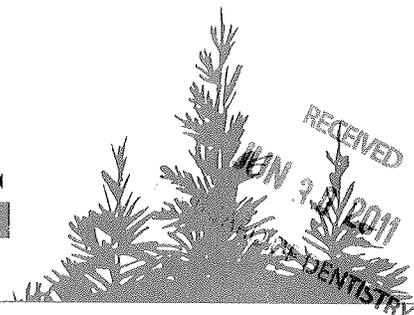
Sincerely,

Dr. Lois Duerst

# NORTH COUNTRY DENTAL

B E M I D J I

Dr. John E. Lueth



Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

I am writing to you in response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*,

I wish to make it known to the Board that I request a public hearing on those proposed rules.

I am particularly concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor do I believe that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads 'John Lueth DDS'.

John Lueth DDS  
1311 Bemidji Avenue  
Box 1310  
Bemidji, MN 56601

Note: sent via email also on 6-27-11

1311 Bemidji Ave.  
Bemidji, MN 56601  
218-751-1111

Mailing Address:  
PO Box 1310  
Bemidji, MN 56619

# Minnesota

Oral & Maxillofacial Surgery, P.A.

RECEIVED  
JUN 30 2013  
MN BOARD

William P. Hoffmann, D.D.S.

Paul C. Tompach, D.D.S., Ph.D.

*Diplomates of the American Board of Oral & Maxillofacial Surgery*

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,



William P. Hoffmann, DDS

Southdale Medical Building, Suite 690  
6545 France Avenue South • Edina, MN 55435  
Phone: 952-925-2525 • Fax: 952-925-2529

WestHealth Medical Building, Suite 670  
2855 Campus Drive • Plymouth, MN 55441  
Phone: 763-520-1234 • Fax: 763-520-1233

email: [dr@mnoral.com](mailto:dr@mnoral.com)

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

RECEIVED  
JUN 20 2011  
MN BOARD OF DENTISTRY

Dear Ms. Johnson,

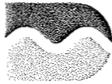
In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

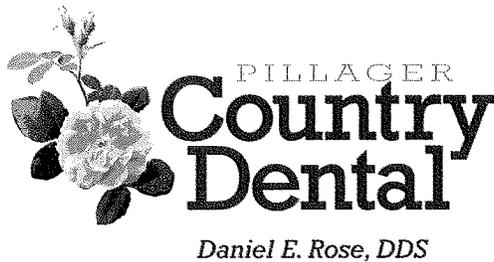
Michael J. Flynn, D.D.S.

Lewiston, MN 55952



MIDWEST DENTAL

560 Debra Drive • P.O. Box 607  
Lewiston, Minnesota 55952



RECEIVED  
JUN 29 2011  
MN BOARD OF DENTISTRY

June 27, 2011

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

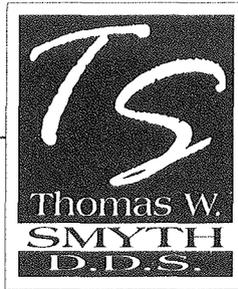
I am a practicing dentist in rural Minnesota, and have serious concerns regarding the development and proposed rules governing the Dental Therapist and Advanced Dental Therapist.

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I believe that it is essential that a public hearing be held to discuss those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. All treatment plans, regardless of their complexity, require a thorough discussion of prognosis, risks, and benefits; based on knowledge of the best scientific evidence. I do not believe that the well-being of the patient would be appropriately provided for if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Daniel E. Rose, DDS  
727 Buckskin Avenue West  
Pillager, Minnesota 56473



RECEIVED  
JUN 29 2011  
MN BOARD OF DENTISTRY

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis MN 55414-3249

Dear Ms. Johnson,

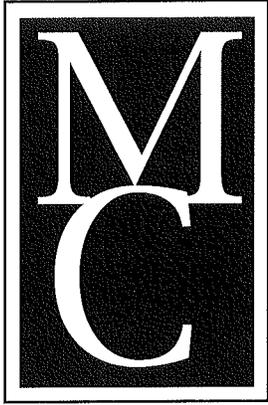
In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the well being of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Thomas Smyth DDS,  
1211 Caledonia Street  
Mankato, MN 56001

Thomas W. Smyth, D.D.S.



Michael Collins, D.D.S., P.A.

*Providing gentle,  
friendly dental care  
for your entire family.*

RECEIVED

JUN 29 2011

MN BOARD OF DENTISTRY

June 27, 2011

Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Michael H. Collins, DDS

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I feel that it is necessary that I request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist as opposed to a dentist.

Thank you for your consideration of this request.

Sincerely,

Adam Swingdorf  
University of Minnesota School of Dentistry  
Class of 2012  
MN American Student Dental Association Past-President  
MN Dental Association Board of Trustees

4000 Zenith Ave. N.  
Robbinsdale, MN 55422

6/29/11

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Michael A. Kurkowski DDS

MICHAEL A. KURKOWSKI DDS

3500 N. RICE ST

ST. PAUL, MINN. 55126

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

James K. Zenk DDS

1317 Grove Ave.

Montevideo MN 56265

320 269 6416

jzenk@montedentistry.com

## Kathy T Johnson

---

**From:** Maureen & Grant Sorensen [gmcdm@IW.NET]  
**Sent:** Tuesday, June 28, 2011 7:02 PM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** Requesting hearing

Ms Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms Johnson,

In response to the "notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the State Register, I wish to request a public hearing on those proposed rules. In particular, I am concerned about , and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp. 9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Grant Sorensen D.D.S.  
1029 3rd Ave  
Worthington, MN 56187

## Kathy T Johnson

---

**From:** Venetia Laganis [laganis@comcast.net]  
**Sent:** Tuesday, June 28, 2011 1:54 PM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** Request for public hearing

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Venetia Laganis, DDS, MS  
Pediatric Dentist  
7767 Elm Creek Blvd., Suite 110  
Maple Grove, MN 55369

Sent from my iPad



June 28, 2011

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Donna J. Stenberg', written over a printed name.

Donna J. Stenberg, DDS, MS

**DONNA J. STENBERG, D.D.S., M.S.**

1395 Curve Crest Boulevard | Stillwater, MN 55082 | 651-439-1966 | 800-640-9335 | (f) 651-439-7555  
www.stenbergorthodontics.com



DOUGLAS M. ERICKSON, DDS, MS, FACP  
Board Certified Prosthodontist

1212 Medical Arts Building  
324 West Superior Street  
Duluth, MN 55802  
218-722-8118  
Fax: 218-726-9089

June 28, 3011

Douglas M. Erickson, DDS, MS  
324 W. Superior Street, Suite 1212  
Duluth, MN 55802

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE, Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Douglas M. Erickson, DDS, MS

## Kathy T Johnson

---

**From:** Kirby Johnson [joh08964@umn.edu]  
**Sent:** Tuesday, June 28, 2011 12:00 PM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** [-- Possible SPAM --] - Public Hearing Request - Number of numbers in MIME From exceeds maximum threshold

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the State Register, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Kirby Johnson  
2737 Blaisdell Ave. S., Unit 3  
Minneapolis, MN 55408

--

Kirby Johnson  
U of MN School of Dentistry  
DDS Class of 2014  
MN ASDA President-elect

MN ASDA President-elect

# ENDODONTIC ASSOCIATES LIMITED

ABBAS TABIBI, No. 2819, P. 2  
ROBERT S. EDMUNDS, D.D.S., M.S.  
RAMON AGUIRRE, D.D.S., M.S.  
KIRK A. DULAC, D.D.S., M.S.D.  
ALEJANDRO M. AGUIRRE, D.D.S., M.S.  
THOMAS E. NEAFUS, D.D.S., M.S.  
BADRI JUREIDINI, D.D.S., M.S.  
JEFFREY L. RYAN, D.D.S., M.S.

**Brooklyn Center Office**  
Brookdale Corporate Center  
6300 Shingle Creek Parkway  
Suite 365  
Brooklyn Center, MN 55430  
Phone: (763) 537-5795  
FAX: (763) 537-2796

**Edina Office**  
Centennial Lakes  
Medical Center  
7373 France Ave South  
Suite 608  
Edina, MN 55435  
Phone: (952) 832-0404  
FAX: (952) 832-0131

**Elk River Office**  
Waterfront West  
Professional Building  
9075 Quaday Ave NE  
Suite 103  
Osseo, MN 55330  
Phone: (763) 398-3320  
Fax: (763) 398-3325

**Coon Rapids Office**  
Mercy Health Care Center  
3960 Coon Rapids Boulevard  
Suite 320  
Coon Rapids, MN 55433  
Phone: (763) 427-1720  
FAX: (763) 427-5659

**North Oaks Office**  
Village Center  
Professional Building  
700 Village Center Drive  
Suite 150  
North Oaks, MN 55127  
Phone: (651) 481-8443  
FAX: (651) 481-8380

**Plymouth Office**  
WestHealth Medical  
Building  
2805 Campus Drive  
Suite 445  
Plymouth, MN 55441  
Phone: (763) 694-9588  
FAX: (763) 694-9794

**Administrative Office**  
11464 Robinson Drive NW  
Coon Rapids, MN 55433  
Phone: (763) 767-6202  
FAX: (763) 767-6259

www.ealmn.com

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,



Ramon Aguirre, D.D.S., M.S.

Endodontic Associates Limited  
763-694-9588

**Kathy T Johnson**

---

**From:** Michael Madden <[madde011@umn.edu](mailto:madde011@umn.edu)>

**Date:** June 28, 2011 8:28:17 AM CDT

**To:** <[Dental.Board@state.mn.us](mailto:Dental.Board@state.mn.us)>

**Subject:** request public hearing

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE, Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Michael J. Madden DDS  
University of Minnesota School of Dentistry  
4-215 Moos Tower  
515 Delaware Street SE  
Minneapolis, MN 55455  
612-625-5455

## Kathy T Johnson

---

**From:** Docmogckblock@aol.com  
**Sent:** Tuesday, June 28, 2011 9:26 AM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** Request of Public Hearing

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding record keeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the well being of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Susan Block, DDS

Susan E. M. Block, DDS  
Suite 100  
14070 Commerce Ave., NE  
Prior Lake, MN 55372

## Kathy T Johnson

---

**From:** Norman Coates [nfcoates@gmail.com]  
**Sent:** Tuesday, June 28, 2011 9:16 AM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** Proposed Rule Changes to the Dental Act

Dear Ms. Johnson,

My name is Norman Coates, and I am a licensed dentist in Minnesota and practice with the group "Associated Dentists" on 1371 Seventh St. West, St. Paul, Minnesota.

It has come to my attention that there are proposed rule changes regarding dental therapists and advanced dental therapists. The rule I am particularly concerned with is Board Rule 3100.9600, Subp. 9 which relates to record keeping and informed consent. In my opinion, these are areas that should be under the auspices of a licensed dentist and a hearing regarding these changes should be in the public forum. Please consider holding a public hearing in this regard in the interest of the public's safety and well-being.

Thank you for your consideration,

Dr. Norman Coates

June 28, 2011

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,



Todd T. Tsuchiya, DDS  
5851 Duluth Street, Suite 100  
Golden Valley, MN 55422  
763-546-1301

## Kathy T Johnson

---

**From:** Laura Eng [lauraengdds@yahoo.com]  
**Sent:** Monday, June 27, 2011 5:08 PM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** request for public hearing

Ms. Kathy T. Johnson

Minnesota Board of Dentistry

University Park Plaza

2829 University Avenue SE

Suite 450

Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the well-being of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you.

Sincerely,

Laura Eng, DDS

411 Main Street, St. Paul, MN 55102

## Kathy T Johnson

---

**From:** Tom Day [TDay@mndental.org]  
**Sent:** Tuesday, June 28, 2011 9:04 AM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** Notice of Intent to Adopt Rules

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

**Tom Day**

9667 Hamlet Ave S.  
Cottage Grove, MN 55016

## Kathy T Johnson

---

**From:** Ronald K. Leach D.D.S. [drleach@leachdental.com]  
**Sent:** Monday, June 27, 2011 6:45 PM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** Public Hearing Request.

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Ronald K. Leach DDS  
101 S. Park Ave  
LeCenter Mn 56057

## Kathy T Johnson

---

**From:** Kevin & Cathy Dens [kcdens@msn.com]  
**Sent:** Monday, June 27, 2011 6:41 PM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** Public Hearing request

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Kevin W. Dens, DDS  
2220 Norway Pine Rd SW  
Brainerd, MN 56425

## Kathy T Johnson

---

**From:** Roger Sjulson [rwsdds@GVTEL.COM]  
**Sent:** Monday, June 27, 2011 6:46 PM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** request for public hearing

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,  
Roger Sjulson DDS  
109 N. Johnson Ave  
Fosston, MN 56542

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care or that adequate safeguards are present to protect the patient. Also, I do not believe that the wellbeing of the patient would be appropriately provided for if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Timothy J.Flor, DDS  
President  
Minnesota Dental Association

Timothy J.Flor, DDS  
1505 North State Street  
Waseca, MN 56093  
email---- [drtflor@prairiedentalarts.com](mailto:drtflor@prairiedentalarts.com)

## Kathy T Johnson

---

**From:** Karl Andreasen [cstrand2@mac.com]  
**Sent:** Monday, June 27, 2011 7:22 PM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** Notice

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Karl andreasen, dds  
120 prospect av  
Minneapolis, Mn 55419

Sent from my iPhone

## Kathy T Johnson

---

**From:** Michelle Bergsrud [sbeautifulsmile@comcast.net]  
**Sent:** Monday, June 27, 2011 8:08 PM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** Request for hearing please

Kathy T. Johnson

Minnesota Board of Dentistry

University Park Plaza

2829 University Avenue SE

Suite 450

Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely

Michelle Bergsrud DDS, MS  
Beautiful Smiles Orthodontics PA  
6060 Clearwater Drive, Suite 230  
Minnetonka, MN 55343

Office: 952-938-8882  
Mobile: 952-297-5597  
[sbeautifulsmile@comcast.net](mailto:sbeautifulsmile@comcast.net)

[www.beautifulsmilesmn.com](http://www.beautifulsmilesmn.com)

## Kathy T Johnson

---

**From:** Michael Zakula [drmichaelzakula@gmail.com]  
**Sent:** Monday, June 27, 2011 9:34 PM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** Public Hearing Request

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue S.E.  
Suite 450  
Minneapolis, Minnesota 55414-3249

Re: Request for Public Hearing

Dear Ms. Johnson,

After reviewing the "Notice of Intent to Adopt Rules" pertaining to dental therapists and advanced dental therapist in the State Register, I would like to request a public hearing on those proposed rules. Specifically I have concerns with adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, pertaining to informed consent and record keeping. Informed consent is clearly not within the legal scope of practice of a dental therapist or an advanced dental therapist. Therefore it is not appropriate care for them to provide to patients. Their training does not adequately prepare them with the skills and information necessary to safely provide patients with all the options and ramifications pertaining to the treatment options available to them.

Sincerely,  
Michael Zakula  
333 Highland Drive  
Hibbing, Minnesota 55746

## Kathy T Johnson

---

**From:** Doug Williams [molar@paulbunyan.net]  
**Sent:** Tuesday, June 28, 2011 7:55 AM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** Re: Request for a public hearing- Dental Therapists

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,  
Douglas R. Williams, D.D.S.  
PO Box 1005  
Bemidji, MN 56619-0522

**Kathy T Johnson**

---

**From:** aaguirreg@comcast.net  
**Sent:** Monday, June 27, 2011 3:53 PM  
**To:** Kathy.T.Johnson@state.mn.us  
**Cc:** Alejandro Aguirre  
**Subject:** Dental Therapist Rules

Greetings,

My name is Alejandro M. Aguirre and I would like to respectfully ask for a public hearing regarding the Dental Therapist rules that the Board of Dentistry is considering.

Thank you kindly,

Alejandro M. Aguirre DDS, MS  
2805 Campus Drive Suite #445  
Plymouth, MN 55441

763-694-9588



## SAINT ANTHONY PARK DENTAL ARTS

2282 Como Avenue West • Saint Paul, Minnesota 55108

Phone 651.646.1123 • Fax 651.646.1987

www.sapdentalarts.com

William Harrison DDS

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

William H. Harrison D.D.S.

President-St. Paul District Dental Society

## Kathy T Johnson

---

**From:** Domo@aol.com  
**Sent:** Monday, June 27, 2011 2:43 PM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** Board rules - request for hearing

I am writing to request a hearing on your proposed rules relating to dental therapist and advanced dental therapist. Specifically, I would like to comment on the portion of the rule relating to record keeping and the ability to provide informed consent.

This provision in the rule seems to conflict with current dental practice act statutes and should not be included in the rule.

Thank you. I look forward to a public hearing on the proposed rules.

Dominic Sposeto

***Dominic J. Sposeto***  
Dominic Sposeto & Associates  
2824 Irving Avenue S.  
Minneapolis, MN 55408-1802  
[domo@aol.com](mailto:domo@aol.com)

## Kathy T Johnson

---

**From:** Jamie Sledd [JSledd@ARBORLAKESDENTAL.COM]  
**Sent:** Monday, June 27, 2011 2:40 PM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** Request for hearing.

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Jamie L. Sledd, DDS  
Arbor Lakes Dental  
12000 Elm Creek Boulevard  
Suite 230  
Maple Grove, MN 55369  
763-494-4443

## Kathy T Johnson

---

**From:** Dr. Michael Perpich [mperpich@nqadental.com]  
**Sent:** Monday, June 27, 2011 2:30 PM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** Notice of Intent to Adopt Rules

Ms. Kathy T. Johnson

Minnesota Board of Dentistry

University Park Plaza

2829 University Avenue SE

Suite 450

Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Michael J. Perpich, D.D.S.

Dr. Michael Perpich  
NQA Inc.  
10743 Lyndale Circle  
Bloomington, MN 55420

612-819-1882 - P  
[mperpich@nqadental.com](mailto:mperpich@nqadental.com)

## Kathy T Johnson

---

**From:** Maureen & Grant Sorensen [gmcdm@IW.NET]  
**Sent:** Tuesday, June 28, 2011 9:33 PM  
**To:** Kathy.T.Johnson@state.mn.us  
**Subject:** Board Rule 3100.9600

Dear Ms Johnson:

I wish to request a public hearing on the proposed rules regarding recordkeeping and informed consent for dental therapists and advanced dental therapists (Board Rule 3100.9600).

Sincerely,

Maureen Sorensen, D.D.S.  
Worthington, MN

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Kemmet' with 'DDS' written below it.

Lindell Kemmet, DDS  
Bassett Creek Dental  
(763) 546-1301

## Kathy T Johnson

---

**From:** Kimberly Lindquist [kadl@aol.com]  
**Sent:** Monday, June 27, 2011 5:28 PM  
**To:** Kathy.T.Johnson@state.mn.us

Ms. Kathy T. Johnson  
Minnesota Board of Dentistry  
University Park Plaza  
2829 University Avenue SE  
Suite 450  
Minneapolis, MN 55414-3249

Dear Ms. Johnson,

In response to the "Notice of Intent to Adopt Rules" regarding dental therapists and advanced dental therapists recently published in the *State Register*, I wish to request a public hearing on those proposed rules. In particular, I am concerned about, and opposed to, adding dental therapist and advanced dental therapist to Board Rule 3100.9600, Subp.9, regarding recordkeeping and informed consent. I do not believe that informed consent is within the legal scope of practice of a dental therapist or an advanced dental therapist. I do not believe that it is appropriate care, nor that the wellbeing of the patient would be appropriately provided for, if informed consent were to be provided by a dental therapist or an advanced dental therapist.

Thank you for your consideration of this request.

Sincerely,

Kimberly Lindquist DDS, MSD  
Second Vice President  
Northeast District Dental Society  
324 W. Superior Street  
Duluth, MN 55802

Sent from my iPad



## MINNESOTA BOARD OF DENTISTRY

University Park Plaza, 2829 University Avenue SE, Suite 450  
Minneapolis, MN 55414-3249 www.dentalboard.state.mn.us  
Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

---

**Minnesota Board of Dentistry**

### **CERTIFICATE OF MAILING A NOTICE OF HEARING TO THOSE WHO REQUESTED A HEARING**

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

I certify that on July 26, 2011, I mailed a Notice of Hearing by depositing the Notice in the State of Minnesota's central mail system for proper postage to be affixed and subsequently placed in the United States mail, to all persons who requested a hearing. The Notice is given under Minnesota Statutes, section 14.25, subdivision 1. Copies of both the Notice and of the mailing list are attached to this Certificate.

A handwritten signature in cursive script that reads "Kathy T. Johnson".

KATHY T. JOHNSON

Legal Analyst

Minnesota Board of Dentistry



**MINNESOTA BOARD OF DENTISTRY**  
University Park Plaza, 2829 University Avenue SE, Suite 450  
Minneapolis, MN 55414-3249 www.dentalboard.state.mn.us  
Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

---

**Minnesota Board of Dentistry**

**NOTICE OF HEARING TO THOSE WHO REQUESTED A HEARING**

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

To persons who requested a hearing. In accordance with Minnesota Statutes, section 14.25, subdivision 1, the Board of Dentistry is sending this Notice to all persons who requested a hearing.

**There will be a hearing.** In the June 6, 2011, State Register, on pages 1907 to 1914, the Board of Dentistry published a Dual Notice of Intent to Adopt Rules relating to dental therapists and advanced dental therapists. The Notice stated that the Board of Dentistry would hold a hearing on the proposed rules if 25 or more persons submitted written requests. We have received a sufficient number of requests for a hearing. The hearing will be conducted as stated in the State Register in the 4<sup>th</sup> Floor Conference Room A, University Park Plaza, 2829 University Avenue SE, Minneapolis, Minnesota 55414, starting at 9:00 a.m. on Friday, August 5, 2011.

**Administrative Law Judge.** Administrative Law Judge Manuel J. Cervantes will conduct the hearing. The judge can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620, telephone 651-361-7945, and Fax 651-361-7936. You should direct questions concerning the rule hearing procedure to the administrative law judge.

**Agency Contact Person.** The agency contact person is: Kathy Johnson, Minnesota Board of Dentistry, University Park Plaza, 2829 University Avenue SE, Suite 450, Minneapolis, Minnesota 55414-3249, phone: 612-548-2134 or 888/240-4762 (outside metro), Fax: 612-617-2260. Minnesota Relay Service for hearing impaired: 800/627-3529. You should direct questions or comments about the rules to the agency contact person. A copy of the Dual Notice, as published in the State Register on June 6, 2011, is available upon request from the agency contact person or is located on the Board's website at [www.dentalboard.state.mn.us](http://www.dentalboard.state.mn.us).

Date: July 26, 2011

Marshall Shragg, Executive Director  
Minnesota Board of Dentistry

## MAILING LIST OF HEARING REQUESTORS

Lois Duerst, DDS  
1395 Curve Crest Blvd  
Stillwater, MN 55082

John Lueth, DDS  
P.O. Box 1310  
Bemidji, MN 56619

William Hoffmann, DDS  
Southdale Medical Bldg #690  
6545 France Ave South  
Edina, MN 55435

Michael Flynn, DDS  
560 Debra Drive  
P.O. Box 607  
Lewiston, MN 55952

Daniel Rose, DDS  
727 Buckskin Ave West  
Pillager, MN 56473

Thomas Smyth, DDS  
1211 Caledonia Street  
Mankato, MN 56001

Michael Collins, DDS  
121 – 7<sup>th</sup> Ave East  
Alexandria, MN 56308

Adam Swingdorf  
4000 Zenith Ave North  
Robbinsdale, MN 55422

Michael Kurkowski, DDS  
3500 North Rice Street  
St. Paul, MN 55126

James Zenk, DDS  
1317 Grove Avenue  
Montevideo, MN 56265

Grant Sorensen, DDS  
1029 – 3<sup>rd</sup> Avenue  
Worthington, MN 56187

Venetia Laganis, DDS  
7767 Elm Creek Blvd, Ste 110  
Maple Grove, MN 55369

Donna Stenberg, DDS  
1395 Curve Crest Blvd  
Stillwater, MN 55082

Douglas Erickson, DDS  
324 W. Superior St, Ste 1212  
Duluth, MN 55802

Kirby Johnson  
2737 Blaisdell Ave S, Unit 3  
Minneapolis, MN 55408

Ramon Aguirre, DDS  
WestHealth Medical Bldg  
2805 Campus Dr, Ste 445  
Plymouth, MN 55441

Michael Madden, DDS  
4-215 Moos Tower  
515 Delaware Street SE  
Minneapolis, MN 55455

Susan Block, DDS  
14070 Commerce Ave NE # 100  
Prior Lake, MN 55372

Norman Coates, DDS  
1371 – 7th Street West  
St. Paul, MN 55116

Todd Tsuchiya, DDS  
5851 Duluth Street, Ste 100  
Golden Valley, MN 55422

Laura Eng, DDS  
411 Main Street  
St. Paul, MN 55102

Tom Day  
9667 Hamlet Ave South  
Cottage Grove, MN 55016

Ronald Leach, DDS  
101 S. Park Ave  
LeCenter, MN 56057

Kevin Dens, DDS  
2220 Norway Pine Rd SW  
Brainerd, MN 56425

Roger Sjulson, DDS  
109 N. Johnson Ave  
Fosston, MN 56542

Timothy Flor, DDS  
1505 North State Street  
Waseca, MN 56093

Karl Andreasen, DDS  
120 Prospect Ave  
Minneapolis, MN 55419

Michelle Bergsrud, DDS  
6060 Clearwater Dr, Ste 230  
Minnetonka, MN 55343

Michael Zakula, DDS  
333 Highland Drive  
Hibbing, MN 55746

Douglas Williams, DDS  
P.O. Box 1005  
Bemidji, MN 56619-0522

Alejandro Aguirre, DDS  
2805 Campus Dr, Ste 445  
Plymouth, MN 55441

William Harrison, DDS  
2282 Como Ave West  
St. Paul, MN 55108

Dominic Sposeto  
2824 Irving Avenue S  
Minneapolis, MN 55408-1802

Jamie Sledd, DDS  
Arbor Lakes Dental  
12000 Elm Creek Blvd, Ste 230  
Maple Grove, MN 55369

Michael Perpich, DDS  
10743 Lyndale Circle  
Bloomington, MN 55420

Maureen Sorensen, DDS  
1029 – 3<sup>rd</sup> Avenue  
Worthington, MN 56187

Lindell Kemmet, DDS  
5851 Duluth Street, Ste 100  
Golden Valley, MN 55422

Kimberly Lindquist, DDS  
324 W. Superior St, Ste 824  
Duluth, MN 55802

# MINNESOTA BOARD OF DENTISTRY

## RULES HEARING

Friday, August 5, 2011 @ 9:00 a.m. – 12:15 p.m.

Assistant Chief Administrative Law Judge Eric L. Lipman  
OAH Docket No. 8-0902-22075-1

4<sup>th</sup> Floor Conference Room A  
2829 University Ave. SE  
Minneapolis, MN 55414

### Exhibit List

Exhibit No.	Description of Exhibit
<b>Statutory Documents A to K-2</b>	
A	Request for Comments – State Register
B	<u>Not enclosed</u> : rulemaking petitions
C	Proposed Rules including Revisor’s approval
D	SONAR
E	Certificate and Letter - Legislative Reference Library
F	Dual Notice – State Register
G	Certificate of Mailing the Dual Notice and of Accuracy of the Rulemaking Mailing List
H	Certificate of Additional Notice (including supportive documentation)
I-1	Written Comment – 07/06/11 Letter from Minnesota Dental Association Re: Informed Consent
I-2	More than 25 Hearing Requests/Comments Re: Informed Consent
J	<u>Not enclosed</u> : authorization to omit proposed rules text from Notice of Hearing in the State Register
K-1	Notice to Legislators – Certificate and Letter
K-2	Consultation with MMB – Certificate, Letter, and Response
<b>Additional Exhibits from Hearing</b>	
L	Testimony of Board of Dentistry Member – Candace Mensing, D.D.S.
M	Testimony of Board of Dentistry Member – David A. Linde, D.D.S.
N	Testimony of Minnesota Dental Association Executive Director Dick Diercks
O	S.F. 1201 [H.F. 1483]

### Witness List

1. **Candace Mensing, D.D.S.** – Member of the Minnesota Board of Dentistry, will testify about the rationale for recommending the proposed rules relating to the advanced dental therapist and dental therapist.
  
2. **David Linde, D.D.S.** – President of the Minnesota Board of Dentistry, will testify about the rationale for recommending the proposed rules relating to the advanced dental therapist and dental therapist.

State of Minnesota Board of Dentistry

Licensure and Credentials Committee

Rule Hearing August 5<sup>th</sup>, 2011

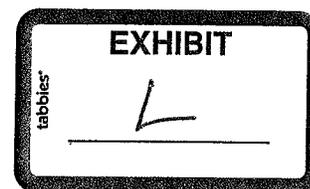
Minnesota Statute 150A.105 and 150A.106

Dental Therapy and Advanced Dental Therapy

Good morning and welcome Judge Lipman, Fellow Members of the Board of Dentistry, Board staff members, the attorney representing the Attorney General's Office and guests. I am Board member Dr. Candace Mensing. Throughout the legislative process for the Statutes involving Dental Therapy and Advanced Dental Therapy, I have been an officer of the Board of Dentistry and I have held positions on several committees, including the Licensure and Credentials Committee. This committee was assigned the task of working through the Collaborative Management Agreement for the Advanced Dental Therapist. We are here today to discuss the Collaborative Management Agreement and the roles that the collaborating dentist and advanced dental therapist have in providing care to the citizens of Minnesota.

The importance of the Collaborative Management Agreement is stated in the following two references. Statute 150A.105 Subdivision 3 (a) states that, quote: "Prior to performing any of the services authorized under this chapter, a dental therapist must enter into a written collaborative management agreement with a Minnesota-licensed dentist." This includes advanced dental therapists who are, by definition, also dental therapists. Further, Statute 150A.106, Subdivision 3 (a) states, quote: "An advanced dental therapist shall not perform any service or procedure described in Subdivision 2 except as authorized by the collaborating dentist."

The Committee's task was to interpret some of the language of the Statute and review the requirements for the Collaborative Management Agreement. During the process, the Committee adopted the premise that the final work product should adhere to Statutes 150A.105 and 150A.106 as completely and accurately as possible. The Committee held many open session meetings and received extensive testimony from many interested and concerned public participants. The Committee's final document does indeed adhere to the Statutes referenced. However, there are three inconsistencies in the law, between the new Statutes and pre-existing Rules - inconsistencies that the Committee could not reconcile satisfactorily. These, briefly stated are, first, the matter of a comprehensive oral evaluation that must be completed by a dentist, not by an advanced dental therapist. Second, the matter of developing an individualized and comprehensive treatment plan for each patient which must be done by a dentist, not by an advanced dental therapist. And third, the matter of informed consent which the patient must give to a dentist, based upon the outcome of the comprehensive oral evaluation and the individualized treatment plan, not to an advanced dental therapist.



General Supervision defined by Rule 3100.0100 Subpart 21 does not grant these functions to the advanced dental therapist or describe the real relationship between the advanced dental therapist and the collaborating dentist. Further, Recordkeeping Rule 3100.9600 does not grant these functions to the advanced dental therapist, but only to the dentist.

The only support for granting these functions to the advanced dental therapist is found in Statute 150A.106 Subdivision 3 (a) which states, quote: "An advanced dental therapist shall not perform any service or procedure described in subdivision 2 except as authorized by the collaborating dentist." The important phrase is, quote: "except as authorized by the collaborating dentist." What exactly is the legal definition of the phrase "authorized by the collaborating dentist?"

Can the dentist authorize the advanced dental therapist to do examinations that are more comprehensive in nature when the dentist is not present in the office, and may have never examined this patient? Can the dentist authorize the advanced dental therapist to develop an individualized treatment plan for the patient when the dentist is not present in the office and has never done a comprehensive oral evaluation for this patient? Can the dentist authorize the advanced dental therapist to get informed consent from the patient when the dentist is not present in the office, no comprehensive oral evaluation has been done by a dentist and there is no comprehensive, individualized treatment plan? Recordkeeping Rule 3100.9600 requires these of every other dentist in Minnesota. How should these Rules then be applied to the unique relationship between the collaborating dentist, the advanced dental therapist and the patient?

This is what the Committee decided to do after many hours of debate and when compromise seemed impossible. The Committee accepted that the phrase "authorized by the collaborating dentist" extended certain functions to the advanced dental therapist who was working with a dentist under a unique contract called a Collaborative Management Agreement. The dentist would be ultimately responsible for all aspects of care, from diagnosis to comprehensive care. First, the advanced dental therapist would be authorized by the dentist to complete a limited type of examination called an oral evaluation and assessment as stated in Statute 150A.106 Subdivision 2 (1) without the dentist present on site. Second, the advanced dental therapist may complete a limited treatment plan corresponding only to the limited scope of practice of the advanced dental therapist – also without the collaborating dentist on site. And third, the advanced dental therapist may get informed consent from the patient corresponding to this limited treatment plan – again without the collaborating dentist on site. Thus, the collaborating dentist has extended limited duties to the advanced dental therapist only because they have a working contract called a Collaborative Management Agreement.

The Committee voted to accept this interpretation. Later, the Board of Dentistry voted at an open and noticed Board meeting also to accept this interpretation of the Statutes. The inconsistencies in the Statutes and Rules obviously still exist. As a Board member who has considerable experience with complaint matters, I must emphasize that these inconsistencies are very real. For example, the Board holds every dentist to the words and actions of Recordkeeping Rule 3100.9600. It translates into appropriate care and protection for every patient seeking dental care in Minnesota. What will happen if a patient sees an advanced dental therapist for a limited oral evaluation and assessment, but never sees

the collaborating dentist for a comprehensive oral evaluation? A complete and accurate diagnosis may not be made, a treatment decision may be made out of sequence, a disease process may not be identified, a patient may suffer the consequences of fragmented care because this is possible when limited services are being provided and comprehensive services are not.

Can the collaborating dentist authorize an advanced dental therapist to provide care with limited information under these circumstances? To what degree is the advanced dental therapist an extension of the collaborating dentist? Has the Board granted too much latitude to the collaboration? Are the Board's decisions fully supported by the Statutes and Rules? We are here now to discuss all aspects of these issues. You should know that the Committee and the Board did not receive advice from the Attorney General's Office in this matter. The AGO declined to participate in this process.

Today you will hear from many compassionate and dedicated people that access to care is the most important element of the new Statutes for dental therapy and advanced dental therapy – that many citizens of Minnesota have dental needs that are unmet and will continue to be unmet if there are changes to the legislation, or if implementation is slowed down in some way. This is the first legislation of its kind in this nation. It is ground breaking. We are all aware that economic issues have created serious dental needs in our state. But, this new legislation must NOT rush patients, dentists and advanced dental therapists into situations that put the patient at unforeseen, unintended risk.

Thank you, Dr. Candace Mensing

Your Honor,

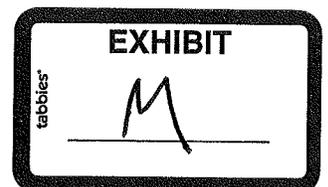
I have read through the proposed Rule changes and find them to be an accurate attempt to achieve what the legislature asked of us with the Statute written as it is. In regards to the informed consent issue, the Statute will require the Collaborative Management Agreement to supersede the lack of examination, diagnosis and informed consent normally given by the dentist.

I have read through the letter written by the Minnesota Dental Association and they are correct that previously the definition of "practicing dentistry" was limited by the ability to diagnose, and that only the dentist could diagnose. 150A.05, Subd. 1, (1). Similarly, only a dentist could give "informed consent". Rules: 3100.9600, Subp. 9.

I have been part of almost every discussion involving the creation of this provider, their education and their testing. While they are going to be well educated individuals and a necessary part of the allied staff, they will not be dentists. That is why the Board passed on December 3, 2010 our 10 point list of concerns that hopefully the legislature would address. The Minnesota Dental Association's legislation was an attempt to address some of these concerns.

This relates directly to the Scope of Practice (list of duties) of an advanced dental therapist. The advanced dental therapist is held accountable to the Board through education, testing, licensing and certification for a specific scope of practice, which is well defined and not "comprehensive". It basically consists of preventive and restorative (fillings and temporary crowns) procedure codes. 150A.105, Subd.4 and 150A.106 Subd.2. Only the dentist has the education, testing, and licensing of comprehensive dental practice such as endodontics (root canals), crowns, bridges, dentures, orthodontics, oral surgery, oral pathology, and periodontics (gum treatment). Therefore, how is an advanced dental therapist to do an adequate informed consent covering options, risks, benefits and consequences of no treatment if they did not do a comprehensive examination and treatment plan? Is the advanced dental therapist to be held accountable for only informed consent in their scope of practice? The Collaborative Management Agreement recommends that the patient be referred to a dentist for a comprehensive exam, etc. but does not require it of the patient. The patient may choose to not go to the referral. Thus, the patient may never receive a comprehensive exam, treatment plan and informed consent.

Please note that the Collaborative Management Agreement also allows for a comprehensive examination, treatment plan and informed consent to be done by a dentist off site by teledentistry. Please see ADT/CMA page 3, (13) 3. Then the advanced dental therapist could proceed with perhaps multiple appointments of treatment without the dentist's further involvement.



In closing, all sides are correct in their individual proposals, but unfortunately the public is being left at risk. This new provider is going to be treating those patients who by definition are at risk from lacking the normal avenues to health care and therefore will bring to the health care environment challenges for which the dental therapist and the advanced dental therapist are not comprehensively educated.

I do believe that access, which is not safe, is not the intent of the legislature. However, the court may determine that the new statute and proposed rules accurately reflect the legislature's intent. The Board will implement the courts decision.

David A. Linde, DDS  
2011 Board of Dentistry President

## INFORMED CONSENT TALKING POINTS

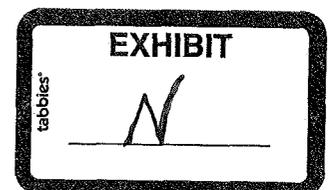
---

Your Honor, thank you for the opportunity to speak to you today.

My name is Dick Diercks. I am the Executive Director of the Minnesota Dental Association.

The Minnesota Dental Association is speaking today in opposition to the proposed rule amendment in 3100.9600, Subpart 9(A), that would allow dental therapists and advanced dental therapists to obtain informed consent from a patient.

1. An advanced dental therapist cannot be allowed in rule to provide informed consent because the advanced dental therapist cannot diagnose patients or create a treatment plan as required as part of informed consent.
  - a. The courts have made it clear that a diagnosis and treatment plan are required and integral components of informed consent.
  - b. The legislature has given only dentists the authority to diagnose within their scope of practice. 150A.05, Subd. 1(1). No other dental provider has diagnosis within their scope of practice.
  - c. Without a comprehensive exam, diagnosis, and formulation of possible treatment plans (which only the dentist can provide), the "prognosis, benefits, and risks of each treatment option (i.e., informed consent) cannot meaningfully be discussed with the patient nor can the patient fully consent to one of the treatment plans.
  - d. So, without the power to make a diagnosis and formulate a treatment, a provider, including an advanced dental therapist, cannot obtain informed consent.
2. The scope of practice for a dental therapist states that the authorized services are to be provided under general supervision. 150A.105, Subd. 4(c).
  - a. General supervision, as defined by the Board in 3100.0100, Subp. 21, requires the tasks to be performed by the supervised individual "with the prior knowledge and consent of the dentist."
  - b. Therefore, a dental therapist and an advanced dental therapist cannot be authorized in rule by the Board to independently provide informed consent.
  - c. Indeed, since informed consent must be treatment- and patient-specific, general supervision requires that a dentist be involved and have prior knowledge and give consent to the information provided to each patient.
    - i. Blanket or implied consent is not allowed.
  - d. Thus, the proposed rule regarding informed consent would exempt informed consent from the general supervision requirement, which is a violation of state law.



3. The proposed informed consent rule would allow unsupervised treatment by dental therapists and advanced dental therapists in contradiction to the general supervision requirement of the dental therapist law.
  - a. If informed consent is allowed to be done by a dental therapist or advanced dental therapist without the prior knowledge and consent of the dentist, then all types of procedures could be done without the prior knowledge and consent of the dentist which would be a violation of the general supervision requirement of the law.
  - b. Furthermore, violating the general supervision requirement of state law could allow patients to receive treatment without ever returning for a dentist's comprehensive exam, diagnosis, and treatment plan which would be very deleterious for patient care.
  - c. The legislature has directed that dental therapists and advanced dental therapists work requires the actual and active involvement of dentists in caring for individual patients. For instance,
    - i. Collaborative management agreements are required.
    - ii. A limit is placed on the number of dental therapists and advanced dental therapists with whom a dentist may have a collaborative management agreement at any one time.
    - iii. General supervision is required.
    - iv. An advanced dental therapist is authorized to formulate an individualized treatment plan authorized by the collaborating dentist.
    - v. The collaborating dentist must ensure that a dentist is available to the advanced dental therapist for timely consultation during treatment.
    - vi. The collaborating dentist must also provide or arrange with another dentist or specialist to any patient who requires more treatment than the advanced dental therapist is authorized to provide.
    - vii. So, the MDA does not believe that the Board's proposed rule that would expand the ability of dental therapists and advanced dental therapists to obtain informed consent is legal. Such action needs to be an act of the legislature.
4. The proposed rule undermines the purpose of informed consent and puts patients at risk.
  - a. Providing only limited information or, worse, depriving patients of relevant information before treatment begins, leaves patients less informed and prevents them from truly consenting to their treatment.
  - b. The Board's website itself advises that information provided in the informed consent process should be comprehensive and not limited to just those procedures that are provided in that dentist's practice or to what the dentist personally thinks is appropriate.
  - c. Only dentists have the training, experience, and education required to diagnose and prepare a comprehensive treatment plan and then provide informed consent with the patient.

5. Conclusion: The informed consent portion of the rule is not within the authority of the Board of Dentistry to establish by rule.



# Minnesota Senate

Legislature Home | Links to the World | Help | Advanced Search

House | Senate | Joint Departments and Commissions | Bill Search and Status | Statutes, Laws, and Rules

KEY: ~~stricken~~ = removed, old language. underscored = added, new language.

Authors and Status

List versions



Senjem, Miller, SPARKS, Nelson, Fischbach

S.F. No. 1201, as introduced - 87th Legislative Session (2011-2012) Posted on Apr 13, 2011

H.F. 1483 HAMILTON, NoSTON, HUNTLEY, DEAN, McFarlane

A bill for an act

MACK

1.2 relating to health; changing provisions in dental practice;amending Minnesota  
1.3 Statutes 2010, sections 150A.05, subdivision 1b; 150A.105, subdivisions 2,  
1.4 8; 150A.106.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2010, section 150A.05, subdivision 1b, is amended to  
1.7 read:

1.8 Subd. 1b. **Practice of dental therapy.** A person shall be deemed to be practicing as  
1.9 a dental therapist within the meaning of this chapter who:

1.10 (1) works under the supervision of a Minnesota-licensed dentist under a collaborative  
1.11 management agreement as specified under section 150A.105;

1.12 (2) practices in settings that serve low-income, ~~uninsured~~, and underserved  
1.13 patients or are located in dental health professional shortage areas and who maintains an  
1.14 underserved patient base of at least 50 percent as defined by section 150A.105, subdivision  
1.15 8, paragraph (b), clause (6), items (i) to (iii); and

1.16 (3) provides oral health care services, including preventive, oral ~~evaluation and~~  
1.17 assessment, educational, palliative, therapeutic, and restorative services as authorized  
1.18 under sections 150A.105 and 150A.106 and within the context of a collaborative  
1.19 management agreement.

1.20 Sec. 2. Minnesota Statutes 2010, section 150A.105, subdivision 2, is amended to read:

1.21 Subd. 2. **Limited practice settings.** A dental therapist licensed under this chapter  
1.22 is limited to primarily practicing in settings that serve low-income, ~~uninsured~~, and  
1.23 underserved patients or in a dental health professional shortage area. A dental therapist  
2.1 licensed under this chapter must maintain an underserved patient base of at least 50  
2.2 percent as defined by subdivision 8, paragraph (b), clause (6), items (i) to (iii).

2.3 Sec. 3. Minnesota Statutes 2010, section 150A.105, subdivision 8, is amended to read:

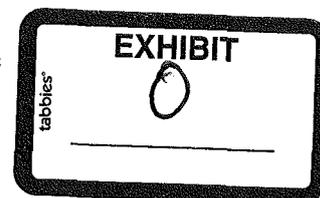
2.4 Subd. 8. **Definitions.** (a) For the purposes of this section, the following definitions  
2.5 apply.

2.6 (b) "Practice settings that serve the low-income and underserved" mean any of  
2.7 the following:

2.8 (1) critical access dental provider settings as designated by the commissioner of  
2.9 human services under section 256B.76, subdivision 4;

2.10 (2) dental hygiene collaborative practice settings identified in section 150A.10,  
2.11 subdivision 1a, paragraph (e), and including medical facilities, assisted living facilities,  
2.12 federally qualified health centers, and organizations eligible to receive a community clinic  
2.13 grant under section 145.9268, subdivision 1;

2.14 (3) military and veterans administration hospitals, clinics, and care settings;



(4) a patient's residence or home when the patient is home-bound or receiving or eligible to receive home care services or home and community-based waived services, regardless of the patient's income;

(5) oral health educational institutions; ~~or~~ and

(6) any other clinic or practice setting, including mobile dental units, in which at least 50 percent of the total patient base of the dental therapist or advanced dental therapist consists of patients who:

(i) are enrolled in a Minnesota health care program;

(ii) have a medical disability or chronic condition that creates a significant barrier to receiving dental care;

(iii) do not have dental health coverage, either through a public health care program or private insurance, and have an annual gross family income equal to or less than 200 percent of the federal poverty guidelines; or

(iv) do not have dental health coverage, either through a state public health care program or private insurance, and whose family gross income is equal to or less than 200 percent of the federal poverty guidelines.

(c) "Dental health professional shortage area" means an area that meets the criteria established by the secretary of the United States Department of Health and Human Services and is designated as such under United States Code, title 42, section 254e.

Sec. 4. Minnesota Statutes 2010, section 150A.106, is amended to read:

**150A.106 ADVANCED DENTAL THERAPIST.**

Subdivision 1. **General.** In order to be certified by the board to practice as an advanced dental therapist, a person must:

(1) complete a dental therapy education program;

(2) pass an examination to demonstrate competency under the dental therapy scope of practice;

(3) be licensed as a dental therapist;

(4) complete 2,000 hours of dental therapy clinical practice under direct or indirect supervision;

(5) graduate from a ~~master's~~ an advanced dental therapy education program;

(6) pass a board-approved certification examination to demonstrate competency under the advanced scope of practice; and

(7) submit an application for certification as prescribed by the board.

Subd. 2. **Scope of practice.** (a) An advanced dental therapist certified by the board under this section may perform the following services and procedures pursuant to the written collaborative management agreement:

(1) an oral ~~evaluation~~ and assessment of dental disease ~~and to be used in the~~ formulation of an individualized treatment plan ~~authorized~~ prepared by the collaborating dentist;

(2) the services and procedures described under section 150A.105, subdivision 4, paragraphs (c) and (d); and

(3) nonsurgical extractions of permanent teeth as limited in subdivision 3, paragraph (b).

(b) The services and procedures described under this subdivision may be performed under general supervision.

Subd. 3. **Practice limitation.** (a) An advanced practice dental therapist shall not perform any service or procedure described in subdivision 2 ~~except as authorized until an examination and diagnosis have been completed, an individual treatment plan prepared, and informed consent has been obtained in advance~~ by the collaborating dentist.

(b) An advanced dental therapist may perform nonsurgical extractions of periodontally diseased permanent teeth with tooth mobility of +3 to +4 under general supervision if authorized in advance by the collaborating dentist. The advanced dental therapist shall not extract a tooth for any patient if the tooth is unerupted, impacted, fractured, or needs to be sectioned for removal.

(c) The collaborating dentist is responsible for directly providing or arranging for another dentist or specialist to provide any necessary advanced services needed by the patient.

(d) An advanced dental therapist in accordance with the collaborative management agreement must refer patients to another qualified dental or health care professional to receive any needed services that exceed the scope of practice of the advanced dental therapist.

(e) In addition to the collaborative management agreement requirements described in section 150A.105, a collaborative management agreement entered into with an advanced dental therapist must include specific written protocols to govern situations in which the advanced dental therapist encounters a patient who requires treatment that exceeds the authorized scope of practice of the advanced dental therapist. The collaborating dentist must ensure that a dentist is available to the advanced dental therapist for timely consultation to diagnose, develop an individualized treatment plan, and obtain informed consent during treatment if needed and must either provide or arrange with another dentist or specialist to provide the necessary treatment to any patient who requires more treatment than the advanced dental therapist is authorized to provide.

Subd. 4. **Medications.** (a) An advanced dental therapist may ~~provide~~, dispense, and administer the following drugs within the parameters of the collaborative management agreement, within the scope of practice of the advanced dental therapist practitioner, and with the authorization of the collaborating dentist: analgesics, anti-inflammatories, and antibiotics.

(b) The authority to ~~provide~~, dispense, and administer shall extend only to the categories of drugs identified in this subdivision, and may be further limited by the collaborative management agreement.

(c) The authority to dispense includes the authority to dispense sample drugs within the categories identified in this subdivision if dispensing is permitted by the collaborative management agreement.

(d) Notwithstanding paragraph (a), an advanced dental therapist is prohibited from providing, dispensing, or administering a narcotic drug as defined in section 152.01, subdivision 10.

---

Please direct all comments concerning issues or legislation  
to your House Member or State Senator.

For Legislative Staff or for directions to the Capitol, visit the Contact Us page.

General questions or comments.

last updated: 04/15/2009

## File #21

On August 5, 2011 at 9:00am, the Minnesota Board of Dentistry held its rules hearing before Administrative Law Judge Eric L. Lipman.

Unfortunately at this time, the Board's website does not accommodate streaming audio.

However, the recording of the hearing is available by contacting the Minnesota Board of Dentistry, (612) 617-2250 or [dentalboard.state.mn.us](http://dentalboard.state.mn.us), and requesting a copy.



**MINNESOTA BOARD OF DENTISTRY**  
University Park Plaza, 2829 University Avenue SE, Suite 450  
Minneapolis, MN 55414-3249 www.dentalboard.state.mn.us  
Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

---

August 25, 2011

The Honorable Eric L. Lipman  
Assistant Chief Administrative Law Judge  
Office of Administrative Hearings  
P.O. Box 64620  
St. Paul, MN 55164-0620

**[Preliminary Response to Comments and Hearing Testimony]**

**Re: In the Matter of the Proposed Permanent Rules of the Minnesota Board of Dentistry Relating to Dental Therapists and Advanced Dental Therapists, Minnesota Rules, Chapter 3100; OAH Docket No. 8-0902-22075-1; Governor's Tracking Number AR592**

Dear Judge Lipman:

The Minnesota Board of Dentistry ("Board") submits this letter as its preliminary response to written comments and hearing testimony regarding Minnesota Rules part 3100.9600, subpart 9, item A. All comments or issues are summarized below and the Board's response follows each comment or issue.

As an initial matter, the Board notes that the submitted testimony and written responses focus on the following proposed amendments to Minnesota Rules 3100.9600, subpart 9:

**Part 3100.9600. RECORDKEEPING.**

Subpart 9. **Informed Consent.** Dental records must include a notation that:

A. the dentist, advanced dental therapist, or dental therapist discussed with the patient the treatment options and the prognosis, benefits, and risks of each; and

B. the patient has consented to the treatment chosen.

Interested parties spoke both in support of and opposition to the Board's proposed rules that require advanced dental therapists and dental therapists to document informed consent. Interested parties in opposition presented the following objections, as stated in paragraphs 1 to 5 below:

**[Comment]**

1. The Board does not have statutory authority to promulgate this proposed rule until a statutory amendment is made to include the term “informed consent” in the Practice Act, Minnesota Statutes chapter 150A.

**[Board’s Response]**

The Board clearly has statutory authority to promulgate rules regulating the practice of advanced dental therapists and dental therapists. Minnesota Statutes section 150A.04, subdivision 5, states:

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. The rules may specify training and education necessary for administering general anesthesia and intravenous conscious sedation.

In 2009, the Legislature created two new dental providers, the dental therapist and advanced dental therapist. Laws 2009, ch. 95, art. 3. These two new providers are not addressed by the Board’s current rules. Accordingly, under Minnesota Statutes section 150A.04, subdivision 4, the Board has authority to promulgate rules to implement new provisions within sections 150A.01 to 150A.12.

Rather than a general challenge to the Board’s rulemaking authority, the objection appears to argue that the proposed amendments to recordkeeping requirements will expand the role of the dental therapist and advanced dental therapist beyond the statutorily authorized scope of practice. This objection does not take into account the creation of two new dental providers. In the Board’s proposed rule, informed consent would be viewed in the context of the care provided by any given health professional. To benefit and protect Minnesota patients, each professional would be required to document informed consent to the extent of his or her statutorily defined scope of practice.

The scopes of practice for dental therapy and advanced dental therapy are defined by Minnesota Statutes sections 150A.105 and 150A.106. A dental therapist may provide significant dental services, including radiographs, mechanical polishing, topical prophylactic agents, pulp vitality testing, temporary restorations, atraumatic restorative therapy, tooth reimplantation, and administration of local anesthetic and nitrous oxide, under general supervision. Minn. Stat. § 150A.105, subd. 4(a). In addition to the duties allowed for dental therapists, Minnesota Statutes section 150A.106 allows advanced dental therapists to perform “an oral evaluation and assessment of dental disease and the formulation of an individualized treatment plan authorized by the collaborating dentist;” also under general supervision. Minn. Stat. § 150A.106, subd. 2. General supervision does “not require the presence of the dentist in the office or on the

The Honorable Eric L. Lipman  
August 25, 2011  
Page 3

premises....but require the tasks be performed with the prior knowledge and consent of the dentist.” Minn. R. 3100.0100, subp. 21.

Within the general supervision rubric, the law relies on the formulation of a collaborative management agreement to further define a therapist’s practice. Accordingly, it is within the sound judgment of each collaborating dentist and dental therapist or advanced dental therapist to authorize patient services as appropriate, up to the extent of the therapist’s statutory scope of practice.

Accordingly, the Board has proposed rules that it has determined are consistent with Minnesota Statutes and better serve Minnesota patients.

\*\*\*\*\*

**[Comment]**

2. The advanced dental therapist and dental therapist will obtain informed consent from the patient and proceed to treat patients without the dentist having prior knowledge and consent or without proper authorization.

**[Board’s Response]**

This objection appears to be based on a predicate assumption that requiring dental therapists and advanced dental therapists to document informed consent in patients’ dental records somehow changes the statutory scope of practice. This argument, however, fails to address the basic principle that rules may not exceed the authorizing statute. The more accurate view of the proposed rule is that it does not expand or change the scopes of practice for dental therapists or advanced dental therapists but rather requires these professionals to provide patients with adequate information to consent to care to the extent authorized by statute.

It is important to note that, as previously stated, all services performed by dental therapists and advanced dental therapists must be conducted under at least general supervision and within the limits of a collaborative management agreement. Minn. Stat. §§ 150A.105, subs. 3, 4; 150A.106, subd. 2. Because general supervision is defined to require prior knowledge and consent of the collaborating dentist, the rule that dental therapists and advanced dental therapists document informed consent cannot, and does not, allow these providers to perform dental services without any supervision or without the prior knowledge and consent of the dentist. Minn. R. 3100.0100, subp. 21.

Moreover, the collaborative management agreement, which is instrumental in the new law, allows advanced dental therapists to provide certain well-defined dental services to patients at remote locations where the dentist is not available. In these situations, the advanced dental

The Honorable Eric L. Lipman

August 25, 2011

Page 4

therapist must have the ability to obtain informed consent from the patient prior to providing each and every dental service to the patient. Advanced dental therapists and dental therapists cannot properly care for patients without the ability to obtain informed consent.

\*\*\*\*\*

**[Comment]**

3. The advanced dental therapist and dental therapist lack the necessary dental education to discuss the components of treatment options, prognoses, benefits, and risks relative to informed consent.

**[Board's Response]**

Dental therapy and advanced dental therapy students are educated about the recordkeeping rules, and specifically about informed consent. Informed consent requires dental professionals providing dental services to discuss treatment options and the prognosis, benefits, and risks of each treatment option with their patients. To ensure that competency is met in this area, the critical concepts of informed consent are integrated throughout many hours in education and clinical practice. The concepts and skills of recordkeeping and informed consent are practiced daily in clinic, and the students must also pass a recordkeeping competency examination, which has informed consent as a component.

Throughout the curriculum, students also learn the following: to recognize normal and deviations from normal; to systematically collect, analyze, record, and assess data on the health status of patients; to develop critical thinking and analytical decision-making skills to reach conclusions about oral health needs; to develop preventative and therapeutic treatment goals and alternative prognoses based upon clinical findings; and to implement informed consent into the practice of advanced dental therapy. Ultimately, to obtain a dental therapy license in Minnesota, students are required to successfully pass an examination administered by an independent testing agency. Therefore, the Board finds that the existing educational backgrounds of advanced dental therapists and dental therapists directly support the capability of obtaining informed consent from patients.

Moreover, within the statutory scope of practice for advanced dental therapists, the proposed informed consent rule would be based on an "oral evaluation and assessment of dental disease and the formulation of an individualized treatment plan authorized by the collaborating dentist," not a dentist's comprehensive diagnosis and treatment plan.

\*\*\*\*\*

**[Comment]**

4. Inconsistencies between the new statute and existing rules may pose ambiguities to licensed dentists as to what services may be performed by an advanced dental therapist or dental therapist with whom the dentist collaborates. Confusion about scope of practice may hinder the practicality of hiring a dental therapist or advanced dental therapist.

**Board Response**

The claimed inconsistencies have not been specifically identified by parties in opposition. While it is possible individuals may read inconsistencies into the rules, because rules cannot supersede, expand, or change the statutory scopes of practice for dental therapists and advanced dental therapists, there can be no actual conflict. Again, 3100.9600 is a recordkeeping rule that requires dental therapists and advanced dental therapists to document appropriate informed consent within the statutorily authorized scopes of practice and the limits of individual collaborative agreements. Any confusion may be resolved by a review of the statute and careful crafting of the collaborative management agreement.

\*\*\*\*\*

**[Comment]**

5. The Board exceeded its authority in granting advanced dental therapists and dental therapists the ability to obtain a limited consent from a patient for a limited service within statutory scopes of practice.

**[Board Response]**

As stated above, the informed consent recordkeeping rule does not determine statutory scope of practice. Rather, it requires dentists, advanced dental therapists, and dental therapists, to document that the patient has been informed of the treatment options, prognosis, benefits, and risks and has consented to treatment to the extent of each provider's scope of practice. This is a definite departure from the dentist providing a comprehensive diagnosis and treatment plan and then obtaining informed consent within a comprehensive scope of practice. The rule allows informed consent only to the extent of each provider's scope of practice as defined by statute.

In conclusion, the Board has addressed the numerous concerns raised during the hearing and comment period.

The Honorable Eric L. Lipman  
August 25, 2011  
Page 6

Thank you for your time in addressing these complex issues.

Respectfully submitted,

A handwritten signature in black ink that reads "David Linde, DDS". The signature is written in a cursive style with a large, stylized initial "D".

DAVID LINDE, DDS  
President  
Minnesota Board of Dentistry  
(612) 269-4895

AG: #2872926-v2



# MINNESOTA BOARD OF DENTISTRY

University Park Plaza, 2829 University Avenue SE, Suite 450  
Minneapolis, MN 55414-3249 www.dentalboard.state.mn.us  
Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

---

September 1, 2011

Eric L. Lipman  
Assistant Chief Administrative Law Judge  
Office of Administrative Hearings  
P.O. Box 64620  
St. Paul, MN 55164-0620

**[Final Response/Rebuttal to Comments]**

**Re: In The Matter Of The Proposed Permanent Rules Of The Minnesota Board of Dentistry Relating to Dental Therapists and Advanced Dental Therapists, *Minnesota Rules*, Chapter 3100; OAH Docket No. 8-0902-22075-1; Governor's Tracking Number AR592**

Dear Judge Lipman:

The Minnesota Board of Dentistry ("Board") submits this letter as its final response or rebuttal to the comments received by your office. Regarding its pending rules, the Board finds no additional issues or concerns raised by the public in their preliminary responses to the comments and hearing testimony. Therefore, the Board shall solely rely on the contents of its preliminary response dated August 25, 2011, to also serve by reference as its final response.

The Board previously addressed the numerous concerns raised during the hearing and comment period. Additionally, the Board has shown the proposed rules to be needed and reasonable. Therefore, adoption of these proposed rules should be recommended.

The Board wishes to thank everyone that participated in this rulemaking process.

Respectfully submitted,

A handwritten signature in cursive script that reads "David Linde, DDS".

David Linde, DDS  
President  
Minnesota Board of Dentistry  
(612) 269-4895



RECEIVED  
OCT 11 2011  
MIN BOARD OF DENTISTRY

## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street  
Saint Paul, Minnesota 55101

Mailing Address:  
P.O. Box 64620  
St. Paul, Minnesota 55164-0620

Voice: (651) 361-7900  
TTY: (651) 361-7878  
Fax: (651) 361-7936

October 11, 2011

Marshall Shragg  
Executive Director  
Minnesota Board of Dentistry  
Suite 450  
2829 University Ave  
Minneapolis, MN 55414-3246

**Re: *In the Matter of the Proposed Amendments to Permanent Rules  
Relating to Dental Therapists and Advanced Dental Therapists,  
Minnesota Rules Chapter 3100  
OAH Docket No. 8-0902-22075-1***

Dear Mr. Shragg:

Enclosed herewith and served upon you by mail are the **Report of the Chief Administrative Law Judge** and the **Report of the Administrative Law Judge** in the above-entitled matter. Also enclosed is the official record.

Sincerely,

A handwritten signature in cursive script that reads "Eric L. Lipman /dse".

ERIC L. LIPMAN  
Assistant Chief Administrative Law Judge

Telephone: (651) 361-7842

ELL:dsc

Enclosure

cc: Legislative Coordinating Commission  
Attorney General Lori Swanson  
Paul Marinac  
Brian Wietgreffe  
Representative Joyce Peppin  
Senator Mike Parry

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA BOARD OF DENTISTRY

In the Matter of the Proposed Amendments to  
Permanent Rules Relating to Dental  
Therapists and Advanced Dental Therapists,  
Minnesota Rules Chapter 3100

**REPORT OF THE  
ADMINISTRATIVE LAW JUDGE**

The above-entitled matter came on for review by the Chief Administrative Law Judge pursuant to the provisions of Minnesota Rules, part 1400.2240, subpart 4. Based upon a review of the record in this proceeding, the Chief Administrative Law Judge hereby approves the Report of the Administrative Law Judge, dated October 3, 2011, in all respects.

In order to correct the defects enumerated by the Administrative Law Judge in the attached Report, the agency shall either take the action recommended by the Administrative Law Judge, make different changes to the rule to address the defects noted, or submit the rule to the Legislative Coordinating Commission and the House of Representatives and Senate policy committees with primary jurisdiction over state governmental operations, for review under Minnesota Statutes, section 14.15, subdivision 4.

If the agency chooses to take the action recommended by the Administrative Law Judge, or if the agency chooses to make other changes to correct the defects, it shall submit to the Chief Administrative Law Judge a copy of the rules as originally published in the *State Register*, the agency's order adopting the rules, and the rule showing the agency's changes. The Chief Administrative Law Judge will then make a determination as to whether the defect has been corrected and whether the modifications to the rules make them substantially different than originally proposed.

Dated this 11<sup>th</sup> day of October, 2011



RAYMOND R. KRAUSE  
Chief Administrative Law Judge

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA BOARD OF DENTISTRY

In the Matter of the Proposed Amendments to  
Permanent Rules Relating to Dental  
Therapists and Advanced Dental Therapists,  
Minnesota Rules Chapter 3100

**REPORT OF THE  
ADMINISTRATIVE LAW JUDGE**

The rules proposed to be amended concern the credentialing and practice of two new categories of licensure established by the Minnesota Legislature in 2009. The proposed rules would include dental therapists and advanced dental therapists under existing standards on licensure, reinstatement, examination conduct, nitrous oxide administration, disciplinary action and professional development.

Administrative Law Judge Eric L. Lipman of the Office of Administrative Hearings conducted a hearing on August 5, 2011. The hearing commenced at 9:00 a.m., in the 4<sup>th</sup> Floor Conference Room, University Park Plaza, 2829 University Avenue Southeast, Minneapolis, Minnesota 55414-3251.

The hearing and this Report are part of a larger rulemaking process under the Minnesota Administrative Procedure Act. The Minnesota Legislature has designed this process so as to ensure that state agencies have met all of the requirements that the state has specified for adopting rules.

The hearing was conducted so as to permit agency representatives and the Administrative Law Judge to hear public comment regarding the impact of the proposed rules and what changes might be appropriate. Further, the hearing process provides the general public an opportunity to review, discuss and critique the proposed rules.

The agency must establish that the proposed rules are necessary and reasonable; that the rules are within the agency's statutory authority; and that any modifications that the agency may make after the proposed rules were initially published in the *State Register* are within the scope of the matter that was originally announced.<sup>1</sup>

David A. Linde, D.D.S., of the Minnesota Board of Dentistry (Board), appeared at the rule hearing on behalf of the Board. Also present on behalf of the Board were Candace Messing, D.D.S., Nancy Kearn, D.H., and Assistant Attorney General Daphne Lundstrom.

---

<sup>1</sup> See generally, Minn. Stat. §§ 14.05, 14.15 and 14.50.

Approximately 36 people attended the hearing and signed the hearing register. The proceedings continued until all interested persons, groups or associations had an opportunity to be heard concerning the proposed rules. In addition to members of the agency panel, 20 members of the public made statements or asked questions at the hearing.

After the hearing ended, the Administrative Law Judge kept the administrative record open for another 20 calendar days – until August 25, 2011 – to permit interested persons and the Board to submit written comments. Following the initial comment period, the hearing record was open an additional five business days so as to permit interested parties and the Board an opportunity to reply to earlier-submitted comments. The hearing record closed on September 1, 2011.

## **SUMMARY OF CONCLUSIONS**

With one exception listed below, the Board has established that it has the statutory authority to adopt the proposed rules and that the rules are necessary and reasonable.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

### **I. Nature of the Proposed Rules**

1. The Board is charged with adopting rules for the conduct of its business and with making and publishing uniform rules for carrying out the provisions of Minnesota Statutes, Chapter 3100 governing the Board of Dentistry.<sup>2</sup>

2. With this rulemaking process, the Board seeks to amend numerous provisions of its rules relating to the credentialing and practice of dental therapists and advanced dental therapists.

3. The Board's purpose is to clarify the licensure requirements for dental therapists and advanced dental therapists. In addition, the Board used this rulemaking to respond to requests from certain licensees for greater clarity as to the permitted scope of practice for dental therapists and advanced dental therapists.<sup>3</sup>

---

<sup>2</sup> Minn. Stat. § 150A.04, subd. 5.

<sup>3</sup> Exhibits D and F.

## II. Procedural Requirements of Chapter 14

4. On December 13, 2010, the Board published in the *State Register* a Request for Comments seeking comments on its possible amendment to rules governing the regulation of dental therapists and advanced dental therapists.<sup>4</sup>

5. On May 11, 2011, the Board requested approval of its Dual Notice of Intent to Adopt Rules With or Without a Hearing and Additional Notice Plan.<sup>5</sup>

6. By letter dated May 20, 2011, Administrative Law Judge Manuel J. Cervantes approved the Board's Dual Notice and Additional Notice Plan.<sup>6</sup>

7. On May 26, 2011, the Board sent by U.S. mail a copy of the Dual Notice of Hearing to all persons and associations who had registered their names with the Board for the purpose of receiving such notice and to all persons and associations identified in the additional notice plan.<sup>7</sup>

8. On May 26, 2011, the Board sent a copy of the Statement of Need and Reasonableness (SONAR) to the Legislative Reference Library as required by Minn. Stat. §§ 14.131 and 14.23.<sup>8</sup>

9. On May 26, 2011, the Board sent a copy of the Dual Notice, the SONAR and copy of proposed rules to certain legislative leaders as required by Minn. Stat. § 14.116.<sup>9</sup>

10. The Dual Notice of Intent to Adopt Rules, published in the June 6, 2011 issue of the *State Register*, set July 6, 2011 as the deadline for comments or to request a hearing.<sup>10</sup>

11. The Dual Notice identified the date and location of the hearing in this matter.<sup>11</sup>

---

<sup>4</sup> Ex. A.

<sup>5</sup> See, Ex. H.

<sup>6</sup> Ex. H.

<sup>7</sup> Ex. G.

<sup>8</sup> Ex. E.

<sup>9</sup> Ex. K.

<sup>10</sup> Ex. F.

<sup>11</sup> Ex. K.

12. The Dual Notice included electronic links to the Revisor's draft of the rules, and related materials, along with instructions for obtaining copies of these documents from the Board.<sup>12</sup>

13. At the hearing on August 5, 2011, the Board filed copies of the following documents as required by Minn. R. 1400.2220:

- a. the Board's Request for Comments as published in the *State Register* on December 13, 2010.<sup>13</sup>
- b. the proposed rules dated April 18, 2011, including the Revisor's approval;<sup>14</sup>
- c. the Board's SONAR;<sup>15</sup>
- d. the Certificate of Mailing the SONAR to Legislative Reference Library on May 26, 2011;<sup>16</sup>
- e. the Dual Notice as mailed and as published in the *State Register* on June 6, 2011;<sup>17</sup>
- f. the Certificate of Mailing the Dual Notice to the rulemaking mailing list on May 26, 2011, and the Certificate of Accuracy of the Mailing List;<sup>18</sup>
- g. the Certificate of Giving Additional Notice Pursuant to the Additional Notice Plan on May 26, 2011;<sup>19</sup>
- h. the written comments on the proposed rules that the Board received during the comment period that followed publication of the Dual Notice.<sup>20</sup>

---

<sup>12</sup> *Id.*

<sup>13</sup> Ex. A.

<sup>14</sup> Ex. C.

<sup>15</sup> Ex. D.

<sup>16</sup> Ex. E.

<sup>17</sup> Ex. F.

<sup>18</sup> Ex. G.

<sup>19</sup> Ex. H.

<sup>20</sup> Ex. I.

- i. the Certificate of Sending the Dual Notice and the Statement of Need and Reasonableness to Legislators on May 26, 2011,<sup>21</sup> and,
- j. the Board's calculation of compliance-related costs.<sup>22</sup>

### **III. Statutory Authority**

14. The Board cites Minn. Stat. § 150A.04, subdivision 5, as its source of statutory authority for these proposed rules. This statutory provision grants the Board authority to adopt "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."<sup>23</sup>

15. The Administrative Law Judge concludes that the Board has the statutory authority to adopt rules governing the credentialing and practice of dental therapists and advanced dental therapists – licensed professions established by Minn. Stat. §§ 150A.105 and 150A.106.

### **IV. Impact on Farming Operations**

16. Minn. Stat. § 14.111 imposes additional notice requirements when the proposed rules affect farming operations. The statute requires that an agency provide a copy of any such changes to the Commissioner of Agriculture at least 30 days prior to publishing the proposed rules in the *State Register*.

17. The proposed rules do not impose restrictions or have an impact on farming operations. The Administrative Law Judge finds that the Board was not required to notify the Commissioner of Agriculture.

### **V. Additional Notice Requirements**

18. Minn. Stat. §§ 14.131 and 14.23 requires that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule; or alternatively, the agency must detail why these notification efforts were not made.

19. On May 20, 2011, the Board provided the Dual Notice of Intent to Adopt in the following manner, according to the Additional Notice Plan approved by the Office of Administrative Hearings.<sup>24</sup>

---

<sup>21</sup> Ex. K-1.

<sup>22</sup> Ex. K-2.

<sup>23</sup> Minn. Stat. § 150A.04, subd. 5; see also SONAR at 2.

<sup>24</sup> Ex. E.

- Beginning in August of 2009, the Board has undertaken monthly meeting to discuss with stakeholders methods of credentialing and regulating the practice of dental therapists and advanced dental therapists.
- The Board disseminated notice of these stakeholder meetings to regulated dental professionals and the general public. Furthermore, drafts of the proposed rules were distributed and discussed during these public meetings.
- The Board sent copies of its Request for Comments to the dental therapy programs of Normandale Community College and the University of Minnesota with the request that the Request be distributed to program students.
- In addition to the notice requirements set forth in Minn. Stat. Chapter 14, the Board posted rulemaking materials to its internet website.

20. The Administrative Law Judge concludes that the Board has fulfilled its additional notice requirements.

## **VI. Statutory Requirements for the SONAR**

21. The Administrative Procedure Act obliges an agency adopting rules to address seven factors in its Statement of Need and Reasonableness.<sup>25</sup> Those factors are:

- (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;
- (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;
- (3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- (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;
- (5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable

---

<sup>25</sup> Minn. Stat. § 14.131.

categories of affected parties, such as separate classes of governmental units, businesses, or individuals;

- (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; and
- (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.

#### A. Regulatory Analysis

- (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.**

22. The Board states that the following groups will be affected by the proposed rules: dental therapists, advanced dental therapists and the members of the general public who receive treatment from these professionals

23. The Board asserts that the direct costs of obtaining and maintaining dental therapy credentials will be borne by the professionals applying for licensure. Further, the Board submits that its regulatory program strives to limit the practice to those who competently deliver care and to “obtain optimal results towards protecting the public.”<sup>26</sup>

- (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.**

24. The Board states that with respect to administration costs it has received an appropriation from the Legislature that is sufficient to cover its program expenses.<sup>27</sup>

- (3) **The determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

25. The Board asserts that to the extent that the proposed regulations follow from the establishment of two new categories of professional licenses (see, 2009 Laws of Minnesota, Chapter 95, Article 3, Sections 24 and 25), the proposed regulations

---

<sup>26</sup> Ex. D at 1, 8 and 9.

<sup>27</sup> *Id.*, at 2.

represent the least costly and least intrusive methods of completing the certification and oversight functions delegated by the 2009 law.<sup>28</sup>

- (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.**

26. Because the Board and its stakeholders agreed that the least costly and least intrusive method of completing the certification and oversight functions delegated by the 2009 law was to broaden the Board's current rules wide enough to cover the newly-designated professional categories, no other methods were seriously considered by the Board.<sup>29</sup>

- (5) The probable costs of complying with the proposed rules.**

27. The Board asserts that the costs of compliance with the proposed rules include: registration fees, reinstatement fees if a license is terminated and the costs of continuing education coursework.<sup>30</sup>

- (6) The probable costs or consequences of not adopting the proposed rule, including those costs borne by individual categories of affected parties, such as separate classes of governmental units, businesses, or individuals.**

28. The Board contends that the consequence of not adopting the proposed rules is that the Board will be without an effective mechanism to credential or oversee dental therapists and advanced dental therapists.<sup>31</sup>

- (7) An assessment of any differences between the proposed rules and existing federal regulation and a specific analysis of the need for and reasonableness of each difference.**

29. The Board is unaware of any differences between the proposed rule changes and existing federal regulations.<sup>32</sup>

---

<sup>28</sup> *Id.*, at 3.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*, at 3 - 4.

<sup>32</sup> *Id.*, at 4.

## **B. Performance-Based Regulation**

30. The Administrative Procedure Act<sup>33</sup> also requires an agency to describe how it has considered and implemented the legislative policy supporting performance based regulatory systems. A performance based rule is one that emphasizes superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.<sup>34</sup>

31. In developing these rules, the Board has harmonized the requirements for the two new categories with the existing and familiar requirements for other oral health care providers. Across such topics as pre-licensure testing rules, records management and continuing education, the standards for dental therapists and advanced dental therapists are directly comparable to those that apply to other dental professionals.<sup>35</sup>

## **C. Consultation with the Commissioner of Minnesota Management and Budget (MMB)**

32. The Board sought the assessment of Minnesota Management and Budget (MMB) on the proposed rules. As required by Minn. Stat. § 14.131, the Board sought the views of MMB and furnished it materials needed for a review.

33. By way of a letter dated October 3, 2011, MMB provided its review. Executive Budget Officer Lisa Barnidge concluded that "the proposed changes will not impose a cost on local governments."

34. The Administrative Law Judge finds that the Board has met the requirements set forth in Minn. Stat. § 14.131.

## **D. Cost to Small Businesses and Cities under Minn. Stat. § 14.127**

35. Minn. Stat. § 14.127, requires the Board to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees." The Board must make this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.<sup>36</sup>

36. The Board determined that the cost of complying with the proposed rule changes will not exceed \$25,000 for any business or any statutory or home rule charter city.<sup>37</sup>

---

<sup>33</sup> Minn. Stat. § 14.131.

<sup>34</sup> Minn. Stat. § 14.002.

<sup>35</sup> Ex. D at 4 and 7 - 9.

<sup>36</sup> Minn. Stat. § 14.127, subds. 1 and 2.

<sup>37</sup> Ex. D at 6.

37. The Administrative Law Judge finds that the agency has made the determination required by Minn. Stat. § 14.127 and approves that determination.

#### **E. Adoption or Amendment of Local Ordinances**

38. Under Minn. Stat. § 14.128, the agency must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. The agency must make this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.<sup>38</sup>

39. The Board concluded that no local government will need to adopt or amend an ordinance or other regulation to comply with the proposed rules.<sup>39</sup>

40. The Administrative Law Judge finds that the agency has made the determination required by Minn. Stat. § 14.128 and approves that determination.

#### **VII. Rulemaking Legal Standards**

41. The Administrative Law Judge must make the following inquiries: Whether the agency has statutory authority to adopt the rule; whether the rule is unconstitutional or otherwise illegal; whether the agency has complied with the rule adoption procedures; whether the proposed rule grants undue discretion to government officials; whether the rule constitutes an undue delegation of authority to another entity; and whether the proposed language meets the definition of a rule.<sup>40</sup>

42. Under Minn. Stat. § 14.14, subd. 2, and Minn. R. 1400.2100, the agency must establish the need for, and reasonableness of, a proposed rule by an affirmative presentation of facts. In support of a rule, the agency may rely upon materials developed for the hearing record,<sup>41</sup> “legislative facts” (namely, general and well-established principles, that are not related to the specifics of a particular case, but which guide the development of law and policy),<sup>42</sup> and the agency’s interpretation of related statutes.<sup>43</sup>

---

<sup>38</sup> Minn. Stat. § 14.128, subd. 1. Moreover, a determination that the proposed rules require adoption or amendment of an ordinance may modify the effective date of the rule, subject to some exceptions. Minn. Stat. § 14.128, subs. 2 and 3.

<sup>39</sup> Ex. D at 6k.

<sup>40</sup> See, Minn. R. 1400.2100.

<sup>41</sup> See, *Manufactured Housing Institute v. Petterson*, 347 N.W.2d 238, 240 (Minn. 1984); *Minnesota Chamber of Commerce v. Minnesota Pollution Control Agency*, 469 N.W.2d 100, 103 (Minn. App. 1991).

<sup>42</sup> Compare generally, *United States v. Gould*, 536 F.2d 216, 220 (8th Cir. 1976).

<sup>43</sup> See, *Mammenga v. Board of Human Services*, 442 N.W.2d 786, 789-92 (Minn. 1989); *Manufactured Housing Institute v. Petterson*, 347 N.W.2d 238, 244 (Minn. 1984).

43. A proposed rule is reasonable if the agency can “explain on what evidence it is relying and how the evidence connects rationally with the agency’s choice of action to be taken.”<sup>44</sup> By contrast, a proposed rule will be deemed arbitrary and capricious where the agency’s choice is based upon whim, devoid of articulated reasons or “represents its will and not its judgment.”<sup>45</sup>

44. An important corollary to these standards is that when proposing new rules an agency is entitled to make choices between different possible regulatory approaches, so long as the alternative that is selected by the agency is a rational one.<sup>46</sup> Thus, while reasonable minds might differ as to whether one or another particular approach represents “the best alternative,” the agency’s selection will be approved if it is one that a rational person could have made.<sup>47</sup>

45. Because the Administrative Law Judge has suggested a change to the proposed rule language after the date it was originally published in the *State Register*, it is also necessary for the Administrative Law Judge to determine if this new language is substantially different from that which was originally proposed. The standards to determine whether any changes to proposed rules create a substantially different rule are found in Minn. Stat. § 14.05, subd. 2. The statute specifies that a modification does not make a proposed rule substantially different if:

“the differences are within the scope of the matter announced . . . in the notice of hearing and are in character with the issues raised in that notice;”

the differences “are a logical outgrowth of the contents of the . . . notice of hearing, and the comments submitted in response to the notice;” and

the notice of hearing “provided fair warning that the outcome of that rulemaking proceeding could be the rule in question.”

46. In reaching a determination regarding whether modifications result in a rule that is substantially different, the Administrative Law Judge is to consider:

whether “persons who will be affected by the rule should have understood that the rulemaking proceeding . . . could affect their interests;”

whether the “subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the . . . notice of hearing;” and

---

<sup>44</sup> *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

<sup>45</sup> See, *Mammenga*, 442 N.W.2d at 789; *St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm'n*; 312 Minn. 250, 260-61, 251 N.W.2d 350, 357-58 (1977).

<sup>46</sup> *Peterson v. Minn. Dep't of Labor & Indus.*, 591 N.W.2d 76, 78 (Minn. App. 1999).

<sup>47</sup> *Minnesota Chamber of Commerce v. Minnesota Pollution Control Agency*, 469 N.W.2d 100, 103 (Minn. App. 1991).

whether “the effects of the rule differ from the effects of the proposed rule contained in the . . . notice of hearing.”

### **VIII. Rule by Rule Analysis**

47. Most sections of the proposed rules were not opposed by any member of the public and were adequately supported by the SONAR. Accordingly, this Report will not necessarily address each comment or rule part. Rather, the discussion that follows below focuses on those portions of the proposed rules as to which commentators prompted a genuine dispute as to the reasonableness of the Board’s regulatory choice or otherwise requires closer examination.

48. The Administrative Law Judge finds that the Board has demonstrated by an affirmative presentation of facts the need for and reasonableness of all rule provisions that are not specifically addressed in this Report.

49. Further, the Administrative Law Judge finds that all provisions that are not specifically addressed in this Report are authorized by statute and that there are no other defects that would bar the adoption of those rules.

#### **3100.1170, Subpart 2 (C) - Resident Dental Therapist and Resident Dental Hygienist**

50. So as to permit students studying dental therapy or dental hygiene to engage in “graduate or advanced educational clinical experience” as part of training for future licensure, the Board proposed the establishment of “resident dental therapist” and “resident dental hygienist” licensing categories.

51. Under the proposed rules, this interim licensure status would terminate “when the person is no longer an enrolled graduate student or student of an advanced dental education program approved by the board.”<sup>48</sup>

52. Likewise important, the proposed rules provide that a covered licensee “must inform the board when the licensee is no longer an enrolled graduate student or student of an advanced dental education program approved by the board.” The regulatory penalty for failing to make these disclosures is that the Licensee will be “deemed to have committed fraud or deception within the meaning of Minnesota Statutes, section 150A.08, subdivision 1, clause 1.”<sup>49</sup>

53. The difficulty is that the proposed regulation does not provide a time within which the disclosures must be made by the Licensee so as to avoid the Board deeming that he or she “committed fraud or deception ....”

---

<sup>48</sup> See, Ex. C at 2 (Revisor Draft 3991 – April 18, 2011).

<sup>49</sup> *Id.*, at 2 – 3.

54. Neither is it sufficient to say that the regulation will be read so as to insist upon disclosures within a “reasonable time.” The standards that the Board or its inspectors might use in making a determination as to when the disclosures are due are not stated, or a part of common understanding, so as to make the intended meaning clear.<sup>50</sup>

55. Because proposed rule 3100.1170, subpart 2 (C) fails to provide reasonable notice of when the regulatory standards will apply, it is defective.<sup>51</sup>

56. One possible cure to this defect is to revise the proposed rule so as to read: “A person who fails to inform the board as required in item B, within thirty (30) days of no longer being enrolled as a student or graduate student in a program approved by the Board, is deemed to have committed fraud or deception within the meaning of Minnesota Statutes, section 150A.08, subdivision 1, clause 1.”

57. Modifying the proposed rules so as to specify a time within which required disclosures are due, is needed and reasonable and would not make a substantial change from the rules as they were originally proposed.

### **3100.9600 - Informed Consent**

58. The Board proposed revising Minn. R. 3100.9600, subpart 9, as follows:

Informed consent. Dental records must include a notation that:

A. the dentist, advanced dental therapist or dental therapist discussed with the patient the treatment options and the prognosis, benefits, and risks of each; and

B. the patient has consented to the treatment chosen.

As the Board reasoned, because “obtaining informed consent from the patient prior to providing treatment still remains an important and necessary component of patient care and adequate recordkeeping,” the regulatory definition on informed consent needed to be expanded so as to include the newly denominated categories of oral health professionals.<sup>52</sup>

---

<sup>50</sup> Compare, e.g., *In the Matter of the Proposed Rules Governing the Licensure of Treatment Programs for Chemical Abuse and Dependency and Detoxification Programs, Minnesota Rules, Chapter 9530*, OAH Docket No. 3-1800-15509-1 (2004) (“The Administrative Law Judge finds the requirement that a program have a particular licensure, and ‘any additional certifications required by the department,’ to be impermissibly vague and a defect in the rule”) (<http://www.oah.state.mn.us/aljBase/180015509.rr.htm>).

<sup>51</sup> See, *In the Matter of Proposed Amendments to Rules Governing Apprenticeship Wages*, OAH Docket No. 7-1900-17022-1, slip op. at 36 (2006) (<http://www.oah.state.mn.us/aljBase/190017022.rr.htm>).

<sup>52</sup> See, Ex. C at 12; Ex. D at 9.

59. For the reasons detailed in the accompanying Memorandum, the proposed rule implements the regulatory changes that the Minnesota Legislature made to Chapter 150A in 2009 (and thereafter), is within the authority of the Board to promulgate, and is needed and reasonable.

### CONCLUSIONS

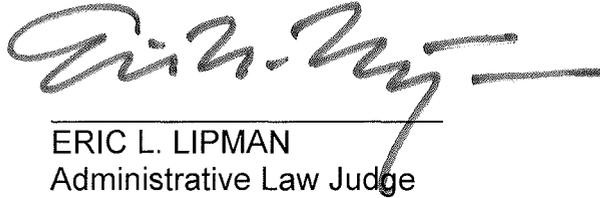
1. The Minnesota Board of Dentistry gave notice to interested persons in this matter.
2. The Department has fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law or rule.
3. The Board has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1; 14.15, subd. 3; and 14.50 (i) and (ii), except as noted in Finding 55.
4. The Administrative Law Judge has suggested action to correct the defects cited in Conclusion Number 3, as noted in Finding Number 56.
5. The Notice of Hearing, the proposed rules and Statement of Need and Reasonableness (SONAR) complied with Minn. R. 1400.2080, subp. 5.
6. The Board has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14 and 14.50.
7. The modifications to the proposed rules suggested by the Administrative Law Judge after publication of the proposed rules in the *State Register* are not substantially different from the proposed rules as published in the *State Register* within the meaning of Minn. Stat. § 14.05, subd. 2, and 14.15, subd. 3.
8. Due to Conclusion Number 3, this Report has been submitted to the Chief Administrative Law Judge for his approval pursuant to Minn. Stat. § 14.15, subd. 3.
9. A Finding or Conclusion of need and reasonableness with regard to any particular rule subsection does not preclude and should not discourage the Board from further modification of the proposed rules based upon this Report and an examination of the public comments, provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

## RECOMMENDATION

IT IS HEREBY RECOMMENDED that the proposed amended rules be adopted, except as otherwise noted.

Dated: October 3, 2011



ERIC L. LIPMAN  
Administrative Law Judge

Reported: Digital Recording; No Transcript

## NOTICE

The Board must make this Report available for review by anyone who wishes to review it for at least five working days before it may take any further action to adopt final rules or to modify or withdraw the proposed rules. If the Board makes changes in the rules, it must submit the rules, along with the complete hearing record, to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.

Because the Administrative Law Judge has determined that the proposed rules are defective in certain respects, state law requires that this Report be submitted to the Chief Administrative Law Judge for his approval. If the Chief Administrative Law Judge approves the adverse findings contained in this Report, he will advise the Board of actions that will correct the defects, and the Board may not adopt the rules until the Chief Administrative Law Judge determines that the defects have been corrected.

If the Board elects to adopt the actions suggested by the Chief Administrative Law Judge and make no other changes and the Chief Administrative Law Judge determines that the defects have been corrected, it may proceed to adopt the rules. If the Board makes changes in the rules other than those suggested by the Administrative Law Judge and the Chief Administrative Law Judge, it must submit copies of the rules showing its changes, the rules as initially proposed, and the proposed order adopting the rules to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.

After adopting the final version of the rules, the Board must submit the final version to the Revisor of Statutes for a review as to its form. If the Revisor of Statutes approves the form of the rules, the Revisor will submit certified copies to the Administrative Law Judge, who will then review the same and file them with the Secretary of State. When the final rules are filed with the Secretary of State, the Administrative Law Judge will notify the Board, and the Board will notify those persons who requested to be informed of their filing.

## MEMORANDUM

The overwhelming majority of the comments received on these rules – both during the public hearing and the comment periods that followed – were directed at the informed consent provisions of proposed Minn. R. 3100.9600, subpart 9.

Proponents of the new rule asserted that the proposed text was carefully drafted and is needed to implement the changes to dental practice made by the Minnesota Legislature in 2009 and 2011.<sup>53</sup>

The critics of the proposed rule contend that because dental therapists and advanced dental therapists do not possess the training necessary to identify a wide enough range of medical risks associated with oral health procedures, these professionals cannot detail the “prognosis, benefits, and risks of each treatment” as required by the new rule. Many commentators argued that dental therapists or advanced dental therapists are simply not equipped to obtain informed consent from their patients. The comments of the Minnesota Dental Association are emblematic of the critiques submitted by opponents of the proposed rule. It argued:

Nothing in Chapter 150A authorizes advanced dental therapists or dental therapists to make the diagnosis required for obtaining informed consent. By statute, only dentists can diagnose patients. Minn. Stat. § 150A.05, subd. 1(1), (4) and (6). Other allied dental personnel are prohibited from diagnosing patients and establishing treatment plans....

....

The informed consent requirement, both under the common law and by rule, requires a “diagnosis” and nothing less. Quite simply, Chapter 150A contains no statutory provision that would allow the Board to adopt a rule enlarging dental therapy practice to include diagnosis, even those with a “limited” scope. Without statutory authority to make an independent diagnosis, neither dental therapists nor advanced dental therapists may obtain informed consent.<sup>54</sup>

In the view of the Administrative Law Judge, the proponents of the rule have the better of the two arguments. This is because the statutory changes made in 2009 sharply defined minimum training requirements, scopes of practice and practice limitations for the new categories for licensure.<sup>55</sup> The Legislature has authorized dental therapists and advanced dental therapists to undertake particular health care

---

<sup>53</sup> See, e.g., Comments of Deputy Assistant Commissioner James I. Golden, PhD, Minnesota Department of Human Services (August 10, 2011); Comments of Jayne Cernohous, DDS (August 24, 2011); Comments of Craig W. Amundson, DDS (August 24, 2011).

<sup>54</sup> Comments of the Minnesota Dental Association, at 3 and 5 (August 25, 2011).

<sup>55</sup> See, e.g., Minn. Stat. §§ 150A.105, subds. (4) and (5), and 150A.106, subds. (1) – (4).

procedures and the proposed rule would permit them to obtain the patient's consent for the delivery of this care. To suggest otherwise reads the 2009 revisions out of the statute.<sup>56</sup>

Likewise telling, the Minnesota Legislature has since considered a proposal to require precisely what the rule opponents urge in this proceeding – a mandate that a dentist develop an individual treatment plan and receive informed consent from a patient before a dental therapist performs services – but the Legislature has yet to revise Chapter 150A in this way.<sup>57</sup> Moreover, while this proposal was under consideration, the Legislature did make other changes to related provisions of the law: It established license fees for advanced dental therapists<sup>58</sup> and authorized reimbursement for the services provided by dental therapists and advanced dental therapists to those who are covered by Minnesota's medical assistance program.<sup>59</sup> Individually, and in combination, these events lead to the conclusion that the Minnesota Legislature intends that dental therapists and advanced dental therapists serve patients as described in Minn. Stat. §§ 150A.105 and 150A.106.

The proposed rule – Minn. R. 3100.9600, subpart 9 – conforms to the Legislature's delegation of authority and is needed and reasonable.

**E. L. L.**

---

<sup>56</sup> See, Minn. Stat. § 645.17 (1) ("In ascertaining the intention of the legislature the courts may be guided by the following presumptions ... the legislature does not intend a result that is absurd, impossible of execution, or unreasonable.")

<sup>57</sup> See, Senate File 1201, Section 4 (2011); House File 1483, Section 4 (2011).

<sup>58</sup> See, 2011 Laws of Minnesota, 1<sup>st</sup> Spec. Sess., Chapter 9, Article V, Section 11.

<sup>59</sup> See, 2011 Laws of Minnesota, 1<sup>st</sup> Spec. Sess., Chapter 9, Article VI, Section 58.

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE LAW SECTION  
PO BOX 64620  
600 NORTH ROBERT STREET  
ST. PAUL, MINNESOTA 55164

**CERTIFICATE OF SERVICE**

In the Matter of the Proposed Amendments to Permanent Rules Relating to Dental Therapists and Advanced Dental Therapists, Minnesota Rules Chapter 3100	OAH Docket No. 8-0902-22075-1
--	-------------------------------

Denise Collins, certifies that on the 11<sup>th</sup> day of October, 2011, she served a true and correct copy of the attached **Report of the Chief Administrative Law Judge** and the **Report of the Administrative Law Judge**; by placing it in the United States mail with postage prepaid, addressed to the following individuals:

Marshall Shragg Executive Director Minnesota Board of Dentistry Suite 450 2829 University Ave Minneapolis, MN 55414-3246	
Legislative Coordinating Commission 85 State Office Building 100 Rev. Dr. Martin Luther King Jr. Blvd St. Paul, MN 55155	The Honorable Lori Swanson Minnesota Attorney General 102 Capitol Building 75 Rev. Dr. Martin Luther King Jr. Blvd St. Paul, MN 55155
Paul Marinac Office of the Revisor of Statutes 700 State Office Building 100 Rev. Dr. Martin Luther King Jr. Blvd St. Paul, MN 55155	Brian Wietgreffe Legislative Coordinator Governors Office 130 State Capitol 75 Constitution St Paul, MN 55155
Representative Joyce Peppin 503 State Office Building 100 Rev. Dr. Martin Luther King Jr. Blvd. St. Paul, MN 55155	Senator Mike Parry Capitol Building, Room 309 75 Rev. Dr. Martin Luther King Jr. Blvd. St. Paul, MN 55155-1606

**ONLY WHEN DEFECTS**

Representative Joyce Peppin  
503 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

**ONLY WHEN DEFECTS**

Senator Mike Parry  
Capitol Building, Room 309  
75 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155-1606

# 2011 Administrative Rule Final Rule Form

Administrative Rule Tracking #: AR592

Submitting Agency: Minnesota Board of Dentistry Date: October 14, 2011

Rule Contact: Kathy T. Johnson

E-mail Address: kathy.t.johnson@state.mn.us Phone #: 612-548-2134

Title: (Short descriptive title)	Proposed Amendments to Permanent Rules Relating to Dental Therapists and Advanced Dental Therapists.
Chapter number(s):	Minnesota Rules Chapter 3100
Comments/controversies received since Dual Notice of Intent to Adopt:	Received opposition to adding the advanced dental therapist and dental therapist to Minn. R. 3100.9600, subp. 9, item A regarding informed consent.
If a hearing was requested explain why and attach ALJ Report:	The Board received more than 25 hearing requests opposed to adding the advanced dental therapist and dental therapist to Minn. R. 3100.9600, subp. 9, item A regarding informed consent. See the 10/11/11 OAH report pp. 15, 16, the ALJ recommended adopting these proposed rules.
List changes from draft rules proposal:	One change within Minn. R. 3100.1170, subp. 2, item C – “A person who fails to inform the board as required in item B, <u>within 30 days of no longer being enrolled as a student or graduate student in a program approved by the board</u> , is deemed to have committed fraud or deception within the meaning of Minnesota Statutes, section 150A.08, subdivision 1, clause (1). See the 10/11/11 OAH report p. 13, the ALJ recommended the underlined change to correct this defect. The Board accepts the ALJ’s recommended change.



Executive Director's Signature

10/14/11  
Date

\*\*\*THIS SECTION TO BE COMPLETED BY THE GOVERNOR'S OFFICE\*\*\*

I have reviewed the above information and have approved this administrative rule. The Agency may formally submit this rule to the Office of Administrative Hearings for approval and filing with the Office of Secretary of State.

\_\_\_\_\_  
Governor's Policy Advisor

\_\_\_\_\_  
Date

## Kathy T Johnson

---

**From:** Wietgreffe, Brian (GOV) [Brian.Wietgreffe@state.mn.us]  
**Sent:** Wednesday, November 02, 2011 1:21 PM  
**To:** kathy.t.johnson@state.mn.us  
**Subject:** AR 592

Hi Kathy,

The Office of the Governor has reviewed and approved the Final Form for AR 592, relating to dental therapists.

You may now proceed with the Filing of the Order Adopting Rules.

Thank you,

Brian Wietgreffe  
Legislative Coordinator  
Office of the Governor  
651-201-3420



# MINNESOTA BOARD OF DENTISTRY

University Park Plaza, 2829 University Avenue SE, Suite 450  
Minneapolis, MN 55414-3249 www.dentalboard.state.mn.us  
Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

## Minnesota Board of Dentistry

### ORDER ADOPTING RULES

#### Adoption of Rules Relating to Dental Therapists and Advanced Dental Therapists, *Minnesota Rules, Chapter 3100*

#### BACKGROUND INFORMATION

1. The Minnesota Board of Dentistry has complied with all notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law. The Board authorized proposing the rules at its meeting on December 3, 2010, and a quorum was present.

2. The Board of Dentistry adopts the Administrative Law Judge's Report dated October 3, 2011, and incorporates the Report into this Order, except as described below.

3. Part 3100.1170, subpart 2, item C, of the proposed rules has been amended to read:

“C. A person who fails to inform the board as required in item B within 30 days of no longer being enrolled as a student or graduate student in a program approved by the board, is deemed to have committed fraud or deception within the meaning of Minnesota Statutes, section 150A.08, subdivision 1, clause (1).”

According to the October 3, 2011, Administrative Law Judge Report, the modifications to the proposed rules suggested by the Administrative Law Judge after publication of the proposed rules in the State Register are not substantially different from the proposed rules as published in the State Register within the meaning of Minnesota Statutes, sections 14.05, subdivision 2 and 14.15, subdivision 3.

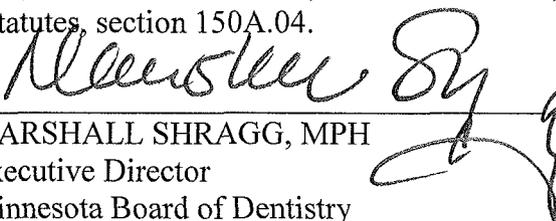
4. The rules are needed and reasonable.

5. The Board of Dentistry authorized adopting the rules at its meeting on December 3, 2010, a quorum was present, and the undersigned was authorized to sign this Order.

#### ORDER

The above-named rules, in the form published in the State Register on June 6, 2011, with the modifications as indicated in the Revisor's draft, file number AR3991, dated October 19, 2011, are adopted under my authority in Minnesota Statutes, section 150A.04.

November 2<sup>nd</sup>, 2011  
Date

  
MARSHALL SHRAGG, MPH  
Executive Director  
Minnesota Board of Dentistry



RECEIVED  
NOV 14 2011  
COMMUNICATIONS SECTION

## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street  
Saint Paul, Minnesota 55101

Mailing Address:  
P.O. Box 64620  
St. Paul, Minnesota 55164-0620

November 10, 2011

Voice: (651) 361-7900  
TTY: (651) 361-7878  
Fax: (651) 361-7936

Marshall Schragg, MPH  
Executive Director  
Minnesota Board of Dentistry  
2829 University Avenue, SE - Suite 450  
Minneapolis, MN 55414-3249

RE: Proposed Amendments to Permanent Rules Relating to Dental Therapists and  
Advanced Dental Therapists, Minnesota Rules Chapter 3100.  
OAH Docket No. 8-0902-22075-1, Governor's Tracking No. AR 592.

Dear Director Schragg:

Enclosed please find the Order of the Chief Administrative Law Judge in the above-entitled matter. The rules have been approved as to legality. With the approval of the proposed rules, our office has closed this file and has previously returned the rule record to you so that your agency can maintain the official rulemaking record in this matter as required by Minnesota Statutes, section 14.365.

Our office will file four copies of the adopted rules with the Secretary of State, who will forward one copy to the Revisor of Statutes, one copy to the Governor, and one to the Board for its rulemaking record. You will then receive from the Revisor's Office three copies of the notice of adoption of your rule. Your next step is to arrange for publication of the Notice of Adoption in the *State Register*. You should submit two copies of the Notice of Adoption that you receive from the Revisor's Office to the *State Register* for publication. In accordance with Minnesota Statutes, section 14.18, the rules will be effective five working days after the Notice of Adoption is published in the *State Register*.

If you have any questions regarding the remaining steps in the rulemaking process, please do not hesitate to contact me at (651) 361-7874.

Sincerely,

Nancy J. Hansen  
Legal Assistant

Enclosures

cc: Office of the Attorney General  
Office of the Revisor of Statutes  
Legislative Coordinating Commission  
Office of the Governor

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA BOARD OF DENTISTRY

In the Matter of the Proposed Amendments to  
Permanent Rules Relating to Dental  
Therapists and Advanced Dental Therapists,  
Minnesota Rules Chapter 3100

**CHIEF ADMINISTRATIVE LAW  
JUDGE'S ORDER ON REVIEW  
OF RULES UNDER MINN. STAT.  
§ 14.16, SUBD. 2 AND MINN. R.  
1400.2240, SUBP. 4**

The Minnesota Board of Dentistry (Board) proposes to adopt the above-entitled rules pursuant to Minn. Stat. § 14.16. The proposed rules came on for a public hearing on August 5, 2011.

The Administrative Law Judge disapproved a part of the rules in a Report dated October 3, 2011. The Chief Administrative Law Judge, by Report dated October 11, 2011, concurred with the determination of the Administrative Law Judge.

On November 2, 2011, the Board requested that the Chief Administrative Law Judge review modifications to the part of the rules that had been disapproved. The Chief Administrative Law Judge finds that the final proposed rules are not substantially different from those published in the *State Register* on June 6, 2011, and proposed at the public hearing;

Based upon a review of the modifications made by the Board as presented in the November 2, 2011 submissions and filings, Minnesota Statutes, Minnesota Rules, and the previous orders issued in this matter,

**IT IS HEREBY ORDERED:** that the proposed rules, dated October 19, 2011, are approved as to legality.

Dated: November 10, 2011



RAYMOND R. KRAUSE  
Chief Administrative Law Judge

1.1 **Minnesota Board of Dentistry**1.2 **Adopted Permanent Rules Relating to Advanced Dental Therapists and Dental**  
1.3 **Therapists**1.4 **3100.0100 DEFINITIONS.**

1.5 [For text of subps 1 to 4, see M.R.]

1.6 Subp. 5. **Allied dental personnel.** "Allied dental personnel" means an advanced  
1.7 dental therapist, dental therapist, dental hygienist, licensed dental assistant, dental assistant  
1.8 with a limited-license permit, assistant without a license or permit, and dental technician.

1.9 [For text of subps 5a to 9b, see M.R.]

1.10 Subp. 9c. **Dental assistant with a limited-license permit.** "Dental assistant with  
1.11 a limited-license permit" means a person holding a limited-license permit as a dental  
1.12 assistant under part 3100.8500, subpart 3.1.13 Subp. 9d. **Dental health care personnel or DHCP.** "Dental health care personnel"  
1.14 or "DHCP" means individuals who work in a dental practice who may be exposed to  
1.15 body fluids such as blood or saliva.1.16 Subp. 9e. **Dental hygienist.** "Dental hygienist" means a person holding a license as  
1.17 a dental hygienist issued by the board pursuant to the act.

1.18 [For text of subps 10 and 11, see M.R.]

1.19 Subp. 11a. **Elective activities.** "Elective activities" refers to those activities directly  
1.20 related to, or supportive of, the practice of dentistry, dental therapy, dental hygiene, or  
1.21 dental assisting.

1.22 [For text of subps 11b to 12e, see M.R.]

1.23 Subp. 13. **Licensee.** "Licensee" means a dentist, dental therapist, dental hygienist,  
1.24 licensed dental assistant, or dental assistant with a limited-license permit.

2.1 [For text of subps 13a to 22, see M.R.]

2.2 **3100.1170 LICENSE TO PRACTICE AS A RESIDENT DENTAL THERAPIST**  
2.3 **OR RESIDENT DENTAL HYGIENIST.**

2.4 **Subpart 1. Licensure.**

2.5 A. In order to practice dental therapy or dental hygiene as directly related to  
2.6 a respective graduate or advanced educational clinical experience, an enrolled graduate  
2.7 student or a student of an advanced education program must be licensed by the board.

2.8 B. The board must license a person to practice dental therapy or dental hygiene  
2.9 as a resident dental therapist or resident dental hygienist if:

2.10 (1) the person completes and submits to the board an application furnished  
2.11 by the board;

2.12 (2) the person provides evidence of being an enrolled graduate student or a  
2.13 student of an advanced dental education program approved by the board; and

2.14 (3) the person has not engaged in behavior for which licensure may be  
2.15 suspended, revoked, limited, modified, or denied on any of the grounds specified in  
2.16 Minnesota Statutes, section 150A.08.

2.17 **Subp. 2. Termination of licensure.**

2.18 A. A person's license to practice dental therapy or dental hygiene as a resident  
2.19 dental therapist or resident dental hygienist is terminated when the person is no longer an  
2.20 enrolled graduate student or a student of an advanced dental education program approved  
2.21 by the board.

2.22 B. A person licensed to practice dental therapy or dental hygiene as a resident  
2.23 dental therapist or resident dental hygienist must inform the board when the licensee  
2.24 is no longer an enrolled graduate student or a student of an advanced dental education  
2.25 program approved by the board.

3.1 C. A person who fails to inform the board as required in item B within 30 days  
3.2 of no longer being enrolled as a student or graduate student in a program approved by the  
3.3 board, is deemed to have committed fraud or deception within the meaning of Minnesota  
3.4 Statutes, section 150A.08, subdivision 1, clause (1).

3.5 **3100.1700 TERMS AND RENEWAL OF LICENSE OR PERMIT; GENERAL.**

3.6 [For text of subps 1 to 1b, see M.R.]

3.7 Subp. 2. **Renewal applications.** Each licensee shall submit an application for  
3.8 biennial renewal of a license or permit together with the necessary fee no later than the  
3.9 last day of the licensee's birth month which is the application deadline. An application for  
3.10 renewal is deemed timely if received by the board or postmarked no later than the last day  
3.11 of the licensee's birth month. The application form must provide a place for the renewal  
3.12 applicant's signature certifying compliance with the applicable professional development  
3.13 requirements including holding a current CPR certification and information including the  
3.14 applicant's office address or addresses, the license number, whether the licensee has been  
3.15 engaged in the active practice of dentistry during the two years preceding the period for  
3.16 which renewal is sought as a licensee, and if so, whether within or without the state, and  
3.17 any other information which may be reasonably requested by the board.

3.18 [For text of subps 3 to 5, see M.R.]

3.19 **3100.1850 REINSTATEMENT OF LICENSE.**

3.20 [For text of subps 1 to 2a, see M.R.]

3.21 Subp. 3. **Expiration or voluntary termination of 24 months or more.** An  
3.22 applicant whose license has expired according to part 3100.1700, subpart 3, or who  
3.23 voluntarily terminated the license 24 months or more previous to the application for  
3.24 reinstatement must:

3.25 A. comply with subpart 2a; and

4.1 B. submit either:

4.2 (1) evidence of having successfully completed part II of the national  
4.3 board examination or the clinical examination in part 3100.1100, subpart 2, for dentists;  
4.4 the examinations in Minnesota Statutes, section 150A.106, subdivision 1, clauses (2)  
4.5 and (6), for advanced dental therapists; the clinical examination in Minnesota Statutes,  
4.6 section 150A.06, subdivision 1d, for dental therapists; the national board examination or  
4.7 the clinical examination in part 3100.1200, item C, for dental hygienists; and the two  
4.8 examinations in part 3100.1300, item C, for licensed dental assistants. The examination  
4.9 must have been completed within 24 months prior to the board's receipt of the application;  
4.10 or

4.11 (2) evidence of having successfully completed applicable board-approved  
4.12 coursework with minimal hour requirements directly relating to the practice of dentistry,  
4.13 advanced dental therapy, dental therapy, dental hygiene, or dental assisting as indicated in  
4.14 the reinstatement application. The board-approved coursework must have been completed  
4.15 within 24 months prior to the board's receipt of the application. The coursework  
4.16 completed under this subpart may not be used to fulfill any of the applicable professional  
4.17 development requirements in part 3100.5100.

4.18 [For text of subps 4 and 5, see M.R.]

4.19 **3100.3100 CONDUCT OF EXAMINATIONS.**

4.20 This part and parts 3100.3300 to 3100.3500 govern the conduct of examinations and  
4.21 must be strictly adhered to throughout each entire examination given to those applicants  
4.22 for licensure as a dentist, dental therapist, dental hygienist, or licensed dental assistant,  
4.23 or for certification as an advanced dental therapist. An examinee who violates any of  
4.24 the applicable rules or instructions may be declared by the board to have failed the  
4.25 examination.

4.26 [For text of items A to M, see M.R.]

5.1 **3100.3200 CLINICAL EXAMINATIONS.**

5.2 Every dentist, advanced dental therapist, dental therapist, and dental hygienist  
5.3 applicant shall give a demonstration of skill in those operations appropriate for the level  
5.4 of licensure or certification prescribed by the board. Licensed dental assistant applicants  
5.5 may also be examined for licensure. All operations shall be performed in the presence  
5.6 of a board member qualified for the particular examination being given or consultant  
5.7 appointed by the board for that purpose.

5.8 **3100.3350 EXAMINATION OF DENTAL THERAPISTS AND ADVANCED**  
5.9 **DENTAL THERAPISTS.**

5.10 Subpart 1. **Scope.** This part provides that the examination of applicants for a license  
5.11 to practice dental therapy and become certified to practice advanced dental therapy in this  
5.12 state shall be sufficiently thorough to test the fitness of the applicant to practice dental  
5.13 therapy or advanced dental therapy.

5.14 Subp. 2. **Clinical examination.** An applicant must pass a board-approved clinical  
5.15 examination designed to determine the applicant's clinical competency.

5.16 Subp. 3. **Additional examination content.** All applicants shall be examined for  
5.17 general knowledge of the act and the rules of the board. Additional written theoretical  
5.18 examinations may be administered by the board.

5.19 Subp. 4. **Additional education for two failed clinical examinations.** If an applicant  
5.20 fails twice any part of the clinical examination required by Minnesota Statutes, section  
5.21 150A.06, subdivision 1d, for dental therapists, or Minnesota Statutes, section 150A.106,  
5.22 subdivision 1, for advanced dental therapists, the applicant may not retake the examination  
5.23 until the applicant successfully completes additional education provided by an institution  
5.24 approved by the board. The education must cover all of the subject areas failed by the  
5.25 applicant in the clinical examination. The applicant may retake the examination only  
5.26 after the institution provides information to the board specifying the areas failed in

6.1 the previous examinations and the instruction provided to address the areas failed, and  
6.2 certifies that the applicant has successfully completed the instruction. The applicant must  
6.3 take the additional instruction provided above each time the applicant fails the clinical  
6.4 examination twice.

6.5 Subp. 5. **Examination for continued licensure.** The board may administer any  
6.6 other examination it deems necessary to determine qualifications for continued licensure.

6.7 **3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,**  
6.8 **MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE**  
6.9 **INHALATION ANALGESIA.**

6.10 Subpart 1. **Prohibitions.** A dental therapist, dental hygienist, or licensed dental  
6.11 assistant may not administer general anesthesia, deep sedation, moderate sedation, or  
6.12 minimal sedation.

6.13 [For text of subps 2 and 3, see M.R.]

6.14 Subp. 4. **Nitrous oxide inhalation analgesia; educational training requirements.**

6.15 A dentist may administer nitrous oxide inhalation analgesia only according to items A  
6.16 to D and subpart 5, items A and C. A dental therapist may administer nitrous oxide  
6.17 inhalation analgesia only according to items C to F. A dental hygienist may administer  
6.18 nitrous oxide inhalation analgesia only according to items C to F and subpart 5, item  
6.19 D. A licensed dental assistant may administer nitrous oxide inhalation analgesia only  
6.20 after a maximum dosage has been prescribed by a dentist for a specific patient, and it is  
6.21 administered according to items C to F and subpart 5, item D.

6.22 [For text of items A and B, see M.R.]

6.23 C. A dentist, dental therapist, dental hygienist, or licensed dental assistant must  
6.24 complete CPR training and maintain current CPR certification thereafter.

6.25 D. A dentist, dental therapist, dental hygienist, or licensed dental assistant must  
6.26 only use fail-safe anesthesia equipment capable of positive pressure respiration.

7.1 E. A dental therapist, dental hygienist, or licensed dental assistant may  
7.2 administer nitrous oxide inhalation analgesia only after satisfactorily completing a course  
7.3 on the administration of nitrous oxide inhalation analgesia from an institution accredited  
7.4 by the Commission on Accreditation, and submitting to the board original documentation  
7.5 from the institution of successful completion of the course. The course must be a  
7.6 minimum of 12 hours total comprised of didactic instruction, personally administering and  
7.7 managing at least three individual supervised cases of analgesia, and supervised clinical  
7.8 experience using fail-safe anesthesia equipment capable of positive pressure respiration.

7.9 F. A dental therapist, dental hygienist, or licensed dental assistant may  
7.10 administer nitrous oxide inhalation analgesia under the appropriate level of supervision  
7.11 by a dentist who is current with the requirements to administer nitrous oxide inhalation  
7.12 analgesia according to items A to D and subpart 5, items A to C.

7.13 [For text of subps 5 to 7, see M.R.]

7.14 Subp. 8. **Reporting of incidents required.** A dentist, dental therapist, dental  
7.15 hygienist, or licensed dental assistant must report to the board any incident that arises from  
7.16 the administration of nitrous oxide inhalation analgesia, general anesthesia, deep sedation,  
7.17 moderate sedation, local anesthesia, analgesia, or minimal sedation that results in:

7.18 [For text of item A, see M.R.]

7.19 B. minimal sedation unintentionally becoming moderate sedation, deep  
7.20 sedation, or general anesthesia when the licensee does not have a certificate for  
7.21 administering general anesthesia or moderate sedation described in subpart 9.

7.22 The report must be submitted to the board on forms provided by the board within ten  
7.23 business days of the incident by the dentist, dental therapist, dental hygienist, or licensed  
7.24 dental assistant, even when another licensed health care professional who, under contract  
7.25 or employment with the dentist, was the actual person administering the analgesia or  
7.26 pharmacological or nonpharmacological method. A licensee who fails to comply with

8.1 reporting of incidents is subject to disciplinary proceedings on grounds specified in parts  
8.2 3100.6100 and 3100.6200 and Minnesota Statutes, section 150A.08, subdivision 1.

8.3 [For text of subps 9 to 11, see M.R.]

8.4 **3100.5100 PROFESSIONAL DEVELOPMENT.**

8.5 Subpart 1. **Professional development cycles.**

8.6 A. The initial professional development cycle must coincide with the initial  
8.7 licensure period for each dentist, dental therapist, dental hygienist, or licensed dental  
8.8 assistant. The initial cycle for each licensee begins on the date of initial licensure and ends  
8.9 on the last day of the licensee's birth month in either an even-numbered or odd-numbered  
8.10 year that corresponds with the licensee's year of birth. The initial cycle varies in the  
8.11 number of months depending on the date of initial licensure for each licensee.

8.12 B. A biennial professional development cycle coincides with the biennial  
8.13 licensure periods for each dentist, dental therapist, dental hygienist, or licensed dental  
8.14 assistant. Each biennial renewal cycle consists of a 24-month period beginning on the first  
8.15 day of the month following expiration of the previous professional development cycle. An  
8.16 established biennial cycle continues to apply even if the license is revoked, suspended,  
8.17 conditioned, or not renewed for any reason for any length of time.

8.18 Subp. 2. **Professional development requirements.**

8.19 A. For the initial professional development requirements, each dentist, dental  
8.20 therapist, dental hygienist, and licensed dental assistant shall establish a portfolio to  
8.21 record, monitor, and retain acceptable documentation of fundamental and elective  
8.22 professional development activities, CPR certification, and self-assessments.

8.23 B. The minimum number of required hours of fundamental and elective  
8.24 professional development for each biennial cycle is 50 hours for dentists and dental  
8.25 therapists, and 25 hours for dental hygienists and licensed dental assistants. Each dentist,

9.1 dental therapist, dental hygienist, and licensed dental assistant shall establish a portfolio  
9.2 to record, monitor, and retain acceptable documentation of fundamental and elective  
9.3 professional development activities, CPR certification, and self-assessments. Any  
9.4 professional development hours earned in excess of the required hours for a biennial cycle  
9.5 must not be carried forward to the subsequent biennial cycle. The requirements for the  
9.6 fundamental and elective professional development activities are described in subitems  
9.7 (1) and (2).

9.8 (1) Each dentist, dental therapist, dental hygienist, and licensed dental  
9.9 assistant must complete a minimum of 60 percent of the required biennial hours in  
9.10 fundamental activities directly related to the provision of clinical dental services as  
9.11 follows: a minimum of 30 hours for dentists and dental therapists, and a minimum of 15  
9.12 hours for dental hygienists and licensed dental assistants. A licensee may earn all required  
9.13 biennial hours in fundamental activities only.

9.14 (2) Dentists, dental therapists, dental hygienists, and licensed dental  
9.15 assistants are allowed a maximum of 40 percent of the required biennial hours in elective  
9.16 activities directly related to, or supportive of, the practice of dentistry, dental therapy,  
9.17 dental hygiene, or dental assisting as follows: a maximum of 20 hours for dentists and  
9.18 dental therapists, and a maximum of ten hours for dental hygienists and licensed dental  
9.19 assistants.

9.20 [For text of items C and D, see M.R.]

9.21 Subp. 3. **Professional development activities.** Professional development activities  
9.22 include, but are not limited to, continuing education, community services, publications,  
9.23 and career accomplishments throughout a professional's life. Professional development  
9.24 activities are categorized as fundamental or elective activities as described in items  
9.25 A and B.

9.26 [For text of item A, see M.R.]

10.1 B. Elective activities for an initial or biennial cycle include, but are not limited  
10.2 to, the examples described in subitems (1) to (6):

10.3 [For text of subitem (1), see M.R.]

10.4 (2) volunteerism or community service directly relating to the practice  
10.5 of dentistry, dental therapy, dental hygiene, or dental assisting such as international or  
10.6 national mission work, voluntary clinic work, or dental health presentations to students  
10.7 or groups;

10.8 (3) professional reading of published articles or other forms of self-study  
10.9 directly relating to the practice of dentistry, dental therapy, dental hygiene, or dental  
10.10 assisting;

10.11 (4) scholarly activities include, but are not limited to:

10.12 (a) teaching a professional course directly related to the practice of  
10.13 dentistry, dental therapy, dental hygiene, or dental assisting; or presenting a continuing  
10.14 dental education program;

10.15 (b) presenting a table clinic directly related to the practice of dentistry,  
10.16 dental therapy, dental hygiene, or dental assisting;

10.17 [For text of units (c) to (e), see M.R.]

10.18 [For text of subitem (5), see M.R.]

10.19 (6) the board shall approve other additional elective activities if the board  
10.20 finds the contents of the activity to be directly related to, or supportive of, the practice of  
10.21 dentistry, dental therapy, dental hygiene, or dental assisting.

10.22 [For text of subps 4 and 5, see M.R.]

10.23 **3100.6100 STATUTORY GROUNDS FOR DISCIPLINE.**

11.1 In general terms, the grounds for suspension or revocation of licenses of dentists,  
11.2 dental therapists, dental hygienists, and licensed dental assistants are in Minnesota  
11.3 Statutes, section 150A.08, subdivision 1.

11.4 **3100.6200 CONDUCT UNBECOMING A LICENSEE.**

11.5 "Conduct unbecoming a person licensed to practice dentistry, dental therapy, dental  
11.6 hygiene, or dental assisting, or conduct contrary to the best interests of the public," as used  
11.7 in Minnesota Statutes, section 150A.08, subdivision 1, clause (6), shall include the act of a  
11.8 dentist, dental hygienist, licensed dental assistant, or applicant in:

11.9 [For text of items A to E, see M.R.]

11.10 F. dental therapists, hygienists, or licensed dental assistants performing services  
11.11 not authorized by the dentist under this chapter or Minnesota Statutes, chapter 150A;

11.12 [For text of items G to L, see M.R.]

11.13 **3100.6300 ADEQUATE SAFETY AND SANITARY CONDITIONS FOR DENTAL**  
11.14 **OFFICES.**

11.15 [For text of subps 1 to 13, see M.R.]

11.16 Subp. 14. **Hazardous waste.** Dental health care personnel shall comply with the  
11.17 requirements for hazardous waste in chapter 7045.

11.18 Subp. 15. **Ionizing radiation.** Each licensee shall comply with the requirements for  
11.19 ionizing radiation in chapter 4732.

11.20 **3100.8200 UNLAWFUL PRACTICE BY ALLIED DENTAL PERSONNEL.**

11.21 An assistant, hygienist, dental therapist, or dental technician who assists a dentist in  
11.22 practicing dentistry in any capacity other than as an employee or independent contractor,  
11.23 who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor,  
11.24 or director of a dental office as a guise or subterfuge to enable the assistant, hygienist,  
11.25 dental therapist, or dental technician to engage directly in acts defined by the act as the

12.1 "practice of dentistry," or who performs dental services within the meaning of Minnesota  
12.2 Statutes, section 150A.11, subdivision 1, for members of the public, other than as an  
12.3 employee or independent contractor for an employing dentist, shall be deemed to be  
12.4 practicing dentistry without a license.

12.5 **3100.8300 RESPONSIBILITIES OF LICENSED DENTIST.**

12.6 Nothing in this chapter relating to the scope of services rendered by assistants,  
12.7 technicians, hygienists, or dental therapists shall diminish or abrogate the professional and  
12.8 legal responsibilities of employing dentists to their patients, to their profession, and to  
12.9 the state of Minnesota. Dentists employing assistants, technicians, hygienists, or dental  
12.10 therapists shall be fully responsible for all acts or omissions of these personnel performed  
12.11 or omitted if the acts or omissions are within the normal scope of their employment. Acts  
12.12 or omissions of personnel means whether or not omitted or committed by personnel at the  
12.13 instance and request of the employing dentist if the omission or commission is within the  
12.14 normal scope of their employment.

12.15 **3100.9600 RECORD KEEPING.**

12.16 [For text of subps 1 to 8, see M.R.]

12.17 Subp. 9. **Informed consent.** Dental records must include a notation that:

12.18 A. the dentist, advanced dental therapist, or dental therapist discussed with the  
12.19 patient the treatment options and the prognosis, benefits, and risks of each; and

12.20 B. the patient has consented to the treatment chosen.

12.21 [For text of subps 10 to 14, see M.R.]

# Office of the Revisor of Statutes

## Administrative Rules

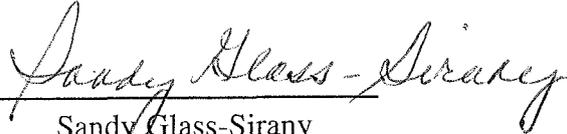


**TITLE:** Adopted Permanent Rules Relating to Advanced Dental Therapists and Dental Therapists

**AGENCY:** Minnesota Board of Dentistry

**MINNESOTA RULES:** Chapter 3100

The attached rules are approved for  
filing with the Secretary of State

  
Sandy Glass-Sirany  
Senior Assistant Revisor



RECEIVED  
NOV 21 2011  
MN BOARD OF DENTISTRY

## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street  
Saint Paul, Minnesota 55101

Mailing Address:  
P.O. Box 64620  
St. Paul, Minnesota 55164-0620

November 21, 2011

Voice: (651) 361-7900  
TTY: (651) 361-7878  
Fax: (651) 361-7936

Nancy Breems  
Secretary of State, Elections Division  
180 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd  
St. Paul, Minnesota 55155-1299

Re: In the Matter of the Proposed Amendments to Permanent Rules Relating to Dental Therapists and Advanced Dental Therapists, Minnesota Rules Chapter 3100

OAH Docket No. 8-0902-22075-1, Governor's Tracking No. AR 592

Dear Ms. Breems:

Pursuant to Minn. Stat. § 14.26, and Minn. R. 1400.2300, our office is filing with the Secretary of State four copies of the above-entitled adopted rules. The rules were approved for legality by our office on November 10, 2011.

Please send the agency copy of the rules to:

Kathy T. Johnson  
Minnesota Board of Dentistry  
2829 University Avenue – Suite 450, Minneapolis, MN 55414-3249

If you have any questions regarding this matter, please feel free to contact me at (651) 361-7842.

Sincerely,

ERIC L. LIPMAN  
Administrative Law Judge

Enclosures  
cc: Kathy T. Johnson, Minnesota Board of Dentistry

# Office of the Revisor of Statutes Administrative Rules



**TITLE:** Adopted Permanent Rules Relating to Advanced Dental Therapists and Dental Therapists

**AGENCY:** Minnesota Board of Dentistry

**MINNESOTA RULES:** Chapter 3100



RULE APPROVED  
OFFICE OF ADMINISTRATIVE HEARINGS

*November 21, 2011*

DATE

*[Signature]*

ADMINISTRATIVE LAW JUDGE.

The attached rules are approved for  
filing with the Secretary of State

*[Signature]*

Sandy Glass-Sirany  
Senior Assistant Revisor

1201268

1.1 **Minnesota Board of Dentistry**1.2 **Adopted Permanent Rules Relating to Advanced Dental Therapists and Dental**  
1.3 **Therapists**1.4 **3100.0100 DEFINITIONS.**

1.5 [For text of subps 1 to 4, see M.R.]

1.6 Subp. 5. **Allied dental personnel.** "Allied dental personnel" means an advanced  
1.7 dental therapist, dental therapist, dental hygienist, licensed dental assistant, dental assistant  
1.8 with a limited-license permit, assistant without a license or permit, and dental technician.

1.9 [For text of subps 5a to 9b, see M.R.]

1.10 Subp. 9c. **Dental assistant with a limited-license permit.** "Dental assistant with  
1.11 a limited-license permit" means a person holding a limited-license permit as a dental  
1.12 assistant under part 3100.8500, subpart 3.1.13 Subp. 9d. **Dental health care personnel or DHCP.** "Dental health care personnel"  
1.14 or "DHCP" means individuals who work in a dental practice who may be exposed to  
1.15 body fluids such as blood or saliva.1.16 Subp. 9e. **Dental hygienist.** "Dental hygienist" means a person holding a license as  
1.17 a dental hygienist issued by the board pursuant to the act.

1.18 [For text of subps 10 and 11, see M.R.]

1.19 Subp. 11a. **Elective activities.** "Elective activities" refers to those activities directly  
1.20 related to, or supportive of, the practice of dentistry, dental therapy, dental hygiene, or  
1.21 dental assisting.

1.22 [For text of subps 11b to 12e, see M.R.]

1.23 Subp. 13. **Licensee.** "Licensee" means a dentist, dental therapist, dental hygienist,  
1.24 licensed dental assistant, or dental assistant with a limited-license permit.

2.1 [For text of subps 13a to 22, see M.R.]

2.2 **3100.1170 LICENSE TO PRACTICE AS A RESIDENT DENTAL THERAPIST**  
2.3 **OR RESIDENT DENTAL HYGIENIST.**

2.4 **Subpart 1. Licensure.**

2.5 A. In order to practice dental therapy or dental hygiene as directly related to  
2.6 a respective graduate or advanced educational clinical experience, an enrolled graduate  
2.7 student or a student of an advanced education program must be licensed by the board.

2.8 B. The board must license a person to practice dental therapy or dental hygiene  
2.9 as a resident dental therapist or resident dental hygienist if:

2.10 (1) the person completes and submits to the board an application furnished  
2.11 by the board;

2.12 (2) the person provides evidence of being an enrolled graduate student or a  
2.13 student of an advanced dental education program approved by the board; and

2.14 (3) the person has not engaged in behavior for which licensure may be  
2.15 suspended, revoked, limited, modified, or denied on any of the grounds specified in  
2.16 Minnesota Statutes, section 150A.08.

2.17 **Subp. 2. Termination of licensure.**

2.18 A. A person's license to practice dental therapy or dental hygiene as a resident  
2.19 dental therapist or resident dental hygienist is terminated when the person is no longer an  
2.20 enrolled graduate student or a student of an advanced dental education program approved  
2.21 by the board.

2.22 B. A person licensed to practice dental therapy or dental hygiene as a resident  
2.23 dental therapist or resident dental hygienist must inform the board when the licensee  
2.24 is no longer an enrolled graduate student or a student of an advanced dental education  
2.25 program approved by the board.

3.1 C. A person who fails to inform the board as required in item B within 30 days  
3.2 of no longer being enrolled as a student or graduate student in a program approved by the  
3.3 board, is deemed to have committed fraud or deception within the meaning of Minnesota  
3.4 Statutes, section 150A.08, subdivision 1, clause (1).

3.5 **3100.1700 TERMS AND RENEWAL OF LICENSE OR PERMIT; GENERAL.**

3.6 [For text of subps 1 to 1b, see M.R.]

3.7 Subp. 2. **Renewal applications.** Each licensee shall submit an application for  
3.8 biennial renewal of a license or permit together with the necessary fee no later than the  
3.9 last day of the licensee's birth month which is the application deadline. An application for  
3.10 renewal is deemed timely if received by the board or postmarked no later than the last day  
3.11 of the licensee's birth month. The application form must provide a place for the renewal  
3.12 applicant's signature certifying compliance with the applicable professional development  
3.13 requirements including holding a current CPR certification and information including the  
3.14 applicant's office address or addresses, the license number, whether the licensee has been  
3.15 engaged in the active practice of dentistry during the two years preceding the period for  
3.16 which renewal is sought as a licensee, and if so, whether within or without the state, and  
3.17 any other information which may be reasonably requested by the board.

3.18 [For text of subps 3 to 5, see M.R.]

3.19 **3100.1850 REINSTATEMENT OF LICENSE.**

3.20 [For text of subps 1 to 2a, see M.R.]

3.21 Subp. 3. **Expiration or voluntary termination of 24 months or more.** An  
3.22 applicant whose license has expired according to part 3100.1700, subpart 3, or who  
3.23 voluntarily terminated the license 24 months or more previous to the application for  
3.24 reinstatement must:

3.25 A. comply with subpart 2a; and

4.1 B. submit either:

4.2 (1) evidence of having successfully completed part II of the national  
4.3 board examination or the clinical examination in part 3100.1100, subpart 2, for dentists;  
4.4 the examinations in Minnesota Statutes, section 150A.106, subdivision 1, clauses (2)  
4.5 and (6), for advanced dental therapists; the clinical examination in Minnesota Statutes,  
4.6 section 150A.06, subdivision 1d, for dental therapists; the national board examination or  
4.7 the clinical examination in part 3100.1200, item C, for dental hygienists; and the two  
4.8 examinations in part 3100.1300, item C, for licensed dental assistants. The examination  
4.9 must have been completed within 24 months prior to the board's receipt of the application;  
4.10 or

4.11 (2) evidence of having successfully completed applicable board-approved  
4.12 coursework with minimal hour requirements directly relating to the practice of dentistry,  
4.13 advanced dental therapy, dental therapy, dental hygiene, or dental assisting as indicated in  
4.14 the reinstatement application. The board-approved coursework must have been completed  
4.15 within 24 months prior to the board's receipt of the application. The coursework  
4.16 completed under this subpart may not be used to fulfill any of the applicable professional  
4.17 development requirements in part 3100.5100.

4.18 [For text of subps 4 and 5, see M.R.]

4.19 **3100.3100 CONDUCT OF EXAMINATIONS.**

4.20 This part and parts 3100.3300 to 3100.3500 govern the conduct of examinations and  
4.21 must be strictly adhered to throughout each entire examination given to those applicants  
4.22 for licensure as a dentist, dental therapist, dental hygienist, or licensed dental assistant,  
4.23 or for certification as an advanced dental therapist. An examinee who violates any of  
4.24 the applicable rules or instructions may be declared by the board to have failed the  
4.25 examination.

4.26 [For text of items A to M, see M.R.]

5.1 **3100.3200 CLINICAL EXAMINATIONS.**

5.2 Every dentist, advanced dental therapist, dental therapist, and dental hygienist  
5.3 applicant shall give a demonstration of skill in those operations appropriate for the level  
5.4 of licensure or certification prescribed by the board. Licensed dental assistant applicants  
5.5 may also be examined for licensure. All operations shall be performed in the presence  
5.6 of a board member qualified for the particular examination being given or consultant  
5.7 appointed by the board for that purpose.

5.8 **3100.3350 EXAMINATION OF DENTAL THERAPISTS AND ADVANCED**  
5.9 **DENTAL THERAPISTS.**

5.10 Subpart 1. **Scope.** This part provides that the examination of applicants for a license  
5.11 to practice dental therapy and become certified to practice advanced dental therapy in this  
5.12 state shall be sufficiently thorough to test the fitness of the applicant to practice dental  
5.13 therapy or advanced dental therapy.

5.14 Subp. 2. **Clinical examination.** An applicant must pass a board-approved clinical  
5.15 examination designed to determine the applicant's clinical competency.

5.16 Subp. 3. **Additional examination content.** All applicants shall be examined for  
5.17 general knowledge of the act and the rules of the board. Additional written theoretical  
5.18 examinations may be administered by the board.

5.19 Subp. 4. **Additional education for two failed clinical examinations.** If an applicant  
5.20 fails twice any part of the clinical examination required by Minnesota Statutes, section  
5.21 150A.06, subdivision 1d, for dental therapists, or Minnesota Statutes, section 150A.106,  
5.22 subdivision 1, for advanced dental therapists, the applicant may not retake the examination  
5.23 until the applicant successfully completes additional education provided by an institution  
5.24 approved by the board. The education must cover all of the subject areas failed by the  
5.25 applicant in the clinical examination. The applicant may retake the examination only  
5.26 after the institution provides information to the board specifying the areas failed in

6.1 the previous examinations and the instruction provided to address the areas failed, and  
6.2 certifies that the applicant has successfully completed the instruction. The applicant must  
6.3 take the additional instruction provided above each time the applicant fails the clinical  
6.4 examination twice.

6.5 Subp. 5. **Examination for continued licensure.** The board may administer any  
6.6 other examination it deems necessary to determine qualifications for continued licensure.

6.7 **3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,**  
6.8 **MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE**  
6.9 **INHALATION ANALGESIA.**

6.10 Subpart 1. **Prohibitions.** A dental therapist, dental hygienist, or licensed dental  
6.11 assistant may not administer general anesthesia, deep sedation, moderate sedation, or  
6.12 minimal sedation.

6.13 [For text of subps 2 and 3, see M.R.]

6.14 Subp. 4. **Nitrous oxide inhalation analgesia; educational training requirements.**

6.15 A dentist may administer nitrous oxide inhalation analgesia only according to items A  
6.16 to D and subpart 5, items A and C. A dental therapist may administer nitrous oxide  
6.17 inhalation analgesia only according to items C to F. A dental hygienist may administer  
6.18 nitrous oxide inhalation analgesia only according to items C to F and subpart 5, item  
6.19 D. A licensed dental assistant may administer nitrous oxide inhalation analgesia only  
6.20 after a maximum dosage has been prescribed by a dentist for a specific patient, and it is  
6.21 administered according to items C to F and subpart 5, item D.

6.22 [For text of items A and B, see M.R.]

6.23 C. A dentist, dental therapist, dental hygienist, or licensed dental assistant must  
6.24 complete CPR training and maintain current CPR certification thereafter.

6.25 D. A dentist, dental therapist, dental hygienist, or licensed dental assistant must  
6.26 only use fail-safe anesthesia equipment capable of positive pressure respiration.

7.1 E. A dental therapist, dental hygienist, or licensed dental assistant may  
7.2 administer nitrous oxide inhalation analgesia only after satisfactorily completing a course  
7.3 on the administration of nitrous oxide inhalation analgesia from an institution accredited  
7.4 by the Commission on Accreditation, and submitting to the board original documentation  
7.5 from the institution of successful completion of the course. The course must be a  
7.6 minimum of 12 hours total comprised of didactic instruction, personally administering and  
7.7 managing at least three individual supervised cases of analgesia, and supervised clinical  
7.8 experience using fail-safe anesthesia equipment capable of positive pressure respiration.

7.9 F. A dental therapist, dental hygienist, or licensed dental assistant may  
7.10 administer nitrous oxide inhalation analgesia under the appropriate level of supervision  
7.11 by a dentist who is current with the requirements to administer nitrous oxide inhalation  
7.12 analgesia according to items A to D and subpart 5, items A to C.

7.13 [For text of subps 5 to 7, see M.R.]

7.14 Subp. 8. **Reporting of incidents required.** A dentist, dental therapist, dental  
7.15 hygienist, or licensed dental assistant must report to the board any incident that arises from  
7.16 the administration of nitrous oxide inhalation analgesia, general anesthesia, deep sedation,  
7.17 moderate sedation, local anesthesia, analgesia, or minimal sedation that results in:

7.18 [For text of item A, see M.R.]

7.19 B. minimal sedation unintentionally becoming moderate sedation, deep  
7.20 sedation, or general anesthesia when the licensee does not have a certificate for  
7.21 administering general anesthesia or moderate sedation described in subpart 9.

7.22 The report must be submitted to the board on forms provided by the board within ten  
7.23 business days of the incident by the dentist, dental therapist, dental hygienist, or licensed  
7.24 dental assistant, even when another licensed health care professional who, under contract  
7.25 or employment with the dentist, was the actual person administering the analgesia or  
7.26 pharmacological or nonpharmacological method. A licensee who fails to comply with

8.1 reporting of incidents is subject to disciplinary proceedings on grounds specified in parts  
8.2 3100.6100 and 3100.6200 and Minnesota Statutes, section 150A.08, subdivision 1.

8.3 [For text of subps 9 to 11, see M.R.]

8.4 **3100.5100 PROFESSIONAL DEVELOPMENT.**

8.5 **Subpart 1. Professional development cycles.**

8.6 A. The initial professional development cycle must coincide with the initial  
8.7 licensure period for each dentist, dental therapist, dental hygienist, or licensed dental  
8.8 assistant. The initial cycle for each licensee begins on the date of initial licensure and ends  
8.9 on the last day of the licensee's birth month in either an even-numbered or odd-numbered  
8.10 year that corresponds with the licensee's year of birth. The initial cycle varies in the  
8.11 number of months depending on the date of initial licensure for each licensee.

8.12 B. A biennial professional development cycle coincides with the biennial  
8.13 licensure periods for each dentist, dental therapist, dental hygienist, or licensed dental  
8.14 assistant. Each biennial renewal cycle consists of a 24-month period beginning on the first  
8.15 day of the month following expiration of the previous professional development cycle. An  
8.16 established biennial cycle continues to apply even if the license is revoked, suspended,  
8.17 conditioned, or not renewed for any reason for any length of time.

8.18 **Subp. 2. Professional development requirements.**

8.19 A. For the initial professional development requirements, each dentist, dental  
8.20 therapist, dental hygienist, and licensed dental assistant shall establish a portfolio to  
8.21 record, monitor, and retain acceptable documentation of fundamental and elective  
8.22 professional development activities, CPR certification, and self-assessments.

8.23 B. The minimum number of required hours of fundamental and elective  
8.24 professional development for each biennial cycle is 50 hours for dentists and dental  
8.25 therapists, and 25 hours for dental hygienists and licensed dental assistants. Each dentist,

9.1 dental therapist, dental hygienist, and licensed dental assistant shall establish a portfolio  
9.2 to record, monitor, and retain acceptable documentation of fundamental and elective  
9.3 professional development activities, CPR certification, and self-assessments. Any  
9.4 professional development hours earned in excess of the required hours for a biennial cycle  
9.5 must not be carried forward to the subsequent biennial cycle. The requirements for the  
9.6 fundamental and elective professional development activities are described in subitems  
9.7 (1) and (2).

9.8 (1) Each dentist, dental therapist, dental hygienist, and licensed dental  
9.9 assistant must complete a minimum of 60 percent of the required biennial hours in  
9.10 fundamental activities directly related to the provision of clinical dental services as  
9.11 follows: a minimum of 30 hours for dentists and dental therapists, and a minimum of 15  
9.12 hours for dental hygienists and licensed dental assistants. A licensee may earn all required  
9.13 biennial hours in fundamental activities only.

9.14 (2) Dentists, dental therapists, dental hygienists, and licensed dental  
9.15 assistants are allowed a maximum of 40 percent of the required biennial hours in elective  
9.16 activities directly related to, or supportive of, the practice of dentistry, dental therapy,  
9.17 dental hygiene, or dental assisting as follows: a maximum of 20 hours for dentists and  
9.18 dental therapists, and a maximum of ten hours for dental hygienists and licensed dental  
9.19 assistants.

9.20 [For text of items C and D, see M.R.]

9.21 Subp. 3. **Professional development activities.** Professional development activities  
9.22 include, but are not limited to, continuing education, community services, publications,  
9.23 and career accomplishments throughout a professional's life. Professional development  
9.24 activities are categorized as fundamental or elective activities as described in items  
9.25 A and B.

9.26 [For text of item A, see M.R.]

10.1 B. Elective activities for an initial or biennial cycle include, but are not limited  
10.2 to, the examples described in subitems (1) to (6):

10.3 [For text of subitem (1), see M.R.]

10.4 (2) volunteerism or community service directly relating to the practice  
10.5 of dentistry, dental therapy, dental hygiene, or dental assisting such as international or  
10.6 national mission work, voluntary clinic work, or dental health presentations to students  
10.7 or groups;

10.8 (3) professional reading of published articles or other forms of self-study  
10.9 directly relating to the practice of dentistry, dental therapy, dental hygiene, or dental  
10.10 assisting;

10.11 (4) scholarly activities include, but are not limited to:

10.12 (a) teaching a professional course directly related to the practice of  
10.13 dentistry, dental therapy, dental hygiene, or dental assisting; or presenting a continuing  
10.14 dental education program;

10.15 (b) presenting a table clinic directly related to the practice of dentistry,  
10.16 dental therapy, dental hygiene, or dental assisting;

10.17 [For text of units (c) to (e), see M.R.]

10.18 [For text of subitem (5), see M.R.]

10.19 (6) the board shall approve other additional elective activities if the board  
10.20 finds the contents of the activity to be directly related to, or supportive of, the practice of  
10.21 dentistry, dental therapy, dental hygiene, or dental assisting.

10.22 [For text of subps 4 and 5, see M.R.]

10.23 **3100.6100 STATUTORY GROUNDS FOR DISCIPLINE.**

11.1 In general terms, the grounds for suspension or revocation of licenses of dentists,  
11.2 dental therapists, dental hygienists, and licensed dental assistants are in Minnesota  
11.3 Statutes, section 150A.08, subdivision 1.

11.4 **3100.6200 CONDUCT UNBECOMING A LICENSEE.**

11.5 "Conduct unbecoming a person licensed to practice dentistry, dental therapy, dental  
11.6 hygiene, or dental assisting, or conduct contrary to the best interests of the public," as used  
11.7 in Minnesota Statutes, section 150A.08, subdivision 1, clause (6), shall include the act of a  
11.8 dentist, dental hygienist, licensed dental assistant, or applicant in:

11.9 [For text of items A to E, see M.R.]

11.10 F. dental therapists, hygienists, or licensed dental assistants performing services  
11.11 not authorized by the dentist under this chapter or Minnesota Statutes, chapter 150A;

11.12 [For text of items G to L, see M.R.]

11.13 **3100.6300 ADEQUATE SAFETY AND SANITARY CONDITIONS FOR DENTAL**  
11.14 **OFFICES.**

11.15 [For text of subps 1 to 13, see M.R.]

11.16 Subp. 14. **Hazardous waste.** Dental health care personnel shall comply with the  
11.17 requirements for hazardous waste in chapter 7045.

11.18 Subp. 15. **Ionizing radiation.** Each licensee shall comply with the requirements for  
11.19 ionizing radiation in chapter 4732.

11.20 **3100.8200 UNLAWFUL PRACTICE BY ALLIED DENTAL PERSONNEL.**

11.21 An assistant, hygienist, dental therapist, or dental technician who assists a dentist in  
11.22 practicing dentistry in any capacity other than as an employee or independent contractor,  
11.23 who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor,  
11.24 or director of a dental office as a guise or subterfuge to enable the assistant, hygienist,  
11.25 dental therapist, or dental technician to engage directly in acts defined by the act as the

12.1 "practice of dentistry," or who performs dental services within the meaning of Minnesota  
12.2 Statutes, section 150A.11, subdivision 1, for members of the public, other than as an  
12.3 employee or independent contractor for an employing dentist, shall be deemed to be  
12.4 practicing dentistry without a license.

12.5 **3100.8300 RESPONSIBILITIES OF LICENSED DENTIST.**

12.6 Nothing in this chapter relating to the scope of services rendered by assistants,  
12.7 technicians, hygienists, or dental therapists shall diminish or abrogate the professional and  
12.8 legal responsibilities of employing dentists to their patients, to their profession, and to  
12.9 the state of Minnesota. Dentists employing assistants, technicians, hygienists, or dental  
12.10 therapists shall be fully responsible for all acts or omissions of these personnel performed  
12.11 or omitted if the acts or omissions are within the normal scope of their employment. Acts  
12.12 or omissions of personnel means whether or not omitted or committed by personnel at the  
12.13 instance and request of the employing dentist if the omission or commission is within the  
12.14 normal scope of their employment.

12.15 **3100.9600 RECORD KEEPING.**

12.16 [For text of subps 1 to 8, see M.R.]

12.17 Subp. 9. **Informed consent.** Dental records must include a notation that:

12.18 A. the dentist, advanced dental therapist, or dental therapist discussed with the  
12.19 patient the treatment options and the prognosis, benefits, and risks of each; and

12.20 B. the patient has consented to the treatment chosen.

12.21 [For text of subps 10 to 14, see M.R.]

## Kathy T Johnson

---

**From:** Wietgreffe, Brian (GOV) [Brian.Wietgreffe@state.mn.us]  
**Sent:** Wednesday, December 14, 2011 10:00 AM  
**To:** Kathy T Johnson  
**Subject:** AR 592

Kathy,

The Governor will not veto AR 592, relating to rules governing advanced dental therapists and dental therapists.

Thank you,

Brian Wietgreffe  
Legislative Coordinator  
Office of the Governor  
651-201-3420

## Adopted Rules

A rule becomes effective after the requirements of *Minnesota Statutes* §§ 14.05-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule. If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed. If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

**KEY: Proposed Rules** - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

## Minnesota Board of Dentistry

### Adopted Permanent Rules Relating to Advanced Dental Therapists and Dental Therapists

The rules proposed and published at *State Register*, Volume 35, Number 49, pages 1907-1914, June 06, 2011 (35 SR 1907), are adopted with the following modifications:

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

##### Subp. 2. **Termination of licensure.**

C. A person who fails to inform the board as required in item B within 30 days of no longer being enrolled as a student or graduate student in a program approved by the board, is deemed to have committed fraud or deception within the meaning of *Minnesota Statutes*, section 150A.08, subdivision 1, clause (1).

1.1 **3100.0100 DEFINITIONS.**

1.2 [For text of subps 1 to 4, see M.R.]

1.3 Subp. 5. **Allied dental personnel.** "Allied dental personnel" means an advanced  
1.4 dental therapist, dental therapist, dental hygienist, licensed dental assistant, dental assistant  
1.5 with a limited-license permit, assistant without a license or permit, and dental technician.

1.6 [For text of subps 5a to 9b, see M.R.]

1.7 Subp. 9c. **Dental assistant with a limited-license permit.** "Dental assistant with  
1.8 a limited-license permit" means a person holding a limited-license permit as a dental  
1.9 assistant under part 3100.8500, subpart 3.

1.10 Subp. 9d. **Dental health care personnel or DHCP.** "Dental health care personnel"  
1.11 or "DHCP" means individuals who work in a dental practice who may be exposed to  
1.12 body fluids such as blood or saliva.

1.13 Subp. 9e. **Dental hygienist.** "Dental hygienist" means a person holding a license as  
1.14 a dental hygienist issued by the board pursuant to the act.

1.15 [For text of subps 10 and 11, see M.R.]

1.16 Subp. 11a. **Elective activities.** "Elective activities" refers to those activities directly  
1.17 related to, or supportive of, the practice of dentistry, dental therapy, dental hygiene, or  
1.18 dental assisting.

1.19 [For text of subps 11b to 12e, see M.R.]

1.20 Subp. 13. **Licensee.** "Licensee" means a dentist, dental therapist, dental hygienist,  
1.21 licensed dental assistant, or dental assistant with a limited-license permit.

1.22 [For text of subps 13a to 22, see M.R.]

1.23 **3100.1170 LICENSE TO PRACTICE AS A RESIDENT DENTAL THERAPIST**  
1.24 **OR RESIDENT DENTAL HYGIENIST.**

2.1 Subpart 1. **Licensure.**

2.2 A. In order to practice dental therapy or dental hygiene as directly related to  
2.3 a respective graduate or advanced educational clinical experience, an enrolled graduate  
2.4 student or a student of an advanced education program must be licensed by the board.

2.5 B. The board must license a person to practice dental therapy or dental hygiene  
2.6 as a resident dental therapist or resident dental hygienist if:

2.7 (1) the person completes and submits to the board an application furnished  
2.8 by the board;

2.9 (2) the person provides evidence of being an enrolled graduate student or a  
2.10 student of an advanced dental education program approved by the board; and

2.11 (3) the person has not engaged in behavior for which licensure may be  
2.12 suspended, revoked, limited, modified, or denied on any of the grounds specified in  
2.13 Minnesota Statutes, section 150A.08.

2.14 Subp. 2. **Termination of licensure.**

2.15 A. A person's license to practice dental therapy or dental hygiene as a resident  
2.16 dental therapist or resident dental hygienist is terminated when the person is no longer an  
2.17 enrolled graduate student or a student of an advanced dental education program approved  
2.18 by the board.

2.19 B. A person licensed to practice dental therapy or dental hygiene as a resident  
2.20 dental therapist or resident dental hygienist must inform the board when the licensee  
2.21 is no longer an enrolled graduate student or a student of an advanced dental education  
2.22 program approved by the board.

2.23 C. A person who fails to inform the board as required in item B within 30 days  
2.24 of no longer being enrolled as a student or graduate student in a program approved by the

3.1 board, is deemed to have committed fraud or deception within the meaning of Minnesota  
3.2 Statutes, section 150A.08, subdivision 1, clause (1).

3.3 **3100.1700 TERMS AND RENEWAL OF LICENSE OR PERMIT; GENERAL.**

3.4 [For text of subps 1 to 1b, see M.R.]

3.5 Subp. 2. **Renewal applications.** Each licensee shall submit an application for  
3.6 biennial renewal of a license or permit together with the necessary fee no later than the  
3.7 last day of the licensee's birth month which is the application deadline. An application for  
3.8 renewal is deemed timely if received by the board or postmarked no later than the last day  
3.9 of the licensee's birth month. The application form must provide a place for the renewal  
3.10 applicant's signature certifying compliance with the applicable professional development  
3.11 requirements including holding a current CPR certification and information including the  
3.12 applicant's office address or addresses, the license number, whether the licensee has been  
3.13 engaged in the active practice of dentistry during the two years preceding the period for  
3.14 which renewal is sought as a licensee, and if so, whether within or without the state, and  
3.15 any other information which may be reasonably requested by the board.

3.16 [For text of subps 3 to 5, see M.R.]

3.17 **3100.1850 REINSTATEMENT OF LICENSE.**

3.18 [For text of subps 1 to 2a, see M.R.]

3.19 Subp. 3. **Expiration or voluntary termination of 24 months or more.** An  
3.20 applicant whose license has expired according to part 3100.1700, subpart 3, or who  
3.21 voluntarily terminated the license 24 months or more previous to the application for  
3.22 reinstatement must:

3.23 A. comply with subpart 2a; and

3.24 B. submit either:

4.1 (1) evidence of having successfully completed part II of the national  
4.2 board examination or the clinical examination in part 3100.1100, subpart 2, for dentists;  
4.3 the examinations in Minnesota Statutes, section 150A.106, subdivision 1, clauses (2)  
4.4 and (6), for advanced dental therapists; the clinical examination in Minnesota Statutes,  
4.5 section 150A.06, subdivision 1d, for dental therapists; the national board examination or  
4.6 the clinical examination in part 3100.1200, item C, for dental hygienists; and the two  
4.7 examinations in part 3100.1300, item C, for licensed dental assistants. The examination  
4.8 must have been completed within 24 months prior to the board's receipt of the application;  
4.9 or

4.10 (2) evidence of having successfully completed applicable board-approved  
4.11 coursework with minimal hour requirements directly relating to the practice of dentistry,  
4.12 advanced dental therapy, dental therapy, dental hygiene, or dental assisting as indicated in  
4.13 the reinstatement application. The board-approved coursework must have been completed  
4.14 within 24 months prior to the board's receipt of the application. The coursework  
4.15 completed under this subpart may not be used to fulfill any of the applicable professional  
4.16 development requirements in part 3100.5100.

4.17 [For text of subps 4 and 5, see M.R.]

#### 4.18 **3100.3100 CONDUCT OF EXAMINATIONS.**

4.19 This part and parts 3100.3300 to 3100.3500 govern the conduct of examinations and  
4.20 must be strictly adhered to throughout each entire examination given to those applicants  
4.21 for licensure as a dentist, dental therapist, dental hygienist, or licensed dental assistant,  
4.22 or for certification as an advanced dental therapist. An examinee who violates any of  
4.23 the applicable rules or instructions may be declared by the board to have failed the  
4.24 examination.

4.25 [For text of items A to M, see M.R.]

#### 4.26 **3100.3200 CLINICAL EXAMINATIONS.**

5.1 Every dentist, advanced dental therapist, dental therapist, and dental hygienist  
5.2 applicant shall give a demonstration of skill in those operations appropriate for the level  
5.3 of licensure or certification prescribed by the board. Licensed dental assistant applicants  
5.4 may also be examined for licensure. All operations shall be performed in the presence  
5.5 of a board member qualified for the particular examination being given or consultant  
5.6 appointed by the board for that purpose.

5.7 **3100.3350 EXAMINATION OF DENTAL THERAPISTS AND ADVANCED**  
5.8 **DENTAL THERAPISTS.**

5.9 Subpart 1. **Scope.** This part provides that the examination of applicants for a license  
5.10 to practice dental therapy and become certified to practice advanced dental therapy in this  
5.11 state shall be sufficiently thorough to test the fitness of the applicant to practice dental  
5.12 therapy or advanced dental therapy.

5.13 Subp. 2. **Clinical examination.** An applicant must pass a board-approved clinical  
5.14 examination designed to determine the applicant's clinical competency.

5.15 Subp. 3. **Additional examination content.** All applicants shall be examined for  
5.16 general knowledge of the act and the rules of the board. Additional written theoretical  
5.17 examinations may be administered by the board.

5.18 Subp. 4. **Additional education for two failed clinical examinations.** If an applicant  
5.19 fails twice any part of the clinical examination required by Minnesota Statutes, section  
5.20 150A.06, subdivision 1d, for dental therapists, or Minnesota Statutes, section 150A.106,  
5.21 subdivision 1, for advanced dental therapists, the applicant may not retake the examination  
5.22 until the applicant successfully completes additional education provided by an institution  
5.23 approved by the board. The education must cover all of the subject areas failed by the  
5.24 applicant in the clinical examination. The applicant may retake the examination only  
5.25 after the institution provides information to the board specifying the areas failed in  
5.26 the previous examinations and the instruction provided to address the areas failed, and

6.1 certifies that the applicant has successfully completed the instruction. The applicant must  
6.2 take the additional instruction provided above each time the applicant fails the clinical  
6.3 examination twice.

6.4 Subp. 5. **Examination for continued licensure.** The board may administer any  
6.5 other examination it deems necessary to determine qualifications for continued licensure.

6.6 **3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,**  
6.7 **MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE**  
6.8 **INHALATION ANALGESIA.**

6.9 Subpart 1. **Prohibitions.** A dental therapist, dental hygienist, or licensed dental  
6.10 assistant may not administer general anesthesia, deep sedation, moderate sedation, or  
6.11 minimal sedation.

6.12 [For text of subps 2 and 3, see M.R.]

6.13 Subp. 4. **Nitrous oxide inhalation analgesia; educational training requirements.**  
6.14 A dentist may administer nitrous oxide inhalation analgesia only according to items A  
6.15 to D and subpart 5, items A and C. A dental therapist may administer nitrous oxide  
6.16 inhalation analgesia only according to items C to F. A dental hygienist may administer  
6.17 nitrous oxide inhalation analgesia only according to items C to F and subpart 5, item  
6.18 D. A licensed dental assistant may administer nitrous oxide inhalation analgesia only  
6.19 after a maximum dosage has been prescribed by a dentist for a specific patient, and it is  
6.20 administered according to items C to F and subpart 5, item D.

6.21 [For text of items A and B, see M.R.]

6.22 C. A dentist, dental therapist, dental hygienist, or licensed dental assistant must  
6.23 complete CPR training and maintain current CPR certification thereafter.

6.24 D. A dentist, dental therapist, dental hygienist, or licensed dental assistant must  
6.25 only use fail-safe anesthesia equipment capable of positive pressure respiration.

7.1 E. A dental therapist, dental hygienist, or licensed dental assistant may  
7.2 administer nitrous oxide inhalation analgesia only after satisfactorily completing a course  
7.3 on the administration of nitrous oxide inhalation analgesia from an institution accredited  
7.4 by the Commission on Accreditation, and submitting to the board original documentation  
7.5 from the institution of successful completion of the course. The course must be a  
7.6 minimum of 12 hours total comprised of didactic instruction, personally administering and  
7.7 managing at least three individual supervised cases of analgesia, and supervised clinical  
7.8 experience using fail-safe anesthesia equipment capable of positive pressure respiration.

7.9 F. A dental therapist, dental hygienist, or licensed dental assistant may  
7.10 administer nitrous oxide inhalation analgesia under the appropriate level of supervision  
7.11 by a dentist who is current with the requirements to administer nitrous oxide inhalation  
7.12 analgesia according to items A to D and subpart 5, items A to C.

7.13 [For text of subps 5 to 7, see M.R.]

7.14 Subp. 8. **Reporting of incidents required.** A dentist, dental therapist, dental  
7.15 hygienist, or licensed dental assistant must report to the board any incident that arises from  
7.16 the administration of nitrous oxide inhalation analgesia, general anesthesia, deep sedation,  
7.17 moderate sedation, local anesthesia, analgesia, or minimal sedation that results in:

7.18 [For text of item A, see M.R.]

7.19 B. minimal sedation unintentionally becoming moderate sedation, deep  
7.20 sedation, or general anesthesia when the licensee does not have a certificate for  
7.21 administering general anesthesia or moderate sedation described in subpart 9.

7.22 The report must be submitted to the board on forms provided by the board within ten  
7.23 business days of the incident by the dentist, dental therapist, dental hygienist, or licensed  
7.24 dental assistant, even when another licensed health care professional who, under contract  
7.25 or employment with the dentist, was the actual person administering the analgesia or  
7.26 pharmacological or nonpharmacological method. A licensee who fails to comply with

8.1 reporting of incidents is subject to disciplinary proceedings on grounds specified in parts  
8.2 3100.6100 and 3100.6200 and Minnesota Statutes, section 150A.08, subdivision 1.

8.3 [For text of subps 9 to 11, see M.R.]

8.4 **3100.5100 PROFESSIONAL DEVELOPMENT.**

8.5 **Subpart 1. Professional development cycles.**

8.6 A. The initial professional development cycle must coincide with the initial  
8.7 licensure period for each dentist, dental therapist, dental hygienist, or licensed dental  
8.8 assistant. The initial cycle for each licensee begins on the date of initial licensure and ends  
8.9 on the last day of the licensee's birth month in either an even-numbered or odd-numbered  
8.10 year that corresponds with the licensee's year of birth. The initial cycle varies in the  
8.11 number of months depending on the date of initial licensure for each licensee.

8.12 B. A biennial professional development cycle coincides with the biennial  
8.13 licensure periods for each dentist, dental therapist, dental hygienist, or licensed dental  
8.14 assistant. Each biennial renewal cycle consists of a 24-month period beginning on the first  
8.15 day of the month following expiration of the previous professional development cycle. An  
8.16 established biennial cycle continues to apply even if the license is revoked, suspended,  
8.17 conditioned, or not renewed for any reason for any length of time.

8.18 **Subp. 2. Professional development requirements.**

8.19 A. For the initial professional development requirements, each dentist, dental  
8.20 therapist, dental hygienist, and licensed dental assistant shall establish a portfolio to  
8.21 record, monitor, and retain acceptable documentation of fundamental and elective  
8.22 professional development activities, CPR certification, and self-assessments.

8.23 B. The minimum number of required hours of fundamental and elective  
8.24 professional development for each biennial cycle is 50 hours for dentists and dental  
8.25 therapists, and 25 hours for dental hygienists and licensed dental assistants. Each dentist,

9.1 dental therapist, dental hygienist, and licensed dental assistant shall establish a portfolio  
9.2 to record, monitor, and retain acceptable documentation of fundamental and elective  
9.3 professional development activities, CPR certification, and self-assessments. Any  
9.4 professional development hours earned in excess of the required hours for a biennial cycle  
9.5 must not be carried forward to the subsequent biennial cycle. The requirements for the  
9.6 fundamental and elective professional development activities are described in subitems  
9.7 (1) and (2).

9.8 (1) Each dentist, dental therapist, dental hygienist, and licensed dental  
9.9 assistant must complete a minimum of 60 percent of the required biennial hours in  
9.10 fundamental activities directly related to the provision of clinical dental services as  
9.11 follows: a minimum of 30 hours for dentists and dental therapists, and a minimum of 15  
9.12 hours for dental hygienists and licensed dental assistants. A licensee may earn all required  
9.13 biennial hours in fundamental activities only.

9.14 (2) Dentists, dental therapists, dental hygienists, and licensed dental  
9.15 assistants are allowed a maximum of 40 percent of the required biennial hours in elective  
9.16 activities directly related to, or supportive of, the practice of dentistry, dental therapy,  
9.17 dental hygiene, or dental assisting as follows: a maximum of 20 hours for dentists and  
9.18 dental therapists, and a maximum of ten hours for dental hygienists and licensed dental  
9.19 assistants.

9.20 [For text of items C and D, see M.R.]

9.21 Subp. 3. **Professional development activities.** Professional development activities  
9.22 include, but are not limited to, continuing education, community services, publications,  
9.23 and career accomplishments throughout a professional's life. Professional development  
9.24 activities are categorized as fundamental or elective activities as described in items  
9.25 A and B.

9.26 [For text of item A, see M.R.]

10.1 B. Elective activities for an initial or biennial cycle include, but are not limited  
10.2 to, the examples described in subitems (1) to (6):

10.3 [For text of subitem (1), see M.R.]

10.4 (2) volunteerism or community service directly relating to the practice  
10.5 of dentistry, dental therapy, dental hygiene, or dental assisting such as international or  
10.6 national mission work, voluntary clinic work, or dental health presentations to students  
10.7 or groups;

10.8 (3) professional reading of published articles or other forms of self-study  
10.9 directly relating to the practice of dentistry, dental therapy, dental hygiene, or dental  
10.10 assisting;

10.11 (4) scholarly activities include, but are not limited to:

10.12 (a) teaching a professional course directly related to the practice of  
10.13 dentistry, dental therapy, dental hygiene, or dental assisting; or presenting a continuing  
10.14 dental education program;

10.15 (b) presenting a table clinic directly related to the practice of dentistry,  
10.16 dental therapy, dental hygiene, or dental assisting;

10.17 [For text of units (c) to (e), see M.R.]

10.18 [For text of subitem (5), see M.R.]

10.19 (6) the board shall approve other additional elective activities if the board  
10.20 finds the contents of the activity to be directly related to, or supportive of, the practice of  
10.21 dentistry, dental therapy, dental hygiene, or dental assisting.

10.22 [For text of subps 4 and 5, see M.R.]

10.23 **3100.6100 STATUTORY GROUNDS FOR DISCIPLINE.**

11.1 In general terms, the grounds for suspension or revocation of licenses of dentists,  
 11.2 dental therapists, dental hygienists, and licensed dental assistants are in Minnesota  
 11.3 Statutes, section 150A.08, subdivision 1.

11.4 **3100.6200 CONDUCT UNBECOMING A LICENSEE.**

11.5 "Conduct unbecoming a person licensed to practice dentistry, dental therapy, dental  
 11.6 hygiene, or dental assisting, or conduct contrary to the best interests of the public," as used  
 11.7 in Minnesota Statutes, section 150A.08, subdivision 1, clause (6), shall include the act of a  
 11.8 dentist, dental hygienist, licensed dental assistant, or applicant in:

11.9 [For text of items A to E, see M.R.]

11.10 F. dental therapists, hygienists, or licensed dental assistants performing services  
 11.11 not authorized by the dentist under this chapter or Minnesota Statutes, chapter 150A;

11.12 [For text of items G to L, see M.R.]

11.13 **3100.6300 ADEQUATE SAFETY AND SANITARY CONDITIONS FOR DENTAL**  
 11.14 **OFFICES.**

11.15 [For text of subps 1 to 13, see M.R.]

11.16 Subp. 14. **Hazardous waste.** Dental health care personnel shall comply with the  
 11.17 requirements for hazardous waste in chapter 7045.

11.18 Subp. 15. **Ionizing radiation.** Each licensee shall comply with the requirements for  
 11.19 ionizing radiation in chapter 4732.

11.20 **3100.8200 UNLAWFUL PRACTICE BY ALLIED DENTAL PERSONNEL.**

11.21 An assistant, hygienist, dental therapist, or dental technician who assists a dentist in  
 11.22 practicing dentistry in any capacity other than as an employee or independent contractor,  
 11.23 who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor,  
 11.24 or director of a dental office as a guise or subterfuge to enable the assistant, hygienist,  
 11.25 dental therapist, or dental technician to engage directly in acts defined by the act as the

12.1 "practice of dentistry," or who performs dental services within the meaning of Minnesota  
12.2 Statutes, section 150A.11, subdivision 1, for members of the public, other than as an  
12.3 employee or independent contractor for an employing dentist, shall be deemed to be  
12.4 practicing dentistry without a license.

12.5 **3100.8300 RESPONSIBILITIES OF LICENSED DENTIST.**

12.6 Nothing in this chapter relating to the scope of services rendered by assistants,  
12.7 technicians, hygienists, or dental therapists shall diminish or abrogate the professional and  
12.8 legal responsibilities of employing dentists to their patients, to their profession, and to  
12.9 the state of Minnesota. Dentists employing assistants, technicians, hygienists, or dental  
12.10 therapists shall be fully responsible for all acts or omissions of these personnel performed  
12.11 or omitted if the acts or omissions are within the normal scope of their employment. Acts  
12.12 or omissions of personnel means whether or not omitted or committed by personnel at the  
12.13 instance and request of the employing dentist if the omission or commission is within the  
12.14 normal scope of their employment.

12.15 **3100.9600 RECORD KEEPING.**

12.16 [For text of subps 1 to 8, see M.R.]

12.17 Subp. 9. **Informed consent.** Dental records must include a notation that:

12.18 A. the dentist, advanced dental therapist, or dental therapist discussed with the  
12.19 patient the treatment options and the prognosis, benefits, and risks of each; and

12.20 B. the patient has consented to the treatment chosen.

12.21 [For text of subps 10 to 14, see M.R.]

## RULEMAKING CHECKLIST - RULES ADOPTED AFTER A HEARING

**NOTES:**

1. If rules are pursuant to a newly adopted or amended rulemaking mandate, you must publish the Request for Comments (step 5) within 60 days of the law's effective date. MS14.101,s1.
2. The agency must publish a notice of intent to adopt rules (step 13) within 18 months of the effective date of the law authorizing or requiring rules to be adopted, amended, or repealed. Otherwise, the agency will lose the authority to do the rules. MS14.125. This applies only to first-time rule adoptions under the statutory authority and not to subsequent amendments or repeals unless the Legislature subsequently alters the authority. Failure to adopt rules within 180 days of issuance of the ALJ's post-hearing report must be explained to the Legislature. MS14.19.
3. The steps are listed in the recommended order, but the steps do not have to be done in the sequence indicated. However, steps 1–12 *must* be completed before step 13.
4. The Rulemaking Manual Editor *strongly* recommends that you write the SONAR (or at least make notes about what will go into it) concurrently with rule development.
5. For the precise deadlines for submissions to the State Register, see [http://www.comm.media.state.mn.us/bookstore/state\\_register\\_submissions.asp](http://www.comm.media.state.mn.us/bookstore/state_register_submissions.asp).
6. If the proposed rules are highly controversial, it might be advisable to meet with associations and other interested parties even before step 1.

Step	Timeline	Rulemaking Manual Reference	Target Date	Completion Date
1.	Authorization from Commissioner or Board to begin project. At least 1 week before step 5	BD-NTC	_____	_____
2.	Send Preliminary Proposal Form to Brian Wietgreffe at Governor's Office Brian Wietgreffe, Office of Governor Mark Dayton, 130 State Capitol, 75 Dr. Martin Luther King Jr. Blvd., St. Paul, Minnesota 55155, 651/201-3420	GOV-PRLM	_____	_____

\* Governor's Office 9/21/11 rules review policy GOV-PLCY: "When an agency has developed a rule idea, it should complete the Preliminary Proposal Form [GOV-PRLM] and submit it to the Governor's Office. The form must be signed by the Commissioner or Director of the agency and will serve as the official notification to the Governor's Office that an agency is seeking a rule. Regardless of the type of rule the agency is proposing (Exempt, Expedited, Permanent or Good-Cause Exemption), this form should be completed in its entirety and submitted to the Legislative Coordinator of LACA. The information contained in the Preliminary Proposal Form likely will be broad and general because of the proposal being at the very beginning stages of rulemaking. Although, this information is important to the Governor's Office, the Policy Advisors cannot perform a substantive review of the proposed rule until they receive the Statement of Need and Reasonableness (SONAR). Therefore, the agency does not need to wait for a response from the Governor's Office before publishing the Request for Comments. Should the information contained in the Preliminary Proposal Form be of concern to the Policy Advisor he or she will contact the agency. . . .

"Upon receipt of the Preliminary Proposal Form, the Legislative Coordinator will contact the agency with an administrative rule tracking number. All future correspondence with the Governor's Office and the Office of Administrative Hearings should include this tracking number, the title given to the proposed rule, and the chapter number. One tracking number will be assigned per rule."

## Minnesota Rulemaking Manual - Appendix

\*\* Huge Hint: The Preliminary Proposal Form to the Governor's Office is an excellent opportunity *at the beginning of your rules project* to clearly set out your goals for the project and to write a first complete draft of the statement of need and the statutory authority for the rules. Having worked on many rules projects with the need and the goals *clearly in mind*, it became quickly apparent after doing one Governor's form that it was preferable and beneficial to have the need and the goals *clearly on paper*. The project goals and statutory authority will fit nicely into the SONAR.

\* *Note on Repealing Rules*. Per Governor's Office 9/21/11 rules review policy: "Agencies do not need to submit rule repeals to the Governor's Office for approval. However, an agency should send an informational memo identifying the obsolete, unnecessary, or duplicative rule(s) to be repealed, describing the rationale for repeal, and indicating any potential controversies. This memo will serve to notify the Governor's Office that the agency is seeking to repeal a rule. No approval is necessary, at any stage, in the rule repeal process."

3. Begin saving documents for official rulemaking record.	RECORD	_____	_____
---	--------	-------	-------

\* If needed, establish a rules advisory committee. Consult with affected parties, such as trade associations and agency advisory councils.

4. Develop an Additional Notice Plan, which must be included in SONAR (step 8b). MR1400.2060.		_____	_____
---	--	-------	-------

5. Request for Comments - submit to State Register. 1 electronic copy (via disk or e-mail), & Printing Order form & Purchase Order form.	Published on the Monday 6 days after submission to State Register	REQUEST	_____	_____
--	---	---------	-------	-------

6. Request for Comments - mail to people on mailing list; (optional) prepare Certificate of Mailing.	At least 3 days before publication	CRT-GNRC	_____	_____
--	------------------------------------	----------	-------	-------

\* Notify additional people, if this is part of the Additional Notice Plan for the Request for Comments

7. Request for Comments - publish in State Register.	At least 60 days before Notice of Intent to Adopt.		_____	_____
--	--	--	-------	-------

\* NOTE: At any time there is a significant change from the initial proposal, send a memo to Brian Wietgreffe. From the 9/21/11 Governor's rule review policy GOV-PLCY: "The Governor's Office recognizes that agencies cannot predict all controversies at the outset of a rules project. As a result, the agency should use its judgment to send issues to the Governor's Office for review throughout the process. Additional review might be necessary if a rule suddenly becomes controversial. If the agency believes that an issue or proposed change might be in conflict with the Governor's beliefs and principles, the agency should notify its Policy Advisor."

## Minnesota Rulemaking Manual - Appendix

* Only if you are using a rules advisory committee: Meet with the committee to discuss the rulemaking timeline and possible rule language.	ADV-COMM	_____	_____
8. Steps 8a, 8b, and 8c can be done in any order; they are often done concurrently.			
8a. Ask Revisor for preliminary draft of proposed rules.	REVISOR	_____	_____
8b. Draft SONAR, including Additional Notice Plan	Concurrent w/ rule development	SONAR	_____
* Decide whether to use a Notice of Hearing or Dual Notice. Use a Dual Notice if you're not sure whether or not the proposed rules will be controversial.			
8c. Get rules & SONAR, including Additional Notice Plan, approved by commissioner or executive director.	When rules & SONAR completed	_____	_____
9. Send rules & SONAR to Governor's Office	Almost final rules & SONAR	GOV-PRPS	_____

\* From the Governor's Office 9/21/11 administrative rule review policy, GOV-PLCY: "After the agency has published its Request for Comment, created the SONAR, and has final or almost final draft rules, it should complete the Proposed Rule and SONAR Form [GOV-PRPS] and the Commissioner or Director sign it. The agency must then submit the completed form, SONAR, and draft rules to the Governor's Office.

"This stage is crucial to rulemaking and is the critical point of information for the Governor's Office. The Proposed Rule and SONAR Form seeks the information received during the Request for Comment, an Executive Summary of the SONAR, supporters, opponents, possible controversies, and any significant changes from the Preliminary Proposal Form. The form also contains an 'other' box. The Governor's Office understands that every rulemaking experience is slightly different. Therefore, the 'other' box seeks information that might not fit into the SONAR or one of the other boxes of information requested. The 'other' box can be viewed as 'any information that may be of importance to this rule.'

"The Proposed Rule and SONAR Form again seeks fiscal impact information. However, at this point, only two options (yes or no) exist. The fiscal impact 'yes' box should be checked for positive or negative fiscal impact to the State of Minnesota. If the fiscal impact declaration changed from the Preliminary Proposal Form, the agency should explain why. Within the SONAR Executive Summary box, the agency should include all fiscal information that affects individuals, businesses, units of government, or the agency itself. . . .

"The agency must receive official approval from the Legislative Coordinator of LACA before proceeding with the Notice of Intent to Adopt Proposed Rules. In most cases, the agency will receive the approval to proceed with the Notice of Intent to Adopt Proposed Rules within three weeks of the Governor's Office's receiving the SONAR, draft rules, and Proposed Rules and SONAR Form. If the agency hasn't received a communication by the 21st day after the Governor's Office received this information, the agency should contact the Legislative Coordinator for a status report."

## Minnesota Rulemaking Manual - Appendix

- |   |   |                                  |       |       |
|---|---|----------------------------------|-------|-------|
| 10. Draft Notice of Intent to Adopt Rules. Have commissioner or executive director sign Notice & SONAR.   | After Gov's Office approval and when rules & SONAR are final  | NTC-HR or<br>NTC-DL              | _____ | _____ |
| <ul style="list-style-type: none"> <li>* If you plan to go directly to a hearing or if you feel there is a strong likelihood of receiving 25+ hearing requests, your Notice of Intent to Adopt can be either a Notice of Hearing or a Dual Notice. Refer to paragraph 6.1 in the Rulemaking Manual for the pros and cons of how to proceed.</li> <li>* Allow 30-day comment period; add day if last day is holiday.</li> <li>* If you are using a Dual Notice, you need to have at least 10 days between the close of the comment period and the hearing date.</li> </ul> |   |                                  |       |       |
| 11. Ask Revisor for approved draft of the rules.  |   |                                  | _____ | _____ |
| 12. Send letter to OAH requesting hearing date and judge  | After SONAR is signed   | HR-RQUEST                        | _____ | _____ |
| * Send Additional Notice Plan to OAH for approval (optional, yet encouraged).   |   |                                  |       |       |
| 13. Notice of Intent to Adopt – submit to State Register 1 electronic copy (via disk or e-mail) the Revisor's document number for the rules & Printing Order form & Purchase Order form.  | 12 days before publication (check State Register website for exact due date)                              | ST-REG                           | _____ | _____ |
| 14. Notice of Intent to Adopt - give notice to persons on rulemaking mailing list and per your Additional Notice Plan. Prepare Certificate of Mailing, Certificate of Accuracy of Mailing List, and Certificate of Giving Additional Notice.  | After submit Notice of Intent to Adopt State Register; no later than 33 days before end of comment period | CRT-MLNG<br>CRT-LIST<br>CRT-GNRC | _____ | _____ |
| 15. Send SONAR to Legislative Reference Library via e-mail; Prepare Certificate of Mailing to library OR make copy of cover letter.   | When SONAR becomes available to the public  | LRL<br>CRT-LRL                   | _____ | _____ |
| 16. Send notice to legislators - chairs and ranking minority party members of House & Senate policy & budget committees; PLUS chief legislative authors of rulemaking authority if it is within two years of the effective date of the authority; prepare Certificate of Mailing to legislators OR make copy of cover letter.   | When Notice is mailed   | LEG<br>CRT-LEG                   | _____ | _____ |

## Minnesota Rulemaking Manual - Appendix



- |  |   |                                 |       |
|--|---|---------------------------------|-------|
| 23. During post-hearing rebuttal period, submit response to comments and information received by ALJ during the post-hearing comment period.   | Post-hearing rebuttal period is 5 working days                    | _____                           | _____ |
| 24. Hearing record closes.   | At end of post-hearing rebuttal period                            | _____                           | _____ |
| 25. ALJ completes report.  | 30 days after close of hearing record                             | _____                           | _____ |
| * ALJ returns entire hearing record to agency.   |   |                                 |       |
| 26. Decide how to proceed; get approval from agency decision makers (commissioner, executive director, and appropriate board members) about changes recommended by ALJ. Do language changes if needed.   | If a Board, prior to Board meeting at which rules will be adopted | _____                           | _____ |
| 27. Get Governor's Office approval.  | Before sending Order Adopting Rules to OAH                        | GOV-FNL                         |       |
| * Per the Governor's Office 9/21/11 rules review policy, GOV-PLCY: "When the agency is adopting rules after a hearing: the agency must submit the completed Final Rule Form [GOV-FNL] to the Office of the Governor before the agency submits its signed Order Adopting the Rules to OAH. The agency must explain why a hearing was requested and attach a copy of the Administrative Law Judge Report. The agency must also explain any changes made in response to the ALJ Report, including any large deletions from the rule. The Policy Advisor will direct any concerns the Advisor might have directly to the agency. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform them it may formally submit the signed Order Adopting Rules to the OAH. . . . |   |                                 |       |
| If the proposed rule remained substantially unchanged from the SONAR stage, final review of the rule should take less than a week. If the agency hasn't received a communication by the 7th day after the Governor's Office received the above information, the agency should contact the Legislative Coordinator for a status report.   |   |                                 |       |
| 28. Draft Order Adopting Rules and, for Boards, a Board Resolution Adopting Rules.   | If a Board, prior to Board meeting when rules will be adopted     | ORD-ADPT<br>SMPLFNDS<br>BD-ADPT |       |
| * If your rules were approved and you are making no changes other than those already approved, then skip to step 30.   |   |                                 |       |

## Minnesota Rulemaking Manual - Appendix

29. If you are making changes to the rules other than those approved by the ALJ OR to correct a disapproval by the ALJ, submit the rules to the Chief ALJ for review. It is recommended that you ask the Revisor for a rules draft, approved as to form. See MS14.16 and MR1400.2240,s4&5.	Chief ALJ must approve or disapprove within 5 working days, if you are correcting a defect, or 10 days, if making changes other than those already approved	CHNG-OTH CHNG-DIS	_____	_____
30. Order Adopting Rules signed by commissioner or by person authorized in Board Resolution.	Commissioner's signature or Board action must be at least 5 working days after ALJ report		_____	_____
<ul style="list-style-type: none"> <li>* OAH will get a rules draft from the Revisor, approved for filing with the Secretary of State. OAH will file the rules with the Secretary of State and notify the agency in advance of when it will do this.</li> <li>* Secretary of State forwards rules to the Governor, who may veto within 14 days. MS14.05,s6.</li> </ul>				
31. Mail Notice of Filing to all persons requesting this. (See sign-up sheet in hearing record for names.)	Notice of Filing must be sent when the rules are filed with the Secy of State	NTC-SECY CRT-SECY	_____	_____
32. Revisor drafts Notice of Adoption and sends to agency.				
33. <b>After you are sure Governor will not veto:</b> Submit Notice of Adoption to State Register by submitting the Revisor's document number & Printing & Purchase Order form.	Wednesday at noon, 12 days before publication; (Holidays	ST-REG	_____	_____
34. State Register publishes Notice of Adoption.	The Monday, 12 days after submission to State Register		_____	_____
35. Rules take effect.	Five working days after publication in State Register		_____	_____
36. Notify staff of rule change	ASAP	CLOSURE	_____	_____
37. Inform regulated persons. Publish information about rules in newsletter and/or web page.	ASAP		_____	_____
38. Finalize Official Rulemaking Record and archive rule documents. MS14.365.		RECORD	_____	_____

## Minnesota Rulemaking Manual - Appendix