

OFFICIAL RULEMAKING RECORD
MINNESOTA BOARD OF DENTISTRY

**PROPOSED AMENDMENTS TO PERMANENT RULES RELATING TO LIMITED
GENERAL DENTISTS, DENTISTS, DENTAL THERAPISTS, DENTAL HYGIENISTS,
AND LICENSED DENTAL ASSISTANTS, MINNESOTA RULES, PARTS 3100.1130,
3100.1700, 3100.1750, 3100.1850, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8400,
3100.8500, 3100.9600**

MARCH 2012 TO JULY 2013

NOTICE OF ADOPTION PUBLISHED: JUNE 24, 2013
EFFECTIVE DATE: JULY 1, 2013

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 March 26, 2012 (36 SR 1129). **[File #5]**
 - b. Dual Notice: Notice of Intent to Adopt Rules dated November 26, 2012 (37 SR 809), along with proposed rules dated October 31, 2012. **[File #13]**
 - c. Notice of Adoption dated June 24, 2013 (37 SR 1849). **[File #28]**

- (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 no comments or requests for a hearing for these rules.

- (3) The Statement of Need and Reasonableness (SONAR) dated October 31, 2012. **[File #8b]**

- (4) The official transcript of the hearing if one was held, or the tape recording of the hearing if a transcript was not prepared.

There is no transcript or tape because no hearing was held.

- (5) The report of the Administrative Law Judge.

There is no report because no hearing was held.

- (6) The rules in the form first submitted to the Administrative Law Judge under Minnesota Statutes, sections 14.22 to 14.28.

The rules as adopted, dated October 31, 2012, were first submitted to the Administrative Law Judge under Minnesota Statutes, sections 14.22 to 14.28. **[File #11]**

Secondly, there is a final copy of the adopted rules, dated May 1, 2013, containing: (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 #25]**

Thirdly, there is a final stripped version of the adopted rules from the Revisor's Office dated June 25, 2013. **[File #28]**

- (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 April 5, 2013. The Chief Administrative Law Judge's written approval of the Report of the Administrative Law Judge is dated April 5, 2013. **[File #24]**

After the Board made the appropriate amendments to Minn. R. 3100.1130 and submitted to the OAH, the Board received the Administrative Law Judge's written Order dated May 7, 2013, approving the rules. **[File #24c]**

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

Documents required by OAH Rules part 1400.2310 for rules adopted without a hearing:

- A. Request for Comments published in the State Register; **[File #5]**
- B. Not enclosed - rulemaking petition(s) – none submitted to Board;
- C. Proposed rules, including Revisor's approval, dated October 31, 2012; **[File #11]**
- D. Statement of Need and Reasonableness; **[File #8b]**
- E. Dual Notice of Hearing - State Register; **[File #13]**
- F. Not enclosed – letter from Chief Administrative Law Judge authorizing the Board to omit the text of the proposed rules from Dual Notice in State Register – no text was omitted from Dual Notice;
- G. Certificate of Mailing the Dual Notice and Accuracy of Rulemaking Mailing List; **[File #14a]**
- H. Certificate of Additional Notice; and Judge Cochran's Order approving Additional Notice Plan dated November 8, 2012; **[File #14b]**
- I. Certificate and Letter - Legislative Reference Library; **[File #15]**
- J. Not enclosed - Written Comments, Requests for Hearing, and Withdrawals received by Board – none received by the Board;
- K. Not enclosed – a notice of withdrawal of hearing request;
- L. Copy of Adopted Rules dated May 1, 2013; **[File #25]**
- M. Not enclosed – a notice of adopting substantially different rules;
- N. Board's Amended Order Adopting Rules dated May 3, 2013; **[File #24b]**
- O. Not enclosed – a notice of submission of rules to OAH;
- P-1. Notice to Legislators – Letter; and **[File #16]**
- P-2. Consultation with MMB – Letter and Response. **[File #9b]**

(9) The Board's Order Adopting Rules.

The Board's Executive Director signed the Amended Order Adopting Rules on May 3, 2013. **[File #24b]**

(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 June 18, 2012 **[File #11]**, October 31, 2012 **[File #11]**, and May 1, 2013 **[File #24a]**, rules drafts.

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

The adopted rules, dated May 1, 2013, were filed with the Secretary of State on or about May 22, 2013. **[File #25]**

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 #32]**

(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 #19]**

(14) Governor's Veto of Adopted Rules.

On June 10, 2013, the Governor's office sent correspondence to the Board about not vetoing the Board's adopted rules. **[File #27]**

**Minnesota Department of Commerce
Public Utilities Commission
In the Matter of the Great River Energy & Minnesota Power HVTL Route Permit
Application Savanna Transmission Line Project
PUC Docket Number: ET2, E015/TL-10-1307**

At its regular meeting on February 13, 2012, the Minnesota Public Utilities Commission (Commission) determined that the Environmental Assessment addressed the issues identified in the Scoping Decision.

The Commission also designated the HVTL routes, permit conditions and issued the route permit.

The Commission's Order was released on March 7, 2012.

Project Description

Great River Energy and Minnesota Power propose to construct approximately 37 miles of new 115 kV transmission line; approximately 16 miles of existing 69 kV line between the Cedar Valley and the Gowan substations will be rebuilt to 115 kV. Between the Gowan and Cromwell substations, approximately 21 miles of existing Great River Energy 69 kV transmission line will be rebuilt on double circuit structures with the project's 115 kV line. These transmission lines are located entirely in Minnesota, in St. Louis and Carlton counties.

Minnesota Power proposes to construct a new 115 kV Switching Station (Savanna Switching Station) a few miles northeast of Floodwood, Minnesota. Modifications to accommodate the new 115 kV lines will be required at Lake Country Power's existing Cedar Valley Substation and at Great River Energy's existing Cromwell Substation.

Inquiries about this project should be directed to the DOC project manager, Bill Storm (*bill.storm@state.mn.us*) or the public adviser, Deb Pile (*Deborah.Pile@State.mn.us*) 85 - 7th Place East, Suite 500, St. Paul, MN 55101, **telephone:** (651) 296-7502, **facsimile:** (651) 297-7891 (TTY relay service 1-800-627-3529).

Copies of documents relative to this docket can be obtained through the DOC Project Manager and maybe viewed at PUC web site:
<http://energyfacilities.puc.state.mn.us/Docket.html?Id=31883>

**Minnesota Comprehensive Health Association (MCHA)
Notice of Meeting of the Board of Directors April 4, 2012**

NOTICE IS HEREBY GIVEN that a meeting of the Minnesota Comprehensive Health Association's (MCHA) Board of Directors will be held at 1:00 p.m. on Wednesday, April 4, 2012, at the MCHA Executive Office, 5775 Wayzata Blvd., Suite 910, St. Louis Park, MN.

For additional information, please call Mary McCaffrey at (952) 593-9609.

**Minnesota Board of Dentistry
REQUEST FOR COMMENTS on Proposed Amendments to Permanent Rules
Relating to Limited General Dentists, Dentists, Dental Therapists, Dental
Hygienists, and Dental Assistants, *Minnesota Rules*, Chapter 3100**

Subject of Rules. The Minnesota Board of Dentistry requests comments on its proposed amendments to rules governing limited general dentists, dentists, dental therapists, dental hygienists, and dental assistants. The Board is considering rule amendments adding new or modifying existing language, as follows: licensure for a limited general dentist; reinstatement of license; professional development/

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portfolio audit; dental specialty practice; duties for dental assistants; and recordkeeping. In addition, there are various technical changes and some supplemental corrections in certain rules.

Persons Affected. The amendments to the rules would affect limited general dentists, dentists, dental therapists, dental hygienists, and dental assistants.

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 May 25, 2012. 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. 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. Minnesota Relay Service for hearing impaired: (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: March 16, 2012

Marshall Shragg, Executive Director
Minnesota Board

Department of Human Services (DHS)

Health Care Administration

Public Notice Regarding Proposed Payment Rate Changes for Hospitals, Nursing Facilities and Intermediate Care Facilities Serving People with Developmental Disabilities (ICFs/DD) Participating in the Medical Assistance Program

NOTICE IS HEREBY GIVEN to recipients, providers of services under the Medical Assistance Program, and to the public, of proposed payment rate changes for hospitals, nursing facilities and intermediate care facilities serving people with developmental disabilities (ICFs/DD) participating in the Medical Assistance Program.

This notice is published pursuant to 42 *United States Code* §1396a(a)(13)(A) (§1902(a)(13)(A) of the Social Security Act), which requires the Department to publish proposed facility payment rates, the methodologies underlying the establishment of such rates, and the justification for such rates. It is also published pursuant to *Code of Federal Regulations*, title 42, part 447, section 205 (42 CFR §447.205), which requires publication of a notice when there is a proposed rate change in the methods and standards for setting payment rates for Medical Assistance services.

The Department is notifying interested parties about any proposed changes in the Governor's supplemental budget for State Fiscal Page 1130
State Register, Monday 26 March 2012
(Cite 36 SR 1130)

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Comments on Planned Rules or Rule Amendments. An agency must first solicit Comments on Planned Rules or Comments on Planned Rule Amendments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

Rules to be Adopted After a Hearing. After receiving comments and deciding to hold a public hearing on the rule, an agency drafts its rule. It then publishes its rules with a notice of hearing. All persons wishing to make a statement must register at the hearing. Anyone who wishes to submit written comments may do so at the hearing, or within five working days of the close of the hearing. Administrative law judges may, during the hearing, extend the period for receiving comments up to 20 calendar days. For five business days after the submission period the agency and interested persons may respond to any new information submitted during the written submission period and the record then is closed. The administrative law judge prepares a report within 30 days, stating findings of fact, conclusions and recommendations. After receiving the report, the agency decides whether to adopt, withdraw or modify the proposed rule based on consideration of the comments made during the rule hearing procedure and the report of the administrative law judge. The agency must wait five days after receiving the report before taking any action.

Rules to be Adopted Without a Hearing. Pursuant to *Minnesota Statutes* § 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing. An agency must first solicit **Comments on Planned Rules or Comments on Planned Rule Amendments** from the public. The agency then publishes a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

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

Proposed Permanent Rules Relating to License to Practice as a Limited General Dentist

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 Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules*, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.9600

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, December 26, 2012, the board will hold a public hearing in the 4th Floor Conference Room A, University Park Plaza, 2829 University Avenue SE, Minneapolis, Minnesota 55414, starting at 1:00 p.m. on Thursday, January 10, 2013. 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 December 26, 2012 and before January 10, 2013.

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. **TTY** users may call the Board of Dentistry at (800) 627-3529.

Subject of Rules and Statutory Authority. The proposed rules are about: licensure for the limited general dentist; the CPR requirement for licensure; an interview option when reinstating; expanding professional development elective activities; professional development portfolio audit fee; adding another recognized specialty area; assistants allowed to apply fluoride varnish; dental hygienists and licensed dental assistants allowed to complete preliminary charting, take photographs, and take vital signs; and for recordkeeping properly identify the collaborating dentist and transfer adequate radiographs.

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*. The proposed rules are also available on the board's website at: www.dentalboard.state.mn.us or a free

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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, December 26, 2012, 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, December 26, 2012. 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 Thursday, January 10, 2013, 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 December 26, 2012, 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 Jeanne M. Cochran is assigned to conduct the hearing. Judge Cochran can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, St. Paul, MN 55164-0620, telephone (651) 361-7838, 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

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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.

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) 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.

Signed by Executive Director Marshall Shragg, MPH on October 31, 2012

3100.1130 LICENSE TO PRACTICE DENTISTRY AS A LIMITED GENERAL DENTIST.

Subpart 1. Initial requirements for limited licensure. A person who is a graduate of a nonaccredited dental program and desires to obtain a limited license to practice general dentistry within Minnesota shall comply with the requirements in items A to E.

A. The applicant must initially submit to a credential review by the board and pay the nonrefundable fee in Minnesota Statutes, section 150A.091, subdivision 9a. The applicant shall provide documentation such as:

- (1) a completed board-approved evaluation of all international education;
- (2) an original or notarized copy of passing board-approved language testing within the previous two years;
- (3) an original affidavit of licensure;
- (4) a completed dental questionnaire;
- (5) a personal letter/curriculum vitae/resume;
- (6) an original or notarized copy of dental diploma and, if necessary, professional translation;
- (7) proof of clinical practice in dentistry;

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(8) an original or notarized copy of other credentials in dentistry and, if necessary, professional translation;

(9) completed board-approved infection control training; and

(10) an original or notarized copy of National Board Dental Examinations Report - Part I and Part II.

The applicant is allowed to submit to one credential review by the board.

B. Once a credential review has been completed by the board, the committee shall officially notify the applicant by letter as to whether permission to take the regional clinical examination has been denied or granted by the board. The board may also request that the applicant schedule an interview with the credential review committee, then notify the applicant by letter as to whether permission to take the regional clinical examination has been denied or granted by the committee. An applicant denied permission to take the regional clinical examination has the option to appeal the decision to the board within 60 days from the notification date.

C. If the applicant is granted permission by the board to take the regional clinical examination, the applicant must take a board-approved regional clinical examination, successfully pass the regional clinical examination, and submit evidence of the results of the regional clinical examination within 18 months from the receipt date of the board's notification letter granting permission to take the regional clinical examination.

D. When an applicant fails twice any part of a board-approved regional clinical examination, the applicant may not take it again until the applicant successfully completes additional education provided by an institution accredited by the Commission on Dental Accreditation. The education must cover all of the subject areas failed by the applicant in each of the two clinical examinations. The applicant may retake the examination only after the institution provides to the board information 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 shall be allowed to retake the clinical examination one time following this additional educational instruction. If the applicant fails the clinical examination for a third time, the applicant is prohibited from retaking the clinical examination.

E. An applicant must complete and submit a limited license application for review by an appropriate committee of the board. The application must include:

(1) the initial and annual application fees in *Minnesota Statutes*, section 150A.091, subdivision 9b;

(2) evidence of having passed a board-approved regional clinical examination within five years preceding the limited license application;

(3) evidence of having passed an examination designed to test knowledge of Minnesota laws relating to the practice of dentistry and the rules of the board within five years preceding the limited license application;

(4) an acceptable written agreement between the applicant and a board-approved Minnesota licensed supervising dentist. The written agreement shall include all information requested by the board. The written agreement shall also include any practice limitations, and an acknowledgment that the applicant agrees to practice clinical dentistry at least 1,100 hours annually, for a period of three consecutive years;

(5) documentation of current CPR certification;

(6) a statement from a licensed physician attesting to the applicant's physical and mental condition completed within 12 months preceding the limited license application; and

(7) a statement from a licensed ophthalmologist or optometrist attesting to the applicant's visual acuity completed within 12 months preceding the limited license application.

Subp. 2. **Terms of limited licensure.** Throughout the three consecutive years while practicing general dentistry in Minnesota under the general supervision of a Minnesota licensed dentist, the limited license dentist must maintain and comply with the requirements in items A to F:

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A. submit annual payment of the renewal fee in *Minnesota Statutes*, section 150A.091, subdivision 9b;

B. maintain a consecutive and current CPR certification as required to renew a limited license;

C. submit written correspondence and agreement to the board requesting approval of a subsequent supervising dentist and written agreement, within 14 days prior to employment start date with subsequent supervising dentist. The written agreement shall include all information requested by the board. The written agreement shall also include any practice limitations, and an acknowledgment that the limited license dentist agrees to practice clinical dentistry at least 1,100 hours annually, for a period of three consecutive years or any remaining portion thereof;

D. within seven business days of an unforeseen event, submit written correspondence for review by an appropriate committee of the board regarding the unforeseen circumstance that may interrupt the three consecutive years of supervision;

E. maintain with the board a correct and current mailing address and electronic mail address and properly notify the board within 30 days of any changes as described in *Minnesota Statutes*, section 150A.09, subdivision 3; and

F. maintain a professional development portfolio containing:

(1) acceptable documentation of required hours in professional development activities;

(2) a minimum of two different core subjects as part of the fundamental activities;

(3) one completed self-assessment examination; and

(4) a consecutive and current CPR certification.

The total required hours of professional development activities is 75 hours with a minimum of 45 hours in fundamental activities and a maximum of 30 hours in elective activities. Completing at least 25 hours each year towards the total of 75 hours is required for compliance.

Subp. 3. **Terms of supervising dentist.** A supervising dentist must be licensed in Minnesota and provide general supervision to a limited license dentist. The supervising dentist is not required to be present in the office or on the premises when supervising the limited license dentist, but does require the supervising dentist to have knowledge and authorize the procedures being performed by the limited license dentist. For the three consecutive years or any portion thereof, the supervising dentist must be eligible to participate and comply with the requirements in items A to I.

A. A supervising dentist must be a board-approved Minnesota licensed dentist for at least five consecutive years.

B. A supervising dentist's license shall not be subject to, or pending, corrective or disciplinary action within the previous five years according to *Minnesota Statutes*, sections 214.10 and 214.103.

C. A supervising dentist must have an acceptable written agreement between the limited license dentist and the supervising dentist, and the supervising dentist may only supervise one limited license dentist for the duration of the agreement. The written agreement shall include all information requested by the board. The written agreement shall also include any practice limitations, and an acknowledgment that the limited license dentist agrees to practice clinical dentistry at least 1,100 hours annually, for a period of three consecutive years.

D. No more than two limited license dentists are allowed to practice general dentistry under general supervision in one dental facility.

E. Any subsequent modifications to a written agreement must be submitted in writing to the board by the supervising dentist within seven business days of the modification.

F. A supervising dentist must inform the board in writing about the termination of a written agreement with a limited license dentist within seven business days of the termination.

G. A supervising dentist must inform the board in writing about any known disciplinary or malpractice proceedings involving the limited license dentist within seven business days of the proceeding.

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H. The supervising dentist must submit to the board a written performance evaluation of the limited license dentist in regards to employment including practicing clinical dentistry at least 1,100 hours annually, patient care, allied dental personnel, professionalism, billing practices, and make a general recommendation within 90 days preceding to seven business days after completing the three consecutive years or any portion thereof.

I. A supervising dentist who fails to comply with this subpart is subject to disciplinary proceedings on grounds specified in parts 3100.6100 and 3100.6200, and *Minnesota Statutes*, section 150A.08, subdivision 1.

Subp. 4. Requirements for licensure.

A. Upon completion of the three consecutive years, a dentist with a limited license to practice general dentistry in Minnesota shall be prohibited from practicing general dentistry in Minnesota due to expiration of the limited license. A dentist who has an expired or nearly expired limited license may apply for a dental license to practice general dentistry in Minnesota by presenting a license application to the board and meeting the following requirements in subitems (1) to (6). An applicant:

(1) must submit a completed application for a dental license in Minnesota no sooner than 90 days preceding the expiration date of the applicant's limited license or no later than one year after the expiration date of the applicant's limited license;

(2) must submit with the application the nonrefundable fees in *Minnesota Statutes*, section 150A.091, subdivisions 2 and 3;

(3) must submit required documentation of a consecutive and current CPR certification;

(4) shall provide a professional development portfolio for the three consecutive years preceding the license application date as described in subpart 2, item F;

(5) must submit a written performance evaluation from each supervising dentist regarding the applicant while practicing as a limited license dentist; and

(6) must not have been subject to corrective or disciplinary action by the board while holding a limited license during the three consecutive years.

B. An applicant whose license application has been denied may appeal the denial by initiating a contested case hearing pursuant to *Minnesota Statutes*, chapter 14.

3100.1700 TERMS AND RENEWAL OF LICENSE OR PERMIT; GENERAL.

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

Subp. 2. **Biennial renewal applications.** A dentist, dental hygienist, licensed dental assistant, or dental assistant with a permit under part 3100.8500, subpart 3, 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 main-
taining a consecutive and 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 that may be reasonably requested by the board.

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

3100.1750 TERMS AND RENEWAL OF LICENSURE; LIMITED FACULTY AND RESIDENT DENTISTS.

[For text of subs 1 to 3, see M.R.]

Subp. 4. **Application fees.** Each applicant for initial licensure as a limited faculty or resident dentist shall submit with a license application ~~the fee in the following amounts: in *Minnesota Statutes*, section 150A.091, subdivision 2.~~

~~A. limited faculty dentist, \$140; and~~

~~B. resident dentist, \$55.~~

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Subp. 5. **Annual license fees.** Each limited faculty or resident dentist shall submit with an annual license renewal application a fee established by the board not to exceed the following amounts: in Minnesota Statutes, section 150A.091, subdivision 4.

A. limited faculty dentist, \$168; and

B. resident dentist, \$59.

[For text of subp. 6, see M.R.]

3100.1850 REINSTATEMENT OF LICENSE.

[For text of subps 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:

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

(2) evidence of having successfully completed applicable board-approved coursework with minimal hour requirements directly relating to the practice of dentistry, 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 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; and

C. be available for an interview with the appropriate board committee to determine the applicant's knowledge of dental subjects and ability to practice dentistry, dental therapy, dental hygiene, or dental assisting under this subpart.

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

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

[For text of subps 1 to 7, see M.R.]

Subp. 8. **Reporting of incidents required.** A dentist, 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:

A. a serious or unusual outcome that produces a temporary or permanent physiological injury, harm, or other detrimental effect to one or more of a patient's body systems; or

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 subparts 9 and 9b.

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 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 subps 9 to 11, see M.R.]

3100.5100 PROFESSIONAL DEVELOPMENT.

[For text of subps 1 and 2, 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.

A. Fundamental activities include, but are not limited to, clinical subjects, core subjects, CPR training, and the self-assessment examination. Examples of fundamental activities for an initial or biennial cycle are described in subitems (1) to (5).

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[For text of subitems (1) and (2), see M.R.]

(3) A CPR certification course is mandatory for each licensee to maintain licensure. The CPR course must be equivalent to the American Heart Association healthcare provider course or the American Red Cross professional rescuer course. The licensee must ~~hold~~ maintain a consecutive and current CPR certificate when renewing a license or permit each biennial term.

[For text of subitems (4) and (5), 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) ~~(7)~~:

[For text of subitems (1) to (4), see M.R.]

(5) dental practice management courses include, but are not limited to, computer, insurance claims or billing, and Health Insurance Portability and Accountability Act (HIPAA) training; ~~or~~

~~(6) leadership or committee involvement with the board or a dental professional association for a maximum of three credit hours;~~
or

~~(6) (7)~~ 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 hygiene, or dental assisting.

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

3100.5300 AUDIT PROCESS OF PORTFOLIO.

[For text of subps 1 to 5, see M.R.]

Subp. 6. Audit fee. The licensee shall submit to the board the nonrefundable fee in *Minnesota Statutes*, section 150A.091, subdivision 16, after failing two consecutive professional development portfolio audits and thereafter for each failed professional development portfolio audit.

3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.

Subpart 1. **Specialty areas.** The following special areas of dentistry are recognized as suitable for the announcement of specialty dental practices:

A. endodontics (endodontist);

~~B. oral and maxillofacial radiology (oral and maxillofacial radiologist);~~

~~B. C. oral and maxillofacial surgery (oral surgeon/oral maxillofacial surgeon);~~

~~C. D. oral pathology (oral pathologist);~~

~~D. E. orthodontics (orthodontist);~~

~~E. F. pediatric dentistry (pediatric dentist);~~

~~F. G. periodontics (periodontist);~~

~~G. H. prosthodontics (prosthodontist); and~~

~~H. I. public health.~~

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

3100.8400 ASSISTANTS WITHOUT A LICENSE OR PERMIT.

Subpart 1. **Permissible duties.** Assistants under this subpart may:

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

E. provide any assistance, including the placement of articles and topical medication in a patient's oral cavity, in response to a

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specific direction by a licensed dentist who is physically engaged in performing a dental operation as defined in the act and who is physically in a position to give personal supervision to the assistant; and

F. aid dental hygienists and licensed dental assistants in the performance of their duties as defined in parts 3100.8500 and 3100.8700; and

G. apply fluoride varnish in a community setting under the authorization and direction of a licensed practitioner with prescribing authority such as a dentist or physician, as long as the licensed practitioner authorizing the service or the facility at which the fluoride varnish is administered maintains appropriate patient records of the treatment.

[For text of subps 1a to 3, see M.R.]

3100.8500 LICENSED DENTAL ASSISTANTS.

Subpart 1. **Duties under general supervision.** A licensed dental assistant may perform the following procedures without the dentist being present in the dental office or on the premises if the procedures being performed are with prior knowledge and consent of the dentist:

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

H. deliver vacuum-formed orthodontic retainers; and

I. place and remove elastic orthodontic separators;

J. complete preliminary charting of the oral cavity and surrounding structures with the exception of periodontal probing and assessment of the periodontal structure;

K. take photographs extraorally or intraorally; and

L. take vital signs such as pulse rate and blood pressure as directed by a dentist.

[For text of subps 1a to 3, see M.R.]

3100.9600 RECORD KEEPING.

[For text of subps 1 to 9, see M.R.]

Subp. 10. **Progress notes.** Dental records must be legible and include a chronology of the patient's progress throughout the course of all treatment and postoperative visits. The chronology must include;

A. all treatment provided; and

B. clearly identify the provider by name or initials, all medications used and materials placed;

C. identify all medications used and materials placed; the treatment provider by license number, name, or initials; and

D. when applicable, the identity of the collaborating dentist authorizing treatment by license number.

[For text of subps 11 and 12, see M.R.]

Subp. 13. **Transfer of records.** A patient's dental records must be transferred according to *Minnesota Statutes*, sections 144.291 to 144.298, irrespective of the status of the patient's account. Digital radiographs shall be transferred by compact or optical disc, electronic communication, or printing on high-quality photographic paper. All transferred film or digital radiographs must reveal images of diagnostic quality using proper exposure settings and processing procedures.

[For text of subp 14, see M.R.]

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 License to Practice as a Limited General Dentist

The rules proposed and published at *State Register*, Volume 37, Number 22, pages 809-817, November 26, 2012 (37 SR 809), are adopted with the following modifications:

3100.1130 LICENSE TO PRACTICE DENTISTRY AS A LIMITED GENERAL DENTIST.

Subpart 1. **Initial requirements for limited licensure.** A person who is a graduate of a nonaccredited dental program ~~and desires to obtain~~ will be granted a limited license to practice general dentistry within Minnesota ~~shall comply upon successfully complying~~ with the requirements in items A to E.

A. The applicant must initially submit to a credential review by the board and pay the nonrefundable fee in *Minnesota Statutes*, section 150A.091, subdivision 9a. The applicant shall provide the following documentation ~~such as~~:

(2) an original or notarized copy of passing board-approved language testing within the previous two years if English is not the applicant's primary language;

E. An applicant must complete and submit a limited license application for review by an appropriate committee of the board. The application must include:

(4) an acceptable written agreement between the applicant and a board-approved Minnesota licensed supervising dentist. The written agreement shall include all information requested by the board. The written agreement shall also include any practice limitations, and an acknowledgment that the applicant agrees to practice clinical dentistry at least 1,100 hours annually, for a period of three consecutive years after clinical practice in Minnesota begins;

Subp. 3. **Terms of supervising dentist.** A supervising dentist must be licensed in Minnesota and provide general supervision to a limited license dentist. The supervising dentist is not required to be present in the office or on the premises when supervising the limited license dentist, but does require the supervising dentist to have knowledge and authorize the procedures being performed by the limited license dentist. For the three consecutive years or any portion thereof, the supervising dentist must be eligible to participate and comply with the requirements in items A to I.

H. The supervising dentist must submit to the board a written performance evaluation of the limited license dentist in regards to employment including practicing clinical dentistry at least 1,100 hours annually, patient care, allied dental personnel, professionalism, billing practices, and make a general recommendation ~~within 90 days preceding to seven business days after completing the three consecutive years or any portion thereof. The supervising dentist's evaluation must be submitted to the board no earlier than 90 days before completion of the limited license dentist's practice period and no later than seven business days following completion of the limited license dentist's practice period.~~

Minnesota Board of Dentistry

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendments to Permanent Rules Relating to Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules*, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.9600

INTRODUCTION

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

The Board is seeking to amend the rules governing a number of different components relating to dentistry. The amendments that are under consideration are to add new or modify existing language in the following areas: licensure for a limited general dentist; reinstatement of license; professional development and portfolio audit; dental specialty practice; duties for a licensed dental assistant; and recordkeeping. In addition, there are various technical changes to properly coordinate rule language with current statute language and some supplemental clarification and minor technical corrections in certain rules which are not substantial changes to the regulatory 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 amended. 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 March 21, 2012, 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 March 26, 2012, 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 eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below state these factors and then provide the Board of Dentistry's responses.

"(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule"

- The classes of affected persons will include limited general dentists, dentists, dental therapists, dental hygienists, and licensed dental assistants who are regulated by the Board of Dentistry; and the general public;
- The costs of the proposed rules will be borne by limited general dentists who want to obtain and maintain a limited license; and by individual dentists, dental therapists, dental hygienists, and licensed dental assistants who continuously fail their professional development portfolio audits; 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"

- The primary costs to the Board to implement and enforce the proposed rules to create a new license for the limited general dentist are significant administrative costs of approximately \$45,000 relating to revising current procedures, forms, and database processes;
- 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”

- 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”

- Discussions between the Board, various standing and task force committees of the Board, Board staff, professional association representatives, dental professionals and specialists, and the general public involved only slight variations from the actual proposed rules. Nothing substantial as far as alternative methods for achieving the purpose of the proposed rules were seriously considered by the Board.

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

- The entire amount of the known and anticipated costs will be borne by the limited general dentist in compliance with the proposed rules regarding a credential review and licensure. These costs are within Minnesota Statutes, section 150A.091, as follows: \$200-credential review (subd. 9a); \$140-initial application for limited license if qualified (subd. 9b); \$155-renewal application for limited license if qualified (subd. 9b); and \$140-application for dental license if qualified (subd. 2).
In addition, the entire cost amount of \$250, within Minnesota Statutes, section 150A.091, subdivision 16, will be borne by the dentist, dental therapist, dental hygienist, and licensed dental assistant to be in compliance with the proposed rules regarding continuously failing the professional development portfolio audit; 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”

- The probable costs or consequences of not adopting the proposed rules relating to limited general dentists are the adverse consequences that may affect the general public's health, safety and welfare unless more definitive regulations are implemented for limited general dentists; 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”

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

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

- The proposed rules cover areas that are not addressed by federal law or other Minnesota state laws. Therefore, this consideration is not applicable for these proposed rules.

PERFORMANCE-BASED RULES

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

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

ADDITIONAL NOTICE PLAN and NOTICE PLAN

Additional Notice Plan

Minnesota Statutes, sections 14.131 and 14.23, require that this SONAR contain a description of the Board of Dentistry's efforts to provide additional notice to persons who might be affected by the proposed rules or explain why these efforts were not made. Additional notice has been provided by the Board, as follows:

1. Since March 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 March 21, 2012, the Board posted a draft copy of the proposed rule changes on the Board's website at www.dentalboard.state.mn.us making it accessible to the following individuals: all limited general dentists; dentists; dental therapists; 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.
3. On March 21, 2012, 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.
4. On March 21, 2012, the Board posted a copy of the Request for Comments for publication in the State Register on the Board's website at www.dentalboard.state.mn.us. This website is accessible to the following individuals: all limited general dentists; dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; and members of the general public.
5. On March 21, 2012, the Board posted a draft of the Statement of Need and Reasonableness ("SONAR") on the Board's website at www.dentalboard.state.mn.us. All future notices involving these proposed rules shall be posted on the Board of Dentistry's website.
6. On March 26, 2012, the Board's Request for Comments was published in the State Register.
7. On August 2, 2012, the Board contacted the representatives of the Minnesota Dental Association (Dentists), the Minnesota Dental Hygiene Association (Dental Hygienists), and the Minnesota Dental Assistants Association (Dental Assistants) with a request to publish in each organization's newsletter or post on each organization's website for it's members the following information:

MINNESOTA BOARD OF DENTISTRY – NEW PROPOSED RULES

RE: Proposed Amendments to Permanent Rules Relating to Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules*, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.9600

The Minnesota Board of Dentistry is considering some amendments to its existing rules. The amendments that are under consideration in the Board's proposed rules focus on the following areas: the requirements and terms of licensure for a limited general dentist; add "consecutive" to

the CPR requirement for licensure; add an interview option when reinstating; expand professional development elective activities; add professional development portfolio audit fee; add another recognized specialty area; allow assistants to apply fluoride varnish; allow dental hygienists and licensed dental assistants to complete preliminary charting, take photographs, and take vital signs; and in recordkeeping properly identify the collaborating dentist and transfer adequate radiographs.

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

8. On October 31, 2012, the Board posted a copy of its proposed rules dated October 31, 2012 and SONAR dated October 31, 2012, on the Board's website making this information accessible to the following individuals: all limited general dentists; dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; and members of the general public.
9. On November 1, 2012, the Board will send a broadcast electronic mailing to nearly 10,000 licensees including, dentists, limited license dentists, dental therapists, dental hygienists, and licensed dental assistants, notifying them of the Board's Newsletter (Vol. 26, November 2012). This on-line newsletter included information about the Board rules that will be affected by the Board's proposed rule changes, which is also described in paragraph 7 above. Additionally, the Board's Newsletter will be posted on the Board's website making it accessible to the following individuals: all limited general dentists; dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; and members of the general public.
10. Prior to publication of the Dual Notice in the State Register, the Board will send by electronic mail a copy of the Dual Notice of Intent to Adopt Rules, the Proposed Rules, and the Statement of Need and Reasonableness to the representatives of the Minnesota Dental Association, the Minnesota Dental Hygiene Association, and the Minnesota Dental Assistants Association.

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

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

Notice Plan

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

1. According to Minnesota Statutes, section 14.14, subdivision 1a, a copy of the Dual Notice and proposed rules shall be mailed to all persons who have registered to be on the Board of Dentistry's rulemaking mailing list. This mailing shall be accomplished by sending an electronic copy via e-mail to all persons on the list.
2. According to Minnesota Statutes, section 14.116, a copy of the Dual Notice, proposed rules, and this Statement of Need and Reasonableness shall be mailed to:
 - a. The committee members of the Legislature with jurisdiction over the subject matter of the proposed rules. The following is a possible list of these Legislative Committees:
 - 1) House: Health and Human Services Reform Committee Chair and Lead; and Health and Human Services Finance Committee Chair and Lead; and
 - 2) Senate: Health and Human Services Committee Chair and Ranking Minority Member.
 - b. The members of the Legislative Coordinating Commission.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

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

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

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

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

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

As required by Minnesota Statutes, section 14.127, the Board of Dentistry has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Board of Dentistry has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. The Board of Dentistry has made this determination based on the probable costs of complying with the proposed rules, as previously described in the Regulatory Analysis section of this SONAR on pages 2, 3, and 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. Neal Benjamin, D.D.S., Board Member – rules regarding new duties for allied dental personnel, professional development, and recordkeeping;
2. Candace Mensing, D.D.S., Board Member – rules regarding limited license dentist, reinstatement of license, and recordkeeping;
3. Nancy Kearn, D.H., Board Member – rules regarding limited license dentist, and reinstatement of license;
4. Counsel from the Attorney General's Office; and
5. 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:

3100.1130 LICENSE TO PRACTICE DENTISTRY AS A LIMITED GENERAL DENTIST. This is a new part with language regarding the regulatory requirements for a person who has graduated from a non-accredited dental program and desires to become a limited general dentist to practice dentistry. Moreover, this part addresses the limited general dentist following the enactment of legislation regarding graduates of non-accredited dental programs as outlined within Minnesota Statutes, section 150A.06, subdivision 9, which became effective on August 1, 2008. Therefore, the Board considers this new language to be necessary and reasonable.

Subpart 1. **Initial requirements for limited licensure.** For this new subpart, the new language states a list of initial requirements in items A to E that will need to be followed by the applicant. In summary, the requirements or information for the applicant pertain to the following: for a credential review certain listed documentation is required; notification from the Board about either denying or granting permission to take regional clinical examination; taking the Board-approved regional clinical examination by a certain deadline; failing the clinical examination more than once and what will happen; and the requirements indicated within a limited license application.

Specifically, within this subpart, the Board requires that the applicant must provide an acceptable written agreement that includes, among other things, any practice limitations, and an acknowledgement that the applicant agrees to practice clinical dentistry in Minnesota at least 1,100 hours annually, for a period of three consecutive years. The Board felt that the 1,100 hours annually is a reasonable amount of hours in which the applicant can combine previously learned clinical skills into a well-organized and systemic approach to the comprehensive dental treatment of patients, or in other words, gain experience in total patient management and care over three consecutive years. The annual requirement is to ensure that the applicant practices clinical dentistry on an annual basis and not postpone the hour requirement until the latter portion of the three consecutive years. The Board intends that the three-year time period would begin when clinical practice in Minnesota is initiated, not at the time the Limited General License is issued by the Board.

The Board decided that the requirements listed within this subpart will allow the Board to make an accurate determination regarding the applicant's qualification to practice dentistry and pursue a limited license. Moreover, the Board believes that the general public deserves the assurance that only qualified and competent individuals are allowed to enter the practice of dentistry. For these reasons, the Board considers this new language to be necessary and reasonable.

Subpart 2. **Terms of limited licensure.** For this new subpart, the new language states the terms listed in items A to F that the limited license dentist will have to comply with for three consecutive years. In summary, the requirements for the limited license dentist are as follows: pay an annual renewal fee; maintain a consecutive and current CPR certification; submit request for approval of subsequent supervising dentist and written agreement; inform the Board about unforeseen circumstances that have interrupted the three consecutive years; maintain current addresses; and maintain a professional development portfolio. The Board decided that these requirements are consistent with some similar requirements made of other dental professionals regarding a renewal fee, CPR certification, current address, and professional development portfolio. As for other requirements like requesting approval for a subsequent supervising dentist or experiencing unforeseen circumstances, the Board decided that these requirements support the need for continual communication between the limited license dentist and the Board about various factors that may occur during the three year period. Overall, the Board found these requirements to be minimally necessary to maintain consistency between the limited license dentist and other dental professionals, and to assist the limited license dentist to make the transition from a supervised environment to the unsupervised practice of dentistry. For these reasons, the Board considers this new language to be necessary and reasonable.

Subpart 3. **Terms of supervising dentist.** For this new subpart, the new language states the terms listed in items A to I that the supervising dentist will have to comply with for three consecutive years. In summary, the supervising dentist is required to comply with the following: must be a Board-approved licensed dentist; no corrective or disciplinary action has been taken or is pending against the supervising dentist; must have an acceptable written agreement with a limited license dentist; no more than two limited license dentists allowed in one dental facility; submit to Board subsequent modifications to written agreement; inform Board about termination of written agreement; inform Board about disciplinary actions or malpractice reports against limited license dentist; and provide a written performance evaluation. If the supervising dentist is non-compliant with the aforementioned requirements, the supervising dentist will be subject to

disciplinary proceedings. The Board decided that these requirements are appropriate for the supervising dentist who will assume more responsibility for the safe and effective treatment of patients under the care of the limited license dentist and who will prepare the limited license dentist for the realities of practice. Moreover, the Board needs the supervising dentist to provide accurate and detailed evaluations to the Board regarding the limited license dentist, so the Board will be able to determine after the three year period, whether or not the limited license dentist is eligible for a dental license at that point. For these reasons, the Board considers this new language to be necessary and reasonable.

Subpart 4. **Requirements for licensure.** For this new subpart, the new language states the requirements listed in item A, subitems (1) to (6) for the limited license dentist to obtain a dental license following completion of the three consecutive years. In summary, the requirements for this applicant are as follows: complete a dental license application within a certain timeframe; pay fees; submit a consecutive and current CPR certification; provide a professional development portfolio; submit a written performance evaluation(s); and applicant cannot be subject to any corrective or disciplinary action by the Board. Moreover, an applicant who has been denied licensure may pursue a contested case hearing. The Board decided that these requirements will allow the Board to make an accurate determination regarding the applicant's qualifications to practice dentistry and whether or not to issue a dental license to the applicant. Moreover, the Board believes that the general public deserves the assurance that only qualified and competent applicants are allowed to enter the practice of dentistry. For these reasons, the Board considers this new language to be necessary and reasonable.

3100.1700 TERMS AND RENEWAL OF LICENSE OR PERMIT; GENERAL.

Subpart 2. **Renewal applications.** To this subpart added the term consecutive to the existing language regarding a current CPR certificate that has to be maintained by each licensee for renewal of their license. By adding the term consecutive, the Board hopes to resolve a problem with licensees having a lapse of time or interruption between their CPR certificates. The Board has always required that each licensee have a current CPR certificate, and when or prior to that certificate expiring, the licensee must promptly complete the requirements for a consecutive CPR certificate. There should be no lapse or gap in time between each CPR certificate. To clarify this concept, the Board is now requiring in rule language that each licensee have a consecutive and current CPR certificate which demonstrates that the licensee has repeatedly maintained their CPR certificate without having any interruption between each CPR certificate. This change should clarify the Board's expectation regarding the CPR certificate and is not meant to be a new requirement for the licensee; therefore the Board considers this change to be necessary and reasonable.

3100.1750 TERMS AND RENEWAL OF LICENSURE; LIMITED FACULTY AND RESIDENT DENTISTS.

Subpart 4. **Application fees.**

Items A and B – deleted the language regarding fees within these items and added new language to subpart 4 that references where the fees are now found in Minnesota Statutes, as follows: specified in Minnesota Statutes, section 150A.091, subdivision 2. Previously, the Board

was instructed by the Minnesota legislature to move all of the fees listed within the Board's rules into the Board's statutes. In 2005, the Board complied with the legislature by effectuating Minnesota Statutes, section 150A.91 that listed all of the Board's fees. Therefore, these items no longer serve a necessary regulatory purpose for the Board and the Board has now made the appropriate change of including the statutory reference regarding the fees within the subpart. For these reasons, the Board considers these changes to be necessary or reasonable.

Subpart 5. Annual license fees.

Items A and B – deleted the language regarding fees within these items and added new language to subpart 5 that references where the fees are now found in Minnesota Statutes, as follows: specified in Minnesota Statutes, section 150A.091, subdivision 4. Previously, the Board was instructed by the Minnesota legislature to move all of the fees listed within the Board's rules into the Board's statutes. In 2005, the Board complied with the legislature by effectuating Minnesota Statutes, section 150A.91 that listed all of the Board's fees. Therefore, these items no longer serve a necessary regulatory purpose for the Board and the Board has now made the appropriate change of including the statutory reference regarding the fees within the subpart. For these reasons, the Board considers these changes to be necessary or reasonable.

3100.1850 REINSTATEMENT OF LICENSE.

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

Item C – this is a new item and the following language is added: be available for an interview with the appropriate Board committee to determine the applicant's knowledge of dental subjects and ability to practice dentistry, dental therapy, dental hygiene, or dental assisting under this subpart. The Board decided to add this interview component to this subpart to allow the Board the option of conducting an interview with an applicant who has not been licensed with the Board for a period of 24 months or more. When an applicant has not been licensed or practicing for a long period of time, the Board may have concerns regarding the applicant's awareness of current practice standards and ability to practice dentistry on patients safely. The Board has the duty of protecting the general public and sees the interview process as a way to properly assess an applicant's capability to perform to an adequate level of care. For these reasons, the Board considers this new language to be necessary and reasonable.

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

Subpart 8. Reporting of incidents required.

Item B – to this item made a minor technical change of adding 9b, which refers to another subpart that should be included within this item. In the existing rules, this item includes a reference to subpart 9 that addresses having a certificate for administering anesthesia or moderate sedation. However, there is now another subpart, subpart 9b, that addresses having a certificate when using a contracted sedation provider. Therefore, it is appropriate to make this change and add subpart 9b to this item to cover both of these types of certificates. For this reason, the Board considers this change to be necessary and reasonable.

3100.5100 PROFESSIONAL DEVELOPMENT.

Subpart 3. Professional development activities.

Item A, subitem (3) – to this subitem added the term consecutive to the existing language regarding a current CPR certificate that has to be maintained by each licensee for renewal of their license under fundamental activities. By adding the term consecutive, the Board hopes to resolve a problem with licensees having a lapse of time or interruption between their CPR certificates. The Board has always required that each licensee have a current CPR certificate, and when or prior to that certificate expiring, the licensee must promptly complete the requirements for a consecutive CPR certificate. There should be no lapse or gap in time between each CPR certificate. To clarify this concept, the Board is now requiring in rule language that each licensee have a consecutive and current CPR certificate which demonstrates that the licensee has repeatedly maintained their CPR certificate without having any interruption between each CPR certificate. This change should clarify the Board's expectation regarding the CPR certificate and is not meant to be a new requirement for the licensee; therefore the Board considers this change to be necessary and reasonable.

Item B, subitem (6) – added this new subitem to elective activities which is leadership or committee involvement with the Board or a dental professional association for a maximum of three credit hours. From a discussion that occurred at a meeting of the Professional Development Committee, the Board agreed that regulated dental professionals who serve their community through participation in the Board or a dental professional association should be rewarded with a limited number of professional development credits for all the work these professionals contribute to the Board or association. It was determined that these particular regulated dental professionals could receive a maximum of three credit hours under elective activities in their professional development portfolio for each biennial cycle as long as the person was an active participant during that cycle. For this reason, the Board considers this change to be necessary and reasonable.

3100.5300 AUDIT PROCESS OF PORTFOLIO.

Subpart 6. **Audit fee.** This is a new subpart adding language regarding the charging of an audit fee. The new language is: The licensee shall submit to the Board the nonrefundable fee in Minnesota Statutes, section 150A.091, subdivision 16, after failing two consecutive professional development portfolio audits and thereafter for each failed professional development portfolio audit. The audit fee charged to licensees will not exceed the amount of \$250.00 according to the Minnesota Statutes. The licensee will be required to pay the audit fee to the Board, if the licensee fails two consecutive professional development portfolio audits; in addition, the licensee will be required to pay the audit fee for each and every failed portfolio audit thereafter, and no consideration shall be given as to whether any future failed audit is consecutive or not. For at least the past five years, the Board has been auditing professional development portfolios and has seen an increase in failed audits by licensees. Due to this increase, the Board decided to assess a fee to the licensee who is consistently noncompliant with the requirements of professional development as a possible means of discouraging ongoing noncompliant behavior from the licensee. For these reasons, the Board considers this new language to be necessary and reasonable.

3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.

Subpart 1. **Specialty areas.** To this subpart, the addition of the specialty practice known as Oral and Maxillofacial Radiology. The Board decided to include this specialty practice into its rules to be consistent with the American Dental Association. The Council on Dental Education of the American Dental Association has recognized Oral and Maxillofacial Radiology as a specialty practice area, as follows: Oral and maxillofacial radiology is the specialty of dentistry and discipline of radiology concerned with the production and interpretation of images and data produced by all modalities of radiant energy that are used for the diagnosis and management of diseases, disorders and conditions of the oral and maxillofacial region. (Adopted April 2001) For this reason, the Board considers this change to be necessary and reasonable.

3100.8400 ASSISTANTS WITHOUT A LICENSE OR PERMIT.

Subpart 1. **Permissible duties.** One new duty added to this subpart is: apply fluoride varnish in a community setting under the authorization and direction of a licensed practitioner with prescribing authority such as a dentist or physician, as long as the licensed practitioner authorizing the service or the facility at which the fluoride varnish is administered maintains appropriate patient records of the treatment. This new duty is intended to permit any person, including regulated dental professionals, to apply fluoride varnish to the teeth of a person being served in a community setting in accordance with a prescription and protocol issued and established by a dentist or physician, as long as the practitioner or facility maintains appropriate patient records of the treatment. The Board recognizes that: with proper training and protocols, any person has the ability to apply fluoride varnish; and fluoride varnish is an important preventive measure of treatment for people to prevent tooth decay and improve oral health as long as the service is provided under appropriate supervision and documentation. By allowing this service, the Board is attempting to remove any barriers to the expansion of fluoride varnish programs in public settings. For these reasons, the Board considers this new language to be necessary and reasonable.

3100.8500 LICENSED DENTAL ASSISTANTS.

Subpart 1. **Duties under general supervision.** New duties added to this subpart are:

J. complete preliminary charting of the oral cavity and surrounding structures with the exception of periodontal probing and assessment of the periodontal structure;

K. take photographs extraorally or intraorally; and

L. take vital signs such as pulse rate and blood pressure as directed by a dentist.

All three of these new duties will be performed under general supervision and are very low risk methods of data collection. The data collected through these new duties may only be used by a dentist for diagnosing and treatment planning future dental care. Delegation of these duties benefits patients by providing the comprehensive and efficient collection of patient data. Additionally, it is a benefit to the profession of dental assistants who have already received training and testing in the required skills through accredited dental assistant programs in Minnesota for the duties of charting and taking vital signs to use their training to the maximum allowable extent.

For photographs, the duty of taking extraoral photographs involves using some type of external

camera that is an inherently safe device commonly used by the general public for photographic purposes. For intraoral photographs, besides the camera, a photography mirror is placed inside the mouth. The mirror is manipulated in the same fashion as the dental assistant would retract the patient's cheek for suctioning purposes or use a mouth mirror to visualize the teeth for charting purposes. Both of these are clinical actions that the dental assistant is already competent to perform freely and safely on a patient. If a dental assistant has graduated from an accredited dental assisting program, the dental assistant may perform this duty with some in-office guidance. Otherwise, no additional training or testing is required to perform the duty of taking photographs.

For these reasons, the Board considers this new language for duties to be necessary and reasonable.

3100.9600 RECORDKEEPING.

Subpart 10. **Progress notes.** New language is added and the paragraph reformatted in this subpart, as follows:

Dental records must be legible and include a chronology of the patient's progress throughout the course of all treatment and postoperative visits. The chronology must include:

- A. all treatment provided;
- B. identify all medications used and materials placed ;
- C. clearly identify the treatment provider by license number, name, or initials; ; and
- D. when applicable, the identity of the collaborating dentist authorizing treatment by

license number.

This new language added to the existing language will strengthen the regulation of having adequate progress notes in dental records by requiring that progress notes be legible or readable and requiring further identity through a professional's license number. Legibility of patient records is regarded as critical, recognizing that if the patient record cannot be readily interpreted, it is as though no documentation was provided in the record. In item C, the dental provider now has another option of documenting their license number, instead of their name or initials in the patient's progress notes. In item D, the actual dental provider will also be required to document in the patient's progress notes the license number of each collaborating dentist who is authorizing the dental treatment being provided to the patient through either a collaborative agreement with a dental hygienist or a collaborative management agreement with a dental therapist or advanced dental therapist. This new language was created due to the concern of possibly losing continuity between the actual dental providers, the patients, and the collaborating dentists through these agreements. Additionally, it is important as a long-term resource to clearly recognize and document the identity of all dental professionals involved in providing any or all dental treatment to a patient. Therefore, the Board considers these changes to be necessary and reasonable.

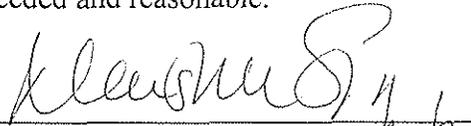
Subpart 13. **Transfer of records.** New language is added to this subpart, as follows: Digital radiographs shall be transferred by compact or optical disc, electronic communication, or printing on high-quality photographic paper. All transferred film or digital radiographs must reveal images of diagnostic quality using proper exposure settings and processing procedures. This language provides further direction for dental practitioners as to the possible procedures that must be utilized when transferring digital radiographs. Since the use of digital radiographs is relatively new technology, this is information that was not previously included within the

Board's existing rules. Additionally, the Board has been experiencing ongoing concerns regarding the improper transferring of radiographs by dental practitioners where by the practitioner has been simply copying radiographs on standard copying paper which lacks the necessary resolution to properly reproduce the image for diagnostic purposes for the subsequent dental practitioner. Transferred radiographs that are of poor diagnostic quality due to improper exposure settings and processing procedures are an unacceptable practice of care for the general public, and often require that the radiograph be retaken by a subsequent dental provider. For these reasons, the Board considers this new language to be necessary and reasonable.

CONCLUSION

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

Dated: OCTOBER 31ST 2012



Marshall Shragg, MPH
Executive Director
Minnesota Board of Dentistry

1.1 **Minnesota Board of Dentistry**1.2 **Proposed Permanent Rules Relating to License to Practice as a Limited General**
1.3 **Dentist**1.4 **3100.1130 LICENSE TO PRACTICE DENTISTRY AS A LIMITED GENERAL**
1.5 **DENTIST.**

1.6 Subpart 1. Initial requirements for limited licensure. A person who is a graduate
1.7 of a nonaccredited dental program and desires to obtain a limited license to practice
1.8 general dentistry within Minnesota shall comply with the requirements in items A to E.

1.9 A. The applicant must initially submit to a credential review by the board and
1.10 pay the nonrefundable fee in Minnesota Statutes, section 150A.091, subdivision 9a. The
1.11 applicant shall provide documentation such as:

1.12 (1) a completed board-approved evaluation of all international education;

1.13 (2) an original or notarized copy of passing board-approved language
1.14 testing within the previous two years;

1.15 (3) an original affidavit of licensure;

1.16 (4) a completed dental questionnaire;

1.17 (5) a personal letter/curriculum vitae/resume;

1.18 (6) an original or notarized copy of dental diploma and, if necessary,
1.19 professional translation;

1.20 (7) proof of clinical practice in dentistry;

1.21 (8) an original or notarized copy of other credentials in dentistry and, if
1.22 necessary, professional translation;

1.23 (9) completed board-approved infection control training; and

1.24 (10) an original or notarized copy of National Board Dental Examinations
1.25 Report - Part I and Part II.

2.1 The applicant is allowed to submit to one credential review by the board.

2.2 B. Once a credential review has been completed by the board, the committee
2.3 shall officially notify the applicant by letter as to whether permission to take the regional
2.4 clinical examination has been denied or granted by the board. The board may also request
2.5 that the applicant schedule an interview with the credential review committee, then notify
2.6 the applicant by letter as to whether permission to take the regional clinical examination
2.7 has been denied or granted by the committee. An applicant denied permission to take the
2.8 regional clinical examination has the option to appeal the decision to the board within 60
2.9 days from the notification date.

2.10 C. If the applicant is granted permission by the board to take the regional clinical
2.11 examination, the applicant must take a board-approved regional clinical examination,
2.12 successfully pass the regional clinical examination, and submit evidence of the results of
2.13 the regional clinical examination within 18 months from the receipt date of the board's
2.14 notification letter granting permission to take the regional clinical examination.

2.15 D. When an applicant fails twice any part of a board-approved regional clinical
2.16 examination, the applicant may not take it again until the applicant successfully completes
2.17 additional education provided by an institution accredited by the Commission on Dental
2.18 Accreditation. The education must cover all of the subject areas failed by the applicant in
2.19 each of the two clinical examinations. The applicant may retake the examination only after
2.20 the institution provides to the board information specifying the areas failed in the previous
2.21 examinations and the instruction provided to address the areas failed, and certifies that the
2.22 applicant has successfully completed the instruction. The applicant shall be allowed to
2.23 retake the clinical examination one time following this additional educational instruction.
2.24 If the applicant fails the clinical examination for a third time, the applicant is prohibited
2.25 from retaking the clinical examination.

3.1 E. An applicant must complete and submit a limited license application for
3.2 review by an appropriate committee of the board. The application must include:

3.3 (1) the initial and annual application fees in Minnesota Statutes, section
3.4 150A.091, subdivision 9b;

3.5 (2) evidence of having passed a board-approved regional clinical
3.6 examination within five years preceding the limited license application;

3.7 (3) evidence of having passed an examination designed to test knowledge
3.8 of Minnesota laws relating to the practice of dentistry and the rules of the board within
3.9 five years preceding the limited license application;

3.10 (4) an acceptable written agreement between the applicant and a
3.11 board-approved Minnesota licensed supervising dentist. The written agreement shall
3.12 include all information requested by the board. The written agreement shall also include
3.13 any practice limitations, and an acknowledgment that the applicant agrees to practice
3.14 clinical dentistry at least 1,100 hours annually, for a period of three consecutive years;

3.15 (5) documentation of current CPR certification;

3.16 (6) a statement from a licensed physician attesting to the applicant's
3.17 physical and mental condition completed within 12 months preceding the limited license
3.18 application; and

3.19 (7) a statement from a licensed ophthalmologist or optometrist attesting to
3.20 the applicant's visual acuity completed within 12 months preceding the limited license
3.21 application.

3.22 Subp. 2. Terms of limited licensure. Throughout the three consecutive years
3.23 while practicing general dentistry in Minnesota under the general supervision of a
3.24 Minnesota licensed dentist, the limited license dentist must maintain and comply with
3.25 the requirements in items A to F:

- 4.1 A. submit annual payment of the renewal fee in Minnesota Statutes, section
4.2 150A.091, subdivision 9b;
- 4.3 B. maintain a consecutive and current CPR certification as required to renew a
4.4 limited license;
- 4.5 C. submit written correspondence and agreement to the board requesting
4.6 approval of a subsequent supervising dentist and written agreement, within 14 days prior
4.7 to employment start date with subsequent supervising dentist. The written agreement shall
4.8 include all information requested by the board. The written agreement shall also include
4.9 any practice limitations, and an acknowledgment that the limited license dentist agrees to
4.10 practice clinical dentistry at least 1,100 hours annually, for a period of three consecutive
4.11 years or any remaining portion thereof;
- 4.12 D. within seven business days of an unforeseen event, submit written
4.13 correspondence for review by an appropriate committee of the board regarding the
4.14 unforeseen circumstance that may interrupt the three consecutive years of supervision;
- 4.15 E. maintain with the board a correct and current mailing address and electronic
4.16 mail address and properly notify the board within 30 days of any changes as described in
4.17 Minnesota Statutes, section 150A.09, subdivision 3; and
- 4.18 F. maintain a professional development portfolio containing:
- 4.19 (1) acceptable documentation of required hours in professional
4.20 development activities;
- 4.21 (2) a minimum of two different core subjects as part of the fundamental
4.22 activities;
- 4.23 (3) one completed self-assessment examination; and
- 4.24 (4) a consecutive and current CPR certification.

5.1 The total required hours of professional development activities is 75 hours with a
5.2 minimum of 45 hours in fundamental activities and a maximum of 30 hours in elective
5.3 activities. Completing at least 25 hours each year towards the total of 75 hours is required
5.4 for compliance.

5.5 Subp. 3. **Terms of supervising dentist.** A supervising dentist must be licensed in
5.6 Minnesota and provide general supervision to a limited license dentist. The supervising
5.7 dentist is not required to be present in the office or on the premises when supervising
5.8 the limited license dentist, but does require the supervising dentist to have knowledge
5.9 and authorize the procedures being performed by the limited license dentist. For the
5.10 three consecutive years or any portion thereof, the supervising dentist must be eligible to
5.11 participate and comply with the requirements in items A to I.

5.12 A. A supervising dentist must be a board-approved Minnesota licensed dentist
5.13 for at least five consecutive years.

5.14 B. A supervising dentist's license shall not be subject to, or pending, corrective
5.15 or disciplinary action within the previous five years according to Minnesota Statutes,
5.16 sections 214.10 and 214.103.

5.17 C. A supervising dentist must have an acceptable written agreement between
5.18 the limited license dentist and the supervising dentist, and the supervising dentist may
5.19 only supervise one limited license dentist for the duration of the agreement. The written
5.20 agreement shall include all information requested by the board. The written agreement
5.21 shall also include any practice limitations, and an acknowledgment that the limited license
5.22 dentist agrees to practice clinical dentistry at least 1,100 hours annually, for a period of
5.23 three consecutive years.

5.24 D. No more than two limited license dentists are allowed to practice general
5.25 dentistry under general supervision in one dental facility.

6.1 E. Any subsequent modifications to a written agreement must be submitted
6.2 in writing to the board by the supervising dentist within seven business days of the
6.3 modification.

6.4 F. A supervising dentist must inform the board in writing about the termination
6.5 of a written agreement with a limited license dentist within seven business days of the
6.6 termination.

6.7 G. A supervising dentist must inform the board in writing about any known
6.8 disciplinary or malpractice proceedings involving the limited license dentist within seven
6.9 business days of the proceeding.

6.10 H. The supervising dentist must submit to the board a written performance
6.11 evaluation of the limited license dentist in regards to employment including practicing
6.12 clinical dentistry at least 1,100 hours annually, patient care, allied dental personnel,
6.13 professionalism, billing practices, and make a general recommendation within 90 days
6.14 preceding to seven business days after completing the three consecutive years or any
6.15 portion thereof.

6.16 I. A supervising dentist who fails to comply with this subpart is subject to
6.17 disciplinary proceedings on grounds specified in parts 3100.6100 and 3100.6200, and
6.18 Minnesota Statutes, section 150A.08, subdivision 1.

6.19 Subp. 4. **Requirements for licensure.**

6.20 A. Upon completion of the three consecutive years, a dentist with a limited
6.21 license to practice general dentistry in Minnesota shall be prohibited from practicing
6.22 general dentistry in Minnesota due to expiration of the limited license. A dentist who has
6.23 an expired or nearly expired limited license may apply for a dental license to practice
6.24 general dentistry in Minnesota by presenting a license application to the board and meeting
6.25 the following requirements in subitems (1) to (6). An applicant:

8.1 and current CPR certification and information including the applicant's office address or
8.2 addresses, the license number, whether the licensee has been engaged in the active practice
8.3 of dentistry during the two years preceding the period for which renewal is sought as a
8.4 licensee, and if so, whether within or without the state, and any other information ~~which~~
8.5 that may be reasonably requested by the board.

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

8.7 **3100.1750 TERMS AND RENEWAL OF LICENSURE; LIMITED FACULTY**
8.8 **AND RESIDENT DENTISTS.**

8.9 [For text of subps 1 to 3, see M.R.]

8.10 Subp. 4. **Application fees.** Each applicant for initial licensure as a limited faculty or
8.11 resident dentist shall submit with a license application a the fee ~~in the following amounts:~~
8.12 in Minnesota Statutes, section 150A.091, subdivision 2.

8.13 A: ~~limited faculty dentist, \$140; and~~

8.14 B: ~~resident dentist, \$55.~~

8.15 Subp. 5. **Annual license fees.** Each limited faculty or resident dentist shall submit
8.16 with an annual license renewal application a the fee ~~established by the board not to exceed~~
8.17 ~~the following amounts:~~ in Minnesota Statutes, section 150A.091, subdivision 4.

8.18 A: ~~limited faculty dentist, \$168; and~~

8.19 B: ~~resident dentist, \$59.~~

8.20 [For text of subp 6, see M.R.]

8.21 **3100.1850 REINSTATEMENT OF LICENSE.**

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

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

9.4 A. comply with subpart 2a; ~~and~~

9.5 B. submit either:

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

9.7 (2) evidence of having successfully completed applicable board-approved
9.8 coursework with minimal hour requirements directly relating to the practice of dentistry,
9.9 dental hygiene, or dental assisting as indicated in the reinstatement application. The
9.10 board-approved coursework must have been completed within 24 months prior to the
9.11 board's receipt of the application. The coursework completed under this subpart may
9.12 not be used to fulfill any of the applicable professional development requirements in
9.13 part 3100.5100-; and

9.14 C. be available for an interview with the appropriate board committee to
9.15 determine the applicant's knowledge of dental subjects and ability to practice dentistry,
9.16 dental therapy, dental hygiene, or dental assisting under this subpart.

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

9.18 **3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,**
9.19 **MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE**
9.20 **INHALATION ANALGESIA.**

9.21 [For text of subps 1 to 7, see M.R.]

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

11.1 (3) A CPR certification course is mandatory for each licensee to maintain
 11.2 licensure. The CPR course must be equivalent to the American Heart Association
 11.3 healthcare provider course or the American Red Cross professional rescuer course. The
 11.4 licensee must ~~hold~~ maintain a consecutive and current CPR certificate when renewing a
 11.5 license or permit each biennial term.

11.6 [For text of subitems (4) and (5), see M.R.]

11.7 B. Elective activities for an initial or biennial cycle include, but are not limited
 11.8 to, the examples described in subitems (1) to ~~(6)~~ (7):

11.9 [For text of subitems (1) to (4), see M.R.]

11.10 (5) dental practice management courses include, but are not limited to,
 11.11 computer, insurance claims or billing, and Health Insurance Portability and Accountability
 11.12 Act (HIPAA) training; ~~or~~

11.13 (6) leadership or committee involvement with the board or a dental
 11.14 professional association for a maximum of three credit hours; or

11.15 ~~(6)~~ (7) the board shall approve other additional elective activities if the
 11.16 board finds the contents of the activity to be directly related to, or supportive of, the
 11.17 practice of dentistry, dental hygiene, or dental assisting.

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

11.19 **3100.5300 AUDIT PROCESS OF PORTFOLIO.**

11.20 [For text of subps 1 to 5, see M.R.]

11.21 Subp. 6. Audit fee. The licensee shall submit to the board the nonrefundable fee
 11.22 in Minnesota Statutes, section 150A.091, subdivision 16, after failing two consecutive
 11.23 professional development portfolio audits and thereafter for each failed professional
 11.24 development portfolio audit.

12.1 **3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.**

12.2 Subpart 1. **Specialty areas.** The following special areas of dentistry are recognized
12.3 as suitable for the announcement of specialty dental practices:

12.4 A. endodontics (endodontist);

12.5 B. oral and maxillofacial radiology (oral and maxillofacial radiologist);

12.6 ~~B. C.~~ oral and maxillofacial surgery (oral surgeon/oral maxillofacial surgeon);

12.7 ~~C. D.~~ oral pathology (oral pathologist);

12.8 ~~D. E.~~ orthodontics (orthodontist);

12.9 ~~E. F.~~ pediatric dentistry (pediatric dentist);

12.10 ~~F. G.~~ periodontics (periodontist);

12.11 ~~G. H.~~ prosthodontics (prosthodontist); and

12.12 ~~H. I.~~ public health.

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

12.14 **3100.8400 ASSISTANTS WITHOUT A LICENSE OR PERMIT.**

12.15 Subpart 1. **Permissible duties.** Assistants under this subpart may:

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

12.17 E. provide any assistance, including the placement of articles and topical
12.18 medication in a patient's oral cavity, in response to a specific direction by a licensed dentist
12.19 who is physically engaged in performing a dental operation as defined in the act and who
12.20 is physically in a position to give personal supervision to the assistant; ~~and~~

12.21 F. aid dental hygienists and licensed dental assistants in the performance of their
12.22 duties as defined in parts 3100.8500 and 3100.8700-; and

13.1 G. apply fluoride varnish in a community setting under the authorization and
13.2 direction of a licensed practitioner with prescribing authority such as a dentist or physician,
13.3 as long as the licensed practitioner authorizing the service or the facility at which the
13.4 fluoride varnish is administered maintains appropriate patient records of the treatment.

13.5 [For text of subps 1a to 3, see M.R.]

13.6 **3100.8500 LICENSED DENTAL ASSISTANTS.**

13.7 Subpart 1. **Duties under general supervision.** A licensed dental assistant may
13.8 perform the following procedures without the dentist being present in the dental office or
13.9 on the premises if the procedures being performed are with prior knowledge and consent
13.10 of the dentist:

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

13.12 H. deliver vacuum-formed orthodontic retainers; and

13.13 I. place and remove elastic orthodontic separators;

13.14 J. complete preliminary charting of the oral cavity and surrounding structures
13.15 with the exception of periodontal probing and assessment of the periodontal structure;

13.16 K. take photographs extraorally or intraorally; and

13.17 L. take vital signs such as pulse rate and blood pressure as directed by a dentist.

13.18 [For text of subps 1a to 3, see M.R.]

13.19 **3100.9600 RECORD KEEPING.**

13.20 [For text of subps 1 to 9, see M.R.]

13.21 Subp. 10. **Progress notes.** Dental records must be legible and include a chronology
13.22 of the patient's progress throughout the course of all treatment and postoperative visits.
13.23 The chronology must include:

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to License to Practice as a Limited General Dentist

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

1.1 **Minnesota Board of Dentistry**1.2 **Adopted Permanent Rules Relating to License to Practice as a Limited General**
1.3 **Dentist**1.4 **3100.1130 LICENSE TO PRACTICE DENTISTRY AS A LIMITED GENERAL**
1.5 **DENTIST.**

1.6 Subpart 1. **Initial requirements for limited licensure.** A person who is a graduate
1.7 of a nonaccredited dental program ~~and desires to obtain~~ will be granted a limited license to
1.8 practice general dentistry within Minnesota ~~shall comply~~ upon successfully complying
1.9 with the requirements in items A to E.

1.10 A. The applicant must initially submit to a credential review by the board and
1.11 pay the nonrefundable fee in Minnesota Statutes, section 150A.091, subdivision 9a. The
1.12 applicant shall provide the following documentation ~~such as~~:

1.13 (1) a completed board-approved evaluation of all international education;

1.14 (2) an original or notarized copy of passing board-approved language
1.15 testing within the previous two years if English is not the applicant's primary language;

1.16 (3) an original affidavit of licensure;

1.17 (4) a completed dental questionnaire;

1.18 (5) a personal letter/curriculum vitae/resume;

1.19 (6) an original or notarized copy of dental diploma and, if necessary,
1.20 professional translation;

1.21 (7) proof of clinical practice in dentistry;

1.22 (8) an original or notarized copy of other credentials in dentistry and, if
1.23 necessary, professional translation;

1.24 (9) completed board-approved infection control training; and

2.1 (10) an original or notarized copy of National Board Dental Examinations
2.2 Report - Part I and Part II.

2.3 The applicant is allowed to submit to one credential review by the board.

2.4 B. Once a credential review has been completed by the board, the committee
2.5 shall officially notify the applicant by letter as to whether permission to take the regional
2.6 clinical examination has been denied or granted by the board. The board may also request
2.7 that the applicant schedule an interview with the credential review committee, then notify
2.8 the applicant by letter as to whether permission to take the regional clinical examination
2.9 has been denied or granted by the committee. An applicant denied permission to take the
2.10 regional clinical examination has the option to appeal the decision to the board within 60
2.11 days from the notification date.

2.12 C. If the applicant is granted permission by the board to take the regional clinical
2.13 examination, the applicant must take a board-approved regional clinical examination,
2.14 successfully pass the regional clinical examination, and submit evidence of the results of
2.15 the regional clinical examination within 18 months from the receipt date of the board's
2.16 notification letter granting permission to take the regional clinical examination.

2.17 D. When an applicant fails twice any part of a board-approved regional clinical
2.18 examination, the applicant may not take it again until the applicant successfully completes
2.19 additional education provided by an institution accredited by the Commission on Dental
2.20 Accreditation. The education must cover all of the subject areas failed by the applicant in
2.21 each of the two clinical examinations. The applicant may retake the examination only after
2.22 the institution provides to the board information specifying the areas failed in the previous
2.23 examinations and the instruction provided to address the areas failed, and certifies that the
2.24 applicant has successfully completed the instruction. The applicant shall be allowed to
2.25 retake the clinical examination one time following this additional educational instruction.

3.1 If the applicant fails the clinical examination for a third time, the applicant is prohibited
3.2 from retaking the clinical examination.

3.3 E. An applicant must complete and submit a limited license application for
3.4 review by an appropriate committee of the board. The application must include:

3.5 (1) the initial and annual application fees in Minnesota Statutes, section
3.6 150A.091, subdivision 9b;

3.7 (2) evidence of having passed a board-approved regional clinical
3.8 examination within five years preceding the limited license application;

3.9 (3) evidence of having passed an examination designed to test knowledge
3.10 of Minnesota laws relating to the practice of dentistry and the rules of the board within
3.11 five years preceding the limited license application;

3.12 (4) an acceptable written agreement between the applicant and a
3.13 board-approved Minnesota licensed supervising dentist. The written agreement shall
3.14 include all information requested by the board. The written agreement shall also include
3.15 any practice limitations, and an acknowledgment that the applicant agrees to practice
3.16 clinical dentistry at least 1,100 hours annually, for a period of three consecutive years
3.17 after clinical practice in Minnesota begins;

3.18 (5) documentation of current CPR certification;

3.19 (6) a statement from a licensed physician attesting to the applicant's
3.20 physical and mental condition completed within 12 months preceding the limited license
3.21 application; and

3.22 (7) a statement from a licensed ophthalmologist or optometrist attesting to
3.23 the applicant's visual acuity completed within 12 months preceding the limited license
3.24 application.

4.1 Subp. 2. **Terms of limited licensure.** Throughout the three consecutive years
4.2 while practicing general dentistry in Minnesota under the general supervision of a
4.3 Minnesota licensed dentist, the limited license dentist must maintain and comply with
4.4 the requirements in items A to F:

4.5 A. submit annual payment of the renewal fee in Minnesota Statutes, section
4.6 150A.091, subdivision 9b;

4.7 B. maintain a consecutive and current CPR certification as required to renew a
4.8 limited license;

4.9 C. submit written correspondence and agreement to the board requesting
4.10 approval of a subsequent supervising dentist and written agreement, within 14 days prior
4.11 to employment start date with subsequent supervising dentist. The written agreement shall
4.12 include all information requested by the board. The written agreement shall also include
4.13 any practice limitations, and an acknowledgment that the limited license dentist agrees to
4.14 practice clinical dentistry at least 1,100 hours annually, for a period of three consecutive
4.15 years or any remaining portion thereof;

4.16 D. within seven business days of an unforeseen event, submit written
4.17 correspondence for review by an appropriate committee of the board regarding the
4.18 unforeseen circumstance that may interrupt the three consecutive years of supervision;

4.19 E. maintain with the board a correct and current mailing address and electronic
4.20 mail address and properly notify the board within 30 days of any changes as described in
4.21 Minnesota Statutes, section 150A.09, subdivision 3; and

4.22 F. maintain a professional development portfolio containing:

4.23 (1) acceptable documentation of required hours in professional
4.24 development activities;

5.1 (2) a minimum of two different core subjects as part of the fundamental
5.2 activities;

5.3 (3) one completed self-assessment examination; and

5.4 (4) a consecutive and current CPR certification.

5.5 The total required hours of professional development activities is 75 hours with a
5.6 minimum of 45 hours in fundamental activities and a maximum of 30 hours in elective
5.7 activities. Completing at least 25 hours each year towards the total of 75 hours is required
5.8 for compliance.

5.9 Subp. 3. **Terms of supervising dentist.** A supervising dentist must be licensed in
5.10 Minnesota and provide general supervision to a limited license dentist. The supervising
5.11 dentist is not required to be present in the office or on the premises when supervising
5.12 the limited license dentist, but does require the supervising dentist to have knowledge
5.13 and authorize the procedures being performed by the limited license dentist. For the
5.14 three consecutive years or any portion thereof, the supervising dentist must be eligible to
5.15 participate and comply with the requirements in items A to I.

5.16 A. A supervising dentist must be a board-approved Minnesota licensed dentist
5.17 for at least five consecutive years.

5.18 B. A supervising dentist's license shall not be subject to, or pending, corrective
5.19 or disciplinary action within the previous five years according to Minnesota Statutes,
5.20 sections 214.10 and 214.103.

5.21 C. A supervising dentist must have an acceptable written agreement between
5.22 the limited license dentist and the supervising dentist, and the supervising dentist may
5.23 only supervise one limited license dentist for the duration of the agreement. The written
5.24 agreement shall include all information requested by the board. The written agreement
5.25 shall also include any practice limitations, and an acknowledgment that the limited license

6.1 dentist agrees to practice clinical dentistry at least 1,100 hours annually, for a period of
6.2 three consecutive years.

6.3 D. No more than two limited license dentists are allowed to practice general
6.4 dentistry under general supervision in one dental facility.

6.5 E. Any subsequent modifications to a written agreement must be submitted
6.6 in writing to the board by the supervising dentist within seven business days of the
6.7 modification.

6.8 F. A supervising dentist must inform the board in writing about the termination
6.9 of a written agreement with a limited license dentist within seven business days of the
6.10 termination.

6.11 G. A supervising dentist must inform the board in writing about any known
6.12 disciplinary or malpractice proceedings involving the limited license dentist within seven
6.13 business days of the proceeding.

6.14 H. The supervising dentist must submit to the board a written performance
6.15 evaluation of the limited license dentist in regards to employment including practicing
6.16 clinical dentistry at least 1,100 hours annually, patient care, allied dental personnel,
6.17 professionalism, billing practices, and make a general recommendation ~~within 90 days~~
6.18 ~~preceding to seven business days after completing the three consecutive years or any portion~~
6.19 ~~thereof.~~ The supervising dentist's evaluation must be submitted to the board no earlier than
6.20 90 days before completion of the limited license dentist's practice period and no later than
6.21 seven business days following completion of the limited license dentist's practice period.

6.22 I. A supervising dentist who fails to comply with this subpart is subject to
6.23 disciplinary proceedings on grounds specified in parts 3100.6100 and 3100.6200, and
6.24 Minnesota Statutes, section 150A.08, subdivision 1.

6.25 Subp. 4. **Requirements for licensure.**

8.1 an application for biennial renewal of a license or permit together with the necessary fee
8.2 no later than the last day of the licensee's birth month which is the application deadline.
8.3 An application for renewal is deemed timely if received by the board or postmarked no
8.4 later than the last day of the licensee's birth month. The application form must provide
8.5 a place for the renewal applicant's signature certifying compliance with the applicable
8.6 professional development requirements including maintaining a consecutive and current
8.7 CPR certification and information including the applicant's office address or addresses, the
8.8 license number, whether the licensee has been engaged in the active practice of dentistry
8.9 during the two years preceding the period for which renewal is sought as a licensee, and if
8.10 so, whether within or without the state, and any other information that may be reasonably
8.11 requested by the board.

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

8.13 **3100.1750 TERMS AND RENEWAL OF LICENSURE; LIMITED FACULTY**
8.14 **AND RESIDENT DENTISTS.**

8.15 [For text of subps 1 to 3, see M.R.]

8.16 Subp. 4. **Application fees.** Each applicant for initial licensure as a limited faculty
8.17 or resident dentist shall submit with a license application the fee in Minnesota Statutes,
8.18 section 150A.091, subdivision 2.

8.19 Subp. 5. **Annual license fees.** Each limited faculty or resident dentist shall submit
8.20 with an annual license renewal application the fee in Minnesota Statutes, section
8.21 150A.091, subdivision 4.

8.22 [For text of subp 6, see M.R.]

8.23 **3100.1850 REINSTATEMENT OF LICENSE.**

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

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

9.4 A. comply with subpart 2a;

9.5 B. submit either:

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

9.7 (2) evidence of having successfully completed applicable board-approved
9.8 coursework with minimal hour requirements directly relating to the practice of dentistry,
9.9 dental hygiene, or dental assisting as indicated in the reinstatement application. The
9.10 board-approved coursework must have been completed within 24 months prior to the
9.11 board's receipt of the application. The coursework completed under this subpart may
9.12 not be used to fulfill any of the applicable professional development requirements in
9.13 part 3100.5100; and

9.14 C. be available for an interview with the appropriate board committee to
9.15 determine the applicant's knowledge of dental subjects and ability to practice dentistry,
9.16 dental therapy, dental hygiene, or dental assisting under this subpart.

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

9.18 **3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,**
9.19 **MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE**
9.20 **INHALATION ANALGESIA.**

9.21 [For text of subps 1 to 7, see M.R.]

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

11.1 (3) A CPR certification course is mandatory for each licensee to maintain
11.2 licensure. The CPR course must be equivalent to the American Heart Association
11.3 healthcare provider course or the American Red Cross professional rescuer course. The
11.4 licensee must maintain a consecutive and current CPR certificate when renewing a license
11.5 or permit each biennial term.

11.6 [For text of subitems (4) and (5), see M.R.]

11.7 B. Elective activities for an initial or biennial cycle include, but are not limited
11.8 to, the examples described in subitems (1) to (7):

11.9 [For text of subitems (1) to (4), see M.R.]

11.10 (5) dental practice management courses include, but are not limited to,
11.11 computer, insurance claims or billing, and Health Insurance Portability and Accountability
11.12 Act (HIPAA) training;

11.13 (6) leadership or committee involvement with the board or a dental
11.14 professional association for a maximum of three credit hours; or

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

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

11.19 **3100.5300 AUDIT PROCESS OF PORTFOLIO.**

11.20 [For text of subps 1 to 5, see M.R.]

11.21 Subp. 6. **Audit fee.** The licensee shall submit to the board the nonrefundable fee
11.22 in Minnesota Statutes, section 150A.091, subdivision 16, after failing two consecutive
11.23 professional development portfolio audits and thereafter for each failed professional
11.24 development portfolio audit.

12.1 **3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.**

12.2 Subpart 1. **Specialty areas.** The following special areas of dentistry are recognized
12.3 as suitable for the announcement of specialty dental practices:

- 12.4 A. endodontics (endodontist);
- 12.5 B. oral and maxillofacial radiology (oral and maxillofacial radiologist);
- 12.6 C. oral and maxillofacial surgery (oral surgeon/oral maxillofacial surgeon);
- 12.7 D. oral pathology (oral pathologist);
- 12.8 E. orthodontics (orthodontist);
- 12.9 F. pediatric dentistry (pediatric dentist);
- 12.10 G. periodontics (periodontist);
- 12.11 H. prosthodontics (prosthodontist); and
- 12.12 I. public health.

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

12.14 **3100.8400 ASSISTANTS WITHOUT A LICENSE OR PERMIT.**

12.15 Subpart 1. **Permissible duties.** Assistants under this subpart may:

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

12.17 E. provide any assistance, including the placement of articles and topical
12.18 medication in a patient's oral cavity, in response to a specific direction by a licensed dentist
12.19 who is physically engaged in performing a dental operation as defined in the act and who
12.20 is physically in a position to give personal supervision to the assistant;

12.21 F. aid dental hygienists and licensed dental assistants in the performance of their
12.22 duties as defined in parts 3100.8500 and 3100.8700; and

13.1 G. apply fluoride varnish in a community setting under the authorization and
13.2 direction of a licensed practitioner with prescribing authority such as a dentist or physician,
13.3 as long as the licensed practitioner authorizing the service or the facility at which the
13.4 fluoride varnish is administered maintains appropriate patient records of the treatment.

13.5 [For text of subps 1a to 3, see M.R.]

13.6 **3100.8500 LICENSED DENTAL ASSISTANTS.**

13.7 Subpart 1. **Duties under general supervision.** A licensed dental assistant may
13.8 perform the following procedures without the dentist being present in the dental office or
13.9 on the premises if the procedures being performed are with prior knowledge and consent
13.10 of the dentist:

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

13.12 H. deliver vacuum-formed orthodontic retainers;

13.13 I. place and remove elastic orthodontic separators;

13.14 J. complete preliminary charting of the oral cavity and surrounding structures
13.15 with the exception of periodontal probing and assessment of the periodontal structure;

13.16 K. take photographs extraorally or intraorally; and

13.17 L. take vital signs such as pulse rate and blood pressure as directed by a dentist.

13.18 [For text of subps 1a to 3, see M.R.]

13.19 **3100.9600 RECORD KEEPING.**

13.20 [For text of subps 1 to 9, see M.R.]

13.21 Subp. 10. **Progress notes.** Dental records must be legible and include a chronology
13.22 of the patient's progress throughout the course of all treatment and postoperative visits.

13.23 The chronology must include:

13.24 A. all treatment provided;

- 14.1 B. all medications used and materials placed;
- 14.2 C. the treatment provider by license number, name, or initials; and
- 14.3 D. when applicable, the identity of the collaborating dentist authorizing
- 14.4 treatment by license number.

14.5 [For text of subps 11 and 12, see M.R.]

14.6 Subp. 13. **Transfer of records.** A patient's dental records must be transferred

14.7 according to Minnesota Statutes, sections 144.291 to 144.298, irrespective of the status of

14.8 the patient's account. Digital radiographs shall be transferred by compact or optical disc,

14.9 electronic communication, or printing on high-quality photographic paper. All transferred

14.10 film or digital radiographs must reveal images of diagnostic quality using proper exposure

14.11 settings and processing procedures.

14.12 [For text of subp 14, see M.R.]

Office of the Revisor of Statutes

Administrative Rules



TITLE: Adopted Permanent Rules Relating to License to Practice as a Limited General Dentist

AGENCY: Minnesota Board of Dentistry

MINNESOTA RULES: Chapter 3100

RULE APPROVED
OFFICE OF ADMINISTRATIVE HEARINGS

May 17, 2013
DATE

Jeanne M. Cochran
ADMINISTRATIVE LAW JUDGE.

RECEIVED
2013 MAY 17 AM 7:46
ADMINISTRATIVE
HEARINGS

The attached rules are approved for
filing with the Secretary of State

Sandy Glass-Sirany
Sandy Glass-Sirany *by Jc*
Senior Assistant Revisor

133215

1.1 **3100.1130 LICENSE TO PRACTICE DENTISTRY AS A LIMITED GENERAL**
1.2 **DENTIST.**

1.3 Subpart 1. **Initial requirements for limited licensure.** A person who is a graduate
1.4 of a nonaccredited dental program will be granted a limited license to practice general
1.5 dentistry within Minnesota upon successfully complying with the requirements in items A
1.6 to E.

1.7 A. The applicant must initially submit to a credential review by the board and
1.8 pay the nonrefundable fee in Minnesota Statutes, section 150A.091, subdivision 9a. The
1.9 applicant shall provide the following documentation:

1.10 (1) a completed board-approved evaluation of all international education;

1.11 (2) an original or notarized copy of passing board-approved language
1.12 testing within the previous two years if English is not the applicant's primary language;

1.13 (3) an original affidavit of licensure;

1.14 (4) a completed dental questionnaire;

1.15 (5) a personal letter/curriculum vitae/resume;

1.16 (6) an original or notarized copy of dental diploma and, if necessary,
1.17 professional translation;

1.18 (7) proof of clinical practice in dentistry;

1.19 (8) an original or notarized copy of other credentials in dentistry and, if
1.20 necessary, professional translation;

1.21 (9) completed board-approved infection control training; and

1.22 (10) an original or notarized copy of National Board Dental Examinations
1.23 Report - Part I and Part II.

1.24 The applicant is allowed to submit to one credential review by the board.

2.1 B. Once a credential review has been completed by the board, the committee
2.2 shall officially notify the applicant by letter as to whether permission to take the regional
2.3 clinical examination has been denied or granted by the board. The board may also request
2.4 that the applicant schedule an interview with the credential review committee, then notify
2.5 the applicant by letter as to whether permission to take the regional clinical examination
2.6 has been denied or granted by the committee. An applicant denied permission to take the
2.7 regional clinical examination has the option to appeal the decision to the board within 60
2.8 days from the notification date.

2.9 C. If the applicant is granted permission by the board to take the regional clinical
2.10 examination, the applicant must take a board-approved regional clinical examination,
2.11 successfully pass the regional clinical examination, and submit evidence of the results of
2.12 the regional clinical examination within 18 months from the receipt date of the board's
2.13 notification letter granting permission to take the regional clinical examination.

2.14 D. When an applicant fails twice any part of a board-approved regional clinical
2.15 examination, the applicant may not take it again until the applicant successfully completes
2.16 additional education provided by an institution accredited by the Commission on Dental
2.17 Accreditation. The education must cover all of the subject areas failed by the applicant in
2.18 each of the two clinical examinations. The applicant may retake the examination only after
2.19 the institution provides to the board information specifying the areas failed in the previous
2.20 examinations and the instruction provided to address the areas failed, and certifies that the
2.21 applicant has successfully completed the instruction. The applicant shall be allowed to
2.22 retake the clinical examination one time following this additional educational instruction.
2.23 If the applicant fails the clinical examination for a third time, the applicant is prohibited
2.24 from retaking the clinical examination.

2.25 E. An applicant must complete and submit a limited license application for
2.26 review by an appropriate committee of the board. The application must include:

3.1 (1) the initial and annual application fees in Minnesota Statutes, section
3.2 150A.091, subdivision 9b;

3.3 (2) evidence of having passed a board-approved regional clinical
3.4 examination within five years preceding the limited license application;

3.5 (3) evidence of having passed an examination designed to test knowledge
3.6 of Minnesota laws relating to the practice of dentistry and the rules of the board within
3.7 five years preceding the limited license application;

3.8 (4) an acceptable written agreement between the applicant and a
3.9 board-approved Minnesota licensed supervising dentist. The written agreement shall
3.10 include all information requested by the board. The written agreement shall also include
3.11 any practice limitations, and an acknowledgment that the applicant agrees to practice
3.12 clinical dentistry at least 1,100 hours annually, for a period of three consecutive years
3.13 after clinical practice in Minnesota begins;

3.14 (5) documentation of current CPR certification;

3.15 (6) a statement from a licensed physician attesting to the applicant's
3.16 physical and mental condition completed within 12 months preceding the limited license
3.17 application; and

3.18 (7) a statement from a licensed ophthalmologist or optometrist attesting to
3.19 the applicant's visual acuity completed within 12 months preceding the limited license
3.20 application.

3.21 Subp. 2. **Terms of limited licensure.** Throughout the three consecutive years
3.22 while practicing general dentistry in Minnesota under the general supervision of a
3.23 Minnesota licensed dentist, the limited license dentist must maintain and comply with
3.24 the requirements in items A to F:

- 4.1 A. submit annual payment of the renewal fee in Minnesota Statutes, section
4.2 150A.091, subdivision 9b;
- 4.3 B. maintain a consecutive and current CPR certification as required to renew a
4.4 limited license;
- 4.5 C. submit written correspondence and agreement to the board requesting
4.6 approval of a subsequent supervising dentist and written agreement, within 14 days prior
4.7 to employment start date with subsequent supervising dentist. The written agreement shall
4.8 include all information requested by the board. The written agreement shall also include
4.9 any practice limitations, and an acknowledgment that the limited license dentist agrees to
4.10 practice clinical dentistry at least 1,100 hours annually, for a period of three consecutive
4.11 years or any remaining portion thereof;
- 4.12 D. within seven business days of an unforeseen event, submit written
4.13 correspondence for review by an appropriate committee of the board regarding the
4.14 unforeseen circumstance that may interrupt the three consecutive years of supervision;
- 4.15 E. maintain with the board a correct and current mailing address and electronic
4.16 mail address and properly notify the board within 30 days of any changes as described in
4.17 Minnesota Statutes, section 150A.09, subdivision 3; and
- 4.18 F. maintain a professional development portfolio containing:
- 4.19 (1) acceptable documentation of required hours in professional
4.20 development activities;
- 4.21 (2) a minimum of two different core subjects as part of the fundamental
4.22 activities;
- 4.23 (3) one completed self-assessment examination; and
- 4.24 (4) a consecutive and current CPR certification.

5.1 The total required hours of professional development activities is 75 hours with a
5.2 minimum of 45 hours in fundamental activities and a maximum of 30 hours in elective
5.3 activities. Completing at least 25 hours each year towards the total of 75 hours is required
5.4 for compliance.

5.5 Subp. 3. **Terms of supervising dentist.** A supervising dentist must be licensed in
5.6 Minnesota and provide general supervision to a limited license dentist. The supervising
5.7 dentist is not required to be present in the office or on the premises when supervising
5.8 the limited license dentist, but does require the supervising dentist to have knowledge
5.9 and authorize the procedures being performed by the limited license dentist. For the
5.10 three consecutive years or any portion thereof, the supervising dentist must be eligible to
5.11 participate and comply with the requirements in items A to I.

5.12 A. A supervising dentist must be a board-approved Minnesota licensed dentist
5.13 for at least five consecutive years.

5.14 B. A supervising dentist's license shall not be subject to, or pending, corrective
5.15 or disciplinary action within the previous five years according to Minnesota Statutes,
5.16 sections 214.10 and 214.103.

5.17 C. A supervising dentist must have an acceptable written agreement between
5.18 the limited license dentist and the supervising dentist, and the supervising dentist may
5.19 only supervise one limited license dentist for the duration of the agreement. The written
5.20 agreement shall include all information requested by the board. The written agreement
5.21 shall also include any practice limitations, and an acknowledgment that the limited license
5.22 dentist agrees to practice clinical dentistry at least 1,100 hours annually, for a period of
5.23 three consecutive years.

5.24 D. No more than two limited license dentists are allowed to practice general
5.25 dentistry under general supervision in one dental facility.

6.1 E. Any subsequent modifications to a written agreement must be submitted
6.2 in writing to the board by the supervising dentist within seven business days of the
6.3 modification.

6.4 F. A supervising dentist must inform the board in writing about the termination
6.5 of a written agreement with a limited license dentist within seven business days of the
6.6 termination.

6.7 G. A supervising dentist must inform the board in writing about any known
6.8 disciplinary or malpractice proceedings involving the limited license dentist within seven
6.9 business days of the proceeding.

6.10 H. The supervising dentist must submit to the board a written performance
6.11 evaluation of the limited license dentist in regards to employment including practicing
6.12 clinical dentistry at least 1,100 hours annually, patient care, allied dental personnel,
6.13 professionalism, billing practices, and make a general recommendation. The supervising
6.14 dentist's evaluation must be submitted to the board no earlier than 90 days before
6.15 completion of the limited license dentist's practice period and no later than seven business
6.16 days following completion of the limited license dentist's practice period.

6.17 I. A supervising dentist who fails to comply with this subpart is subject to
6.18 disciplinary proceedings on grounds specified in parts 3100.6100 and 3100.6200, and
6.19 Minnesota Statutes, section 150A.08, subdivision 1.

6.20 Subp. 4. **Requirements for licensure.**

6.21 A. Upon completion of the three consecutive years, a dentist with a limited
6.22 license to practice general dentistry in Minnesota shall be prohibited from practicing
6.23 general dentistry in Minnesota due to expiration of the limited license. A dentist who has
6.24 an expired or nearly expired limited license may apply for a dental license to practice
6.25 general dentistry in Minnesota by presenting a license application to the board and meeting
6.26 the following requirements in subitems (1) to (6). An applicant:

7.1 (1) must submit a completed application for a dental license in Minnesota
7.2 no sooner than 90 days preceding the expiration date of the applicant's limited license or
7.3 no later than one year after the expiration date of the applicant's limited license;

7.4 (2) must submit with the application the nonrefundable fees in Minnesota
7.5 Statutes, section 150A.091, subdivisions 2 and 3;

7.6 (3) must submit required documentation of a consecutive and current
7.7 CPR certification;

7.8 (4) shall provide a professional development portfolio for the three
7.9 consecutive years preceding the license application date as described in subpart 2, item F;

7.10 (5) must submit a written performance evaluation from each supervising
7.11 dentist regarding the applicant while practicing as a limited license dentist; and

7.12 (6) must not have been subject to corrective or disciplinary action by the
7.13 board while holding a limited license during the three consecutive years.

7.14 B. An applicant whose license application has been denied may appeal the
7.15 denial by initiating a contested case hearing pursuant to Minnesota Statutes, chapter 14.

7.16 **3100.1700 TERMS AND RENEWAL OF LICENSE OR PERMIT; GENERAL.**

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

7.18 Subp. 2. **Biennial renewal applications.** A dentist, dental hygienist, licensed dental
7.19 assistant, or dental assistant with a permit under part 3100.8500, subpart 3, shall submit
7.20 an application for biennial renewal of a license or permit together with the necessary fee
7.21 no later than the last day of the licensee's birth month which is the application deadline.
7.22 An application for renewal is deemed timely if received by the board or postmarked no
7.23 later than the last day of the licensee's birth month. The application form must provide
7.24 a place for the renewal applicant's signature certifying compliance with the applicable
7.25 professional development requirements including maintaining a consecutive and current

8.1 CPR certification and information including the applicant's office address or addresses, the
8.2 license number, whether the licensee has been engaged in the active practice of dentistry
8.3 during the two years preceding the period for which renewal is sought as a licensee, and if
8.4 so, whether within or without the state, and any other information that may be reasonably
8.5 requested by the board.

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

8.7 **3100.1750 TERMS AND RENEWAL OF LICENSURE; LIMITED FACULTY**
8.8 **AND RESIDENT DENTISTS.**

8.9 [For text of subps 1 to 3, see M.R.]

8.10 Subp. 4. **Application fees.** Each applicant for initial licensure as a limited faculty
8.11 or resident dentist shall submit with a license application the fee in Minnesota Statutes,
8.12 section 150A.091, subdivision 2.

8.13 Subp. 5. **Annual license fees.** Each limited faculty or resident dentist shall submit
8.14 with an annual license renewal application the fee in Minnesota Statutes, section
8.15 150A.091, subdivision 4.

8.16 [For text of subp 6, see M.R.]

8.17 **3100.1850 REINSTATEMENT OF LICENSE.**

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

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

8.22 A. comply with subpart 2a;

8.23 B. submit either:

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

9.1 (2) evidence of having successfully completed applicable board-approved
9.2 coursework with minimal hour requirements directly relating to the practice of dentistry,
9.3 dental hygiene, or dental assisting as indicated in the reinstatement application. The
9.4 board-approved coursework must have been completed within 24 months prior to the
9.5 board's receipt of the application. The coursework completed under this subpart may
9.6 not be used to fulfill any of the applicable professional development requirements in
9.7 part 3100.5100; and

9.8 C. be available for an interview with the appropriate board committee to
9.9 determine the applicant's knowledge of dental subjects and ability to practice dentistry,
9.10 dental therapy, dental hygiene, or dental assisting under this subpart.

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

9.12 **3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,**
9.13 **MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE**
9.14 **INHALATION ANALGESIA.**

9.15 [For text of subps 1 to 7, see M.R.]

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

9.20 A. a serious or unusual outcome that produces a temporary or permanent
9.21 physiological injury, harm, or other detrimental effect to one or more of a patient's body
9.22 systems; or

9.23 B. minimal sedation unintentionally becoming moderate sedation, deep
9.24 sedation, or general anesthesia when the licensee does not have a certificate for
9.25 administering general anesthesia or moderate sedation described in subparts 9 and 9b.

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

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

10.9 **3100.5100 PROFESSIONAL DEVELOPMENT.**

10.10 [For text of subps 1 and 2, see M.R.]

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

10.15 A. Fundamental activities include, but are not limited to, clinical subjects, core
10.16 subjects, CPR training, and the self-assessment examination. Examples of fundamental
10.17 activities for an initial or biennial cycle are described in subitems (1) to (5).

10.18 [For text of subitems (1) and (2), see M.R.]

10.19 (3) A CPR certification course is mandatory for each licensee to maintain
10.20 licensure. The CPR course must be equivalent to the American Heart Association
10.21 healthcare provider course or the American Red Cross professional rescuer course. The
10.22 licensee must maintain a consecutive and current CPR certificate when renewing a license
10.23 or permit each biennial term.

10.24 [For text of subitems (4) and (5), see M.R.]

11.1 B. Elective activities for an initial or biennial cycle include, but are not limited
11.2 to, the examples described in subitems (1) to (7):

11.3 [For text of subitems (1) to (4), see M.R.]

11.4 (5) dental practice management courses include, but are not limited to,
11.5 computer, insurance claims or billing, and Health Insurance Portability and Accountability
11.6 Act (HIPAA) training;

11.7 (6) leadership or committee involvement with the board or a dental
11.8 professional association for a maximum of three credit hours; or

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

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

11.13 **3100.5300 AUDIT PROCESS OF PORTFOLIO.**

11.14 [For text of subps 1 to 5, see M.R.]

11.15 Subp. 6. **Audit fee.** The licensee shall submit to the board the nonrefundable fee
11.16 in Minnesota Statutes, section 150A.091, subdivision 16, after failing two consecutive
11.17 professional development portfolio audits and thereafter for each failed professional
11.18 development portfolio audit.

11.19 **3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.**

11.20 Subpart 1. **Specialty areas.** The following special areas of dentistry are recognized
11.21 as suitable for the announcement of specialty dental practices:

11.22 A. endodontics (endodontist);

11.23 B. oral and maxillofacial radiology (oral and maxillofacial radiologist);

11.24 C. oral and maxillofacial surgery (oral surgeon/oral maxillofacial surgeon);

- 12.1 D. oral pathology (oral pathologist);
- 12.2 E. orthodontics (orthodontist);
- 12.3 F. pediatric dentistry (pediatric dentist);
- 12.4 G. periodontics (periodontist);
- 12.5 H. prosthodontics (prosthodontist); and
- 12.6 I. public health.

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

12.8 **3100.8400 ASSISTANTS WITHOUT A LICENSE OR PERMIT.**

12.9 Subpart 1. **Permissible duties.** Assistants under this subpart may:

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

12.11 E. provide any assistance, including the placement of articles and topical
12.12 medication in a patient's oral cavity, in response to a specific direction by a licensed dentist
12.13 who is physically engaged in performing a dental operation as defined in the act and who
12.14 is physically in a position to give personal supervision to the assistant;

12.15 F. aid dental hygienists and licensed dental assistants in the performance of their
12.16 duties as defined in parts 3100.8500 and 3100.8700; and

12.17 G. apply fluoride varnish in a community setting under the authorization and
12.18 direction of a licensed practitioner with prescribing authority such as a dentist or physician,
12.19 as long as the licensed practitioner authorizing the service or the facility at which the
12.20 fluoride varnish is administered maintains appropriate patient records of the treatment.

12.21 [For text of subps 1a to 3, see M.R.]

13.1 **3100.8500 LICENSED DENTAL ASSISTANTS.**

13.2 Subpart 1. **Duties under general supervision.** A licensed dental assistant may
13.3 perform the following procedures without the dentist being present in the dental office or
13.4 on the premises if the procedures being performed are with prior knowledge and consent
13.5 of the dentist:

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

13.7 H. deliver vacuum-formed orthodontic retainers;

13.8 I. place and remove elastic orthodontic separators;

13.9 J. complete preliminary charting of the oral cavity and surrounding structures
13.10 with the exception of periodontal probing and assessment of the periodontal structure;

13.11 K. take photographs extraorally or intraorally; and

13.12 L. take vital signs such as pulse rate and blood pressure as directed by a dentist.

13.13 [For text of subps 1a to 3, see M.R.]

13.14 **3100.9600 RECORD KEEPING.**

13.15 [For text of subps 1 to 9, see M.R.]

13.16 Subp. 10. **Progress notes.** Dental records must be legible and include a chronology
13.17 of the patient's progress throughout the course of all treatment and postoperative visits.

13.18 The chronology must include:

13.19 A. all treatment provided;

13.20 B. all medications used and materials placed;

13.21 C. the treatment provider by license number, name, or initials; and

13.22 D. when applicable, the identity of the collaborating dentist authorizing
13.23 treatment by license number.

14.1 [For text of subps 11 and 12, see M.R.]

14.2 Subp. 13. **Transfer of records.** A patient's dental records must be transferred
14.3 according to Minnesota Statutes, sections 144.291 to 144.298, irrespective of the status of
14.4 the patient's account. Digital radiographs shall be transferred by compact or optical disc,
14.5 electronic communication, or printing on high-quality photographic paper. All transferred
14.6 film or digital radiographs must reveal images of diagnostic quality using proper exposure
14.7 settings and processing procedures.

14.8 [For text of subp 14, see M.R.]



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APR 08 2013

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

April 5, 2013

Voice: (651) 361-7900
TTY: (651) 361-7878
Fax: (651) 361-7936

Marshall Shragg
Executive Director
Minnesota Board of Dentistry
2829 University Ave SE, Ste 450
Minneapolis, MN 55414

Re: *In the Matter of the Adopted Rules of the Minnesota Board of Dentistry Relating to Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, Minnesota Rules, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.0600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.9600*
OAH 68-0902-30135; Revisor's ID No. 4059;
Governor's Tracking No. 4059

Dear Mr. Shragg:

Enclosed please find the Order of the Chief Administrative Law Judge in the above-entitled matter and the Order of Administrative Law Judge Jeanne M. Cochran. The Agency may resubmit the rule to the Chief Administrative Law Judge for review after changing it, or may request that the Chief Judge reconsider the disapproval. If the Agency does not wish to follow the suggested actions of the Chief Administrative Law Judge to correct the defects found, the Agency may follow the process outlined in Minn. Stat. § 14.26, subd.3(c).

If the Agency chooses to resubmit the rule to the Chief Administrative Law Judge for review after changing it, the agency must file the documents listed in Minn. R. 1400.2300, subp. 8, by the **30-day resubmission deadline** contained in Minn. Stat. § 14.26, subd. 2.

Marshall Shragg
April 5, 2013
Page 2

If you have any further questions, please do not hesitate to contact me.

Sincerely,



DENISE COLLINS
Legal Assistant
Telephone: (651) 361-7875

Enclosure

cc: Office of the Governor
Office of the Attorney General
Office of the Revisor of Statutes (paul.marinac@revisor.mn.gov)
Legislative Coordinating Commission

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Adopted Rules of the Minnesota Board of Dentistry Relating to Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules*, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.0600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.9600

**REPORT OF THE CHIEF
ADMINISTRATIVE LAW JUDGE**

This matter came before the Chief Administrative Law Judge pursuant to the provisions of Minn. Stat. § 14.26, subd. 3. Based upon a review of the record in this proceeding, the Chief Administrative Law Judge hereby approves in all respects the Order on Review of Rules Under Minn. Stat § 14.26, of the Administrative Law Judge, dated .

In order to correct the defects enumerated by the Administrative Law Judge in the attached Report, the agency shall make 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 Minn. Stat. § 14.15, subd. 4.

If the agency chooses to make 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: April 5, 2013



RAYMOND R. KRAUSE
Chief Administrative Law Judge

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF DENTISTRY

In the Matter of the Adopted Rules of
the Minnesota Board of Dentistry
Relating to Limited General Dentists,
Dentists, Dental Therapists, Dental
Hygienists, and Licensed Dental
Assistants, *Minnesota Rules*, Parts
3100.1130, 3100.1700, 3100.1750,
3100.1850, 3100.3600, 3100.5100,
3100.5300, 3100.7000, 3100.8400,
3100.8500, and 3100.9600

**ORDER ON REVIEW OF
RULES UNDER MINNESOTA
STATUTES, SECTION 14.26**

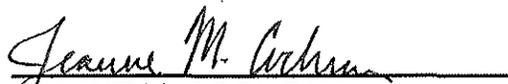
The Minnesota Board of Dentistry (Board) is seeking review and approval of the above-entitled rules, which were adopted by the Board without a hearing. This review and approval is governed by Minn. Stat. § 14.26. On March 25, 2013, the Office of Administrative Hearings (OAH) received the documents that must be filed by the Board under Minn. Stat. § 14.26 and Minn. R. 1400.2310.

Based upon a review of the written submissions and filings, and for the reasons set out in the Memorandum which follows,

IT IS HEREBY ORDERED as follows:

1. The following rules or parts thereof are not approved:
Minn. R. 3100.1130, Subpart 1, Item A; and
Minn. R. 3100.1130, Subpart 3, Item H.
2. All other rules or parts thereof are approved.
3. Pursuant to Minn. Stat. § 14.26, subd. 3(b), and Minn. R. 1400.2300, subp. 6, the rules will be submitted to the Chief Administrative Law Judge for review.

Dated: April 5, 2013


JEANNE M. COCHRAN
Administrative Law Judge

MEMORANDUM

The Board has submitted these rules to the Administrative Law Judge (ALJ) for review under Minn. Stat. § 14.26. Subdivision 3(a) of that statute specifies that the ALJ must approve or disapprove the rules as to their legality and form. In conducting the review, the ALJ must consider the issue of whether the agency has the authority to adopt the rules; whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rules; and whether the rules as modified are substantially different from the rules as originally proposed.

The rules of the Office of Administrative Hearings identify several types of circumstances under which a rule must be disapproved by the Administrative Law Judge or the Chief Administrative Law Judge.¹ These circumstances include situations in which a rule exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by, its enabling statute or other applicable law; a rule was not adopted in compliance with procedural requirements, unless the Judge finds that the error was harmless in nature and should be disregarded; a rule is not rationally related to the agency's objectives or the agency has not demonstrated the need for and reasonableness of the rule; a rule is substantially different than the rule as originally proposed and the agency did not comply with required procedures; a rule is unconstitutional² or illegal; a rule improperly delegates the agency's powers to another entity; or the proposal does not fall within the statutory definition of a "rule."

These standards guide the determinations set forth below.

I. Defects in the Proposed Rules

A. Minn. R. 3100.1130, Subp. 1, Item A – License to Practice Dentistry as a Limited General Dentist, Initial Requirements for Licensure

As proposed, Item A of Subpart 1 states, in relevant part:

The applicant shall provide documents *such as*:³

- (1) a completed board-approved evaluation of all international education;
- (2) an original or notarized copy of passing board-approved language testing within the previous two years;
- (3) an original affidavit of licensure;
- (4) a completed dental questionnaire;
- (5) a personal letter/curriculum vitae/resume;

¹ Minn. R. 1400.2100 (2011).

² In order to be constitutional, a rule must be sufficiently specific to provide fair warning of the type of conduct to which the rule applies. See *Cullen v. Kentucky*, 407 U.S. 104, 110 (1972); *Thompson v. City of Minneapolis*, 300 N.W.2d 763, 768 (Minn. 1980).

³ Emphasis added.

- (6) an original or notarized copy of dental diploma and, if necessary, professional translation;
- (7) proof of clinical practice in dentistry;
- (8) an original or notarized copy of other credentials in dentistry and, if necessary, professional translation;
- (9) completed board-approved infection control training; and
- (10) an original or notarized copy of National Board Dental Examinations Report – Part I and Part II.

The use of the phrase “such as” in Item A renders the proposed rule impermissibly vague. A rule is impermissibly vague if it fails to provide sufficient standards for enforcement or is so indefinite that one must guess at its meaning.⁴ The use of the phrase “*such as*” makes the proposed rule unclear as to whether each of the specific documents listed in Item A is required to be provided to the Board or whether the applicant has the option to do so. The use of the phrase “*such as*” also makes the rule unclear as to whether the list is exhaustive or whether the Board can request additional documentation from the applicant. The Statement of Need and Reasonableness (SONAR) specifies that the proposed rule is intended to require the filing of the documents listed.⁵ To cure this defect in the proposed rule, the ALJ recommends that the second sentence in Item A be modified as follows: “The applicant shall provide the following documentation : . . .”

Due to the change suggested above, the ALJ also recommends one additional change to cure the defect. The ALJ recommends the Board modify the language in Item A(2) as follows: “an original or notarized copy of passing board-approved language testing within the previous two years *if English is not the applicant’s primary language.*”⁶ While the SONAR indicates that the Board intended to require filing of the documents listed in Item A, presumably the filing of documentation of passing language testing would only be required for applicants for whom English is not their primary language.

B. Minn. R. 3100.1130, Subpart 3, Item H – License to Practice Dentistry as a Limited General Dentist, Terms of Supervising Dentist

As proposed, Item H of Subpart 3 states:

The supervising dentist must submit to the board *a written performance evaluation* of the limited license dentist in regards to employment including practicing clinical dentistry at least 1,100 hours annually, patient care, allied dental personnel, professionalism, billing practices, and make a

⁴ *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972); *In re N.P.*, 361 N.W.2d 386, 394 (Minn. 1985), *appeal dismissed*, 106 S. Ct. 375 (1985).

⁵ Statement of Need and Reasonableness at 8 (October 31, 2012).

⁶ Emphasis added.

*general recommendation within 90 days preceding to seven business days after completing the three consecutive years or any portion thereof.*⁷

The language "*within 90 days preceding to seven business days after completing the three consecutive years or any portion thereof*" is confusing and could be interpreted in different ways. This language is impermissibly vague as to the deadline for filing the written performance evaluation and general recommendation to the Board. Because a supervising dentist could be disciplined for failing to comply with the requirements of this proposed rule, it is critical that the Board clarify this language.⁸

To cure this defect in the proposed rule, the Administrative Law Judge recommends that the Board delete the language "*within 90 days preceding to seven business days after*" and instead establish a clear deadline of similar length for the filing of the required evaluation and recommendation. This change will eliminate the ambiguity that arises from the current language, which requires counting forwards and backwards to determine the applicable deadline. In addition, the ALJ recommends that the Board specify that the phrase "any portion thereof" means the portion of the three year practice period supervised by the reporting dentist. The ALJ suggests replacing the phrase "any portion thereof" with the following language: "any portion of the three year practice period."

None of the recommended changes to the parts of the proposed rules that have been found to be defective would render the rule substantially different from the rule as initially proposed.

II. Technical Suggestions

Assuming the Board takes the appropriate steps to correct the above defects, there are other language changes in the rules that the ALJ recommends be considered to clarify or improve the readability of the proposed rules. These wording changes are merely suggestions and do not denote defects in the proposed rules.

A. Minn. R. 3100.1130, Subp. 1 – License to Practice Dentistry as a Limited General Dentist, Initial Requirements for Licensure

Minn. Stat. § 150A.06, subd. 9, provides that a "graduate of a nonaccredited dental program who successfully completes the clinical licensure examination, and meets all other applicant requirements of the board shall be licensed to practice general dentistry and granted a limited general dentist license by the board." As proposed, Minn. R. 3100.1130, subp. 1, sets forth the requirements that an applicant must meet, including successfully completing the clinical licensure examination, to obtain a limited license to practice general dentistry in Minnesota. The proposed rule implies that the Board will grant a limited license to an applicant who meets all of the requirements, but does not expressly so state. To clarify that the Board will grant a limited license to

⁷ Emphasis added.

⁸ See Minn. Stat. § 150A.08, subd. 1(13).

successful applicants, as provided in Minn. Stat. § 150A.06, subd. 9, the ALJ suggests that the Board add language stating: "The Board will grant a limited license to practice general dentistry in Minnesota to an applicant who successfully meets the requirements of Subpart 1."

B. Minn. R. 3100.1130, Subp. 1, Item E(4) – License to Practice Dentistry as a Limited General Dentist, Initial Requirements for Licensure

As proposed, Minn. R. 3100.1130, subp. 1, Item E(4) provides, in relevant part, that: "The written agreement shall also include any practice limitations, and an acknowledgement that the applicant agrees to practice clinical dentistry at least 1,100 hours annually, *for a period of three consecutive years.*"⁹ In the SONAR, the Board states that "the Board intends that the three-year time period would begin when clinical practice in Minnesota is initiated, not at the time the Limited General License is issued by the Board."¹⁰ To add clarity, the ALJ suggests that the language in Item E(4) be modified slightly to specify that the "three consecutive years" will be measured when clinical practice starts in Minnesota. The ALJ suggests changing the end of the sentence to read: "for a period of three consecutive years after clinical practice in Minnesota begins."

None of the suggested modifications would make the rules substantially different from the rules as initially proposed.

J. M. C.

⁹ Emphasis added.

¹⁰ SONAR at 9.



RECEIVED

MAY 08 2013

MN BOARD OF DENTISTRY

MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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Saint Paul, Minnesota 55101

Mailing Address:
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Voice: (651) 361-7900
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May 7, 2013

Marshall Shragg
Executive Director
Minnesota Board of Dentistry
2829 University Avenue SE, Suite 450
Minneapolis, MN 55414

Re: *In the Matter of the Adopted Rules of the Minnesota Board of Dentistry Relating to Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants*
OAH 68-0902-30135
Revisor AR 4059

Dear Mr. Shragg:

On May 3, 2013, our office received for review the Department's submissions as modified pursuant to the April 5, 2013, Report of Administrative Law Judge Jeanne M. Cochran. The rules, Revisor's Draft AR 4059, are approved as to legality. With the approval of the proposed rules, our office has closed this file and is sending the enclosed documents to you so that your agency can maintain the official rulemaking record as required by Minn. Stat. § 14.365. Our office will file four copies of the adopted rule with the Secretary of State, who will forward one copy to the Revisor of Statutes, one copy to the Governor, and one to the Department for its rulemaking record. You will then receive from the Revisor's Office three copies of the Notice of Adoption of the 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. A permanent rule with a hearing does not become effective until five working days after a Notice of Adoption is published in the *State Register* in accordance with Minn. Stat. § 14.18.

Marshall Shragg
May 7, 2013
Page 2

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Denise S. Collins".

DENISE S. COLLINS
Legal Assistant

Telephone: (651) 361-7875

Enclosure

cc: Legislative Coordinating Commission
Attorney General Lori Swanson
Paul Marinac (paul.marinac@revisor.mn.gov)
Amy Hang
Representative Michael V. Nelson
Senator Sandra L. Pappas

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Adopted Rules of the Minnesota Board of Dentistry Relating to Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules*, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.0600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.

**ORDER ON REVIEW OF
RESUBMITTED RULES UNDER
MINN. STAT. § 14.26, SUBD. 2**

The Minnesota Board of Dentistry sought review and approval of the above-entitled rules, which were adopted by the Board without a hearing. Review and approval is governed by Minn. Stat. § 14.26.

On March 25, 2013, the Office of Administrative Hearings received the documents that must be filed under Minn. Stat. § 14.26 and Minn. R. 1400.2310. By way of Order dated April 5, 2013, Administrative Law Judge Jeanne M. Cochran determined that the proposed rules included defects. By way of Order dated April 5, 2013, the Chief Administrative Law Judge concurred in that conclusion.

On May 3, 2013, the Board submitted revisions of the proposed rules for review. Based upon the submissions and rulemaking record,

IT IS HEREBY ORDERED:

1. The Board has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with all procedural requirements of Minnesota Statutes, chapter 14, and Minnesota Rules, chapter 1400.
3. Minn. R. 3100.1130, Subpart 1, Item A and Minn. R. 3100.1130, Subpart 3, Item H are **APPROVED**. All other parts of the rules were approved for legality under the terms of the April 5, 2013 Order.

Dated: May 7, 2013


JEANNE M. COCHRAN
Administrative Law Judge



MINNESOTA BOARD OF DENTISTRY

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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 Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules*, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.9600; Revisor's ID number 4059

I, Kathy T. Johnson, certify that on November 20, 2012, 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 November 20, 2012.

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

Kathy T. Johnson
Legal Analyst Liaison
Minnesota Board of Dentistry

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MINNESOTA BOARD OF DENTISTRY

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Minnesota Board of Dentistry

CERTIFICATE OF GIVING ADDITIONAL NOTICE PURSUANT TO THE ADDITIONAL NOTICE PLAN

Proposed Amendments to Permanent Rules Relating to Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules*, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.9600; Revisor's ID number 4059

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 November 8, 2012.

1. Since March 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 March 21, 2012, the Board posted a draft copy of the proposed rule changes on the Board's website at www.dentalboard.state.mn.us making it accessible to the following individuals: all limited general dentists; dentists; dental therapists; 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.
3. On March 21, 2012, 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.
4. On March 21, 2012, the Board posted a copy of the Request for Comments for publication in the State Register on the Board's website at www.dentalboard.state.mn.us. This website is accessible to the following individuals: all limited general dentists; dentists; dental therapists; 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

5. On March 21, 2012, the Board posted a draft of the Statement of Need and Reasonableness dated March 21, 2012, on the Board's website at www.dentalboard.state.mn.us.
6. On March 26, 2012, the Board's Request for Comments was published in the State Register.
7. On August 2, 2012, the Board contacted the representatives of the Minnesota Dental Association (Dentists), the Minnesota Dental Hygiene Association (Dental Hygienists), and the Minnesota Dental Assistants Association (Dental Assistants) with a request to publish in each organization's newsletter or post on each organization's website for it's members the following information:

MINNESOTA BOARD OF DENTISTRY – NEW PROPOSED RULES

RE: Proposed Amendments to Permanent Rules Relating to Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules*, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.9600

The Minnesota Board of Dentistry is considering some amendments to its existing rules. The amendments that are under consideration in the Board's proposed rules focus on the following areas: the requirements and terms of licensure for a limited general dentist; add "consecutive" to the CPR requirement for licensure; add an interview option when reinstating; expand professional development elective activities; add professional development portfolio audit fee; add another recognized specialty area; allow assistants to apply fluoride varnish; allow dental hygienists and licensed dental assistants to complete preliminary charting, take photographs, and take vital signs; and in recordkeeping properly identify the collaborating dentist and transfer adequate radiographs.

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

8. On October 31, 2012, the Board posted a copy of its proposed rules dated October 31, 2012, and SONAR dated October 31, 2012, on the Board's website making this information accessible to the following individuals: all limited general dentists; dentists; dental therapists; 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 3

9. On November 1, the Board sent a broadcast electronic mailing to nearly 10,000 licensees including, dentists, limited license dentists, dental therapists, dental hygienists, and licensed dental assistants, notifying them of the Board's Newsletter (Vol. 26, November 2012). This on-line newsletter included information about the Board rules that will be affected by the Board's proposed rule changes, which is also described in paragraph 7 above. Additionally, the Board's Newsletter will be posted on the Board's website making it accessible to the following individuals: all limited general dentists; dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; and members of the general public.
10. Prior to publication of the Dual Notice in the State Register, the Board will send by electronic mail a copy of the Dual Notice of Intent to Adopt Rules, the Proposed Rules, and the Statement of Need and Reasonableness to the representatives of the Minnesota Dental Association, the Minnesota Dental Hygiene Association, and the Minnesota Dental Assistants Association.
11. All future notices involving these proposed rules shall be posted on the Board of Dentistry's website.



Kathy T. Johnson
Legal Analyst Liaison
Minnesota Board of Dentistry



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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November 8, 2012

Marshall Shragg
Executive Director
Minnesota Board of Dentistry
2829 University Avenue SE, Suite 450
Minneapolis, MN 55414

Re: *In the Matter of the Proposed Amendments to Permanent Rules of the MN Bd of Dentistry Relating to Limited General Dentists, Dentists, Dental Therapist*
OAH 68-0902-30135
Governor's Tracking No. AR1063

Dear Mr. Shragg:

I have reviewed the Dual Notice and the Additional Notice Plan that I received from you on November 1, 2012, to determine whether they meet the requirements of Minnesota law. The Dual Notice and the Additional Notice Plan are approved.

Please do not hesitate to contact Denise Collins of our office at 651-361-7875 with any questions.

Sincerely,


JEANNE M. COCHRAN
Administrative Law Judge

Telephone: (651) 361-7838

JMC:dsc
Enclosure

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF DENTISTRY

RECEIVED
NOV 13 2012
STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Amendments to Permanent Rules of the Minnesota Board of Dentistry Relating to Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules*, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.9600

**ORDER ON REVIEW OF
DUAL NOTICE AND
ADDITIONAL NOTICE PLAN
UNDER MINNESOTA RULES
1400.2060 AND 1400.2080**

This matter came before Administrative Law Judge Jeanne M. Cochran upon the Minnesota Board of Dentistry's request for review of its Dual Notice and Additional Notice Plan. The Department seeks a legal review of its materials under Minn. Stat. § 14.131, and Minn. R. 1400.2060, subp. 2 and Minn. R. 1400.2080, subp. 2.

Based upon a review of the written submissions and filings made on November 1, 2012,

IT IS HEREBY ORDERED THAT:

1. The Dual Notice is **APPROVED**.
2. The Additional Notice Plan is **APPROVED**.

Dated: November 8, 2012



JEANNE M. COCHRAN
Administrative Law Judge

MEMORANDUM

The Minnesota Board of Dentistry ("Board") has spent over three years working on developing the offered amendments to the rules. As the filings submitted by the Board reflect, various standing committees and task force committees of the Board have held monthly public meetings to develop these proposed rules. Clearly, the Board has made a serious effort to obtain input from numerous sources.

At this stage of the proceedings, the law also requires the Board take steps to ensure that persons affected by the new rule are given notice. The statutes governing that notice are Minn. Stat. §§ 14.14 and 14.22. Each of these statutes provides that the "agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication."¹

In its Additional Notice Plan, the Board stated on August 2, 2012 it contacted representatives of the Minnesota Dental Association (Dentists), the Minnesota Dental Hygiene Association (Dental Hygienists), and the Minnesota Dental Assistants Association (Dental Assistants) with a request to publish in each organization's newsletter or post on each organization's website a detailed notice of the proposed new rules. In addition, the Board noted that on October 31, 2012, the Board posted a copy of its proposed rules dated October 31, 2012 and the Statement of Need and Reasonableness (SONAR) dated October 31, 2012 on the Board's website. The Board also represented that on November 1, 2012, it sent an electronic mailing to nearly 10,000 licensees including, dentists, limited license dentists, dental therapists, dental hygienists and licensed dental assistants notifying them of the Board's Newsletter (Vol. 26, November 2012), which discussed the proposed changes to the Board's rules. Finally, the Board stated in its filing that prior to publication of the Dual Notice in the State Register, the Board will send by electronic mail a copy of the Dual Notice of Intent to Adopt Rules, the Proposed Rules, and the SONAR to representatives of the Dentists, the Dental Hygienists, and the Dental Assistants. In the view of the Administrative Law Judge, the proposed Additional Notice Plan meets the requirements of Minn. Stat. §§ 14.14 and 14.22.

Finally, mindful of the number of stakeholders who participated in previous rulemaking hearings held by the Board of Dentistry, the Board should carefully consider whether the 4th Floor, Conference Room A, University Park Plaza, 2829 University Avenue SE, Minneapolis, MN, is an appropriate venue for this hearing.

J. M. C.

¹ See, Minn. Stat. §§ 14.14 and 14.22.



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 Limited General Dentists, Dentists,
Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules*,
Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.3600, 3100.5100, 3100.5300,
3100.7000, 3100.8400, 3100.8500, and 3100.9600; Revisor's ID number 4059**

I, Kathy T. Johnson, certify that on November 20, 2012, 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. 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

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November 20, 2012

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 Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules*, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.9600; Revisor's ID number 4059

Dear Librarian:

The Minnesota Board of Dentistry intends to adopt rules relating to the following: licensure for limited general dentists; adding "consecutive" to the CPR requirement for licensure; an interview option when reinstating; expanding professional development elective activities; professional development portfolio audit fee; adding another recognized specialty area; new duties for dental hygienists and licensed dental assistants; and new recordkeeping requirements. We plan to publish a Dual Notice of Intent to Adopt Rules in the November 26, 2012, 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 black ink that reads "Kathy T. Johnson". The signature is written in a cursive style.

Kathy T. Johnson
Legal Analyst Liaison
Minnesota Board of Dentistry

Enclosures: Statement of Need and Reasonableness



MINNESOTA BOARD OF DENTISTRY

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Minnesota Board of Dentistry

AMENDED ORDER ADOPTING RULES

Adoption of Permanent Rules Relating to Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules*, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.9600; OAH Docket No. 68-0902-30135; Governor's Tracking Number AR1063; Revisor's ID number 4059

WHEREAS:

1. The Board of Dentistry has complied with all notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law. A copy of the Board's authorization to propose the rules is attached.
2. The Board of Dentistry received no requests for a public hearing and no written comments. Therefore, there are not 25 or more requests for a public hearing. The Board also received no requests for notice of submission to the Office of Administrative Hearings.
3. The Board of Dentistry adopts the Administrative Law Judge's ("ALJ") Order dated April 5, 2013, and hereby incorporates it by reference into this Order. According to the ALJ's Order, she recommended all of the modifications in paragraphs 3.a. to 3.c. below to correct the defects in the Board's proposed rules. The ALJ also concluded that none of the recommended changes would render the rules substantially different from the rules as initially proposed.

Defects in Proposed Rules

a. Minn. R. 3100.1130, subpart 1, item A, of the proposed rules has been amended to read:

A. The applicant must initially submit to a credential review by the board and pay the nonrefundable fee in Minnesota Statutes, section 150A.091, subdivision 9a. The applicant shall provide the following documentation such as:

b. Minn. R. 3100.1130, subpart 1, item A(2), of the proposed rules has been amended to read:

(2) an original or notarized copy of passing board-approved language testing within the previous two years if English is not the applicant's primary language;

c. Minn. R. 3100.1130, subpart 3, item H, of the proposed rules has been amended to read:

H. The supervising dentist must submit to the board a written performance evaluation of the limited license dentist in regards to employment including practicing clinical dentistry at least 1,100 hours annually, patient care, allied dental personnel, professionalism, billing practices, and make a general recommendation ~~within 90 days preceding to seven business days after completing the three consecutive years or any portion thereof.~~ The supervising dentist's evaluation must be submitted to the board no earlier than 90 days before completion of the limited license dentist's practice period and no later than seven business days following completion of the limited license dentist's practice period.

Technical Suggestions

According to the ALJ's Order, she suggested the changes in paragraphs 3.d. and 3.e. below to clarify or improve the readability of the proposed rules. However, these changes do not denote defects in the Board's proposed rules. The ALJ also concluded that none of the suggested changes would render the rules substantially different from the rules as initially proposed.

d. Minn. R. 3100.1130, subpart 1, of the proposed rules has been amended to read:

Subpart 1. Initial requirements for limited licensure. A person who is a graduate of a nonaccredited dental program ~~and desires to obtain~~ will be granted a limited license to practice general dentistry within Minnesota ~~shall comply upon successfully complying with~~ the requirements in items A to E.

e. Minn. R. 3100.1130, subpart 1, item E(4), of the proposed rules has been amended to read:

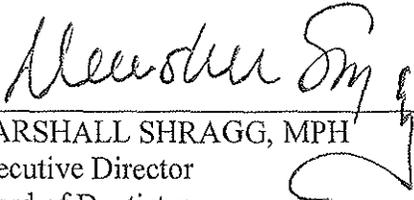
(4) an acceptable written agreement between the applicant and a board-approved Minnesota licensed supervising dentist. The written agreement shall include all information requested by the board. The written agreement shall also include any practice limitations, and an acknowledgement that the applicant agrees to practice clinical dentistry at least 1,100 hours annually, for a period of three consecutive years after clinical practice in Minnesota begins;

4. The aforementioned rules, as amended, are needed and reasonable.
5. A copy of the Board's authorization to adopt the rules is attached.

ORDER

The above-named rules, in the Dual Notice published in the State Register on November 26, 2012, with the modifications as indicated in the Revisor's draft, file number AR4059, dated May 1, 2013, are adopted pursuant to the authority described within Minnesota Statutes, section 150A.04.

May 8th, 2013
Date


MARSHALL SHRAGG, MPH
Executive Director
Board of Dentistry



MINNESOTA BOARD OF DENTISTRY

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November 20, 2012

COMMITTEES

Senate: Health and Human Services Committee

Sen. David W. Hann and Sen. Tony Lourey

House: Health and Human Services Reform Committee

Rep. Steve Gottwalt and Rep. Tina Liebling

House: Health and Human Services Finance Committee

Rep. Jim Abeler and Rep. Thomas Huntley

Legislative Coordinating Commission

100 Rev Dr Martin Luther King Jr Blvd

72 State Office Building

St. Paul, MN 55155-1206

Re: Proposed Amendments to Permanent Rules Relating to Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants, *Minnesota Rules*, Parts 3100.1130, 3100.1700, 3100.1750, 3100.1850, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8400, 3100.8500, and 3100.9600; Revisor's ID number 4059

Dear Legislators:

Executive Summary:

The Board's proposed rules outline the requirements and terms of licensure for a limited general dentist pursuant to Minn. Stat. section 150A.06, subd. 9. Other proposed rules include: adding "consecutive" to the CPR requirement for licensure; an interview option when reinstating; expanding professional development elective activities; professional development portfolio audit fee relating to Minn. Stat. section 150A.091, subd. 16; adding another recognized specialty area; assistants allowed to apply fluoride varnish; dental hygienists and licensed dental assistants allowed to complete preliminary charting, take photographs, and take vital signs, and for recordkeeping identify the collaborating dentist and transfer adequate radiographs.

November 20, 2012

Legislators

Page 2

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 and to the Legislative Coordinating Commission.

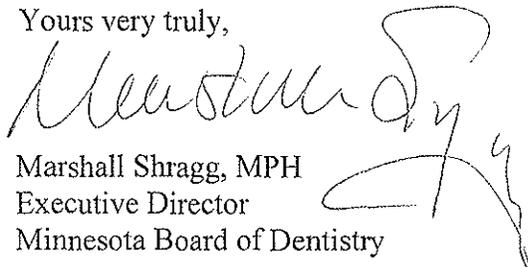
In addition, if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency shall make reasonable efforts to send a copy of the notice and the statement to all sitting legislators who were chief house and senate 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."

We plan to publish a Dual Notice of Intent to Adopt Rules in the November 26, 2012 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.

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



MINNESOTA BOARD OF DENTISTRY

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June 14, 2012

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

Re: In The Matter of the Proposed Permanent Rules of the Minnesota Board Of Dentistry Relating to License to Practice as a Limited General Dentist; *Minnesota Rules, Chapter 3100*; Governor's Tracking #AR 1063

Dear Mr. Roelofs:

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."

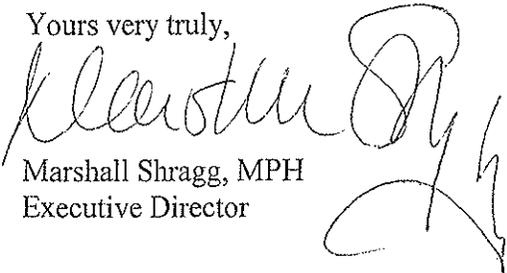
Enclosed for your review are copies of the following documents on proposed rules relating to the limited general dentist.

1. The Governor's Office Proposed Rule and SONAR Form.
2. The February 22, 2012 Revisor's draft of the proposed rules.
3. The June 13, 2012 copy of the SONAR.

I also delivered copies of these documents to the Governor's Office on this same date.

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 your 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

Yours very truly,


Marshall Shragg, MPH
Executive Director



Office Memorandum

Date: September 10th, 2012

To: Marshall Shragg, Executive Director
Minnesota Board of Dentistry

From: Susan Melchionne, Executive Budget Officer
Budget Division, MMB

Phone: 651-201-8035

Subject: M.S. 14.131 Review of Rules Proposed by the Minnesota Board of Dentistry Relating to License to Practice as a Limited General Dentist; Minnesota Rules 3100; #AR 1063

Background

The Minnesota Board of Dentistry is proposing to add a new part to Minnesota Rules Chapter 3100 relating to the licensing of Limited General Dentists. Additionally, the Board is proposing changes in the areas of reinstatement of licenses, professional development and portfolio audit, dental specialty practice, duties for both assistants and licensed dental assistants, and recordkeeping. Supplemental clarifications and technical corrections, including technical changes to properly coordinate rule language with current statute language, are also proposed.

The purposes of the various proposed changes are:

- To allow qualified individuals to practice as limited general dentists
- To assure the public that only those who are qualified and able to provide an adequate level of care are practicing as dental professionals
- To clarify expectations regarding CPR requirements
- To encourage successful portfolio reviews and increase the recoverable fees charged by the board for multiple portfolio audit failures
- To recognize leadership or involvement with the Board of Dentistry or dental professional associations as part of licensees' professional development portfolio
- To bring the specialty practice of Oral and Maxillofacial Radiology into the Board of Dentistry rules, bringing these rules in line with the American Dental Association
- To remove barriers to the expansion of fluoride varnish programs in public settings
- To allow expanded duties for licensed dental assistants under general supervision
- To strengthen regulation to ensure adequate progress notes in dental records
- To improve the quality of digital radiographs by transferring them in high quality formats
- To bring rules into line with statutory changes (technical changes)

The Board of Dentistry's authority to adopt and implement rules can be found in Minnesota Statutes 150A.04, subdivision 5.

Pursuant to M.S. 14.131, the Board of Dentistry has asked the Commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefit of the proposed amendments on local units of government.

Evaluation

On behalf of the Commissioner of MMB, I have reviewed the proposed rules and related Statement of Need and Reasonableness (SONAR) for any potential costs and benefits to local units of government. My evaluation is summarized below:

1. According to the SONAR, the Board of Dentistry has determined that the proposed rules will not require local units of government to adopt or amend any ordinances or regulations because the proposed rules do not require local implementation. The rules are intended to guide and regulate individual dental professionals.
2. The persons who will see the biggest financial impact related to the new rules are professionals seeking to be licensed as limited general dentists, and individual dental professionals who continuously fail their professional development portfolio audits.
 - a. Graduates from nonaccredited (typically international) dental colleges may apply for limited dental licensure. These applicants must pay a fee not to exceed \$200 for a credential review, and not to exceed \$140 to sit for a clinical exam. These fees are previously established in Minnesota Statutes 150A.091, subdivisions 9a and 9b(1), respectively. Once licensed, limited general dentists must pay an annual license renewal fee not to exceed \$155, per Minnesota Statutes 150A.091, subdivision 9b(2).
 - b. Those dental professionals failing their professional development portfolio audits will incur a fee not to exceed \$250 after failing two consecutive reviews, and for each subsequent failure.
3. Some counties do have licensed dentists on staff in clinics. It is unknown whether the license renewal fees are paid for by the licensee or by the county employers. However, annual license fees for limited general dentists are very similar to the renewal fees for general dentists (annualized cost not to exceed \$155 versus \$168, respectively). If counties do pay for license renewals, there will be a negligible financial impact if limited general dentists are hired in place of general dentists, assuming staffing levels are held constant.

Additional rule changes pursuant to the purposes listed above are also included in this proposal. Aside from the licensure, renewal fees, and fees associated with portfolio failure discussed above, these proposed change items do not have a stated fee associated with them. Any incidental impact on time or effort, or marginal impact on cost, will affect licensees, dental professionals, and the Board of Dentistry.

September 10, 2012

Page 3

Any benefits of these additional changes will be realized by members of the dental profession and dental patients. Local governments are not expected to be impacted financially by these changes.

Based on this information, I believe that the Minnesota Board of Dentistry has adequately analyzed and presented the potential costs and benefits of the proposed rules. These rule changes will have little, if any, fiscal impact on local governments.

cc: Angela Vogt, MMB Budget Division Team Leader

1.1 **Minnesota Board of Dentistry**
1.2 **Proposed Permanent Rules Relating to License to Practice as a Limited General**
1.3 **Dentist**

1.4 **3100.1130 LICENSE TO PRACTICE DENTISTRY AS A LIMITED GENERAL**
1.5 **DENTIST.**

1.6 Subpart 1. Initial requirements for limited licensure. A person who is a graduate
1.7 of a nonaccredited dental program and desires to obtain a limited license to practice
1.8 general dentistry within Minnesota shall comply with the requirements in items A to E.

1.9 A. The applicant must initially submit to a credential review by the board and
1.10 pay the nonrefundable fee in Minnesota Statutes, section 150A.091, subdivision 9a. The
1.11 applicant shall provide documentation such as:

1.12 (1) a completed board-approved evaluation of all international education;

1.13 (2) an original or notarized copy of passing board-approved language
1.14 testing within the previous two years;

1.15 (3) an original affidavit of licensure;

1.16 (4) a completed dental questionnaire;

1.17 (5) a personal letter/curriculum vitae/resume;

1.18 (6) an original or notarized copy of dental diploma and, if necessary,
1.19 professional translation;

1.20 (7) proof of clinical practice in dentistry;

1.21 (8) an original or notarized copy of other credentials in dentistry and, if
1.22 necessary, professional translation;

1.23 (9) completed board-approved infection control training; and

2.1 (10) an original or notarized copy of National Board Dental Examinations
2.2 Report - Part I and Part II.

2.3 The applicant is allowed to submit to one credential review by the board.

2.4 B. Once a credential review has been completed by the board, the committee
2.5 shall officially notify the applicant by letter as to whether permission to take the regional
2.6 clinical examination has been denied or granted by the board. The board may also request
2.7 that the applicant schedule an interview with the credential review committee, then notify
2.8 the applicant by letter as to whether permission to take the regional clinical examination
2.9 has been denied or granted by the committee. An applicant denied permission to take the
2.10 regional clinical examination has the option to appeal the decision to the board within 60
2.11 days from the notification date.

2.12 C. If the applicant is granted permission by the board to take the regional clinical
2.13 examination, the applicant must take a board-approved regional clinical examination,
2.14 successfully pass the regional clinical examination, and submit evidence of the results of
2.15 the regional clinical examination within 18 months from the receipt date of the board's
2.16 notification letter granting permission to take the regional clinical examination.

2.17 D. When an applicant fails twice any part of a board-approved regional clinical
2.18 examination, the applicant may not take it again until the applicant successfully completes
2.19 additional education provided by an institution accredited by the Commission on Dental
2.20 Accreditation. The education must cover all of the subject areas failed by the applicant in
2.21 each of the two clinical examinations. The applicant may retake the examination only after
2.22 the institution provides to the board information specifying the areas failed in the previous
2.23 examinations and the instruction provided to address the areas failed, and certifies that the
2.24 applicant has successfully completed the instruction. The applicant shall be allowed to
2.25 retake the clinical examination one time following this additional educational instruction.

3.1 If the applicant fails the clinical examination for a third time, the applicant is prohibited
3.2 from retaking the clinical examination.

3.3 E. An applicant must complete and submit a limited license application for
3.4 review by an appropriate committee of the board. The application must include:

3.5 (1) the initial and annual application fees in Minnesota Statutes, section
3.6 150A.091, subdivision 9b;

3.7 (2) evidence of having passed a board-approved regional clinical
3.8 examination within five years preceding the limited license application;

3.9 (3) evidence of having passed an examination designed to test knowledge
3.10 of Minnesota laws relating to the practice of dentistry and the rules of the board within
3.11 five years preceding the limited license application;

3.12 (4) an acceptable written agreement including any practice limitations for a
3.13 period of three consecutive years between the applicant and a board-approved Minnesota
3.14 licensed supervising dentist;

3.15 (5) documentation of current CPR certification;

3.16 (6) a statement from a licensed physician attesting to the applicant's
3.17 physical and mental condition completed within 12 months preceding the limited license
3.18 application; and

3.19 (7) a statement from a licensed ophthalmologist or optometrist attesting to
3.20 the applicant's visual acuity completed within 12 months preceding the limited license
3.21 application.

3.22 Subp. 2. **Terms of limited licensure.** Throughout the three consecutive years
3.23 while practicing general dentistry in Minnesota under the general supervision of a
3.24 Minnesota licensed dentist, the limited license dentist must maintain and comply with
3.25 the requirements in items A to F:

- 4.1 A. submit annual payment of the renewal fee in Minnesota Statutes, section
4.2 150A.091, subdivision 9b;
- 4.3 B. maintain a consecutive and current CPR certification as required to renew a
4.4 limited license;
- 4.5 C. submit written correspondence and agreement to the board requesting
4.6 approval of a subsequent supervising dentist and written agreement including practice
4.7 limitations within 14 days prior to employment start date with subsequent supervising
4.8 dentist;
- 4.9 D. within seven business days of an unforeseen event, submit written
4.10 correspondence for review by an appropriate committee of the board regarding the
4.11 unforeseen circumstance that may interrupt the three consecutive years of supervision;
- 4.12 E. maintain with the board a correct and current mailing address and electronic
4.13 mail address and properly notify the board within 30 days of any changes as described in
4.14 Minnesota Statutes, section 150A.09, subdivision 3; and
- 4.15 F. maintain a professional development portfolio containing:
- 4.16 (1) acceptable documentation of required hours in professional
4.17 development activities;
- 4.18 (2) a minimum of two different core subjects as part of the fundamental
4.19 activities;
- 4.20 (3) one completed self-assessment examination; and
- 4.21 (4) a consecutive and current CPR certification.

4.22 The total required hours of professional development activities is 75 hours with a
4.23 minimum of 45 hours in fundamental activities and a maximum of 30 hours in elective
4.24 activities. Completing at least 25 hours each year towards the total of 75 hours is required
4.25 for compliance.

5.1 Subp. 3. Terms of supervising dentist. A supervising dentist must be licensed in
5.2 Minnesota and provide general supervision to a limited license dentist. The supervising
5.3 dentist is not required to be present in the office or on the premises when supervising
5.4 the limited license dentist, but does require the supervising dentist to have knowledge
5.5 and authorize the procedures being performed by the limited license dentist. For the
5.6 three consecutive years or any portion thereof, the supervising dentist must be eligible to
5.7 participate and comply with the requirements in items A to I.

5.8 A. A supervising dentist must be a board-approved Minnesota licensed dentist
5.9 for at least five consecutive years.

5.10 B. A supervising dentist's license shall not be subject to, or pending, corrective
5.11 or disciplinary action within the previous five years according to Minnesota Statutes,
5.12 sections 214.10 and 214.103.

5.13 C. A supervising dentist must have an acceptable written agreement including
5.14 any practice limitations between the limited license dentist and the supervising dentist,
5.15 and the supervising dentist may only supervise one limited license dentist for the duration
5.16 of the agreement.

5.17 D. No more than two limited license dentists are allowed to practice general
5.18 dentistry under general supervision in one dental facility.

5.19 E. Any subsequent modifications to a written agreement including practice
5.20 limitations must be submitted in writing to the board by the supervising dentist within
5.21 seven business days of the modification.

5.22 F. A supervising dentist must inform the board in writing about the termination
5.23 of a written agreement with a limited license dentist within seven business days of the
5.24 termination.

6.1 G. A supervising dentist must inform the board in writing about any known
6.2 disciplinary or malpractice proceedings involving the limited license dentist within seven
6.3 business days of the proceeding.

6.4 H. The supervising dentist must submit to the board a written performance
6.5 evaluation of the limited license dentist in regards to employment, patient care, allied
6.6 dental personnel, professionalism, billing practices, and make a general recommendation
6.7 within 90 days preceding to seven business days after completing the three consecutive
6.8 years or any portion thereof.

6.9 I. A supervising dentist who fails to comply with this subpart is subject to
6.10 disciplinary proceedings on grounds specified in parts 3100.6100 and 3100.6200, and
6.11 Minnesota Statutes, section 150A.08, subdivision 1.

6.12 Subp. 4. Requirements for licensure.

6.13 A. Upon completion of the three consecutive years, a dentist with a limited
6.14 license to practice general dentistry in Minnesota shall be prohibited from practicing
6.15 general dentistry in Minnesota due to expiration of the limited license. A dentist who has
6.16 an expired or nearly expired limited license may apply for a dental license to practice
6.17 general dentistry in Minnesota by presenting a license application to the board and meeting
6.18 the following requirements in subitems (1) to (6). An applicant:

6.19 (1) must submit a completed application for a dental license in Minnesota
6.20 no sooner than 90 days preceding the expiration date of the applicant's limited license or
6.21 no later than one year after the expiration date of the applicant's limited license;

6.22 (2) must submit with the application the nonrefundable fees in Minnesota
6.23 Statutes, section 150A.091, subdivisions 2 and 3;

6.24 (3) must submit required documentation of a consecutive and current
6.25 CPR certification;

7.1 (4) shall provide a professional development portfolio for the three
7.2 consecutive years preceding the license application date as described in subpart 2, item F;

7.3 (5) must submit a written performance evaluation from each supervising
7.4 dentist regarding the applicant while practicing as a limited license dentist; and

7.5 (6) must not have been subject to corrective or disciplinary action by the
7.6 board while holding a limited license during the three consecutive years.

7.7 B. An applicant whose license application has been denied may appeal the
7.8 denial by initiating a contested case hearing pursuant to Minnesota Statutes, chapter 14.

7.9 **3100.1700 TERMS AND RENEWAL OF LICENSE OR PERMIT; GENERAL.**

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

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

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

8.1 **3100.1750 TERMS AND RENEWAL OF LICENSURE; LIMITED FACULTY**
8.2 **AND RESIDENT DENTISTS.**

8.3 [For text of subps 1 to 3, see M.R.]

8.4 Subp. 4. **Application fees.** Each applicant for initial licensure as a limited faculty or
8.5 resident dentist shall submit with a license application ~~a the fee in the following amounts:~~
8.6 in Minnesota Statutes, section 150A.091, subdivision 2.

8.7 A. ~~limited faculty dentist, \$140; and~~

8.8 B. ~~resident dentist, \$55.~~

8.9 Subp. 5. **Annual license fees.** Each limited faculty or resident dentist shall submit
8.10 with an annual license renewal application ~~a the fee established by the board not to exceed~~
8.11 ~~the following amounts:~~ in Minnesota Statutes, section 150A.091, subdivision 4.

8.12 A. ~~limited faculty dentist, \$168; and~~

8.13 B. ~~resident dentist, \$59.~~

8.14 [For text of subp 6, see M.R.]

8.15 **3100.1850 REINSTATEMENT OF LICENSE.**

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

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

8.21 A. comply with subpart 2a; ~~and~~

8.22 B. submit either:

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

9.1 (2) evidence of having successfully completed applicable board-approved
 9.2 coursework with minimal hour requirements directly relating to the practice of dentistry,
 9.3 dental hygiene, or dental assisting as indicated in the reinstatement application. The
 9.4 board-approved coursework must have been completed within 24 months prior to the
 9.5 board's receipt of the application. The coursework completed under this subpart may
 9.6 not be used to fulfill any of the applicable professional development requirements in
 9.7 part 3100.5100-; and

9.8 C. be available for an interview with the appropriate board committee to
 9.9 determine the applicant's knowledge of dental subjects and ability to practice dentistry,
 9.10 dental therapy, dental hygiene, or dental assisting under this subpart.

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

9.12 **3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,**
 9.13 **MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE**
 9.14 **INHALATION ANALGESIA.**

9.15 [For text of subps 1 to 7, see M.R.]

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

9.20 A. a serious or unusual outcome that produces a temporary or permanent
 9.21 physiological injury, harm, or other detrimental effect to one or more of a patient's body
 9.22 systems; or

9.23 B. minimal sedation unintentionally becoming moderate sedation, deep
 9.24 sedation, or general anesthesia when the licensee does not have a certificate for
 9.25 administering general anesthesia or moderate sedation described in ~~subpart~~ subparts
 9.26 9 and 9b.

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

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

10.9 **3100.5100 PROFESSIONAL DEVELOPMENT.**

10.10 [For text of subps 1 and 2, see M.R.]

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

10.16 A. Fundamental activities include, but are not limited to, clinical subjects, core
10.17 subjects, CPR training, and the self-assessment examination. Examples of fundamental
10.18 activities for an initial or biennial cycle are described in subitems (1) to (5).

10.19 [For text of subitems (1) and (2), see M.R.]

10.20 (3) A CPR certification course is mandatory for each licensee to maintain
10.21 licensure. The CPR course must be equivalent to the American Heart Association
10.22 healthcare provider course or the American Red Cross professional rescuer course. The
10.23 licensee must ~~hold~~ maintain a consecutive and current CPR certificate when renewing a
10.24 license or permit each biennial term.

10.25 [For text of subitems (4) and (5), see M.R.]

11.1 B. Elective activities for an initial or biennial cycle include, but are not limited
 11.2 to, the examples described in subitems (1) to ~~(6)~~ (7):

11.3 [For text of subitems (1) to (4), see M.R.]

11.4 (5) dental practice management courses include, but are not limited to,
 11.5 computer, insurance claims or billing, and Health Insurance Portability and Accountability
 11.6 Act (HIPAA) training; ~~or~~

11.7 (6) leadership or committee involvement with the board or a dental
 11.8 professional association for a maximum of three credit hours; or

11.9 ~~(6)~~ (7) the board shall approve other additional elective activities if the
 11.10 board finds the contents of the activity to be directly related to, or supportive of, the
 11.11 practice of dentistry, dental hygiene, or dental assisting.

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

11.13 **3100.5300 AUDIT PROCESS OF PORTFOLIO.**

11.14 [For text of subps 1 to 5, see M.R.]

11.15 Subp. 6. **Audit fee.** The licensee shall submit to the board the nonrefundable fee
 11.16 in Minnesota Statutes, section 150A.091, subdivision 16, after failing two consecutive
 11.17 professional development portfolio audits and thereafter for each failed professional
 11.18 development portfolio audit.

11.19 **3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.**

11.20 Subpart 1. **Specialty areas.** The following special areas of dentistry are recognized
 11.21 as suitable for the announcement of specialty dental practices:

11.22 A. endodontics (endodontist);

11.23 B. oral and maxillofacial radiology (oral and maxillofacial radiologist);

11.24 ~~B.~~ C. oral and maxillofacial surgery (oral surgeon/oral maxillofacial surgeon);

- 12.1 ~~C.~~ D. oral pathology (oral pathologist);
- 12.2 ~~D.~~ E. orthodontics (orthodontist);
- 12.3 ~~E.~~ F. pediatric dentistry (pediatric dentist);
- 12.4 ~~F.~~ G. periodontics (periodontist);
- 12.5 ~~G.~~ H. prosthodontics (prosthodontist); and
- 12.6 ~~H.~~ I. public health.

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

12.8 **3100.8400 ASSISTANTS WITHOUT A LICENSE OR PERMIT.**

12.9 Subpart 1. **Permissible duties.** Assistants under this subpart may:

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

12.11 E. provide any assistance, including the placement of articles and topical
 12.12 medication in a patient's oral cavity, in response to a specific direction by a licensed dentist
 12.13 who is physically engaged in performing a dental operation as defined in the act and who
 12.14 is physically in a position to give personal supervision to the assistant; ~~and~~

12.15 F. aid dental hygienists and licensed dental assistants in the performance of their
 12.16 duties as defined in parts 3100.8500 and 3100.8700-; and

12.17 G. apply fluoride varnish in a community setting under the authorization and
 12.18 direction of a licensed practitioner with prescribing authority such as a dentist or physician,
 12.19 as long as the licensed practitioner authorizing the service or the facility at which the
 12.20 fluoride varnish is administered maintains appropriate patient records of the treatment.

12.21 [For text of subps 1a to 3, see M.R.]

12.22 **3100.8500 LICENSED DENTAL ASSISTANTS.**

13.1 Subpart 1. **Duties under general supervision.** A licensed dental assistant may
 13.2 perform the following procedures without the dentist being present in the dental office or
 13.3 on the premises if the procedures being performed are with prior knowledge and consent
 13.4 of the dentist:

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

13.6 H. deliver vacuum-formed orthodontic retainers; ~~and~~

13.7 I. place and remove elastic orthodontic separators;

13.8 J. complete preliminary charting of the oral cavity and surrounding structures
 13.9 with the exception of periodontal probing and assessment of the periodontal structure;

13.10 K. take photographs extraorally or intraorally; and

13.11 L. take vital signs such as pulse rate and blood pressure as directed by a dentist.

13.12 [For text of subps 1a to 3, see M.R.]

13.13 **3100.9600 RECORD KEEPING.**

13.14 [For text of subps 1 to 9, see M.R.]

13.15 Subp. 10. **Progress notes.** Dental records must be legible and include a chronology
 13.16 of the patient's progress throughout the course of all treatment and postoperative visits.
 13.17 The chronology must include:

13.18 A. all treatment provided; and;

13.19 B. clearly identify the provider by name or initials; all medications used and
 13.20 materials placed;

13.21 C. identify all medications used and materials placed; the treatment provider
 13.22 by license number, name, or initials; and

13.23 D. when applicable, the identity of the collaborating dentist authorizing
 13.24 treatment by license number.

14.1 [For text of subps 11 and 12, see M.R.]

14.2 Subp. 13. **Transfer of records.** A patient's dental records must be transferred
14.3 according to Minnesota Statutes, sections 144.291 to 144.298, irrespective of the status of
14.4 the patient's account. Digital radiographs shall be transferred by compact or optical disc,
14.5 electronic communication, or printing on high-quality photographic paper. All transferred
14.6 film or digital radiographs must reveal images of diagnostic quality using proper exposure
14.7 settings and processing procedures.

14.8 [For text of subp 14, see M.R.]

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to License to Practice as a Limited General Dentist

AGENCY: Minnesota Board of Dentistry

MINNESOTA RULES: Chapter 3100

The attached rules are approved for
publication in the State Register

A handwritten signature in cursive script that reads "Sandy Glass-Sirany".

Sandy Glass-Sirany
Senior Assistant Revisor

1.1 **Minnesota Board of Dentistry**1.2 **Adopted Permanent Rules Relating to License to Practice as a Limited General**
1.3 **Dentist**1.4 **3100.1130 LICENSE TO PRACTICE DENTISTRY AS A LIMITED GENERAL**
1.5 **DENTIST.**

1.6 Subpart 1. **Initial requirements for limited licensure.** A person who is a graduate
1.7 of a nonaccredited dental program ~~and desires to obtain~~ will be granted a limited license to
1.8 practice general dentistry within Minnesota ~~shall comply~~ upon successfully complying
1.9 with the requirements in items A to E.

1.10 A. The applicant must initially submit to a credential review by the board and
1.11 pay the nonrefundable fee in Minnesota Statutes, section 150A.091, subdivision 9a. The
1.12 applicant shall provide the following documentation ~~such as~~:

1.13 (1) a completed board-approved evaluation of all international education;

1.14 (2) an original or notarized copy of passing board-approved language
1.15 testing within the previous two years if English is not the applicant's primary language;

1.16 (3) an original affidavit of licensure;

1.17 (4) a completed dental questionnaire;

1.18 (5) a personal letter/curriculum vitae/resume;

1.19 (6) an original or notarized copy of dental diploma and, if necessary,
1.20 professional translation;

1.21 (7) proof of clinical practice in dentistry;

1.22 (8) an original or notarized copy of other credentials in dentistry and, if
1.23 necessary, professional translation;

1.24 (9) completed board-approved infection control training; and

2.1 (10) an original or notarized copy of National Board Dental Examinations
2.2 Report - Part I and Part II.

2.3 The applicant is allowed to submit to one credential review by the board.

2.4 B. Once a credential review has been completed by the board, the committee
2.5 shall officially notify the applicant by letter as to whether permission to take the regional
2.6 clinical examination has been denied or granted by the board. The board may also request
2.7 that the applicant schedule an interview with the credential review committee, then notify
2.8 the applicant by letter as to whether permission to take the regional clinical examination
2.9 has been denied or granted by the committee. An applicant denied permission to take the
2.10 regional clinical examination has the option to appeal the decision to the board within 60
2.11 days from the notification date.

2.12 C. If the applicant is granted permission by the board to take the regional clinical
2.13 examination, the applicant must take a board-approved regional clinical examination,
2.14 successfully pass the regional clinical examination, and submit evidence of the results of
2.15 the regional clinical examination within 18 months from the receipt date of the board's
2.16 notification letter granting permission to take the regional clinical examination.

2.17 D. When an applicant fails twice any part of a board-approved regional clinical
2.18 examination, the applicant may not take it again until the applicant successfully completes
2.19 additional education provided by an institution accredited by the Commission on Dental
2.20 Accreditation. The education must cover all of the subject areas failed by the applicant in
2.21 each of the two clinical examinations. The applicant may retake the examination only after
2.22 the institution provides to the board information specifying the areas failed in the previous
2.23 examinations and the instruction provided to address the areas failed, and certifies that the
2.24 applicant has successfully completed the instruction. The applicant shall be allowed to
2.25 retake the clinical examination one time following this additional educational instruction.

3.1 If the applicant fails the clinical examination for a third time, the applicant is prohibited
3.2 from retaking the clinical examination.

3.3 E. An applicant must complete and submit a limited license application for
3.4 review by an appropriate committee of the board. The application must include:

3.5 (1) the initial and annual application fees in Minnesota Statutes, section
3.6 150A.091, subdivision 9b;

3.7 (2) evidence of having passed a board-approved regional clinical
3.8 examination within five years preceding the limited license application;

3.9 (3) evidence of having passed an examination designed to test knowledge
3.10 of Minnesota laws relating to the practice of dentistry and the rules of the board within
3.11 five years preceding the limited license application;

3.12 (4) an acceptable written agreement between the applicant and a
3.13 board-approved Minnesota licensed supervising dentist. The written agreement shall
3.14 include all information requested by the board. The written agreement shall also include
3.15 any practice limitations, and an acknowledgment that the applicant agrees to practice
3.16 clinical dentistry at least 1,100 hours annually, for a period of three consecutive years
3.17 after clinical practice in Minnesota begins;

3.18 (5) documentation of current CPR certification;

3.19 (6) a statement from a licensed physician attesting to the applicant's
3.20 physical and mental condition completed within 12 months preceding the limited license
3.21 application; and

3.22 (7) a statement from a licensed ophthalmologist or optometrist attesting to
3.23 the applicant's visual acuity completed within 12 months preceding the limited license
3.24 application.

4.1 Subp. 2. **Terms of limited licensure.** Throughout the three consecutive years
4.2 while practicing general dentistry in Minnesota under the general supervision of a
4.3 Minnesota licensed dentist, the limited license dentist must maintain and comply with
4.4 the requirements in items A to F:

4.5 A. submit annual payment of the renewal fee in Minnesota Statutes, section
4.6 150A.091, subdivision 9b;

4.7 B. maintain a consecutive and current CPR certification as required to renew a
4.8 limited license;

4.9 C. submit written correspondence and agreement to the board requesting
4.10 approval of a subsequent supervising dentist and written agreement, within 14 days prior
4.11 to employment start date with subsequent supervising dentist. The written agreement shall
4.12 include all information requested by the board. The written agreement shall also include
4.13 any practice limitations, and an acknowledgment that the limited license dentist agrees to
4.14 practice clinical dentistry at least 1,100 hours annually, for a period of three consecutive
4.15 years or any remaining portion thereof;

4.16 D. within seven business days of an unforeseen event, submit written
4.17 correspondence for review by an appropriate committee of the board regarding the
4.18 unforeseen circumstance that may interrupt the three consecutive years of supervision;

4.19 E. maintain with the board a correct and current mailing address and electronic
4.20 mail address and properly notify the board within 30 days of any changes as described in
4.21 Minnesota Statutes, section 150A.09, subdivision 3; and

4.22 F. maintain a professional development portfolio containing:

4.23 (1) acceptable documentation of required hours in professional
4.24 development activities;

5.1 (2) a minimum of two different core subjects as part of the fundamental
5.2 activities;

5.3 (3) one completed self-assessment examination; and

5.4 (4) a consecutive and current CPR certification.

5.5 The total required hours of professional development activities is 75 hours with a
5.6 minimum of 45 hours in fundamental activities and a maximum of 30 hours in elective
5.7 activities. Completing at least 25 hours each year towards the total of 75 hours is required
5.8 for compliance.

5.9 Subp. 3. **Terms of supervising dentist.** A supervising dentist must be licensed in
5.10 Minnesota and provide general supervision to a limited license dentist. The supervising
5.11 dentist is not required to be present in the office or on the premises when supervising
5.12 the limited license dentist, but does require the supervising dentist to have knowledge
5.13 and authorize the procedures being performed by the limited license dentist. For the
5.14 three consecutive years or any portion thereof, the supervising dentist must be eligible to
5.15 participate and comply with the requirements in items A to I.

5.16 A. A supervising dentist must be a board-approved Minnesota licensed dentist
5.17 for at least five consecutive years.

5.18 B. A supervising dentist's license shall not be subject to, or pending, corrective
5.19 or disciplinary action within the previous five years according to Minnesota Statutes,
5.20 sections 214.10 and 214.103.

5.21 C. A supervising dentist must have an acceptable written agreement between
5.22 the limited license dentist and the supervising dentist, and the supervising dentist may
5.23 only supervise one limited license dentist for the duration of the agreement. The written
5.24 agreement shall include all information requested by the board. The written agreement
5.25 shall also include any practice limitations, and an acknowledgment that the limited license

6.1 dentist agrees to practice clinical dentistry at least 1,100 hours annually, for a period of
6.2 three consecutive years.

6.3 D. No more than two limited license dentists are allowed to practice general
6.4 dentistry under general supervision in one dental facility.

6.5 E. Any subsequent modifications to a written agreement must be submitted
6.6 in writing to the board by the supervising dentist within seven business days of the
6.7 modification.

6.8 F. A supervising dentist must inform the board in writing about the termination
6.9 of a written agreement with a limited license dentist within seven business days of the
6.10 termination.

6.11 G. A supervising dentist must inform the board in writing about any known
6.12 disciplinary or malpractice proceedings involving the limited license dentist within seven
6.13 business days of the proceeding.

6.14 H. The supervising dentist must submit to the board a written performance
6.15 evaluation of the limited license dentist in regards to employment including practicing
6.16 clinical dentistry at least 1,100 hours annually, patient care, allied dental personnel,
6.17 professionalism, billing practices, and make a general recommendation ~~within 90 days~~
6.18 ~~preceding to seven business days after completing the three consecutive years or any portion~~
6.19 ~~thereof.~~ The supervising dentist's evaluation must be submitted to the board no earlier than
6.20 90 days before completion of the limited license dentist's practice period and no later than
6.21 seven business days following completion of the limited license dentist's practice period.

6.22 I. A supervising dentist who fails to comply with this subpart is subject to
6.23 disciplinary proceedings on grounds specified in parts 3100.6100 and 3100.6200, and
6.24 Minnesota Statutes, section 150A.08, subdivision 1.

6.25 Subp. 4. **Requirements for licensure.**

8.1 an application for biennial renewal of a license or permit together with the necessary fee
8.2 no later than the last day of the licensee's birth month which is the application deadline.
8.3 An application for renewal is deemed timely if received by the board or postmarked no
8.4 later than the last day of the licensee's birth month. The application form must provide
8.5 a place for the renewal applicant's signature certifying compliance with the applicable
8.6 professional development requirements including maintaining a consecutive and current
8.7 CPR certification and information including the applicant's office address or addresses, the
8.8 license number, whether the licensee has been engaged in the active practice of dentistry
8.9 during the two years preceding the period for which renewal is sought as a licensee, and if
8.10 so, whether within or without the state, and any other information that may be reasonably
8.11 requested by the board.

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

8.13 **3100.1750 TERMS AND RENEWAL OF LICENSURE; LIMITED FACULTY**
8.14 **AND RESIDENT DENTISTS.**

8.15 [For text of subps 1 to 3, see M.R.]

8.16 Subp. 4. **Application fees.** Each applicant for initial licensure as a limited faculty
8.17 or resident dentist shall submit with a license application the fee in Minnesota Statutes,
8.18 section 150A.091, subdivision 2.

8.19 Subp. 5. **Annual license fees.** Each limited faculty or resident dentist shall submit
8.20 with an annual license renewal application the fee in Minnesota Statutes, section
8.21 150A.091, subdivision 4.

8.22 [For text of subp 6, see M.R.]

8.23 **3100.1850 REINSTATEMENT OF LICENSE.**

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

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

9.4 A. comply with subpart 2a;

9.5 B. submit either:

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

9.7 (2) evidence of having successfully completed applicable board-approved
9.8 coursework with minimal hour requirements directly relating to the practice of dentistry,
9.9 dental hygiene, or dental assisting as indicated in the reinstatement application. The
9.10 board-approved coursework must have been completed within 24 months prior to the
9.11 board's receipt of the application. The coursework completed under this subpart may
9.12 not be used to fulfill any of the applicable professional development requirements in
9.13 part 3100.5100; and

9.14 C. be available for an interview with the appropriate board committee to
9.15 determine the applicant's knowledge of dental subjects and ability to practice dentistry,
9.16 dental therapy, dental hygiene, or dental assisting under this subpart.

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

9.18 **3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,**
9.19 **MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE**
9.20 **INHALATION ANALGESIA.**

9.21 [For text of subps 1 to 7, see M.R.]

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

11.1 (3) A CPR certification course is mandatory for each licensee to maintain
11.2 licensure. The CPR course must be equivalent to the American Heart Association
11.3 healthcare provider course or the American Red Cross professional rescuer course. The
11.4 licensee must maintain a consecutive and current CPR certificate when renewing a license
11.5 or permit each biennial term.

11.6 [For text of subitems (4) and (5), see M.R.]

11.7 B. Elective activities for an initial or biennial cycle include, but are not limited
11.8 to, the examples described in subitems (1) to (7):

11.9 [For text of subitems (1) to (4), see M.R.]

11.10 (5) dental practice management courses include, but are not limited to,
11.11 computer, insurance claims or billing, and Health Insurance Portability and Accountability
11.12 Act (HIPAA) training;

11.13 (6) leadership or committee involvement with the board or a dental
11.14 professional association for a maximum of three credit hours; or

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

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

11.19 **3100.5300 AUDIT PROCESS OF PORTFOLIO.**

11.20 [For text of subps 1 to 5, see M.R.]

11.21 Subp. 6. **Audit fee.** The licensee shall submit to the board the nonrefundable fee
11.22 in Minnesota Statutes, section 150A.091, subdivision 16, after failing two consecutive
11.23 professional development portfolio audits and thereafter for each failed professional
11.24 development portfolio audit.

12.1 **3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.**

12.2 Subpart 1. **Specialty areas.** The following special areas of dentistry are recognized
12.3 as suitable for the announcement of specialty dental practices:

- 12.4 A. endodontics (endodontist);
- 12.5 B. oral and maxillofacial radiology (oral and maxillofacial radiologist);
- 12.6 C. oral and maxillofacial surgery (oral surgeon/oral maxillofacial surgeon);
- 12.7 D. oral pathology (oral pathologist);
- 12.8 E. orthodontics (orthodontist);
- 12.9 F. pediatric dentistry (pediatric dentist);
- 12.10 G. periodontics (periodontist);
- 12.11 H. prosthodontics (prosthodontist); and
- 12.12 I. public health.

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

12.14 **3100.8400 ASSISTANTS WITHOUT A LICENSE OR PERMIT.**

12.15 Subpart 1. **Permissible duties.** Assistants under this subpart may:

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

12.17 E. provide any assistance, including the placement of articles and topical
12.18 medication in a patient's oral cavity, in response to a specific direction by a licensed dentist
12.19 who is physically engaged in performing a dental operation as defined in the act and who
12.20 is physically in a position to give personal supervision to the assistant;

12.21 F. aid dental hygienists and licensed dental assistants in the performance of their
12.22 duties as defined in parts 3100.8500 and 3100.8700; and

13.1 G. apply fluoride varnish in a community setting under the authorization and
13.2 direction of a licensed practitioner with prescribing authority such as a dentist or physician,
13.3 as long as the licensed practitioner authorizing the service or the facility at which the
13.4 fluoride varnish is administered maintains appropriate patient records of the treatment.

13.5 [For text of subps 1a to 3, see M.R.]

13.6 **3100.8500 LICENSED DENTAL ASSISTANTS.**

13.7 Subpart 1. **Duties under general supervision.** A licensed dental assistant may
13.8 perform the following procedures without the dentist being present in the dental office or
13.9 on the premises if the procedures being performed are with prior knowledge and consent
13.10 of the dentist:

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

13.12 H. deliver vacuum-formed orthodontic retainers;

13.13 I. place and remove elastic orthodontic separators;

13.14 J. complete preliminary charting of the oral cavity and surrounding structures
13.15 with the exception of periodontal probing and assessment of the periodontal structure;

13.16 K. take photographs extraorally or intraorally; and

13.17 L. take vital signs such as pulse rate and blood pressure as directed by a dentist.

13.18 [For text of subps 1a to 3, see M.R.]

13.19 **3100.9600 RECORD KEEPING.**

13.20 [For text of subps 1 to 9, see M.R.]

13.21 Subp. 10. **Progress notes.** Dental records must be legible and include a chronology
13.22 of the patient's progress throughout the course of all treatment and postoperative visits.

13.23 The chronology must include:

13.24 A. all treatment provided;

- 14.1 B. all medications used and materials placed;
- 14.2 C. the treatment provider by license number, name, or initials; and
- 14.3 D. when applicable, the identity of the collaborating dentist authorizing
- 14.4 treatment by license number.

14.5 [For text of subps 11 and 12, see M.R.]

14.6 Subp. 13. **Transfer of records.** A patient's dental records must be transferred

14.7 according to Minnesota Statutes, sections 144.291 to 144.298, irrespective of the status of

14.8 the patient's account. Digital radiographs shall be transferred by compact or optical disc,

14.9 electronic communication, or printing on high-quality photographic paper. All transferred

14.10 film or digital radiographs must reveal images of diagnostic quality using proper exposure

14.11 settings and processing procedures.

14.12 [For text of subp 14, see M.R.]

Office of the Revisor of Statutes

Administrative Rules

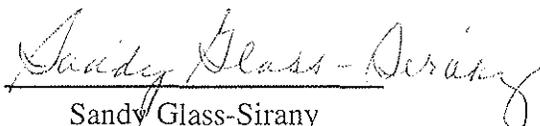


TITLE: Adopted Permanent Rules Relating to License to Practice as a Limited General Dentist

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

2011 Administrative Rule Preliminary Proposal Form

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

Submitting Agency: Minnesota Board of Dentistry Date: March 16, 2012

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 Limited General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Dental Assistants
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 is substantiating its protocols in rules for licensure of a limited general dentist. The Board along with its staff will be administratively and with proper authority handling the licensure process for limited general dentists.
If Exempt or Expedited rule process:	Not applicable.
Describe the need for the rule and provide background information:	Based upon amendments to Minn. Stat. section 150A.06, subd. 9 by the legislature regarding graduates of non-accredited dental programs and becoming a limited general dentist, the Board is proposing new rules that further regulate the limited general dentist in its existing rules. 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

Kathy T. Johnson 3/16/2012
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

2012 Administrative Rule Proposed Rule and SONAR Form

Administrative Rule Tracking #: AR 1063

Submitting Agency: Minnesota Board of Dentistry Date: June 14, 2012

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 License to Practice as a Limited General Dentist.
Chapter number(s):	Minnesota Rules Chapter 3100
Comments received during Request for Comments:	None
Statement of Need and Reasonableness (SONAR) Executive Summary:	The Board's proposed rules outline the requirements and terms of licensure for a limited general dentist pursuant to Minn. Stat. section 150A.06, subd. 9. Other proposed rules include: adding "consecutive" to the CPR requirement for licensure; an interview option when reinstating; expanding professional development elective activities; professional development portfolio audit fee relating to Minn. Stat. section 150A.091, subd. 16; adding another recognized specialty area; assistants allowed to apply fluoride varnish; dental hygienists and licensed dental assistants allowed to complete preliminary charting, take photographs, and take vital signs, and for recordkeeping identify the collaborating dentist and transfer adequate radiographs.
Supporters, opponents, and possible controversies:	<i>Supporters:</i> Board members, statewide dental organizations / associations, and individual licensees. <i>Opponents:</i> None <i>Controversies:</i> None
List significant changes from preliminary proposal:	No significant changes from preliminary proposal.
Other:	

**2012 Administrative Rule
Proposed Rule and SONAR Form**
Minnesota Board of Dentistry
June 14, 2012
Page 2

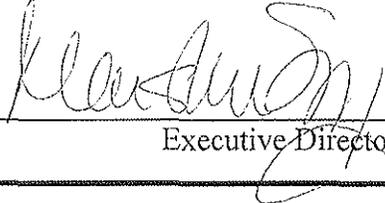
**Fiscal
Impact:**

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

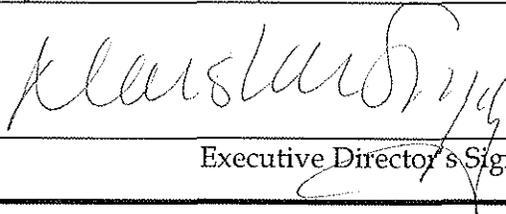
Date

**2012 Administrative Rule
Final Rule Form**

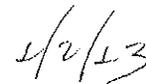
Revisor's ID Number: **4059**

Submitting Agency: Minnesota Board of Dentistry Date: January 2, 2013
 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 License to Practice as a Limited General Dentist.
Chapter number(s):	Minnesota Rules Chapter 3100
Comments/controversies received since Dual Notice of Intent to Adopt:	No comments or controversies received by the Board.
If a hearing was requested explain why and attach ALJ Report:	No hearing requests received by the Board.
List changes from draft rules proposal:	No changes to proposed rules.



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 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

Johnson, Kathy T (HLB)

From: Hang, Amy (GOV)
Sent: Monday, June 10, 2013 11:21 AM
To: Johnson, Kathy T (HLB)
Subject: 4059

Hi, Kathy:

The Office of the Governor has received the Adopted Rule from the Office of the Secretary of State for RD 4059, relating to "General Dentists, Dentists, Dental Therapists, Dental Hygienists, and Dental Assistants." Governor Dayton will not veto this rule. You may now proceed with the Notice of Adoption.

Thanks,
Amy

Amy Hang
Office of MN Governor Mark Dayton and
Lt Governor Yvonne Prettner Solon
Office: (651) 201-3420
Fax: (651) 797-1870



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. MS 14.101, 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. MS 14.125. 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. MS 14.19.
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/mnbookstore.asp?page=archives>.
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.	Obtain Revisor's ID Number and send Preliminary Proposal Form to Allison Jones at Governor's Office Allison Jones, 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 9/21/12 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. . . .

** 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.

Minnesota Rulemaking Manual - Appendix

HR-CKLST - Checklist for Adopting Rules After a Hearing

* *Note on Repealing Rules.* Per Governor's Office 9/21/12 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). MR 1400.2060. _____

5. Request for Comments - submit to State Register. _____ REQUEST _____
 1 electronic copy (via disk or e-mail), & Published on the Monday
 Printing Order form & Purchase Order form. State Register 6 days after submission to

6. Request for Comments - mail to people on mailing list; _____ CRT-GNRC _____
 (optional) prepare Certificate of Mailing. At least 3 days before publication

* 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 Allison Jones. From the 9/21/12 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

HR-CKLST - Checklist for Adopting Rules After a Hearing

* 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 SONAR _____
 Concurrent w/ rule development _____

* 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 GOV-PRPS _____
 Almost final rules & SONAR _____

* From the Governor's Office 9/21/12 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 NTC-DL _____
- * 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.
 - * Allow 30-day comment period; add day if last day is holiday.
 - * 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.
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 CRT-LIST 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 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 CRT-LEG _____

Minnesota Rulemaking Manual - Appendix

- * Send to other legislative committees if required in special circumstances. For example, MS62J.07 requires reports to the Legislative Commission on Health Care Access.
- * Provide other notices if required in special circumstances. See, for example, MS14.111 re notice to Department of Agriculture on rules that affect farming operations; MS3.9223.s4, re notice to Council on Affairs of Chicano/Latino People on rules that have their primary effect on Chicano/Latino people.

17. Notice of Intent to Adopt - published in State Register. Make copy for RECORD.	Published on the Monday 12 days after submission to State Register	_____	_____
18. Comments: maintain folder with comments and any responses you make.	Comments must be received within 30 calendar days of publication in State Register	_____	_____
19. Proceed according to number of hearing requests.	After end of comment period	_____	_____
<ul style="list-style-type: none"> * If you published NTC-HR, proceed with this checklist. * If you published NTC-DL and you got fewer than 25 hearing requests, you will likely want to cancel the hearing (which you must do at least four working days before the hearing). Switch to step 17 of NH-CKLST, the checklist for adopting rules without a hearing. * If you published NTC-DL and you got 25+ hearing requests, notify ALJ and notify persons who requested a hearing. NTC-HR25 & CRT-HR25. Proceed with this checklist. 	STAFF-HR	_____	_____
20. Compile documents for rule hearing: see MR1400.2220. Prepare presentation on rule and consider possible questions that may arise. Prepare staff and board members.		_____	_____
21. At rule hearing, submit documents cited in MR1400.2220 into record.		_____	_____
22. During post-hearing comment period, submit response to testimony and questions: see MR1400.2230	Post-hearing comment period is 5 working days; can be extended by ALJ to 20 calendar days	_____	_____

- * Submit any changes the agency wants to make to the rules. If ALJ prefers a preliminary response during the post-hearing comment period, label these as intended changes, then put in any final changes by the end of the post-hearing rebuttal period.

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 9/21/12 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 SMPLFNDS 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 MS 14.16 and MR 1400.2240,s4&5.
30. Order Adopting Rules signed by commissioner or by person authorized in Board Resolution.
- * OAH will get a rules draft from the Revisor, approved for filing with the Secretary of State and notify the agency in advance of when it will do this.
 - * Secretary of State forwards rules to the Governor, who may veto within 14 days. MS 14.05,s6.
31. Mail Notice of Filing to all persons requesting this. (See sign-up sheet in hearing record for names.)
32. Revisor drafts Notice of Adoption and sends to agency.
33. **After you are sure Governor will not veto:** Submit Notice of Adoption to State Register by submitting the Revisor's document number & Printing & Purchase Order form.
34. State Register publishes Notice of Adoption.
35. Rules take effect.
36. Notify staff of rule change
37. Inform regulated persons. Publish information about rules in newsletter and/or web page.
38. Finalize Official Rulemaking Record and archive rule documents. MS14.365.

CHNG-OTH _____
 CHNG-DIS _____

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

Commissioner's signature or Board action must be at least 5 working days after ALJ report

OAH will file the rules with the Secretary of State and

NTC-SECY _____
 CRT-SECY _____

Notice of Filing must be sent when the rules are filed with the Secy of State

ST-REG _____

Wednesday at noon, 12 days before publication; (Holidays may change deadlines).

The Monday, 12 days after submission to State Register

CLOSURE _____

RECORD _____

Minnesota Rulemaking Manual - Appendix

HR-CKLST - Checklist for Adopting Rules After a Hearing

RULEMAKING CHECKLIST - RULES ADOPTED WITHOUT A HEARING

NOTES:

1. If rules are pursuant to a newly adopted or amended rulemaking mandate, the agency must publish its 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 15) 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 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 1–10 *must* be completed before step 12.
4. The Rulemaking Manual Editor *strongly* recommends that you write the SONAR (or at least make notes about what will go into the SONAR) concurrently with rule development.
5. For the precise deadlines for submissions to the State Register, see <http://www.comm.media.state.mn.us/bookstore/mnbookstore.asp?page=archives>.

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.	Obtain Revisor's ID Number and Send Preliminary Proposal Form to Allison Jones at Governor's Office Allison Jones, 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 9/21/12 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 . . .

** 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.

Minnesota Rulemaking Manual - Appendix

* *Note on Repealing Rules.* Per Governor's Office 9/21/12 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. _____ REQUEST
 Published the Monday, 6 days after submission to State Register

6. Request for Comments - mail to people on mailing list (optional); prepare Certificate of Mailing. _____ CRT-GNRC
 At least 3 days before publication

* 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 Allison Jones. From the 9/21/12 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."

* 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, 8c, and 8d can be done in any order; they are often done concurrently.

8a. Ask Revisor for approved draft of proposed rules. _____ REVISOR _____

8b. Draft SONAR, including Additional Notice Plan _____ SONAR _____
 Concurrent w/ rule development

Minnesota Rulemaking Manual - Appendix

* Decide whether to use a Dual Notice or Notice of Intent to Adopt Rules Without Hearing. 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, _____ When rules & SONAR completed _____
 approved by commissioner or executive director.

8d. Send Additional Notice Plan to OAH for approval _____ NP-RLNTC _____
 (optional, yet encouraged) at agency

9. Send rules & SONAR to Governor's Office _____ GOV-PRPS _____
 Almost final rules & SONAR

* From the Governor's Office 9/21/12 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."

10. Draft Notice of Intent to Adopt Rules. Have commissioner _____ NTC-DL or _____
 or executive director sign Notice & SONAR. when rules & SONAR are final NTC-NH

- * If you hope to proceed without a hearing, your Notice of Intent to Adopt can be either a Notice of Intent to Adopt Rules Without a Public Hearing or a Dual Notice. Refer to paragraph 5.1 in the Rulemaking Manual for the pros and cons of how to proceed.
- * Allow 30-day comment period; add day if last day is holiday.
- * 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.

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11. Notice of Intent to Adopt – submit to State Register 1 electronic copy, the Revisor’s document number for rules, Printing Order form & Purchase Order form.	12 days before publication (check State Register website For exact due date)	ST-REG _____
12. 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 _____ CRT-LIST _____ CRT-GNRC _____
13. 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 _____ CRT-LRL _____
14. 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 _____ CRT-LEG _____
* Send to other legislative committees if required in special circumstances. For example, MS62J.07 requires reports to the Legislative Commission on Health Care Access. * Provide other notices if required in special circumstances. See, for example, MS14.111 re notice to Department of Agriculture on rules that affect farming operations; MS3.9223,s4, re notice to Council on Affairs of Chicano/Latino People on rules that have their primary effect on Chicano/Latino people.		
15. Notice of Intent to Adopt - published in State Register. Make copy for RECORD.	Published on the Monday 12 days after submission to State Register	_____
16. Comments: maintain folder with comments and any responses you make.	Comments must be received within 30 calendar days of publication in State Register	_____
17. Proceed according to number of hearing requests.	After end of comment period	_____

* If you published NTC-NH and you got fewer than 25 hearing requests, proceed with this checklist.

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NH-CKLST - Checklist for Adopting Rules Without a Hearing

- * If you published NTC-NH and you got 25+ hearing requests, you may have to start over and give a NTC-HR. Refer to paragraph 5.17 of the Rulemaking Manual for some of your options.
- * If you published NTC-DL and you got fewer than 25 hearing requests, you will likely want to cancel the hearing. You must do this at least four working days before the hearing, see MS14.25.s2. Notify ALJ and notify persons who requested a hearing. If you were able to get hearing requests withdrawn so that there are fewer than 25 requests, see MS14.25.s2. See ALJ-CNCL, NTC-HRWD, CRT-HRWD, NTC-CNCL, & NTC-NH2.
- * If you published NTC-DL and you got 25+ hearing requests, switch to step 19 of HR-CKLST, the checklist for adopting rules after a hearing.

18. After considering comments, decide if you will make any changes. Changes may not make rules substantially different than when proposed*. Ask Revisor for draft showing changes. _____

After end of comment period

- * If the agency wants to adopt a substantially different rule, see MS14.05.s2, and MR1400.2110.

19. Get Governor's Office approval.

Before sending Order Adopting Rules to OAH _____
GOV-FNL

- * When the agency is adopting rules without a hearing: the agency must submit the completed Final Rule Form [GOV-FNL] to the Office of the Governor when the agency has decided on the final rules and its SONAR is complete. The agency must wait for the Office's approval before submitting its request to Office of Administrative Hearings (OAH) for rule review and approval. If the ALJ makes any substantive recommendations to the rule or if defects are found, the agency should resubmit the Final Rule Form, clearly labeling it as a revised form. The agency must explain its response to the ALJ's Report, including any large deletions from the rule. A copy of the ALJ Report should be submitted to the Governor's Office with the revised Final Rule Form. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform them that it may 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."

20. Order Adopting Rules signed by Commissioner or Board _____
designee. For Boards, Board first passes resolution _____
adopting rules. ORD-ADPT & BD-ADPT
21. Ask Revisor for official draft of rules as adopted. _____
After agency approval to adopt the rule

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- | | | | |
|--|---|--------------------|-------|
| 22. Immediately before submitting rule documents to OAH, mail Notice of Submission to OAH to persons who requested to be notified | After getting approved rules from Revisor and before submitting file to OAH | NTC-SBM
CRT-SBM | _____ |
| 23. Submit rule documents to OAH. These documents are listed in NH-REVV. | Within 180 days after comment period ends | NH-REVV | _____ |
| <ul style="list-style-type: none"> * You must submit the rules to OAH within 180 days after the comment period ends. MS14.26,s1. * Include in the documents you send to OAH the ones listed in MR1400.2310 plus other relevant documents such as the board resolution authorizing rulemaking per step 1, a list of the legislators per step 14 if these are not listed in your SONAR, evidence of compliance with the Additional Notice Plan per steps 8b & 12, and evidence of compliance with MS14.25,s2, per step 17. | | | |
| 24. OAH reviews and approves rules and asks Revisor for rules draft approved for filing with Secy of State. | Within 2 weeks of submission of documents to OAH | | _____ |
| <ul style="list-style-type: none"> * If OAH disapproves the rules, refer to MR1400.2300 for what to do. | | | |
| 25. OAH files rules as adopted with Secretary of State. | | | _____ |
| <ul style="list-style-type: none"> * Secretary of State forwards rules to the Governor, who may veto within 14 days. MS14.05,s6. * Secretary of State also forwards rules to the Revisor. | | | |
| 26. OAH sends approval memo and the rules file to agency. Revisor drafts Notice of Adoption and sends to agency. | | | _____ |
| 27. After you are sure Governor will not veto: 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 may change deadline) | ST-REG | _____ |
| 28. State Register publishes Notice of Adoption. | The Monday, 12 days after submission to State Register | | _____ |
| 29. Rules take effect. | 5 working days after publication in SR | | _____ |
| 30. Notify staff of rule change | ASAP | CLOSURE | _____ |
| 31. Inform regulated persons. Publish information about rules in newsletter and/or web page. | ASAP | | _____ |

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32. Finalize Official Rulemaking Record and archive rule documents. MS14.365.

RECORD

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NH-CKLST - Checklist for Adopting Rules Without a Hearing

9/21/12