

OFFICIAL RULEMAKING RECORD

MINNESOTA BOARD OF DENTISTRY

ADOPTED PERMANENT RULES RELATING TO NITROUS OXIDE AND INFECTION CONTROL, *MINNESOTA RULES 3100.3600, 3100.5100, and 3100.6300*

REVISOR'S ID # 4424

AUGUST 2016 TO AUGUST 2017

NOTICE OF ADOPTION PUBLISHED: AUGUST 21, 2017

EFFECTIVE DATE: AUGUST 28, 2017

Under Minnesota Statutes, section 14.365, the Official Rulemaking Record contains:  
*[Documents are located within and 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 August 22, 2016 (41 SR 250). **[File #5]**
  - b. Dual Notice of Intent to Adopt Rules dated February 6, 2017 (41 SR 947), along with the proposed rules dated August 8, 2016. **[File #13]**
  - c. Notice of Adoption dated August 21, 2017 (42 SR 226). **[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 24, 2016. **[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 August 8, 2016, were first submitted to the Administrative Law Judge under Minnesota Statutes, sections 14.22 to 14.28. **[File #8a]**

Secondly, there is a final copy of the adopted rules, dated February 6, 2017, containing: (a) the Revisor's approval for filing with the Secretary of State; and (b) 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 August 23, 2017. **[File #21]**

- (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 Order approving the Board's rules dated July 13, 2017. **[File #24]**

- (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 August 8, 2016; **[File #8a]**
- 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 Giving Additional Notice; and Judge Mortenson's Order approving Additional Notice Plan dated January 12, 2017; **[File #14b]**
- I. Certificate of Mailing SONAR to 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 February 6, 2017; **[File #25]**
- M. Not enclosed – a notice of adopting substantially different rules;
- N. Board's Order Adopting Rules dated July 13, 2017; **[File #20]**
- O. Not enclosed – a notice of submission of rules to OAH;
- P-1. Certificate of Sending Notice to Legislators; 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 Order Adopting Rules on July 13, 2017. **[File #20]**

- (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 following rules drafts: August 8, 2016 [**File #8a**]; and February 6, 2017 [**File #25**].

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

The adopted rules dated February 6, 2017, were filed with the Secretary of State on July 31, 2017. [**File #25**]

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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) Governor's Office Review of Rules.

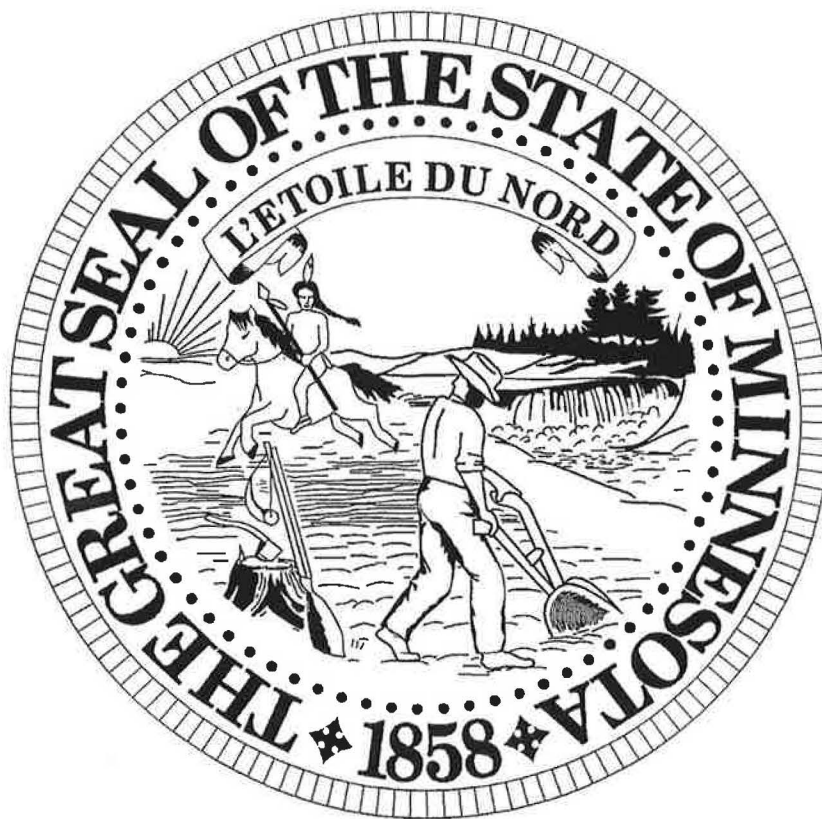
- a. Preliminary Proposal Form; [**File #2**]
- b. Proposed Rule and SONAR Form; and [**File #9a**]
- c. Final Rule Form. [**File #19b**]

- (13) Governor's Veto of Adopted Rules.

On August 9, 2017, the Governor's office sent correspondence to the Board about not vetoing the Board's adopted rules. [**File #27**]

# Minnesota State Register

Published every Monday (Tuesday when Monday is a holiday)



**Proposed, Adopted, Emergency, Expedited, Withdrawn, Vetoed Rules;  
Executive Orders; Appointments; Commissioners' Orders; Revenue Notices;  
Official Notices; State Grants & Loans; State Contracts;  
Non-State Public Bids, Contracts and Grants**

**Monday 22 August 2016  
Volume 41, Number 8  
Pages 197 - 266**



# Official Notice

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October 5, 2016  
December 7, 2016  
February 1, 2017  
April 5, 2017  
June 7, 2017  
August 2, 2017

Under provisions of the Developmental Disabilities Assistance and Bill of Rights Act (P.L. 106-402), the GCDD's business - information, education, and training - is intended to increase the independence, productivity, self determination, integration and inclusion of people with developmental disabilities and their families in the community.

For further information, contact the GCDD by **phone:** (651) 296-4018; **toll free:** (877) 348-0505; **Minnesota Relay Service:** (800) 627-3529 or 711; **Email:** [admin.dd@state.mn.us](mailto:admin.dd@state.mn.us); or via Web site: <http://mn.gov/mnddc>.

Individuals needing accommodations should contact the GCDD at least 10 days in advance of the meeting date.

## Minnesota State Colleges and Universities (MnSCU)

### System Office

#### Request for Information for Classroom, Event and Resource Scheduling Software

**Project:** Request for Information for Classroom, Event and Resource Scheduling Software

Minnesota State is requesting information for a future Request for Proposal (RFP) that would be used to determine whether to continue using the current classroom and event scheduling software or to select a new provider and solution. Minnesota State invites all interested parties to submit a written response to this Request for Information (RFI).

This RFI should not be construed as intent, commitment, or promise to acquire services, supplies, or solutions offered. No contract will result from any response to this RFI. Information submitted in response to this RFI will become property of the Minnesota State.

Minnesota State will not pay for any information herein requested nor is it liable for any cost incurred by the vendor in preparing a response to the RFI. For information about the RFI, go to:

<http://www.finance.mnscu.edu/facilities/design-construction/announcements/index.html>

## Minnesota Board of Dentistry

### Request for Comments for Proposed Amendments to Permanent Rules Governing Nitrous Oxide and Infection Control, *Minnesota Rules* 3100.3600, 3100.5100, and 3100.6300; Revisor's ID Number 4424

**Subject of Rules.** The Minnesota Board of Dentistry requests comments on its proposed amendments to rules governing nitrous oxide and infection control. The Board is considering rule amendments in the following areas: provide more institutional options for dentists who need to complete the nitrous oxide course; and make the infection control course a mandatory requirement for each professional development cycle. In addition, there are various housekeeping changes in certain rules.

**Persons Affected.** The amendments to the rules would affect 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 0.. 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.

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# Official Notice

**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.mn.gov/boards/dentistry](http://www.mn.gov/boards/dentistry). Persons interested in a paper copy of the draft rule changes should contact the Board's contact person directly.

**Board Contact Person.** Written comments, questions, 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.t.johnson@state.mn.us](mailto:kathy.t.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: August 10, 2016  
Bridgett Anderson, Executive Director  
Minnesota Board of Dentistry

## Office of the Governor

### Waiver Pursuant to Minnesota Statutes, Section 14.127, Subdivision 4(e)

**I, Mark Dayton, Governor of the State of Minnesota**, by virtue of the power vested in me by the Constitution and applicable statutes, do hereby issue this Waiver:

**Whereas**, the State of Minnesota is committed to improving the quality of life of persons with disabilities of all ages and persons age 65 and older;

**Whereas**, the State of Minnesota recognizes that improving the quality of life of such persons requires the use of positive supports and the implementation of the principles of the most integrated setting and person-centered planning, in accordance with the settlement agreement and subsequent court orders in *Jensen, et al. v. Minnesota Department of Human Services, et al.*, United States District Court File No. 09-CV-1775, and the court decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999);

**Whereas**, the Minnesota Department of Human Services adopted Minnesota Rules, Chapter 9544 to govern use of positive support strategies, safety interventions, and emergency use of manual restraint in services licensed by the Minnesota Department of Human Services;

**Whereas**, Minnesota Rules, Chapter 9544 took effect on August 31, 2015;

**Whereas**, pursuant to Minnesota Statutes, section 14.127, the Minnesota Department of Human Services determined that the cost of complying with Minnesota Rules, Chapter 9544 in the first year after the rule takes effect would not exceed \$25,000 for a small business or a small city;

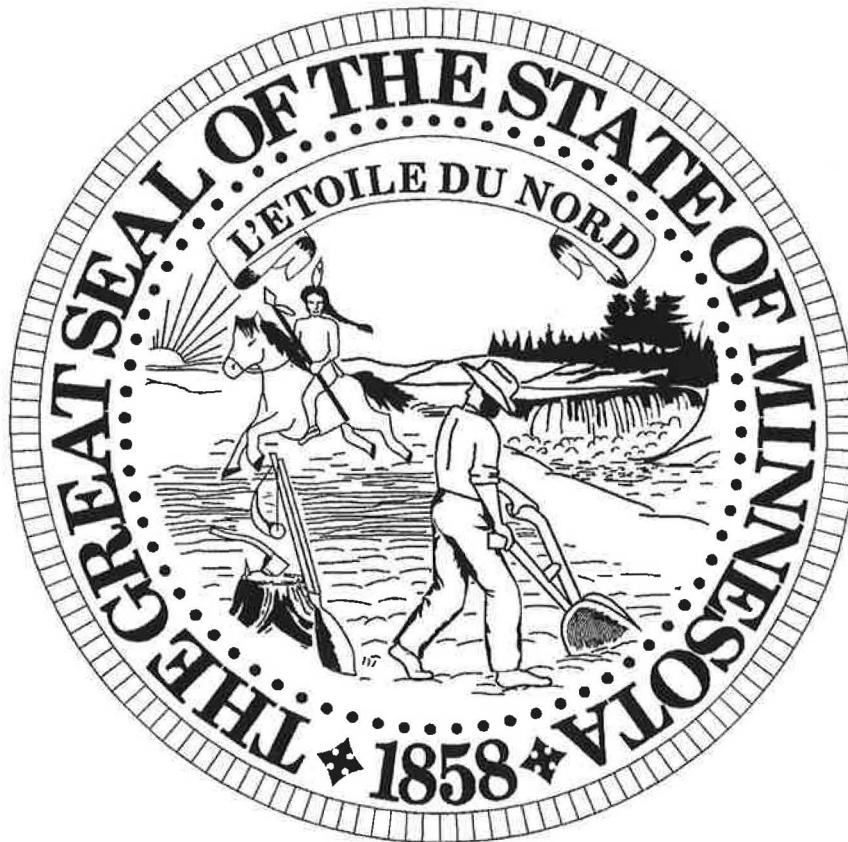
**Whereas**, the Administrative Law Judge assigned to review the rulemaking pursuant to Minnesota Statutes, Chapter 14 disapproved the agency's cost determination under Minnesota Statutes, section 14.127;

**Whereas**, the Administrative Law Judge's disapproval of the agency's cost determination triggers the application of Minnesota Statutes, section 14.127, subdivision 3, which enables a small business or a small city to claim a temporary exemption from Minnesota Rules, Chapter 9544 until the Minnesota Legislature enacts a law approving the rules;

**Whereas**, Minnesota Statutes, section 14.127, subdivision 4, grants the governor authority to issue a waiver of the application of Minnesota Statutes, section 14.127, subdivision 3; and

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**Monday 6 February 2017  
Volume 41, Number 32  
Pages 943 - 966**

# Proposed Rules

**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 §§ 14.1414.20, 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 Nitrous Oxide and Infection Control; Notice of Intent to Adopt Rules Without a Public Hearing

**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; Revisor's ID Number 4424; OAH Docket No. 5-9033-34128**

**Proposed Amendments to Permanent Rules of the Minnesota Board of Dentistry Governing Nitrous Oxide and Infection Control, *Minnesota Rules* 3100.3600, 3100.5100, and 3100.6300**

**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, March 8, 2017, the Board will hold a public hearing in the 4<sup>th</sup> Floor Conference Room A, University Park Plaza, 2829 University Avenue SE, Minneapolis, Minnesota 55414, starting at 9:30 a.m. on Friday, March 24, 2017. 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 March 8, 2017, and before March 24, 2017.

**Agency Contact Person.** The agency contact person is: Kathy Johnson at Minnesota Board of Dentistry, 2829 University Avenue SE, Suite 450, Minneapolis, MN 55414-3249, [kathy.t.johnson@state.mn.us](mailto:kathy.t.johnson@state.mn.us), 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 Board proposes to amend its rules regarding providing more institutional options for dentists who need to complete a nitrous oxide course, and make taking an infection control course a mandatory requirement for each two-year professional development cycle.

# Proposed Rules

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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.mn.gov/boards/dentistry](http://www.mn.gov/boards/dentistry) or a free copy of the entire proposed rules is available upon request from the agency contact person listed above.

**Comments.** You have until **4:30 p.m. on Wednesday, March 8, 2017**, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Public comments should be submitted electronically at <https://minnesotaoah.granicusideas.com>. 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. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

**Request for a Hearing.** In addition to submitting comments, you may also request that 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, March 8, 2017. 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 it when determining whether the Board must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

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

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

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

**Cancellation of Hearing.** The Board will cancel the hearing scheduled for Friday, March 24, 2017, 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 March 8, 2017, 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 James Mortenson is assigned to conduct the hearing. Judge Mortenson's Legal Assistant Katie Lin can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, St. Paul, MN 55164-0620, telephone (651) 361-7900, FAX (651) 539-0310, or [katie.lin@state.mn.us](mailto:katie.lin@state.mn.us).

**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 new evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge via the Office of Administrative Hearings Rulemaking e-comments website at <https://minnesotaoah.granicusideas.com> 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.



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# Proposed Rules

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

**Statement of Need and Reasonableness.** The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. A free copy of the statement is now available from the agency contact person, if requested, or available on the Board's website at [www.mn.gov/boards/dentistry](http://www.mn.gov/boards/dentistry).

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) 539-1180 or 1-800-657-3889.

**Adoption Procedure if No Hearing.** If no hearing is required, the Board may adopt the rules after the end of the comment period. The Board will submit the rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rules are submitted to the office. If you want either to receive notice of this, to receive a copy of the adopted rules, or to register with the Board to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

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

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

Date: January 10, 2017

Bridgett Anderson, L.D.A., M.B.A.  
Executive Director  
Minnesota Board of Dentistry

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

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

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

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

B. A dentist who has not previously registered with the board pursuant to subpart 5, item A, may administer nitrous oxide inhalation analgesia only after satisfactorily completing a ~~dental school or postdental graduate education~~ course on the administration of nitrous oxide inhalation analgesia from an institution accredited by the Commission on Dental Accreditation, and submitting to the board original documentation from the institution of successful completion of the course. The course must be a minimum of 12 hours total comprised of didactic instruction, personally administering and managing at least three individual supervised cases of analgesia, and supervised clinical experience using fail-safe anesthesia equipment capable of positive pressure respiration.

*[For text of items C to F, see M.R.]*

# Proposed Rules

*[For text of subps 5 to 8, see M.R.]*

## Subp. 9. **General anesthesia or moderate sedation certificate.**

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

C. All certificates described in item B are issued and governed by subitems (1) to (9).

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

(3) A dentist holding a current general anesthesia or moderate sedation certificate on ~~the effective date of this part~~ March 19, 2007, is considered by the board to be in compliance with this subpart until the expiration and required renewal of the certificate described in subitem (5).

*[For text of subitems (4) to (9), see M.R.]*

*[For text of subps 9a 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)~~ (6).

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

(2) Core subjects are those seminars, symposiums, lectures, or programs that relate to public safety and professionalism. Each licensee shall complete a minimum of two of the categories of core subjects for each biennial cycle. Examples of core subject categories include, but are not limited to:

~~(a)~~ (a) infection control;

~~(b)~~ (a) record keeping;

~~(c)~~ (b) ethics;

~~(d)~~ (c) patient communications;

~~(e)~~ (d) management of medical emergencies; and

~~(f)~~ (e) treatment and diagnosis.

*[For text of subitem (3), see M.R.]*

(4) An infection control course is mandatory for each licensee to maintain licensure. The course will primarily address patient safety and health issues as referenced in part 3100.6300 and chapter 6950.

~~(4)~~ (5) A licensee must complete one self-assessment examination obtainable through the board for each cycle.

~~(5)~~ (6) The board shall approve other additional fundamental activities if the board finds the activity to be a seminar, symposium, lecture, or program whose contents are directly related to dental care and treatment to patients or public safety and professionalism.

*[For text of item B, see M.R.]*

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

# Proposed Rules

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

*[For text of subps 1 to 10, see M.R.]*

Subp. 11. **Infection control.** Dental health care personnel shall comply with the most current infection control recommendations, guidelines, precautions, procedures, practices, strategies, and techniques specified in by the United States Department of Health and Human Services, Public Health Service, and the Centers for Disease Control publications of the Morbidity and Mortality Weekly Report (MMWR) and Prevention. The current infection control techniques in the MMWR dated December 19, 2003, volume 52, number RR-17, are hereby incorporated by reference. The MMWR is available at the Minnesota State Law Library, by interlibrary loan, or by subscription from the United States Department of Health and Human Services, Public Health Service, Centers for Disease Control. The Infection control standards in the MMWR are subject to frequent change.

*[For text of subps 12 to 15, see M.R.]*

## Official Notices

Pursuant to *Minnesota Statutes* §§ 14.101, an agency must first solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency 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.

The *State Register* also publishes other official notices of state agencies and non-state agencies, including notices of meetings and matters of public interest.

## Investment Advisory Council Meeting Notice

The Investment Advisory Council of the Minnesota State Board of Investment will meet on **Monday, February 13, 2017 at 12:00 P.M.** at the Retirement Systems Building, Room 117 (Main Floor), 60 Empire Drive, St. Paul, MN.

## Minnesota Pollution Control Agency

### Resource Management and Assistance Division

### Public Notice of Proposed Clean Water Act Section 401 Water Quality Certification

**NOTICE IS HEREBY GIVEN** that the Minnesota Pollution Control Agency (MPCA) has made a preliminary decision to provide Clean Water Act (CWA) Section 401 Water Quality Certification for U.S. Army Corps of Engineers (USACE) Nationwide Permits (NWP) for the State of Minnesota. The draft 401 Water Quality Certification is now available for public comment.

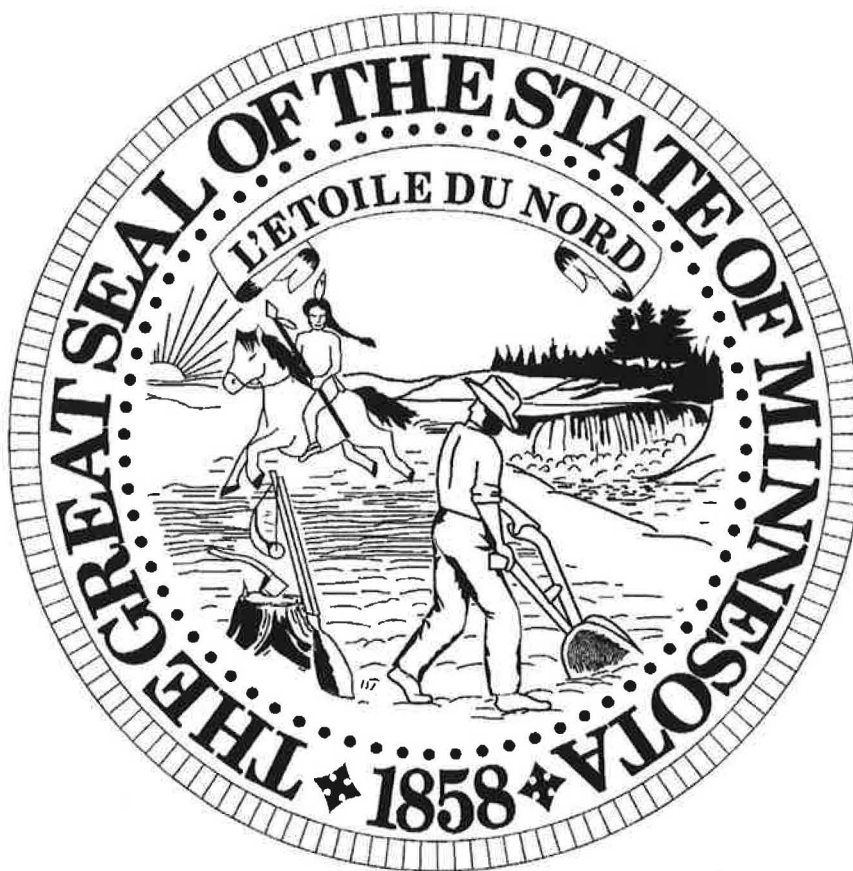
**Background.** Section 401 of the CWA requires any applicant for a federal license or permit to conduct an activity that may result in a discharge of a pollutant into Waters of the United States (including CWA Section 404 permits regulating discharge of dredged or fill material) to obtain a certification from the State in which the discharge originates that the discharge complies with the applicable water quality standards. The 401 Water Quality Certification then becomes a part of the Federal permits. USACE issues NWPs to streamline permitting activities under Section 404 of the CWA and Section 10 of the Rivers and Harbors Act of 1899 that will result in no more than minimal individual and cumulative adverse environmental effects. The NWPs typically address projects with predictable and minimal environmental impacts, and effectively pre-authorize certain categories of activities (such as maintenance activities or construction of stormwater management facilities) for a period of five years; permit applicants whose projects fit within the parameters defined by the specific NWPs are covered. In order for the NWPs to be valid, however, state 401 Water Quality Certification must be granted or waived. The MPCA is the Section 401 authority in Minnesota.

USACE Headquarters published its proposal to reissue 50 existing NWPs and 2 new NWPs on June 1, 2016, (81 *Federal Register* (FR) 35185). USACE Division Engineers are authorized to add regional conditions for NWPs to take into account regional differences in aquatic resource functions and services across the country and to restrict or prohibit the use of NWPs to protect those resources. On October 14, 2016, USACE- St. Paul District published its proposal to issue 42 of the NWPs with associated regional conditions and revoke 10 NWPs within Minnesota and Wisconsin. USACE Headquarters published notice of the finalized NWPs on January 6, 2017, (82 FR 1859); the NWPs will go into effect nationwide on March 19, 2017. A copy of the Nationwide Permits is available in the January 6, 2017, Federal Register notice and can be accessed through the U.S. Army Corps of Engineers website at [http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017\\_final\\_rule\\_FR\\_06jan2017.pdf](http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017_final_rule_FR_06jan2017.pdf).



# Minnesota State Register

Published every Monday (Tuesday when Monday is a holiday)



**Proposed, Adopted, Emergency, Expedited, Withdrawn, Vetoed Rules;  
Executive Orders; Appointments; Commissioners' Orders; Revenue Notices;  
Official Notices; State Grants & Loans; State Contracts;  
Non-State Public Bids, Contracts and Grants**

**Monday 21 August 2017  
Volume 42, Number 8  
Pages 167 - 244**

## 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 Nitrous Oxide and Infection Control

The rules proposed and published at State Register, Volume 41, Number 32, pages 947-951, February 06, 2017 (41 SR 947), are adopted as proposed.

## Official Notices

Pursuant to *Minnesota Statutes* §§ 14.101, an agency must first solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency 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.

The *State Register* also publishes other official notices of state agencies and non-state agencies, including notices of meetings and matters of public interest.

## Minnesota Environmental Quality Board

### Environmental Review Program

### REQUEST FOR COMMENTS on Possible Amendments to Rules Governing Draft Environmental Impact Statements developed for the Environmental Review Program, Minnesota Rules Chapter, 4410; Revisor's ID Number R-04494

**Subject of Rules.** The Minnesota Environmental Quality Board (EQB or Board) is revising the existing rules governing the Environmental Review Program and more specifically the development of draft environmental impact statements (EISs). These rule amendments will incorporate the statutory amendments made in the 2017 legislative session. This possible rulemaking may include the following rule parts:

- 1) Definitions and abbreviations located under part 4410.0200.
- 2) Procedures for the preparation, review and modification of draft EISs located under part 4410.2600.

This rulemaking may also include revisions that may come up as a result of public comments and further review of Chapter 4410. This rulemaking can be referred to as the "Draft EIS Rulemaking."

**Plain English Summary.** This Request for Comments is the Board's legal notice of its intent to begin rulemaking. This is the first of several opportunities for public comment and input on this rulemaking. At this stage, we do not have a draft rule; we want your feedback to inform us about the ideas described under the **Subject of Rules** section above. If you have other ideas related to this rulemaking that we need to consider, please submit them in writing. Submitting your ideas and information to us at this early stage in rulemaking allows us more time to address issues that may come up, and helps to ensure informed decision-making on our part.

# **Minnesota Board of Dentistry**

## **STATEMENT OF NEED AND REASONABLENESS**

**Proposed Amendments to Permanent Rules Relating to Nitrous Oxide and Infection Control, Minnesota Rules 3100.3600, 3100.5100, and 3100.6300; Revisor's ID Number 4424**

### **INTRODUCTION**

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

The proposed rules will modify existing language in the following areas: provide more institutional options for dentists who need to complete the nitrous oxide course; and make the core subject of infection control a mandatory requirement for each professional development cycle. The proposed rules also made modifications that are housekeeping in nature eliminating detailed publication information related to infection control guidelines to simplify an area that will be forever changing, and therefore difficult to manage.

These proposed rules changes came from Committees of the Board. These Committees have held a number of public meetings with all interested parties in attendance to thoroughly discuss and present scenarios regarding these proposed changes. Thereafter, all proposed changes to rules were heard before the Board and given approval to proceed with the rulemaking process.

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

### **ALTERNATIVE FORMAT**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or audio. To make a request, contact Kathy Johnson at the Minnesota Board of Dentistry, 2829 University Avenue SE, Suite 450, Minneapolis, Minnesota 55414, (612) 548-2134, (612) 617-2250 or (888) 240-4762 (outside metro). TTY users may call (800) 627-3529.

### **STATUTORY AUTHORITY**

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

**“150A.04 RULES OF THE BOARD.**

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

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

## REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then provide the Board of Dentistry’s responses.

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

- The classes of affected persons are the following regulated dental professionals: dentists, dental therapists, dental hygienists, and licensed dental assistants;
- For the nitrous oxide course, the dentists will bear the costs, and for the infection control course all regulated dental professionals will bear the costs. However, both the nitrous oxide course and the infection control course are NOT new requirements, therefore regulated dental professionals have already incurred costs prior to this rulemaking and should not be financially impacted by these changes; and
- The dentists will benefit regarding the nitrous oxide course due to the more options of institutions where to complete the course. As for the infection control course, all dental professionals will continue to benefit as they have before toward increasing their knowledge and skills of infection control standards.

**“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”**

- By adopting these proposed rules, it is not anticipated that the Board will incur any increased costs beyond those currently associated with operation under existing rules;
- The Board does not anticipate any probable costs to any other agency in the implementation and enforcement of the proposed rules; and
- The Board does not anticipate any net effect on state revenues.

**“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”**

- The Board has held a number of open public meetings with all interested parties (e.g., regulated dental professionals, association representatives, and the general public) in

attendance and an opportunity to thoroughly discuss, present scenarios, and make recommendations regarding these proposed rules changes. To date, no additional information has been presented which suggests less costly or intrusive methods for accomplishing the purposes of the proposed rules. Therefore, the Board does not believe there are any less costly or intrusive methods for achieving this purpose.

**“(4) a description of any alternative methods for achieving the purpose of the proposed rules that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”**

- The Board seriously considered leaving infection control as a core subject area instead of making infection control education mandatory. However, to align with the Board’s mission of ensuring quality dental health care provided by competent dental healthcare professionals, it was determined that promoting public safety by requiring this type of education will help ensure that dental professionals are competent in the area of infection control in dentistry. The proposed rule impact to licensees does not involve additional costs, has not proven to be controversial, and does not require regulated dental professionals to make significant changes. Thus, the Board rejected keeping infection control as one of the core areas of education, and instead made it mandatory education.

**“(5) the probable costs of complying with the proposed rules, 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”**

- For the nitrous oxide course, the dentists will bear the costs, and for the infection control course all regulated dental professionals will bear the costs. However, both the nitrous oxide course and the infection control course are NOT new requirements, therefore all regulated dental professionals have already incurred these costs prior to this rulemaking and should not have significant financial impact by these changes; and
- No other classes of government units, businesses, or individuals are expected to bear costs associated with the proposed rules.

**“(6) the probable costs or consequences of not adopting the proposed rules, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”**

- The probable consequences of not adopting the proposed rules are that dentists now have difficulty locating a nitrous oxide course due to the limited availability of courses offered at dental institutions. As for the infection control course, it was the Board’s goal to seek out ways to address noncompliance with infection control standards among licensees and making this course mandatory was supported as an effective educational remedy; and
- No other classes of government units or businesses will be affected by not adopting the proposed rules.

**“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”**

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

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

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

## **PERFORMANCE-BASED RULES**

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

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

## **ADDITIONAL NOTICE PLAN and NOTICE PLAN**

### Additional Notice Plan

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

1. In January 2015, the Policy Committee considered taking a more proactive approach to ensuring compliance with infection control standards in dental practices. From July to October 2015, several professional licensees and volunteer members of the Infection Control Inspection Task Force, as created by the Policy Committee, met on three separate occasions to exchange ideas as to how the Board might best fulfill its duty to protect the public regarding infection control violations and the Licensee. As a result, some proposed rules were drafted, distributed, and reviewed during these public meetings by all individuals in attendance and input has been invited. Members of the Professional Development Committee were also part of these meetings. Official notices of these public meetings were electronically sent by the Board to all licensed



dental professionals, association representatives, and the general public, as well as doing a website posting of meetings.

2. On or before August 17, 2016, the Board posted a draft copy of the proposed rule changes on the Board's website at [www.mn.gov/boards/dentistry](http://www.mn.gov/boards/dentistry) making it accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general public. This draft copy identified the Board rules that will be affected by the Board's proposed rule changes.
3. On or before August 17, 2016, the Board posted a copy of the Request for Comments for publication in the State Register on the Board's website at [www.mn.gov/boards/dentistry](http://www.mn.gov/boards/dentistry). This website is accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general public.
4. On or before August 17, 2016, the Board posted a draft copy of the Statement of Need and Reasonableness ("SONAR") on the Board's website at [www.mn.gov/boards/dentistry](http://www.mn.gov/boards/dentistry).
5. On August 17, 2016, the Board mailed the Request for Comments to all persons on the Board's rulemaking mailing list by sending an electronic copy via e-mail to all persons on the list.
6. On or before August 17, 2016, the Board contacted the representatives of the Minnesota Dental Association (Dentists), the Minnesota Dental Hygienists Association (Dental Hygienists), and the Minnesota Dental Assistants Association (Dental Assistants) with a request to publish in each organization's newsletter or post on each organization's website for its members the following information:

#### MINNESOTA BOARD OF DENTISTRY – NEW PROPOSED RULES

#### **RE: Proposed Permanent Rules Relating to Nitrous Oxide and Infection Control, *Minnesota Rules* 3100.3600, 3100.5100, and 3100.6300**

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: provide more institutional options for dentists who need to complete the nitrous oxide course; and make the core subject of infection control a mandatory requirement for each professional development cycle. The proposed rules also include amendments that are "housekeeping" in nature and do not make any substantive changes.

Please check the Board's website at [www.mn.gov/boards/dentistry](http://www.mn.gov/boards/dentistry) for the

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

7. On August 22, 2016, the Board's Request for Comments was published in the State Register, requesting that all comments be submitted to the Board by October 21, 2016. All comments received by the Board regarding the proposed rules shall be reviewed and any suggested changes shall be considered by the Board.
8. On or before August 22, 2016, the Board sent a broadcast electronic mailing to nearly 10,000 licensees including, dentists, dental therapists, dental hygienists, and licensed dental assistants, containing the following information:

#### MINNESOTA BOARD OF DENTISTRY – NEW PROPOSED RULES

##### **RE: Proposed Permanent Rules Relating to Nitrous Oxide and Infection Control, *Minnesota Rules* 3100.3600, 3100.5100, and 3100.6300**

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: provide more institutional options for dentists who need to complete the nitrous oxide course; and make the core subject of infection control a mandatory requirement for each professional development cycle. The proposed rules also include amendments that are "housekeeping" in nature and do not make any substantive changes.

Please check the Board's website at [www.mn.gov/boards/dentistry](http://www.mn.gov/boards/dentistry) for the entire text of these proposed rules and to review the Statement of Need and Reasonableness (SONAR) for these proposed rules.

9. By October 21, 2016, the end of the 60-day Request for Comments period, the Board had only received one comment regarding its proposed rules. The Board received supportive correspondence from an educator of a dental assisting institution, who is confident that their nitrous oxide curriculum would provide the essential training for a dentist, and who agrees that infection control continuing education should be mandatory due to the importance of maintaining current standards for patients and dental professionals.
10. On October 24, 2016, the Board posted a final version of its SONAR dated October 24, 2016, on the Board's website making this information accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general public.



11. Prior to publication of the Dual Notice in the State Register, the Board will send by electronic mail a copy of the Dual Notice of Intent to Adopt Rules, the Proposed Rules, and the Statement of Need and Reasonableness to the representatives of the Minnesota Dental Association (Dentists), the Minnesota Dental Hygienists Association (Dental Hygienists), and the Minnesota Dental Assistants Association (Dental Assistants).

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

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

#### Notice Plan

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

1. According to Minnesota Statutes, section 14.14, subdivision 1a, a copy of the Dual Notice and proposed rules shall be mailed to all persons who have registered to be on the Board of Dentistry's rulemaking mailing list. This mailing shall be accomplished by sending an electronic copy via e-mail to all persons on the list.
2. According to Minnesota Statutes, section 14.116, a copy of the Dual Notice, proposed rules, and this Statement of Need and Reasonableness shall be mailed to:
  - a. The committee members of the Legislature with jurisdiction over the subject matter of the proposed rules. The following is a possible list of these Legislative Committees:
    - 1) House: Health and Human Services Reform Committee Chair and Lead; and Health and Human Services Finance Committee Chair and Lead; and
    - 2) Senate: Health, Human Services and Housing Committee Chair and Ranking Minority Member; and Health and Human Services Budget Division 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 Minnesota Management and Budget ("MMB"). We will do this by sending MMB copies of the 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 of Intent to Adopt. 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 OAH at the hearing or with the documents it submits for ALJ review.

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

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

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

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

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

## **LIST OF WITNESSES**

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

1. Steven Sperling, D.D.S., Board Member
2. John Manahan, J.D., Board Member
3. Nancy Kearn, D.H., Board Member
4. Teri Youngdahl, L.D.A., Board Member
5. Bridgett Anderson, 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:

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

#### **Subpart 4. Nitrous oxide inhalation analgesia; educational training requirements.**

Subpart 4, item B: In this item, some existing language has been deleted to broaden the available institutional options for a dentist who needs to complete a nitrous oxide inhalation analgesia course, as follows: “A dentist who has not previously registered with the board pursuant to subpart 5, item A, may administer nitrous oxide inhalation analgesia only after satisfactorily completing a ~~dental school or postdental graduate education~~ course on the administration of nitrous oxide inhalation analgesia from an institution accredited by the Commission on Dental Accreditation, and submitting to the board original documentation from the institution of successful completion of the course.”

These changes are intended to provide a dentist licensed in Minnesota or another state, who needs to complete a nitrous oxide inhalation analgesia course, for whatever reason with a broader range of institutional options. Besides a dental school, a dentist will now be allowed to complete a nitrous oxide inhalation analgesia course through either a dental hygiene or dental assisting school. Typically, dental hygiene and dental assisting schools provide the nitrous oxide inhalation analgesia course on a more frequent basis and have more convenient locations throughout the state. Whether the dentist completes the nitrous oxide inhalation analgesia course at a dental, dental hygiene, or dental assisting school, the institution still must be accredited by the Commission on Dental Accreditation. Thus, the Board considers these changes to be necessary and reasonable.

#### **Subpart 9. General anesthesia or moderate sedation certificate.**

Subpart 9, item C, subitem (3): In this subitem, the language “the effective date of this part” has been deleted and replaced with the actual effective date of March 19, 2007, as a housekeeping measure that makes no significant change to the meaning of this subitem. Therefore, the Board considers this change to be necessary and reasonable.

(3) A dentist holding a current general anesthesia or moderate sedation certificate ~~on the effective date of this part March 19, 2007,~~ is considered by the board to be in compliance with this subpart until the expiration and required renewal of the certificate described in subitem (5).

### **3100.5100 PROFESSIONAL DEVELOPMENT.**

#### **Subpart 3. Professional development activities.**

Subpart 3, item A, subitem (2)(a): In these subitems, the core subject category of “infection control” has been deleted from the list and moved into a new subitem (4), as seen below:

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)~~ (6).

(2) Core subjects are those seminars, symposiums, lectures, or programs that relate to public safety and professionalism. Each licensee shall complete a minimum of two of the categories of core subjects for each biennial cycle. Examples of core subject categories include, but are not limited to:

- (a) ~~infection control~~;
- (b) record keeping;
- (c) ethics;
- (d) patient communications;
- (e) management of medical emergencies; and
- (f) treatment and diagnosis.

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

(4) An infection control course is mandatory for each licensee to maintain licensure. The course will primarily address patient safety and health issues as referenced within part 3100.6300 and chapter 6950.

~~(4)~~(5) A licensee must complete one self-assessment examination obtainable through the board for each cycle.

~~(5)~~(6) The board shall approve other additional fundamental activities if the board finds the activity to be a seminar, symposium, lecture, or program whose contents are directly related to dental care and treatment to patients or public safety and professionalism.

Following several public meetings, the Infection Control Inspection Task Force of the Policy Committee recommended the following changes: deleting “infection control” from the list above and adding new language in subitem (4) that now makes taking an infection control course mandatory for all licensees in order to maintain their license. No specific credit hour amount has been assigned to this infection control course. Licensees should refer to part 3100.6300 and chapter 6950 to determine the required contents of an acceptable infection control course.

These language changes were based upon the fact that the Board is responsible for overseeing compliance by licensees with infection control requirements and to ensure that the public will be safe from infectious diseases when receiving dental care. Regarding this, the Board has received complaints against licensees where they have failed to comply with certain infection control standards for many reasons, including lack of knowledge on current requirements, complacency, and inattention to deficiency. After some lengthy discussions, the Committee decided to pursue an educational remedy that makes taking an infection control course a mandatory component for

all licensees to maintain their license. Due to the lack of data regarding the actual number of primary and secondary infection control complaints, an educational approach was taken by the Committee, instead of initiating random infection control inspections at this time. Therefore, the Board considers these changes to be necessary and reasonable.

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

#### **Subpart 11. Infection control.**

Dental health care personnel shall comply with the most current infection control recommendations, guidelines, precautions, procedures, practices, strategies, and techniques specified in by the United States Department of Health and Human Services, Public Health Service, and the Centers for Disease Control ~~publications of the Morbidity and Mortality Weekly Report (MMWR) and Prevention.~~ ~~The current infection control techniques in the MMWR dated December 19, 2003, volume 52, number RR-17, are hereby incorporated by reference. The MMWR is available at the Minnesota State Law Library, by interlibrary loan, or by subscription from the United States Department of Health and Human Services, Public Health Service, Centers for Disease Control.~~ The ~~i~~nfection control standards in the MMWR are subject to frequent change.

Subpart 11: For this subpart, the change to add “and Prevention” was made to correctly identify the name commonly used for this organization, the Centers of Disease Control and Prevention. As for the other deleted language, the Board wanted to make changes that were housekeeping in nature eliminating detailed publication information related to infection control guidelines to simplify an area that will be forever changing, and therefore difficult to manage. For this reason, the Board considers these changes to be necessary and reasonable.

### **CONCLUSION**

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

Dated: October 24<sup>th</sup> 2016



Bridgett Anderson, L.D.A., M.B.A.  
Executive Director  
Minnesota Board of Dentistry

1.1 **Minnesota Board of Dentistry**

1.2 **Proposed Permanent Rules Relating to Nitrous Oxide and Infection Control**

1.3 **3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,**  
1.4 **MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE**  
1.5 **INHALATION ANALGESIA.**

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

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

1.8 A dentist may administer nitrous oxide inhalation analgesia only according to items A  
1.9 to D and subpart 5, items A and C. A dental therapist may administer nitrous oxide  
1.10 inhalation analgesia only according to items C to F. A dental hygienist may administer  
1.11 nitrous oxide inhalation analgesia only according to items C to F and subpart 5, item  
1.12 D. A licensed dental assistant may administer nitrous oxide inhalation analgesia only  
1.13 after a maximum dosage has been prescribed by a dentist for a specific patient, and it is  
1.14 administered according to items C to F and subpart 5, item D.

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

1.16 B. A dentist who has not previously registered with the board pursuant  
1.17 to subpart 5, item A, may administer nitrous oxide inhalation analgesia only after  
1.18 satisfactorily completing a ~~dental school or postdental graduate education~~ course on the  
1.19 administration of nitrous oxide inhalation analgesia from an institution accredited by the  
1.20 Commission on Dental Accreditation, and submitting to the board original documentation  
1.21 from the institution of successful completion of the course. The course must be a  
1.22 minimum of 12 hours total comprised of didactic instruction, personally administering and  
1.23 managing at least three individual supervised cases of analgesia, and supervised clinical  
1.24 experience using fail-safe anesthesia equipment capable of positive pressure respiration.

1.25 [For text of items C to F, see M.R.]

1.26 [For text of subps 5 to 8, see M.R.]

2.1 Subp. 9. **General anesthesia or moderate sedation certificate.**

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

2.3 C. All certificates described in item B are issued and governed by subitems  
2.4 (1) to (9).

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

2.6 (3) A dentist holding a current general anesthesia or moderate sedation  
2.7 certificate on ~~the effective date of this part~~ March 19, 2007, is considered by the board  
2.8 to be in compliance with this subpart until the expiration and required renewal of the  
2.9 certificate described in subitem (5).

2.10 [For text of subitems (4) to (9), see M.R.]

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

2.12 **3100.5100 PROFESSIONAL DEVELOPMENT.**

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

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

2.18 A. Fundamental activities include, but are not limited to, clinical subjects, core  
2.19 subjects, CPR training, and the self-assessment examination. Examples of fundamental  
2.20 activities for an initial or biennial cycle are described in subitems (1) to ~~(5)~~ (6).

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

2.22 (2) Core subjects are those seminars, symposiums, lectures, or programs  
2.23 that relate to public safety and professionalism. Each licensee shall complete a minimum



3.1 of two of the categories of core subjects for each biennial cycle. Examples of core subject  
3.2 categories include, but are not limited to:

- 3.3                   (a) ~~infection control~~;
- 3.4                   (b) (a) record keeping;
- 3.5                   (c) (b) ethics;
- 3.6                   (d) (c) patient communications;
- 3.7                   (e) (d) management of medical emergencies; and
- 3.8                   (f) (e) treatment and diagnosis.

3.9                                   [For text of subitem (3), see M.R.]

3.10                   (4) An infection control course is mandatory for each licensee to maintain  
3.11 licensure. The course will primarily address patient safety and health issues as referenced  
3.12 in part 3100.6300 and chapter 6950.

3.13                   (4) (5) A licensee must complete one self-assessment examination  
3.14 obtainable through the board for each cycle.

3.15                   (5) (6) The board shall approve other additional fundamental activities if the  
3.16 board finds the activity to be a seminar, symposium, lecture, or program whose contents are  
3.17 directly related to dental care and treatment to patients or public safety and professionalism.

3.18                                   [For text of item B, see M.R.]

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

3.20                   **3100.6300 ADEQUATE SAFETY AND SANITARY CONDITIONS FOR DENTAL**  
3.21 **OFFICES.**

3.22                                   [For text of subps 1 to 10, see M.R.]

3.23                   Subp. 11. **Infection control.** Dental health care personnel shall comply with the most  
3.24 current infection control recommendations, guidelines, precautions, procedures, practices,



4.1 strategies, and techniques specified ~~in~~ by the United States Department of Health and  
4.2 Human Services, Public Health Service, and the Centers for Disease Control ~~publications~~  
4.3 ~~of the Morbidity and Mortality Weekly Report (MMWR) and Prevention.~~ The current  
4.4 ~~infection control techniques in the MMWR dated December 19, 2003, volume 52, number~~  
4.5 ~~RR-17, are hereby incorporated by reference. The MMWR is available at the Minnesota~~  
4.6 ~~State Law Library, by interlibrary loan, or by subscription from the United States~~  
4.7 ~~Department of Health and Human Services, Public Health Service, Centers for Disease~~  
4.8 ~~Control. The Infection control standards in the MMWR are subject to frequent change.~~

4.9 [For text of subps 12 to 15, see M.R.]

# Office of the Revisor of Statutes

## Administrative Rules



**TITLE:** Proposed Permanent Rules Relating to Nitrous Oxide and Infection Control

**AGENCY:** Minnesota Board of Dentistry

**MINNESOTA RULES:** Chapter 3100

The attached rules are approved for  
publication in the State Register

Lauren C. Bethke

Lauren C. Bethke  
Assistant Revisor

# Office of the Revisor of Statutes

## Administrative Rules



**TITLE:** Adopted Permanent Rules Relating to Nitrous Oxide and Infection Control

**AGENCY:** Minnesota Board of Dentistry

**MINNESOTA RULES:** Chapter 3100



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

Lauren C. Bethke

Lauren C. Bethke  
Assistant Revisor

180273

1.1 **Minnesota Board of Dentistry**

1.2 **Adopted Permanent Rules Relating to Nitrous Oxide and Infection Control**

1.3 **3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,**  
1.4 **MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE**  
1.5 **INHALATION ANALGESIA.**

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

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

1.8 A dentist may administer nitrous oxide inhalation analgesia only according to items A  
1.9 to D and subpart 5, items A and C. A dental therapist may administer nitrous oxide  
1.10 inhalation analgesia only according to items C to F. A dental hygienist may administer  
1.11 nitrous oxide inhalation analgesia only according to items C to F and subpart 5, item  
1.12 D. A licensed dental assistant may administer nitrous oxide inhalation analgesia only  
1.13 after a maximum dosage has been prescribed by a dentist for a specific patient, and it is  
1.14 administered according to items C to F and subpart 5, item D.

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

1.16 B. A dentist who has not previously registered with the board pursuant  
1.17 to subpart 5, item A, may administer nitrous oxide inhalation analgesia only after  
1.18 satisfactorily completing a course on the administration of nitrous oxide inhalation  
1.19 analgesia from an institution accredited by the Commission on Dental Accreditation,  
1.20 and submitting to the board original documentation from the institution of successful  
1.21 completion of the course. The course must be a minimum of 12 hours total comprised  
1.22 of didactic instruction, personally administering and managing at least three individual  
1.23 supervised cases of analgesia, and supervised clinical experience using fail-safe anesthesia  
1.24 equipment capable of positive pressure respiration.

1.25 [For text of items C to F, see M.R.]

1.26 [For text of subps 5 to 8, see M.R.]

2.1 Subp. 9. **General anesthesia or moderate sedation certificate.**

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

2.3 C. All certificates described in item B are issued and governed by subitems  
2.4 (1) to (9).

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

2.6 (3) A dentist holding a current general anesthesia or moderate sedation  
2.7 certificate on March 19, 2007, is considered by the board to be in compliance with this  
2.8 subpart until the expiration and required renewal of the certificate described in subitem (5).

2.9 [For text of subitems (4) to (9), see M.R.]

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

2.11 **3100.5100 PROFESSIONAL DEVELOPMENT.**

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

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

2.17 A. Fundamental activities include, but are not limited to, clinical subjects, core  
2.18 subjects, CPR training, and the self-assessment examination. Examples of fundamental  
2.19 activities for an initial or biennial cycle are described in subitems (1) to (6).

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

2.21 (2) Core subjects are those seminars, symposiums, lectures, or programs  
2.22 that relate to public safety and professionalism. Each licensee shall complete a minimum  
2.23 of two of the categories of core subjects for each biennial cycle. Examples of core subject  
2.24 categories include, but are not limited to:

- 3.1 (a) record keeping;
- 3.2 (b) ethics;
- 3.3 (c) patient communications;
- 3.4 (d) management of medical emergencies; and
- 3.5 (e) treatment and diagnosis.

3.6 [For text of subitem (3), see M.R.]

3.7 (4) An infection control course is mandatory for each licensee to maintain  
3.8 licensure. The course will primarily address patient safety and health issues as referenced  
3.9 in part 3100.6300 and chapter 6950.

3.10 (5) A licensee must complete one self-assessment examination obtainable  
3.11 through the board for each cycle.

3.12 (6) The board shall approve other additional fundamental activities if the  
3.13 board finds the activity to be a seminar, symposium, lecture, or program whose contents are  
3.14 directly related to dental care and treatment to patients or public safety and professionalism.

3.15 [For text of item B, see M.R.]

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

3.17 **3100.6300 ADEQUATE SAFETY AND SANITARY CONDITIONS FOR DENTAL**  
3.18 **OFFICES.**

3.19 [For text of subps 1 to 10, see M.R.]

3.20 Subp. 11. **Infection control.** Dental health care personnel shall comply with the  
3.21 most current infection control recommendations, guidelines, precautions, procedures,  
3.22 practices, strategies, and techniques specified by the United States Department of Health  
3.23 and Human Services, Public Health Service, and the Centers for Disease Control and  
3.24 Prevention. Infection control standards are subject to frequent change.

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

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

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

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

B. A dentist who has not previously registered with the board pursuant to subpart 5, item A, may administer nitrous oxide inhalation analgesia only after satisfactorily completing a course on the administration of nitrous oxide inhalation analgesia from an institution accredited by the Commission on Dental Accreditation, and submitting to the board original documentation from the institution of successful completion of the course. The course must be a minimum of 12 hours total comprised of didactic instruction, personally administering and managing at least three individual supervised cases of analgesia, and supervised clinical experience using fail-safe anesthesia equipment capable of positive pressure respiration.

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

[For text of subps 5 to 8, see M.R.]

Subp. 9. **General anesthesia or moderate sedation certificate.**

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

C. All certificates described in item B are issued and governed by subitems (1) to (9).

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

(3) A dentist holding a current general anesthesia or moderate sedation certificate on March 19, 2007, is considered by the board to be in compliance with this subpart until the expiration and required renewal of the certificate described in subitem (5).

[For text of subitems (4) to (9), see M.R.]

[For text of subps 9a 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 (6).

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

(2) Core subjects are those seminars, symposiums, lectures, or programs that relate to public safety and professionalism. Each licensee shall complete a minimum of two of the categories of core subjects for each biennial cycle. Examples of core subject categories include, but are not limited to:

(a) record keeping;



- 3.1 (b) ethics;
- 3.2 (c) patient communications;
- 3.3 (d) management of medical emergencies; and
- 3.4 (e) treatment and diagnosis.

3.5 [For text of subitem (3), see M.R.]

3.6 (4) An infection control course is mandatory for each licensee to maintain

3.7 licensure. The course will primarily address patient safety and health issues as referenced

3.8 in part 3100.6300 and chapter 6950.

3.9 (5) A licensee must complete one self-assessment examination obtainable

3.10 through the board for each cycle.

3.11 (6) The board shall approve other additional fundamental activities if the

3.12 board finds the activity to be a seminar, symposium, lecture, or program whose contents

3.13 are directly related to dental care and treatment to patients or public safety and

3.14 professionalism.

3.15 [For text of item B, see M.R.]

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

3.17 **3100.6300 ADEQUATE SAFETY AND SANITARY CONDITIONS FOR DENTAL**

3.18 **OFFICES.**

3.19 [For text of subps 1 to 10, see M.R.]

3.20 Subp. 11. **Infection control.** Dental health care personnel shall comply with the most

3.21 current infection control recommendations, guidelines, precautions, procedures, practices,

3.22 strategies, and techniques specified by the United States Department of Health and Human

3.23 Services, Public Health Service, and the Centers for Disease Control and Prevention. Infection

3.24 control standards are subject to frequent change.

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Rules of the  
Minnesota Board of Dentistry Relating to  
Nitrous Oxide and Infection Control

**ORDER ON REVIEW OF  
RULES UNDER  
MINN. STAT. § 14.26**

The Minnesota Board of Dentistry (Board) is seeking review and approval of the above-entitled rules, which were adopted by the agency pursuant to Minn. Stat. § 14.26 (2016). On July 6, 2017, 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 (2015). Based upon a review of the written submissions and filings, Minnesota Statutes, Minnesota Rules,

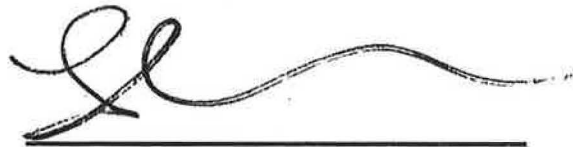
**IT IS HEREBY DETERMINED:**

1. The Board has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14 (2016), and Minnesota Rules, Chapter 1400 (2015).
3. The record demonstrates the rules are needed and reasonable.

**IT IS HEREBY ORDERED THAT:**

The rules are **APPROVED**.

Dated: July 13, 2017



JIM MORTENSON  
Administrative Law Judge



**Minnesota Board of Dentistry**

University Park Plaza, 2829 University Ave SE, Suite 450  
Minneapolis, MN 55414-3249  
Website [mn.gov/boards/dentistry](http://mn.gov/boards/dentistry)  
Phone 612.617.2250 - Toll Free 888.240.4762 - Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

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**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 Nitrous Oxide and Infection  
Control, *Minnesota Rules* 3100.3600, 3100.5100, and 3100.6300; Revisor's ID # 4424**

I, Kathy T. Johnson, certify that on January 26, 2017, 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 January 26, 2017.

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

Kathy T. Johnson  
Legal Analyst  
Minnesota Board of Dentistry



**Minnesota Board of Dentistry**

University Park Plaza, 2829 University Ave SE, Suite 450  
Minneapolis, MN 55414-3249  
Website [mn.gov/boards/dentistry](http://mn.gov/boards/dentistry)  
Phone 612.617.2250 - Toll Free 888.240.4762 - Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

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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 Nitrous Oxide and Infection  
Control, *Minnesota Rules* 3100.3600, 3100.5100, and 3100.6300; Revisor's ID Number 4424**

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 January 12, 2017.

1. In January 2015, the Policy Committee considered taking a more proactive approach to ensuring compliance with infection control standards in dental practices. From July to October 2015, several professional licensees and volunteer members of the Infection Control Inspection Task Force, as created by the Policy Committee, met on three separate occasions to exchange ideas as to how the Board might best fulfill its duty to protect the public regarding infection control violations and the Licensee. As a result, some proposed rules were drafted, distributed, and reviewed during these public meetings by all individuals in attendance and input has been invited. Members of the Professional Development Committee were also part of these meetings. Official notices of these public meetings were electronically sent by the Board to all licensed dental professionals, association representatives, and the general public, as well as doing a website posting of meetings.

2. On or before August 17, 2016, the Board posted a draft copy of the proposed rule changes on the Board's website at [www.mn.gov/boards/dentistry](http://www.mn.gov/boards/dentistry) making it accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general public. This draft copy identified the Board rules that will be affected by the Board's proposed rule changes.

3. On or before August 17, 2016, the Board posted a copy of the Request for Comments for publication in the State Register on the Board's website at [www.mn.gov/boards/dentistry](http://www.mn.gov/boards/dentistry). This website is accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general public.

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

Page 2

4. On or before August 17, 2016, the Board posted a draft copy of the Statement of Need and Reasonableness (“SONAR”) on the Board’s website at [www.mn.gov/boards/dentistry](http://www.mn.gov/boards/dentistry).

5. On August 17, 2016, the Board mailed the Request for Comments to all persons on the Board’s rulemaking mailing list by sending an electronic copy via e-mail to all persons on the list.

6. On or before August 17, 2016, the Board contacted the representatives of the Minnesota Dental Association (Dentists), the Minnesota Dental Hygienists Association (Dental Hygienists), and the Minnesota Dental Assistants Association (Dental Assistants) with a request to publish in each organization’s newsletter or post on each organization’s website for its members the following information:

## **MINNESOTA BOARD OF DENTISTRY – NEW PROPOSED RULES**

### **RE: Proposed Permanent Rules Relating to Nitrous Oxide and Infection Control, *Minnesota Rules* 3100.3600, 3100.5100, and 3100.6300**

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: provide more institutional options for dentists who need to complete the nitrous oxide course; and make the core subject of infection control a mandatory requirement for each professional development cycle. The proposed rules also include amendments that are “housekeeping” in nature and do not make any substantive changes.

Please check the Board’s website at [www.mn.gov/boards/dentistry](http://www.mn.gov/boards/dentistry) for the entire text of these proposed rules and to review the Statement of Need and Reasonableness (SONAR) for these proposed rules.

7. On August 22, 2016, the Board’s Request for Comments was published in the State Register, requesting that all comments be submitted to the Board by October 21, 2016. All comments received by the Board regarding the proposed rules shall be reviewed and any suggested changes shall be considered by the Board.

8. On or before August 22, 2016, the Board sent a broadcast electronic mailing to nearly 10,000 licensees including, dentists, dental therapists, dental hygienists, and licensed dental assistants, containing the following information:

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

Page 3

**MINNESOTA BOARD OF DENTISTRY – NEW PROPOSED RULES**

**RE: Proposed Permanent Rules Relating to Nitrous Oxide and Infection  
Control, *Minnesota Rules* 3100.3600, 3100.5100, and 3100.6300**


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: provide more institutional options for dentists who need to complete the nitrous oxide course; and make the core subject of infection control a mandatory requirement for each professional development cycle. The proposed rules also include amendments that are "housekeeping" in nature and do not make any substantive changes.

Please check the Board's website at [www.mn.gov/boards/dentistry](http://www.mn.gov/boards/dentistry) for the entire text of these proposed rules and to review the Statement of Need and Reasonableness (SONAR) for these proposed rules.

9. By October 21, 2016, the end of the 60-day Request for Comments period, the Board had only received one comment regarding its proposed rules. The Board received supportive correspondence from an educator of a dental assisting institution, who is confident that their nitrous oxide curriculum would provide the essential training for a dentist, and who agrees that infection control continuing education should be mandatory due to the importance of maintaining current standards for patients and dental professionals.

10. On October 24, 2016, the Board posted a final version of its SONAR dated October 24, 2016, on the Board's website making this information accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general public.

11. Prior to publication of the Dual Notice in the State Register, the Board will send by electronic mail a copy of the Dual Notice of Intent to Adopt Rules, the Proposed Rules, and the Statement of Need and Reasonableness to the representatives of the Minnesota Dental Association (Dentists), the Minnesota Dental Hygienists Association (Dental Hygienists), and the Minnesota Dental Assistants Association (Dental Assistants).

  
Kathy T. Johnson  
Legal Analyst  
Minnesota Board of Dentistry

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Minnesota Board of  
Dentistry Rules Relating to Nitrous Oxide  
and Infection Control

**ORDER ON REVIEW  
OF ADDITIONAL NOTICE  
PLAN AND DUAL NOTICE**

This matter came before Administrative Law Judge Jim Mortenson upon the Minnesota Board of Dentistry's request for a legal review under Minn. R. 1400.2060, .2080 (2015) of the Additional Notice Plan and Dual Notice of Intent to Adopt Rules in the above-captioned proceeding.

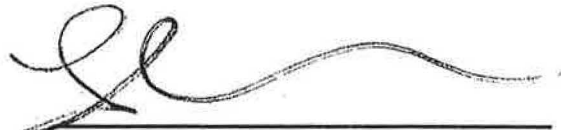
Under its Additional Notice Plan, the Board plans to notify persons and organizations that represent or occupy positions in dental professions.

Based upon a review of the written submissions by the Board,

**IT IS HEREBY ORDERED THAT:**

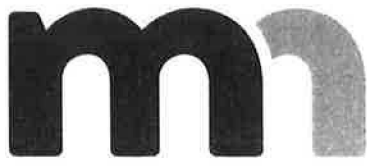
1. The Additional Notice Plan is **APPROVED**.
2. The Dual Notice is **APPROVED**.

Dated: January 12, 2017

A handwritten signature in black ink, appearing to read 'Jm', is written over a horizontal line.

JIM MORTENSON  
Administrative Law Judge





**Minnesota Board of Dentistry**

University Park Plaza, 2829 University Ave SE, Suite 450  
Minneapolis, MN 55414-3249  
Website [mn.gov/boards/dentistry](http://mn.gov/boards/dentistry)  
Phone 612.617.2250 - Toll Free 888.240.4762 - Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

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**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 Nitrous Oxide and Infection  
Control, *Minnesota Rules* 3100.3600, 3100.5100, and 3100.6300; Revisor's ID Number 4424**

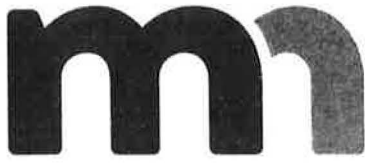
I, Kathy T. Johnson, certify that on January 26, 2017, I mailed an electronic copy of the Board's Statement of Need and Reasonableness to the Legislative Reference Library using the e-mail address: [sonars@lrl.leg.mn](mailto:sonars@lrl.leg.mn). The copy of the Statement of Need and Reasonableness was electronically mailed to comply with Minnesota Statutes, sections 14.131 and 14.23.

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

Kathy T. Johnson

Legal Analyst

Minnesota Board of Dentistry



**Minnesota Board of Dentistry**

University Park Plaza, 2829 University Ave SE, Suite 450  
Minneapolis, MN 55414-3249  
Website [mn.gov/boards/dentistry](http://mn.gov/boards/dentistry)  
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MN Relay Service for Hearing Impaired 800.627.3529

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Minnesota Board of Dentistry

## **ORDER ADOPTING RULES**

**Adoption of Rules Governing Nitrous Oxide and Infection Control, *Minnesota Rules* 3100.3600, 3100.5100, and 3100.6300; Revisor's ID Number 4424**

### **BACKGROUND INFORMATION**


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 dated July 15, 2016.
2. The Board of Dentistry received no written comments and submissions on the rules. 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 rules are needed and reasonable.
4. A copy of the Board's authorization to adopt the rules is attached dated October 14, 2016.

### **ORDER**

The above-named rules, in the Dual Notice published in the State Register on February 6, 2017, are adopted under my authority in Minnesota Statutes, section 150A.04.

Date

July 13<sup>th</sup>, 2017

  
BRIDGETT ANDERSON, L.D.A., M.B.A.  
Executive Director  
Board of Dentistry



**Minnesota Board of Dentistry**

University Park Plaza, 2829 University Ave SE, Suite 450  
Minneapolis, MN 55414-3249  
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MN Relay Service for Hearing Impaired 800.627.3529

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**Minnesota Board of Dentistry**

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

**Proposed Amendments to Permanent Rules Relating to Nitrous Oxide and Infection  
Control, *Minnesota Rules* 3100.3600, 3100.5100, and 3100.6300; Revisor's ID Number 4424**

I, Kathy T. Johnson, certify that on January 26, 2017, when the Minnesota Board of Dentistry mailed the Dual Notice under Minnesota Statutes, section 14.14 or 14.22, I sent a copy of the: (1) Dual Notice; (2) Statement of Need and Reasonableness; and (3) proposed rules, to certain Legislators by placing these documents in the State of Minnesota's central mail system for proper postage to be affixed and subsequently placed in the United States mail. I mailed these documents to comply with Minnesota Statutes, section 14.116.

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

Kathy T. Johnson  
Legal Analyst  
Minnesota Board of Dentistry



## Minnesota Board of Dentistry

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University Park Plaza, 2829 University Ave SE, Suite 450  
Minneapolis, MN 55414-3249  
Website [mn.gov/boards/dentistry](http://mn.gov/boards/dentistry)  
Phone 612.617.2250 - Toll Free 888.240.4762 - Fax 612.617.2260  
MN Relay Service for Hearing Impaired 800.627.3529

October 24, 2016

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

**Re: In The Matter of the Proposed Amendments to Permanent Rules Governing Nitrous Oxide and Infection Control, *Minnesota Rules* 3100.3600, 3100.5100, and 3100.6300; Revisor's ID Number 4424**

Dear Mr. Moore:

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 providing more institutional options for dentists who need to complete a nitrous oxide course, and make taking an infection control course a mandatory requirement for each two-year professional development cycle.

1. The Governor's Office Proposed Rule and SONAR Form.
2. The August 8, 2016, Revisor's draft of the proposed rules.
3. The October 24, 2016, 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: Bridgett Anderson, Minnesota Board of Dentistry, 2829 University Avenue SE, Suite 450, Minneapolis, MN 55414; or by e-mail: [bridgett.anderson@state.mn.us](mailto:bridgett.anderson@state.mn.us)

Yours very truly,

Bridgett Anderson, L.D.A., M.B.A.  
Executive Director

## Office Memorandum

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**Date:** December 15, 2016

**To:** Bridgett Anderson  
Executive Director  
Minnesota Board of Dentistry

**From:** Paul Moore  
Executive Budget Officer  
Minnesota Management & Budget

**Subject:** M.S. 14.131 Review of Proposed Amendments to Permanent Rules Governing Nitrous Oxide and Infection Control

### **Background**

The Minnesota Board of Dentistry (referred to as “board” hereafter) proposes amendments to Minnesota Rules, chapter 3100, relating to nitrous oxide and infection control. The board has authority to make rules governing nitrous oxide and infection control requirements under Minnesota Statutes 2016, section 150A.04. Pursuant to Minnesota Statutes 2016, section 14.131, the board has requested Minnesota Management & Budget evaluate the proposed amendments for fiscal impact and fiscal benefits on units of local government.

### **Evaluation**

On behalf of the commissioner of Minnesota Management & Budget, I have reviewed the proposed rules and the Statement of Need and Reasonableness.

The board purposes broadening the institutional options available to complete required nitrous oxide administration coursework by eliminating the requirement that courses be through a dental school or post-dental graduate institution. This allows dentists to complete coursework through other institutions such as dental hygiene or dental assisting schools. The proposed rule changes also add an infection control course to the list of required professional development courses necessary to maintain licensure. Additionally, this proposal makes several technical changes; first, by replacing the language “the effective date of this part” in the general anesthesia or moderate sedation certificate subpart of Minnesota Rules, part 3100.3600, with the actual date the rule went into effect. Second, by fixing a reference to the Centers for Disease Control and Prevention in Minnesota Rules, part 3100.6300, subpart 11, to include the full title of the federal agency. Finally, subpart 11 also references the most up-to-date detailed publication information for federal infection control guidelines. This is removed so that publication title changes will not require a revision of rules. These three technical modifications do not alter the meaning of this part.

The aforementioned proposed rule changes have no state-mandated fiscal impacts on units of local government.

**2015 Administrative Rule  
Preliminary Proposal Form**

Revisor's ID Number: 4424

Submitting Agency: Minnesota Board of Dentistry Date: August 8, 2016

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 Permanent Rules Relating to Nitrous Oxide and Infection Control
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 proposed rules will modify existing language in the following areas: provide more institutional options for dentists who need to complete the nitrous oxide course; and make the infection control course a mandatory requirement for each professional development cycle.
If Exempt or Expedited rule process:	Not applicable.
Describe the need for the rule and provide background information:	As for the nitrous oxide course, the dentists needed more institutions where they could complete the course. As for the infection control course, the Board wanted to address noncompliance with infection control standards among licensees and making this course mandatory was supported as an effective educational remedy.
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

  
Executive Director's Signature

8/8/16  
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

# 2016 Administrative Rule Proposed Rule and SONAR Form

Revisor's ID Number: 4424

Submitting Agency: Minnesota Board of Dentistry

Date: October 24, 2016

Rule Contact: Kathy T. Johnson

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

Phone #: 612-548-2134

Title: (Short descriptive title)	Proposed Permanent Rules Relating to Nitrous Oxide and Infection Control
Chapter number(s):	Minnesota Rules Chapter 3100
Comments received during Request for Comments:	One Comment Received: Supportive From an educator of a dental assisting institution, who is confident that their nitrous oxide curriculum would provide the essential training for a dentist, and who agrees that infection control continuing education should be mandatory due to the importance of maintaining current standards for patients and dental professionals.
Statement of Need and Reasonableness (SONAR) Executive Summary:	The proposed rules will modify existing language in the following areas: provide more institutional options for dentists who need to complete the nitrous oxide course; and make taking an infection control course a mandatory requirement for each two-year professional development cycle.
Supporters, opponents, and possible controversies:	<i>Supporters:</i> Board members, Minnesota Dental Association, Minnesota Dental Hygienists Association, Minnesota Dental Assistants Association, and individual licensees. <i>Opponents:</i> Unknown <i>Controversies:</i> Unknown
List significant changes from preliminary proposal:	No significant changes from preliminary proposal.
Other:	

Fiscal  
Impact:

☐

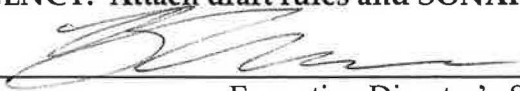
Yes

☒

No

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

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



Executive Director's Signature

Oct 24<sup>th</sup>, 2016  
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



# 2017 Administrative Rule Final Rule Form

Revisor's ID Number: **4424**

Submitting Agency: Minnesota Board of Dentistry

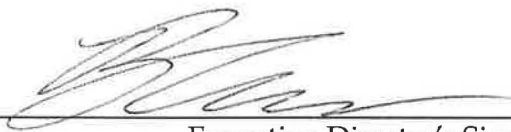
Date: March 9, 2017

Rule Contact: Kathy T. Johnson

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

Phone #: 612-548-2134

Title: (Short descriptive title)	Proposed Permanent Rules Relating to Nitrous Oxide and Infection Control
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

3/9/17

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)

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**From:** Melekin, Merone (GOV)  
**Sent:** Wednesday, August 09, 2017 4:55 PM  
**To:** Johnson, Kathy T (HLB)  
**Subject:** 4424

Hello Kathy,

The Office of the Governor has received the Adopted Rule from the Office of the Secretary of State for 4424 relating to Nitrous Oxide and Infestation Control.

Governor Dayton will not veto this rule. You may now proceed with the Notice of Adoption.

Best,

Merone

Merone Melekin | Policy Coordinator  
Office of Governor Mark Dayton & Lt. Governor Tina Smith  
130 State Capitol  
75 Rev. Dr. Martin Luther King Jr. Blvd.  
Ste. 130  
Saint Paul, MN 55155-1611  
Office: 651-201-3420 | Fax: 651-797-1870

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