

OFFICIAL RULEMAKING RECORD

MINNESOTA BOARD OF DENTISTRY

ADOPTED PERMANENT RULES RELATING TO DENTISTS, DENTAL THERAPISTS, DENTAL HYGIENISTS, AND LICENSED DENTAL ASSISTANTS, MINNESOTA RULES 3100.0100, 3100.0300, 3100.1100, 3100.1150, 3100.1160, 3100.1200, 3100.1300, 3100.1400, 3100.1850, 3100.3300, 3100.3400, 3100.3500, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8500, 3100.8700, and 3100.9600

REVISOR'S ID # 4228

JANUARY 2014 TO APRIL 2015

NOTICE OF ADOPTION PUBLISHED: APRIL 13, 2015

EFFECTIVE DATE: APRIL 20, 2015

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 January 13, 2014 (38 SR 1003). **[File #5]**
 - b. Dual Notice: Notice of Intent to Adopt Rules dated September 15, 2014 (39 SR 342), along with the proposed rules dated April 22, 2014. **[File #13]**
 - c. Notice of Adoption dated April 13, 2015 (39 SR 1455). **[File #34]**
- (2) All written petitions, requests, submissions, or comments received by the Board or the Administrative Law Judge after publication of the Notice of Intent to Adopt Rules in the State Register pertaining to the rules.

The Board received a total of 30 requests for a hearing which were contained within one letter from the attorney representing the organization, Health and Safety Institute ("HSI"). The 30 names did not appear to be from classes of affected persons, but names of employees who were employed at the law firm. Nevertheless, the 30 requests counted toward having a hearing. **[File #18]**

- (3) The Statement of Need and Reasonableness (SONAR) dated August 8, 2014. **[File #8b]**
- (4) Rules Hearing.

OAH Docket # 5-0902-31791

On November 6, 2014, at 1:00 pm, the Board held its rules hearing before Administrative Law Judge James Mortenson. The Exhibit Binder includes Exhibits A through K-2 (See paragraph (8) below). **[File #20]**

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

On November 26, 2014, the Board sent its Preliminary Response Letter to Comments and Hearing Testimony to Judge Mortenson. **[File #22]**

On December 5, 2014, the Board sent its Final Response/Rebuttal Letter to Comments to Judge Mortenson. **[File #23]**

(5) The report of the Administrative Law Judge.

The Official Record contains the report of the Administrative Law Judge (James Mortenson) dated January 15, 2015. **[File #25]**

The Administrative Law Judge recommended that the Board's proposed amended rules be adopted according to his report.

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

The rules as adopted by the Board dated September 15, 2014, were last submitted to the Administrative Law Judge under Minnesota Statutes, sections 14.14 to 14.20. There is a copy of the adopted rules, dated September 15, 2014, in the file that contains: (a) the Revisor's approval for filing with the Secretary of State; (b) the Office of Administrative Hearing's stamp with the Administrative Law Judge's signature indicating approval of the rules; and (c) the Secretary of State's stamp indicating filing with that office. **[File #30]**

Another file contains the Notice of Adoption dated April 13, 2015, and a stripped version of the rules dated April 13, 2015. **[File #34]**

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

No such written statement is included because no modifications to the rules were required by the Administrative Law Judge.

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

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

- A. Request for Comments published in the State Register; **[File #5]**
- B. Not enclosed - rulemaking petition(s);
- C. Proposed rules, including Revisor's approval, dated April 22, 2014; **[File #11]**
- D. Statement of Need and Reasonableness; **[File #8b]**
- E. Certificate and Letter - Legislative Reference Library; **[File #15]**
- F. Dual Notice of Hearing - State Register; **[File #13]**

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

(9) The Board's Order Adopting Rules.

The Board's Executive Director signed the Order Adopting Rules on March 3, 2015. **[File #28]**

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

The Revisor's approval of the form of the rules is contained on the April 22, 2014 **[File #11]**, and September 15, 2014 **[File #29]**, rules drafts.

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

The adopted rules, dated September 15, 2014, were filed with the Secretary of State on March 17, 2015. **[File #30]**

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

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

(13) Governor's Office Review of Rules.

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

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

(15) Governor's Veto of Adopted Rules.

On March 31, 2015, the Governor's office sent correspondence to the Board about not vetoing the Board's adopted rules. **[File #33]**

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, state grants and loans, and state contracts

Minnesota State Agricultural Society

Minnesota State Fair's 155th Annual Meeting Scheduled for Jan. 16-19

MINNESOTA STATE FAIRGROUNDS—The 155th annual meeting of the Minnesota State Agricultural Society, governing body of the Minnesota State Fair, will be held Jan. 16-19 at the DoubleTree by Hilton Hotel Bloomington. The society's general business session is scheduled for 8 a.m. Sunday, Jan. 19, followed by a meeting of the society's board of managers. A complete schedule of meetings and events will be available at the hotel.

The 2014 Minnesota State Fair runs Aug. 21 - Labor Day, Sept. 1.

Minnesota Comprehensive Health Association (MCHA)

Notice of Enrollee Appeal Meeting 27 January 2014

NOTICE IS HEREBY GIVEN that a meeting of the Minnesota Comprehensive Health Association's (MCHA) Enrollee Appeal will be held at 2:00 p.m. on Monday, January 27th, 2014

The meeting will be initiated at the MCHA Executive Office, 5775 Wayzata Blvd., Suite 910, St. Louis Park, MN; it should be noted that some attendees will participate telephonically.

If anyone wishes to attend or participate in this meeting please contact MCHA's Executive Office (952) 593-9609 for additional information.

Minnesota Board of Dentistry

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

Subject of Rules. The Minnesota Board of Dentistry requests comments on its proposed amendments to rules governing dentists, dental therapists, dental hygienists, and dental assistants. The Board is considering rule amendments in the following areas: advanced cardiac life support; CPR; reinstatement of license; nitrous oxide form from dental therapists; audit fee; new duties regarding informed consent and retraction material for dental hygienists and licensed dental assistants; and record keeping. 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.

(Cite 38 SR 1003)

Minnesota State Register, Monday 13 January 2014

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Official Notices

Public Comment. Interested persons or groups may submit comments or information to the Board's contact person listed below on these possible rules in writing until 4:30 p.m. on March 14, 2014. The contact person shall direct all comments to the Board's Executive Committee for review. Any open meetings held by the Board's Executive Committee will be properly announced to the public prior to the meeting.

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

Board Contact Person. Written comments, questions, or requests to receive a draft of the rules and requests for more information on these possible rules should be directed to: Kathy Johnson at Minnesota Board of Dentistry, University Park Plaza, 2829 University Avenue SE, Suite 450, Minneapolis, Minnesota 55414-3249, **phone:** (612) 548-2134 or (888) 240-4762 (outside metro), **fax:** (612) 617-2260, or directed by **e-mail:** kathy.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: January 6, 2014

Marshall Shragg, Executive Director
Minnesota Board of Dentistry

Minnesota Department of Health (MDH) Division of Compliance Monitoring Managed Care Systems Section Notice of Application for Essential Community Provider Status by Lee Carlson Center for Mental Health and Well-Being

NOTICE IS HEREBY GIVEN that an application for designation as an Essential Community Provider (ECP) has been submitted to the Commissioner of Health by Lee Carlson Center for Mental Health and Well-Being, 7954 University Avenue NE, Fridley, MN 55432. Clinical services are offered at Lee Carlson Center for Mental Health and Well-Being, 7954 University Avenue NE, Fridley, MN 55432; Bridgeview, 7920 University Avenue NE, Fridley, MN 55432, Lee Carlson Center for Mental Health and Well-Being – satellite, 1201 89th Avenue NE, Blaine, MN 55434; Centennial High School, 4757 North Road, Circle Pines, MN 55014; Fridley High School, 6000 Moore Lake Drive, Fridley, MN 55432; Mental health services will be offered in 2014 at the following schools: Columbia Heights High School, 1400 49th Avenue NE, Columbia Heights, MN 55421; Columbia Academy, 900 49th Avenue NE, Columbia Heights, MN 55421; Centennial Middle School, 399 Elm Street, Lino Lakes, MN 55014.

An ECP is a health care provider that serves high-risk, special needs, and underserved individuals. In order to be designated as an ECP, a provider must demonstrate that it meets the requirements of *Minnesota Statutes* Section 62Q.19 and *Minnesota Rules* Chapter 4688. The public is allowed 30 days from the date of the publication of this notice to submit written comments on the application. The commissioner will approve or deny the application once the comment period and compliance review is complete.

For more information contact:

Michael McGinnis
Managed Care Systems Section
Division of Compliance Monitoring

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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

Minnesota Board of Dentistry

Proposed Permanent Rules Relating to Licensing Dentists, Dental Hygienists, and Dental Assistants

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, And Notice of Hearing If 25 or More Requests For Hearing Are Received

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

Introduction. The Minnesota Board of Dentistry 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, October 15, 2014, the board will hold a public hearing in the 4th Floor Conference Room A, University Park Plaza, 2829 University Avenue SE, Minneapolis, Minnesota 55414, starting at 1:00 p.m. on Thursday, November 6, 2014. 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 October 15, 2014, and before November 6, 2014.

Agency Contact Person. Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is: Kathy Johnson at Minnesota Board of Dentistry, University Park Plaza, 2829 University Avenue SE, Suite 450, Minneapolis, MN 55414-3249, **phone:** (612) 548-2134 or (888) 240-4762 (outside metro), **fax:** (612) 617-2260. TTY users may call the Board of Dentistry at 1-800-627-3529.

Subject of Rules and Statutory Authority. The proposed rules are about: clarifying the appropriate training required for advanced cardiac life support and CPR; providing proper notification for reinstatement of license; notifying the Board of nitrous oxide form for dental therapists; changing the audit fee; adding new duties regarding informed consent and retraction material for dental hygienists and licensed dental assistants; and including the task of informed consent by allied dental personnel within the record keeping regulations.

The statutory authority to adopt the rules is *Minnesota Statutes*, section 150A.04, subdivision 5. A copy of the proposed rules is published in the *State Register*. The proposed rules are also available on the board's website at www.dentalboard.state.mn.us or a free copy of the entire proposed rules is available upon request from the agency contact person listed above.

Proposed Rules

Comments. You have until 4:30 p.m. on Wednesday, October 15, 2014, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. You must also make any comments about the legality of the proposed rules during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the board hold a hearing on the rules. You must make your request for a public hearing in writing, which the agency contact person must receive by 4:30 p.m. on Wednesday, October 15, 2014. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the board cannot count that request when determining whether the board must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

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

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

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

Cancellation of Hearing. The board will cancel the hearing scheduled for Thursday, November 6, 2014, 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 October 15, 2014, 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 Denise Collins 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) 539-0300, or **e-mail:** denise.collins@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 additional evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

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

Proposed Rules

Statement of Need and Reasonableness. The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. A free copy of the statement is now available from the agency contact person, if requested, or available on the board's website at www.dentalboard.state.mn.us.

A copy of the Dual Notice and proposed rules shall be mailed by sending an electronic mailing to everyone who has registered to be on the Board of Dentistry's rulemaking mailing list under *Minnesota Statutes*, section 14.14, subdivision 1a; and a copy of the Dual Notice, proposed rules, and the Statement of Need and Reasonableness shall be mailed to the Legislature according to *Minnesota Statutes*, section 14.116.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, **telephone:** (651) 2965148 or 1-800-657-3889.

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

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

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

Signed by Executive Director Marshall Shragg, MPH on August 19, 2014.

3100.0100 DEFINITIONS.

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

Subp. 2a. **Advanced cardiac life support or ACLS.** "Advanced cardiac life support" or "ACLS" refers to an advanced educational course for a health care provider that teaches a detailed medical protocol for the provision of lifesaving cardiac care in settings ranging from the prehospital environment to the hospital setting. The course must include advanced airway management skills, cardiac drug usage, defibrillation, and arrhythmia interpretation. An ACLS certificate must be obtained through the American Heart Association, the American Red Cross, or an equivalent course.

[For text of subps 2b to 7a, see M.R.]

Subp. 8. [See repealer.]

[For text of subps 8a to 9, see M.R.]

Subp. 9a. **CPR.** "CPR" refers to a comprehensive, hands-on course for a health care provider that includes: cardiopulmonary resuscitation on an adult, child, and infant; two-person rescuer; barrier mask or bag for ventilation; foreign body airway obstruction; and automated external defibrillation. A CPR certificate shall be obtained through the American Heart Association health care provider course; or the American Red Cross professional rescuer course; ~~or an equivalent course.~~

[For text of subps 9b to 15b, see M.R.]

Subp. 15c. **Pediatric advanced life support or PALS.** "Pediatric advanced life support" or "PALS" refers to an advanced life support educational course for the pediatric health care provider that teaches the current certification standards of the American Academy of Pediatrics or the American Heart Association. A PALS certificate must be obtained through the American Heart Association ~~or an equivalent course.~~

[For text of subps 16 to 22, see M.R.]

Proposed Rules

3100.0300 MEETINGS.

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

Subp. 4. **Parliamentary procedure.** When not otherwise provided, Sturgis American Institute of Parliamentarians Standard Code of Parliamentary Procedure shall govern the conduct of all business meetings of the board.

3100.1100 APPLICATIONS FOR LICENSE TO PRACTICE DENTISTRY.

Subpart 1. **Form, credentials, and certification.** A person seeking licensure to practice dentistry within Minnesota must present to the board an application and credentials, as determined by the board, and meet the following requirements.

A. The application must be on a form furnished by the board and must be completely filled out.

B. The applicant shall furnish satisfactory evidence of having graduated from a school of dentistry accredited by the Commission on Dental Accreditation.

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

[For text of subps 2 to 6, see M.R.]

3100.1150 LICENSE TO PRACTICE DENTISTRY AS A FACULTY DENTIST.

Subpart 1. **Licensure.**

A. In order to practice dentistry, a faculty member must be licensed by the board.

B. The board must license a person to practice dentistry as a faculty dentist if:

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

(3) the dean of a school of dentistry accredited by the Commission on Dental Accreditation certifies to the board, in accordance with the requirements of item C, that the person is a member of the school's faculty and practices dentistry; and

[For text of subitem (4), see M.R.]

C. The board must accept an applicant as a faculty dentist if the dean of a school of dentistry accredited by the Commission on Dental Accreditation provides to the board the following information:

[For text of subitems (1) to (7), see M.R.]

[For text of subp 2, see M.R.]

3100.1160 LICENSE TO PRACTICE DENTISTRY AS A RESIDENT DENTIST.

Subpart 1. **Licensure.**

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

B. The board must license a person to practice dentistry as a resident dentist if:

[For text of subitems (1) to (3), see M.R.]

(4) the person provides evidence of being an enrolled graduate student or a student of an advanced dental education program accredited by the Commission on Dental Accreditation; and

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

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

A. A person's license to practice dentistry as a resident dentist is terminated when the person is no longer an enrolled graduate student or a student of an advanced dental education program accredited by the Commission on Dental Accreditation.

B. A person licensed to practice dentistry as a resident dentist must inform the board when the licensee is no longer an enrolled graduate student or a student of an advanced dental education program accredited by the Commission on Dental Accreditation.

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

3100.1200 APPLICATION FOR LICENSE TO PRACTICE DENTAL HYGIENE.

A person seeking licensure to practice dental hygiene must present an application and credentials as determined by the board and meet the following requirements of the board.

Proposed Rules

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

D. The applicant shall furnish satisfactory evidence of having been granted a diploma or certificate in dental hygiene from a school accredited by the Commission on Dental Accreditation.

[For text of items E and F, see M.R.]

3100.1300 APPLICATION FOR LICENSE TO PRACTICE DENTAL ASSISTING.

A person desiring to be licensed as a dental assistant shall submit to the board an application and credentials as prescribed by the act and shall conform to the following:

A. An application on a form furnished by the board shall be completely filled out.

B. The applicant shall furnish a certified copy or its equivalent of a diploma or certificate of satisfactory completion of a training program approved by the Commission on Dental Accreditation or other program which, in the judgment of the board, is equivalent. If the curriculum of the training program does not include training in the expanded duties specified in part 3100.8500, the applicant must successfully complete a course in these functions which has been approved by the board.

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

3100.1400 APPLICATION FOR LICENSURE BY CREDENTIALS.

A person who is already a licensed dentist or dental hygienist in another state or Canadian province desiring to be licensed to practice dentistry or dental hygiene in Minnesota shall, in order to demonstrate the person's knowledge of dental subjects and ability to practice dentistry or dental hygiene in Minnesota, comply with the requirements in items A to N.

A. The applicant shall complete an application furnished by the board.

B. The applicant shall furnish satisfactory evidence of having graduated from a school of dentistry, or dental hygiene, whichever the case may be, which has been accredited by the Commission on Dental Accreditation.

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

3100.1850 REINSTATEMENT OF LICENSE.

Subpart 1. **Requirements.** ~~Upon complying with the requirements in this part, the applicant's license shall be reinstated.~~

A. A person desiring the reinstatement of a license shall must:

~~A:~~

~~(1) submit to the board a completed reinstatement application provided by the board;~~

~~B:~~

~~(2) submit with the reinstatement application the fee specified in Minnesota Statutes, section 150A.091, subdivision 10;~~

~~C:~~

~~(3) include with the reinstatement application a letter stating the reasons for applying for reinstatement; and~~

~~D:~~

~~(4) comply with the applicable provisions of subparts 2 to 5.~~

B. ~~Upon~~ Once the requirements of this subpart have been reviewed by the board, the board shall officially notify the applicant by letter as to whether the reinstatement of a license has been denied or granted by the board. If granted reinstatement, the person shall be assigned to the biennial term to which the licensee was assigned prior to termination of the license. An applicant denied reinstatement of a license may appeal the denial by initiating a contested case hearing pursuant to Minnesota Statutes, chapter 14.

[For text of subps 2 to 5, see M.R.]

3100.3300 EXAMINATION OF DENTISTS.

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

Subp. 4a. **Additional education for two failed clinical examinations.** When an applicant fails twice any part of the clinical examination required by Minnesota Statutes, section 150A.06, subdivision 1, the applicant may not take it again until the applicant

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successfully completes additional education provided by an institution accredited by the Commission on Dental Accreditation. The education must cover all of the subject areas failed by the applicant in each of the two clinical examinations. The applicant may retake the examination only after the institution provides to the board information specifying the areas failed in the previous examinations and the instruction provided to address the areas failed, and certifies that the applicant has successfully completed the instruction. The applicant must take the additional instruction required in this subpart each time the applicant fails the clinical examination twice.

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

3100.3400 EXAMINATION OF DENTAL HYGIENISTS.

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

Subp. 3a. **Additional education for two failed clinical examinations.** When an applicant fails twice any part of the clinical examination required by Minnesota Statutes, section 150A.06, subdivision 2, the applicant may not take it again until the applicant successfully completes additional education provided by an institution accredited by the Commission on Dental Accreditation. The education must cover all of the subject areas failed by the applicant in each of the two clinical examinations. The applicant may retake the examination only after the institution provides to the board information specifying the areas failed in the previous examinations and the instruction provided to address the areas failed, and certifies that the applicant has successfully completed the instruction. The applicant must take the additional instruction provided above each time the applicant fails the clinical examination twice.

Subp. 4. **Examination for continued licensure.** The board may administer any other examination it deems necessary to determine qualifications for continued licensure.

3100.3500 EXAMINATION OF LICENSED DENTAL ASSISTANTS.

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

Subp. 2a. **Additional education for two failed clinical examinations.** When an applicant fails twice any part of the clinical examination required by Minnesota Statutes, section 150A.06, subdivision 2a, the applicant may not take it again until the applicant successfully completes additional education provided by an institution accredited by the Commission on Dental Accreditation or an independent instructor approved by the board. The education must cover all of the subject areas failed by the applicant in each of the two clinical examinations. The applicant may retake the examination only after the institution or independent instructor provides to the board information specifying the areas failed in the previous examinations and the instruction provided to address the areas failed, and certifies that the applicant has successfully completed the instruction. The applicant must take the additional instruction required in this subpart each time the applicant fails the clinical examination twice.

[For text of subps 3 and 4, see M.R.]

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

[For text of subp 1, see M.R.]

Subp. 2. **General anesthesia or deep sedation; educational training requirements.** A dentist may administer general anesthesia or deep sedation only pursuant to items A to C.

A. A dentist must complete either subitem (1) or (2) and subitems (3) and (4):

(1) a didactic and clinical program at a dental school, hospital, or graduate medical or dental program accredited by the Commission on Dental Accreditation, resulting in the dentist becoming clinically competent in the administration of general anesthesia. The program must be equivalent to a program for advanced specialty education in oral and maxillofacial surgery; or

[For text of subitem (2), see M.R.]

(3) ~~an appropriate dental sedation/anesthesia emergency management course such as the~~ ACLS or PALS course and maintain current ~~dental sedation/anesthesia emergency management~~ advanced certification thereafter; and

(4) a CPR certification course and maintain current CPR certification thereafter.

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

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Subp. 3. **Moderate sedation; educational training requirements.** A dentist may administer moderate sedation only pursuant to items A to C.

A. A dentist must complete subitems (1) to (3):

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

(2) ~~an appropriate dental sedation/anesthesia emergency management course such as the~~ ACLS or PALS course and maintain current ~~dental sedation/anesthesia emergency management~~ advanced certification thereafter; and

(3) a CPR certification course and maintain current CPR certification thereafter.

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

E. A dental therapist, dental hygienist, or licensed dental assistant may administer nitrous oxide inhalation analgesia only after satisfactorily completing a course on the administration of nitrous oxide inhalation analgesia from an institution accredited by the Commission on 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 item F, see M.R.]

Subp. 5. **Notice to board.**

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

B. A dentist may administer general anesthesia, deep sedation, or moderate sedation only if the dentist has submitted the following information to the board on forms provided by the board: the name, address, and telephone number of the institution at which the dentist took the program or residency that complies with subparts 2, item A, subitem (1) or (2); and 3, item A, subitem (1), a certified copy of the dentist's transcript and other official record from the institution verifying that the dentist satisfactorily completed the program, residency, or course; and the name, address, and telephone number of the institution or other agency at which the dentist successfully completed the ACLS, or PALS, ~~or an equivalent course~~ required by subparts 2, item A, subitem (3); and 3, item A, subitem (2). After this initial submission, dentists shall submit on a license renewal application or other form provided by the board a statement of the most recent course completed in ACLS, or PALS, ~~or an equivalent course~~.

C. A dentist not previously registered with the board according to item A or who graduated from an institution in Minnesota accredited by the Commission on Dental Accreditation prior to April 15, 2008, may administer nitrous oxide inhalation analgesia only after the dentist has submitted the information in subitems (1) and (2) to the board on forms provided by the board:

(1) the name, address, and telephone number of the institution at which the dentist took the course that complies with subpart 4, item B; and

(2) a certified copy of the dentist's transcript and other official record from the institution verifying that the dentist has successfully completed CPR as required by subpart 4, item C.

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After the initial submission, a dentist ~~shall submit on the license renewal application or other form provided by the board a statement of the most recent course completed in must attest to maintaining consecutive and current~~ CPR certification at the time of each license renewal.

D. A dental hygienist or licensed dental assistant who graduated from an institution in Minnesota accredited by the Commission on Dental Accreditation or received licensure by credentials prior to September 2, 2004, may administer nitrous oxide inhalation analgesia only after the dental hygienist or licensed dental assistant has submitted the information in subitems (1) and (2) to the board on forms provided by the board:

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

(2) a certified copy of the dental hygienist's or licensed dental assistant's transcript and other official record from the institution verifying that the dental hygienist or licensed dental assistant has successfully completed CPR as required by subpart 4, item C.

After the initial submission, ~~the a~~ dental hygienist or licensed dental assistant ~~shall submit on the license renewal application or other form provided by the board a statement of the most recent course completed in must attest to maintaining consecutive and current~~ CPR certification at the time of each license renewal.

E. A dental therapist who graduated from a board-approved dental therapy program in Minnesota prior to August 1, 2013, may administer nitrous oxide inhalation analgesia only after the dental therapist has submitted the information in subitems (1) and (2) to the board on forms provided by the board:

(1) the name, address, and telephone number of the institution where the dental therapist successfully completed the course required by subpart 4, item E; and

(2) a certified copy of the dental therapist's transcript and other official records from the institution verifying that the dental therapist has successfully completed CPR as required by subpart 4, item C.

After the initial submission, a dental therapist must attest to maintaining consecutive and current CPR certification at the time of each license renewal.

[For text of subps 6 to 9, see M.R.]

Subp. 9a. **Expiration or termination of general anesthesia or moderate sedation certificate; requirements.** A dentist requesting renewal or recertification of a general anesthesia or moderate sedation certificate following expiration or termination must comply with the requirements for the applicable interval specified in item A or B. After successful completion of all requirements, the board shall issue a general anesthesia or moderate sedation certificate to the dentist.

A. A dentist whose anesthesia/sedation certificate has expired as described in subpart 9, item C, subitem (5), or who voluntarily terminated the anesthesia/sedation certificate, within 60 calendar days after the renewal application deadline, must comply with subitems (1) to (6):

[For text of subitems (1) to (3), see M.R.]

(4) provide official documentation as proof of current certification in ACLS; ~~or PALS, or an equivalent dental sedation/anesthesia emergency management course;~~

[For text of subitems (5) and (6), see M.R.]

B. A dentist whose anesthesia/sedation certificate has been terminated by the board according to subpart 9, item C, subitem (5), or who voluntarily terminated the anesthesia/sedation certificate, more than 60 calendar days after the renewal application deadline, must comply with subitems (1) to (6):

[For text of subitems (1) to (3), see M.R.]

(4) provide official documentation of current certification in ACLS; ~~or PALS, or an equivalent dental sedation/anesthesia emergency management course;~~

[For text of subitems (5) and (6), see M.R.]

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

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

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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).

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

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

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

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

Subp. 4. **Acceptable documentation of professional development activities.** A licensee must record or obtain acceptable documentation of hours in professional development activities for the licensee's portfolio. Acceptable documentation includes, but is not limited to, the following:

A. a completed self-assessment examination;

B. a copy of the front and back of a completed CPR card ~~or certificate~~ from the American Heart Association; ~~or~~ the American Red Cross; ~~or other equivalent organization;~~

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

[For text of subp 5, see M.R.]

3100.5300 AUDIT PROCESS OF PORTFOLIO.

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

Subp. 3. **Failure of an audit.**

A. Upon failure of an audit, the appropriate board committee ~~may either~~ must impose one or both of the following options:

(1) grant the licensee up to six months to comply with written requirements to resolve deficiencies in professional development compliance; or

(2) initiate disciplinary proceedings against the licensee on grounds specified in parts 3100.6100 and 3100.6200 and Minnesota Statutes, section 150A.08, subdivision 1. Deficiencies causing audit failure may include, but are not limited to, the following:

(+)

(a) lack of proof of documentation or participation;

(2)

(b) credit hours earned outside of renewal period being audited;

(3)

(c) excess of earned hours in a category having a maximum if a deficiency exists;

(4)

(d) lack of earned hours in a category having a minimum if a deficiency exists;

(5)

(e) failure to submit the portfolio;

(6)

(f) unacceptable professional development sources; or

(7)

(g) fraudulently earned or reported hours.

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

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

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

3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.

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

A. dental public health;

~~A.B.~~ endodontics (endodontist);

C. oral and maxillofacial pathology (oral pathologist);

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

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

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

E.F. orthodontics and dentofacial orthopedics (orthodontist);

F.G. pediatric dentistry (pediatric dentist/pedodontist);

~~G.H.~~ periodontics (periodontist); and

H.I. prosthodontics (prosthodontist); and,

~~I.~~ public health.

Subp. 2. ~~Postdoctoral course completion~~ **Specialty announcement.** Only ~~a licensed dentists~~ dentist who ~~have~~ has successfully completed a postdoctoral course of study approved by the Commission on Dental Accreditation in ~~one any~~ one of the designated specialty areas, or who has announced a limitation of practice prior to 1967, or who ~~have~~ has successfully completed certification by ~~one any~~ one of the following specialty examining boards; may announce each specialty practice area and may advertise as a specialist in that area: ~~American Board of Dental Public Health, American Board of Endodontics, American Board of Oral and Maxillofacial Radiology, American Board of Oral and Maxillofacial Surgery, American Board of Oral Pathology, American Board of Orthodontics, American Board of Pediatric Dentistry, American Board of Periodontology, and American Board of Prosthodontics.~~

A. American Board of Dental Public Health;

B. American Board of Endodontics;

C. American Board of Oral and Maxillofacial Pathology;

D. American Board of Oral and Maxillofacial Radiology;

E. American Board of Oral and Maxillofacial Surgery;

F. American Board of Orthodontics;

G. American Board of Pediatric Dentistry;

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H. American Board of Periodontology; and

I. American Board of Prosthodontics.

[For text of subp 3, see M.R.]

3100.8500 LICENSED DENTAL ASSISTANTS.

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

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

K. take photographs extraorally or intraorally; **and**

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

M. obtain informed consent, according to part 3100.9600, subpart 9, for treatments authorized by the supervising dentist pursuant to the licensed dental assistant's scope of practice.

Subp. 1a. **Duties under indirect supervision.** A licensed dental assistant, in addition to the services performed by an assistant described in part 3100.8400, subpart 1, may perform the following services if a dentist is in the office, authorizes the procedures, and remains in the office while the procedures are being performed:

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

L. etch appropriate enamel surfaces, apply and adjust pit and fissure sealants. Before the application of pit and fissure sealants, a licensed dental assistant must have successfully completed a course in pit and fissure sealants at a dental, dental hygiene, or dental assisting school accredited by the Commission on Dental Accreditation;

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

Subp. 1b. **Duties under direct supervision.** A licensed dental assistant may perform the following services if a dentist is in the dental office, personally diagnoses the condition to be treated, personally authorizes the procedure, and evaluates the performance of the licensed dental assistant before dismissing the patient:

A. remove excess bond material from orthodontic appliances;

B. remove bond material from teeth with rotary instruments after removal of orthodontic appliances. Before utilizing rotary instruments for the removal of bond material, a licensed dental assistant must have successfully completed a course in the use of rotary instruments for the express purpose of the removal of bond material from teeth. The course must be one that is presented by a dental, dental hygiene, or dental assisting school accredited by the Commission on Dental Accreditation;

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

I. remove fixed orthodontic bands and brackets; **and**

J. initiate and place an intravenous infusion line in preparation for intravenous medications and sedation while under direct supervision of a dentist who holds a valid general anesthesia or moderate sedation certificate. Before initiating and placing an intravenous infusion line, a licensed dental assistant must have successfully completed board-approved allied dental personnel courses comprised of intravenous access and general anesthesia and moderate sedation training; **and**

K. place nonsurgical retraction material for gingival displacement. Before placing nonsurgical retraction material, a licensed dental assistant must have successfully completed a course in nonsurgical retraction material for gingival displacement at a dental, dental hygiene, or dental assisting school accredited by the Commission on Dental Accreditation.

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

3100.8700 DENTAL HYGIENISTS.

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

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

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J. administer local anesthesia. Before administering local anesthesia, a dental hygienist must have successfully completed a didactic and clinical program sponsored by a dental or dental hygiene school accredited by the Commission on Dental Accreditation, resulting in the dental hygienist becoming clinically competent in the administration of local anesthesia; ~~and~~

K. administer nitrous oxide inhalation analgesia according to part 3100.3600, subparts 4 and 5; ~~and~~

L. obtain informed consent, according to part 3100.9600, subpart 9, for treatments authorized by the supervising dentist pursuant to the dental hygienist's scope of practice.

[For text of subp 2, see M.R.]

Subp. 2a. **Duties under direct supervision.** A dental hygienist may perform the following procedures if a dentist is in the office, personally diagnoses the condition to be treated, personally authorizes the procedure, and evaluates the performance of the dental hygienist before dismissing the patient:

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

E. remove bond material from teeth with rotary instruments after removal of orthodontic appliances. Before utilizing rotary instruments for the removal of bond material, a dental hygienist must have successfully completed a course in the use of rotary instruments for the express purpose of the removal of bond material from teeth. The course must be one that is presented by a dental, dental hygiene, or dental assisting school accredited by the Commission on Dental Accreditation;

F. attach prefit and preadjusted orthodontic appliances;

G. remove fixed orthodontic bands and brackets; ~~and~~

H. initiate and place an intravenous infusion line in preparation for intravenous medications and sedation while under direct supervision of a dentist who holds a valid general anesthesia or moderate sedation certificate. Before initiating and placing an intravenous infusion line, a dental hygienist must have successfully completed board-approved allied dental personnel courses comprised of intravenous access and general anesthesia and moderate sedation training; ~~and~~

I. place nonsurgical retraction material for gingival displacement. Before placing nonsurgical retraction material, a dental hygienist must have successfully completed a course in nonsurgical retraction material for gingival displacement at a dental, dental hygiene, or dental assisting school accredited by the Commission on Dental Accreditation.

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

3100.9600 RECORD KEEPING.

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

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

A. the dentist, advanced dental therapist, ~~or dental therapist, dental hygienist, or licensed dental assistant~~ discussed with the patient the treatment options and the prognosis, benefits, and risks of each treatment that is within the scope of practice of the respective licensee; ~~and~~

B. the patient has consented to the treatment chosen.

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

REPEALER. Minnesota Rules, part 3100.0100, subpart 8, is repealed.

EFFECTIVE DATE. The amendments to Minnesota Rules, parts 3100.0100; 3100.3600; and 3100.5100, are effective August 1, 2014.

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 Licensing Dentists, Dental Hygienists, and Dental Assistants

The rules proposed and published at *State Register*, Volume 39, Number 11, pages 342-353, September 15, 2014 (39 SR 342), are adopted as proposed.

RECEIVED

OCT 15 2014

MN BOARD OF DENTISTRY



MICHAEL J. AHERN

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October 15, 2014

VIA ELECTRONIC MAIL AND MESSENGER

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

Re: Request for Public Hearing on the Minnesota Board of Dentistry's Proposed Rules

Dear Ms. Johnson:

On September 15, 2014, the Minnesota Board of Dentistry ("Board") published notice of Proposed Permanent Rules Relating to Licensing Dentists, Dental Hygienists, and Dental Assistants in the Minnesota State Register. Pursuant to Minn. Stat. § 14.25, the 30 signatories to this letter (included as Attachment A) request that the Board conduct a public hearing on the proposed rules under the procedure provided in Minn. Stat. §§ 14.14 to 14.20.

The Health and Safety Institute ("HSI") is an organization that is in the business of training and offering CPR courses equivalent to the American Heart Association ("AHA") and the American Red Cross ("ARC") to the Board's licensees as well as other organizations and professionals in Minnesota and across North America. Nearly 2000 state and federal government agencies currently use HSI's American Safety and Health Institute ("ASHI") (or MEDIC First Aid) training programs to train their employees, including the United States Coast Guard; Veterans Administration; Department of Agriculture; Air Force; Army Corps of Engineers; Army National Guard; Marshals Service; Administrative Office of the U.S. Courts; Forest Service; Bureau of Alcohol, Tobacco, Firearms and Explosives; Bureau of Land Management; Customs and Border Protection; and the Internal Revenue Service. On whole, ASHI training programs are currently recognized, accepted, approved, or meet the requirements of more than 1900 state regulatory agencies, occupational licensing boards, national associations, commissions, and councils in more than 120 occupations and professions. As an example, earlier this month the Illinois Dental Practice rules were amended to specifically include ASHI programs along with the AHA and ARC as approved basic life support programs.

Earlier this year an Administrative Law Judge found that the Board had illegally implemented the policy sought by the Board's proposed changes to the sections noted below. The Board was ordered to cease and desist from any further efforts to eliminate the Board's legal duty to approve CPR programs that are "equivalent" to those of the AHA and the ARC. Additional context regarding the legislative and rulemaking history of the Board and its treatment of its regulated public can be found in correspondence included as Attachment B to this letter.

The signatories object to the noted rules on multiple bases that will be addressed at the public hearing on November 6, 2014. At that time it will be established that the proposed rules are neither needed nor reasonable. It will be demonstrated that the Board's past actions and these proposed rules have greatly disadvantaged dental licensees as well as "equivalent" CPR and other course providers such as HSI. If adopted, the proposed rules will perpetuate an anticompetitive and even monopolistic regime that is neither needed nor reasonable and is not in the public interest.

The signatories object to the following and recommend that the proposed changes NOT BE adopted:

3100.0100 DEFINITIONS.

Subp. 2a. Advanced cardiac life support or ACLS. "Advanced cardiac life support" or "ACLS" refers to an advanced educational course for a health care provider that teaches a detailed medical protocol for the provision of lifesaving cardiac care in settings ranging from the prehospital environment to the hospital setting. The course must include advanced airway management skills, cardiac drug usage, defibrillation, and arrhythmia interpretation. An ACLS certificate must be obtained through the American Heart Association, ~~the American Red Cross,~~ ~~or an equivalent course.~~

Subp. 9a. CPR. "CPR" refers to a comprehensive, hands-on course for a health care provider that includes: cardiopulmonary resuscitation on an adult, child, and infant; two-person rescuer; barrier mask or bag for ventilation; foreign body airway obstruction; and automated external defibrillation. A CPR certificate shall be obtained through the American Heart Association health care provider course, or the American Red Cross professional rescuer course, ~~or an equivalent course.~~

Subp. 15c. Pediatric advanced life support or PALS. "Pediatric advanced life support" or "PALS" refers to an advanced life support educational course for the pediatric health care provider that teaches the current certification standards of the American Academy of Pediatrics or the American Heart Association. A PALS certificate must be obtained through the American Heart Association ~~or an equivalent course.~~

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

... Subp. 2. General anesthesia or deep sedation; educational training requirements. A dentist may administer general anesthesia or deep sedation only pursuant to items A to C.

A. A dentist must complete either subitem (1) or (2) and subitems (3) and (4):

(3) ~~an appropriate dental sedation/anesthesia emergency management course such as the ACLS or PALS course~~ and maintain current dental sedation/anesthesia emergency management advanced certification thereafter; and

... Subp. 3. Moderate sedation; educational training requirements. A dentist may administer moderate sedation only pursuant to items A to C.

A. A dentist must complete subitems (1) to (3):

... (3) ~~an appropriate dental sedation/anesthesia emergency management course such as the ACLS or PALS course~~ and maintain current dental sedation/anesthesia emergency management advanced certification thereafter; and

... Subp. 5. Notice to board.

... B. A dentist may administer general anesthesia, deep sedation, or moderate sedation only if the dentist has submitted the following information to the board on forms provided by the board: the name, address, and telephone number of the institution at which the dentist took the program or residency that complies with subparts 2, item A, subitem (1) or (2); and 3, item A, subitem (1), a certified copy of the dentist's transcript and other official record from the institution verifying that the dentist satisfactorily completed the program, residency, or course; and the name, address, and telephone number of the institution or other agency at which the dentist successfully completed the ACLS, or PALS, ~~or, an equivalent course~~ required by subparts 2, item A, subitem (3); and 3, item A, subitem (2). After this initial submission, dentists shall submit on a license renewal application or other form provided by the board a statement of the most recent course completed in ACLS, or PALS, ~~or an equivalent course~~.

Subp. 9a. Expiration or termination of general anesthesia or moderate sedation certificate; requirements. A dentist requesting renewal or recertification of a general anesthesia or moderate sedation certificate following expiration or termination must comply with the requirements for the applicable interval specified in item A or B. After successful completion of all requirements, the board shall issue a general anesthesia or moderate sedation certificate to the dentist.

A. A dentist whose anesthesia/sedation certificate has expired as described in subpart 9, item C, subitem (5), or who voluntarily terminated the anesthesia/sedation certificate, within 60 calendar days after the renewal application deadline, must comply with subitems (1) to (6):

(4) provide official documentation as proof of current certification in ACLS, or PALS, ~~or an equivalent dental sedation/anesthesia-emergency management course~~;

B. A dentist whose anesthesia/sedation certificate has been terminated by the board according to subpart 9, item C, subitem (5), or who voluntarily terminated the anesthesia/sedation certificate, more than 60 calendar days after the renewal application deadline, must comply with subitems (1) to (6):

(4) provide official documentation of current certification in ACLS, or PALS, ~~or an equivalent dental sedation/anesthesia-emergency management course~~;

3100.5100 PROFESSIONAL DEVELOPMENT.

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).

(3) A CPR certification course is mandatory for each licensee to maintain licensure. The CPR course must be ~~equivalent to the American Heart~~ Association healthcare provider course or the American Red Cross professional

rescuer course. The licensee must maintain a consecutive and current CPR certificate when renewing a license or permit each biennial term.

...

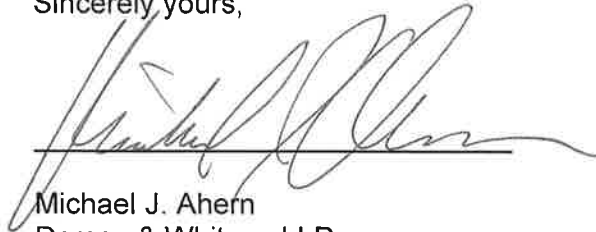
Subp. 4. Acceptable documentation of professional development activities. A licensee must record or obtain acceptable documentation of hours in professional development activities for the licensee's portfolio. Acceptable documentation includes, but is not limited to, the following:

- A. a completed self-assessment examination;
- B. a copy of the front and back of a completed CPR card ~~or certificate~~ from the American Heart Association, or the American Red Cross, ~~or other equivalent organization;~~

[END OF PROPOSED RULES]

Please feel free to contact the undersigned if you have any questions.

Sincerely yours,



Michael J. Ahern
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, Minnesota 55402-1498
612-340-2881 (office)
612-340-2643 (facsimile)
ahern.michael@dorsey.com

ATTACHMENT A

The following signatories to this letter request a public hearing on the Minnesota Board of Dentistry's proposed rulemaking publishing in the Minnesota State Register on September 15, 2014

(1)
Signature: [Signature]
Name: Nina Kaczowski
Address: 2919 Silver Lake Ct.
Mpls, MN 55421

(2)
Signature: [Signature]
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Address: 1162 Thomas Ave, St Paul
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(3)
Signature: [Signature]
Name: Brian Bell
Address: 501 Main St. SE, #630
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(4)
Signature: [Signature]
Name: Mark D. Wyner
Address: 4203 Blaisdell Ave
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Signature: [Signature]
Name: James Mason
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Signature: [Signature]
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~~Michael Dwyer~~


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(17)

Signature:

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(18)

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Name:

Address:

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(30)

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Mounds View MN 55112

ATTACHMENT B



MICHAEL J. AHERN
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ahern.michael@dorsey.com

August 28, 2014

Senator Kathy Sheran
120 Capitol
75 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155-1606

Senator Jeff Hayden
208 Capitol
75 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155-1606

Representative Tina Leibling
P.O. Box 6332
Rochester, MN 55903

Representative Will Morgan
409 Oakland Lane
Burnsville, MN 55337

Representative Melissa Hortman
377 State Office Building
100 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155-1206

Re: Request for Board of Dentistry Determination of the Health and Safety Institute's
Cardiopulmonary Resuscitation Courses (CPR)

Greetings:

I am writing on behalf of the Health Safety Institute (HSI) and its parent the American Safety and Health Institute (ASHI) to provide an update to last session's discussion about whether the Board of Dentistry (the Board) should/could exclude CPR "equivalent vendors" from being qualified vendors to dental professionals in Minnesota. The HSI/ASHI professional level CPR training programs are currently recognized as equivalent, accepted, approved, or otherwise meet the licensing requirements for dental professionals in 45 states. On whole, ASHI training programs meet the requirements of more than 2000 state regulatory agencies, occupational licensing boards, national associations, commissions, and councils in more than 120 occupations and professions (FACT Sheet, attached).

2014 SESSION:

As you may recall, prior to the last legislative session, the Board initiated a rule making proceeding proposing to reduce the number of qualified CPR vendors to just two: the American Heart Association (AHA) and the American Red Cross (ARC). The HSI (a competitor/alternate vendor to AHA and ARC) formally objected through participation in the rulemaking proceeding. Unbeknownst to HSI, the Board sponsored legislative amendments eliminating the "or equivalent" language were added to routine Board legislation early in the 2014 session. HSI only learned of this after the House and Senate committees had adopted and passed on the legislation to the next committee—and ultimately transferred authorship as part of an omnibus bill.

August 28, 2014
Page 2

On behalf of HSI, I visited with staff and a few legislators seeking to slow or amend this legislation. Understandably, we were told we were too late unless we could work something out with the Board's Mr. Shragg. I met with Mr. Shragg in an attempt to find a compromise.

We understood the rationale for eliminating the "or equivalent" language was that the process of determining equivalency was too time consuming/difficult/inconvenient and otherwise a distraction for the Board staff. Accordingly, we proposed an amendment that would allow the Board to rely on the equivalency determination of a nationally recognized allied dental organization. The Dental Assisting National Board (DANB) is a nationally recognized dentistry organization dedicated to accreditation of dental assistants. DANB's legitimacy and accreditation of dental assistant training IS recognized in Minnesota law (see Minn. Statute Section 150A.06 subd.8). On a national basis, DANB actively monitors and publishes a list of qualified vendors that meet the CPR equivalency standards (see attached list). Mr. Shragg promised to visit with DANB staff regarding their accreditation and listing of CPR providers. His response was that the DANB list was updated too frequently, and thus would still be an enforcement inconvenience. So there was no compromise amendment to be made with the Board in the 2014 session.

POST SESSION:

The Board was successful in the 2014 session in changing the two references to "equivalency" that are contained in statute. However, these changes only applied to a subset of Board licensees—limited license dentists(semi-retired dentists) and dental assistants. All of the other licensees regulated by the Board after August 1, 2014 are still entitled to use equivalent CPR courses pursuant to Board rules that have not been amended.

HSI brought a legal action against the Board alleging the Board had illegally barred HSI and other vendors from providing CPR courses by issuing a summary edict and notice on March 7, 2013 purporting to be retroactive to September 21, 2012. The Board responded to this action by removing the March 7, 2013 notice from its website, agreeing to review HSI for equivalency, and asserting the legal action was now moot and should be dismissed. The ALJ issued a cease and desist order against the Board finding they had acted illegally, and the case was not moot.

In pleadings and at oral argument in May, the Board stated they were evaluating HSI for approval as an equivalent CPR provider. At the conclusion of the oral argument on May 19th 2014, HSI followed up with the Board to see if there was any other information needed for the Board's review of HSI. Despite their representations to the court, no response was received from the Board. On August 1, 2014 (after two and a half months!), I wrote the attached letter requesting a Board response in a week. Still no response from the Board.

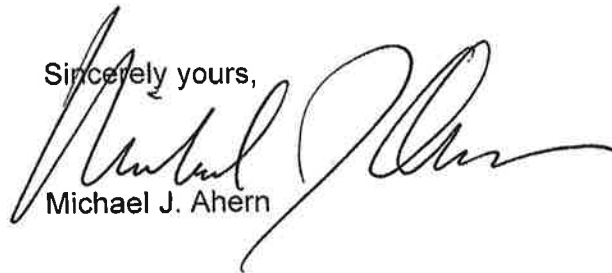
The Board has been Ordered to stop its illegal actions. Yet, since May of this year, the Board has ignored all HSI inquires and denied HSI its right to equivalency for dental professionals which it enjoys in 45 states.

August 28, 2014
Page 3

I am writing you, as a legislator who I spoke to last session, to request your assistance in trying to get the Board to follow the law and their own commitments. No member of the regulated public should be treated with the active disdain shown by the Board of Dentistry and their staff toward HSI.

In the coming weeks I will follow up with you and your staff to see what might be done to remedy this situation.

Sincerely yours,



Michael J. Ahern

Attachments

cc: Ralph Shenefelt – HSI/ASHI



Professional Level Resuscitation Training Program Fact Sheet¹

Resuscitation Programs

- ASHI *CPR Pro for the Professional Rescuer*. Basic Life Support for Healthcare Providers (BLS)
- ASHI *Advanced Cardiac Life Support* (ASHI ACLS)
- ASHI *Pediatric Advanced Life Support* (ASHI PALS)

About ASHI/HSI

1. ASHI resuscitation training programs are developed by the Health and Safety Institute (HSI).
2. HSI is a major CPR, emergency care, and safety training organization, joining together the training programs, products, and services of ASHI, MEDIC First Aid®, 24-7 EMS, 24-7 Fire, EMP Canada, and Summit Training Source.²

ASHI resuscitation programs are current, evidence-based, and peer-reviewed.

1. HSI, like the American Heart Association, ® Inc. (AHA), is a nationally accredited organization of the Continuing Education Coordinating Board for Emergency Medical Services (CECBEMS). CECBEMS is the national accrediting body for Emergency Medical Services (EMS) continuing education courses and course providers. CECBEMS accreditation requires an evidence-based peer-review process for continuing education programs comparable to all healthcare accreditors. ASHI resuscitation training programs are CECBEMS approved.
 2. ASHI resuscitation training programs conform to the ILCOR 2010 Consensus on Science, and the 2010 AHA Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care Science.
 3. An ASHI representative participated in the *International Committee on Resuscitation 2005 and 2010 International Conference on Cardiopulmonary Resuscitation and Emergency Cardiovascular Care Science with Treatment Recommendations*, hosted by the AHA.
 4. An ASHI representative was a volunteer member of the AHA and American Red Cross 2005 National and 2010 International First Aid Science Advisory Board and were contributors to the 2005 and 2010 Consensus on First Aid Science and Treatment Recommendations.
 5. ASHI resuscitation programs meet the standards of the Joint Commission, are accepted as equivalent to the AHA by the Commission on Accreditation of Medical Transport Systems, the American Academy of Sleep Medicine, and the United States Coast Guard Health Services Program (among others).
 6. ASHI resuscitation programs are approved by the Texas Medical Board, Florida Board of Medicine, and the Medical Board of California, among others (letters on file).
 7. HSI is a member of the American National Standards Institute (ANSI) and ASTM International (ASTM) – both globally recognized leaders in the development and delivery of international voluntary consensus standards.
-

¹ Last reviewed/updated: February 10, 2014

² Anderson ML, et al. Rates of cardiopulmonary resuscitation training in the United States. *JAMA Intern Med.* 2014 Feb 1;174(2):194-201
ASHI, MEDIC First Aid®, 24-7 EMS®, 24-7 Fire, EMP Canada, and Summit Training Source are members of the HSI family of brands.

ATTACHMENT B

8. HSI is a member of the Council on Licensure, Enforcement and Regulation (CLEAR), the premiere international resource for professional regulation stakeholders.
9. Nearly 2000 state and federal government agencies currently use ASHI (or MEDIC First Aid) training programs to train their employees, including the United States Coast Guard, Veterans Administration, Department of Agriculture, Air Force, Army Corps of Engineers, Army National Guard, Marshals Service, Administration Office of the U.S. Courts, Forest Service, Bureau of Alcohol, Tobacco, Firearms and Explosives, Bureau of Land Management, Customs and Border Protection, and the Internal Revenue Service.
10. On whole, ASHI training programs are currently recognized, accepted, approved, or meet the requirements of more than 1900 state regulatory agencies, occupational licensing boards, national associations, commissions, and councils in more than 120 occupations and professions.

ASHI resuscitation programs are taught by qualified instructors affiliated with an approved Training Center and are authorized to certify course participants

1. Certification of participants requires successful completion of a written exam and instructor evaluation of hands-on skills to verify skill competency.
2. HSI publishes and administers a set of Quality Assurance Standards designed to monitor and improve the performance of HSI, its approved ASHI Training Centers and Authorized Instructors so that the products and services provided meet or exceed the requirements of regulatory authorities and other approvers.

If you have questions please contact us at 800-447-3177

ATTACHMENT B

3/31/2014

DANB-Accepted CPR Providers



Dental Assisting National Board, Inc.
Measuring Dental Assisting Excellence®

DANB-Accepted CPR Providers

Following is a list of CPR course providers accepted by DANB as meeting certification and recertification requirements. Courses must be for CPR, and a hands-on exam must be taken.

American Environmental Health and Safety

American Heart Association

American Red Cross

American Safety and Health Institute

Canadian Red Cross

Emergency Care and Safety Institute

Emergency First Response

Emergency Medical Training Associates

Emergency University*

EMS Safety Services

Medic First Aid

Medical Training Associates

Military Training Network

National Safety Council (Green Cross)

ProCPR*

Saudi Heart Association

*Not all courses include the hands-on exam; check with the provider before taking a course to confirm it will be accepted by DANB.

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3/31/2014

DANB-Accepted CPR Providers

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Dental Assisting National Board, Inc. | 444 N. Michigan Ave., Suite 900 Chicago, IL 60611 | Telephone: 1-800-367-3262 (or 312-642-3368)

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ATTACHMENT B



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August 1, 2014

VIA ELECTRONIC MAIL AND POSTAL SERVICE

Marshall Shragg
Executive Director
Minnesota Board of Dentistry
University Park Plaza
2829 University Avenue, SE, Suite 450
Minneapolis, MN 55414-3236

Re: Request for Board of Dentistry Determination of the Health and Safety Institute's
Cardiopulmonary Resuscitation Courses

Dear Mr. Shragg:

This letter follows a series of correspondence and hearings that have unfolded over the past year and a half in which the Health and Safety Institute ("HSI") has sought the recognition that it is due under Minnesota Statutes and Rules to provide Cardiopulmonary Resuscitation ("CPR") certification courses to individuals regulated by the Minnesota Board of Dentistry ("Board"). On March 7, 2013, the Board issued a resolution stating that it would only accept the American Heart Association ("AHA") or the American Red Cross ("ARC") as CPR courses for professional development and licensure requirements of the Board. On March 15, 2013, Senior Vice President of HSI, Ralph Shenefelt, sent the Board a letter requesting that it stop the unfair and competition restraining practices reflected in the resolution and amend its March 7, 2013 resolution to include courses equivalent to the AHA and ARC.

After the Board failed to grant the action requested by HSI, on April 14, 2014, HSI filed a petition and affidavit under Minn. Stat. § 14.381 requesting that the Office of Administrative Hearings order the Board to cease and desist enforcement of its March 7, 2013 resolution as an unadopted rule. On April 29, 2014, Assistant Attorney General Sara P. Boeshans replied on behalf of the Board. On June 18, 2014, Administrative Law Judge Eric P. Lipman ruled that under the current statutes and rules, the Board could not limit the accreditation of CPR courses to those from the AHA and the ARC and equivalent courses must also be considered.

In the April 29, 2014 reply of Assistant Attorney General Sara P. Boeshans on behalf of the Board, she stated the following on page 8 of that document as supporting an argument that HSI's request was moot:

...the Board is considering whether [HSI's] CPR courses are equivalent to the AHA and ARC courses. If the Board accepts [HSI's] CPR courses as equivalent, the Board will continue to accept them as equivalent as long as ASHI does not

ATTACHMENT B



August 1, 2014
Page 2

change any of the CPR course components and until the Board's statutes or rules are changed. Thus, [HSI] will not be subject to the alleged actions it complains of again.

Assistant Attorney General Sara P. Boeshans confirmed this statement at oral arguments in Docket No. OAH 8-0902-31449 on May 19, 2014 and stated that the Board was actively making determinations with regard to the equivalency of CPR courses. See Hearing Transcript, OAH 8-0902-31449, at 40-41, 46 (May 19, 2014).

In addition, on the very day of the hearing before the ALJ, May 19, 2014, Mr. Ralph Shenefeldt sent you the following e-mail, (on which I was copied):

Sent: Monday, May 19, 2014 2:14 PM
To: marshall.shragg@state.mn.us
Cc: ahern.michael@dorsey.com
Subject: Considerations of Equivalency

Dear Mr. Shragg;

According to the response of the Board to our petition, it is currently considering whether ASHI's CPR courses are equivalent to the AHA and ARC courses (OAH Docket No. 8-0902-31449, April 29th, 2014, pg. 8). With the exception of materials previously included as exhibits in my numerous communications, is there any additional information or materials that the Board requires for its consideration? In addition, please advise by when may we expect to learn the Board's decision. Thank you!

Respectfully,

Ralph M. Shenefeldt
SVP, Regulatory & Quality Assurance
P 800 447 3177, x390
Health & Safety Institute | 1450 Westec Drive Eugene, OR 97402 | www.hsi.com

Months have now passed since the Board made representations to the Judge and obligations to HSI. During this time HSI has heard NOTHING from the Board.

HSI requests that the Board make a determination regarding the equivalency of HSI's CPR course within 7 days of the date of this letter.

Sincerely yours,



Michael J. Ahern

cc: Judge Eric Lipman
Assistant Attorney General Sara Boeshans
Ralph Shenefeldt

Minnesota Board of Dentistry

STATEMENT OF NEED AND REASONABLENESS

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

INTRODUCTION

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

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

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

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

ALTERNATIVE FORMAT

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

STATUTORY AUTHORITY

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

"150A.04 RULES OF THE BOARD.

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

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

REGULATORY ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

- No other classes of government units or businesses will be affected by not adopting the proposed rules.

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

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

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

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

PERFORMANCE-BASED RULES

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

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

ADDITIONAL NOTICE PLAN and NOTICE PLAN

Additional Notice Plan

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

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

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

MINNESOTA BOARD OF DENTISTRY – NEW PROPOSED RULES

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

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

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

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

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

MINNESOTA BOARD OF DENTISTRY – NEW PROPOSED RULES

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

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

9. By March 14, 2014, the end of the 60-day Request for Comments period, the Board had only received the following two comments regarding its proposed rules.

- a. On February 11, 2014, the Board received correspondence from Ralph Shenefelt of the Health and Safety Institute ("HSI"). The HSI opposed the Board's proposed rules where certain language had been eliminated regarding an "equivalent course" for CPR and ACLS. The HSI also suggested specifically naming, the American Safety & Health Institute, a division of HSI, in the Board's proposed rules concerning CPR and ACLS.

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

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

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

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

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

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

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

Notice Plan

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

1. According to Minnesota Statutes, section 14.14, subdivision 1a, a copy of the Dual Notice and proposed rules shall be mailed to all persons who have registered to be on the Board of Dentistry's rulemaking mailing list. This mailing shall be accomplished by sending an electronic copy via e-mail to all persons on the list.

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

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

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

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

b. The members of the Legislative Coordinating Commission.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

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

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

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

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

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

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

LIST OF WITNESSES

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

1. Teri Youngdahl, L.D.A., Board Member
2. Joan Sheppard, D.D.S., Board Member
3. Paul Walker, D.D.S., Board Member
4. Nancy Kearn, D.H., Board Member
5. Neal Benjamin, D.D.S., Board Member
6. David Gesko, D.D.S., Board Member
7. Counsel from the Attorney General's Office
8. Marshall Shragg, Executive Director

RULE-BY-RULE ANALYSIS

PROPOSED RULE CHANGES

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

3100.0100 DEFINITIONS.

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

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

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

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

3100.0300 MEETINGS.

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

3100.1850 REINSTATEMENT OF LICENSE.

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

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

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

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

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

Subpart 5. **Notice to board.**

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

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

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

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

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

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

3100.5100 PROFESSIONAL DEVELOPMENT.

Subpart 3. Professional development activities.

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

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

Subpart 4. Acceptable documentation of professional development activities.

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

3100.5300 AUDIT PROCESS OF PORTFOLIO.

Subpart 3. Failure of an audit.

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

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

3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.

Subpart 1. **Specialty areas.**

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

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

3100.8500 LICENSED DENTAL ASSISTANTS.

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

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

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

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

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

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

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

3100.8700 DENTAL HYGIENISTS.

Subpart 1. Duties under general supervision.

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

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

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

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

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

3100.9600 RECORD KEEPING.

Subpart 9. **Informed consent.**

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

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

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

3100.1100 APPLICATIONS FOR LICENSE TO PRACTICE DENTISTRY.

- Subpart 1, Item B.

3100.1150 LICENSE TO PRACTICE DENTISTRY AS A FACULTY DENTIST.

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

3100.1160 LICENSE TO PRACTICE DENTISTRY AS A RESIDENT DENTIST.

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

3100.1200 APPLICATION FOR LICENSE TO PRACTICE DENTAL HYGIENE.

- Item D.

3100.1300 APPLICATION FOR LICENSE TO PRACTICE DENTAL ASSISTING.

- Item B.

3100.1400 APPLICATION FOR LICENSURE BY CREDENTIALS.

- Item B.

3100.3300 EXAMINATION OF DENTISTS.

- Subpart 4a.

3100.3400 EXAMINATION OF DENTAL HYGIENISTS.

- Subpart 3a.

3100.3500 EXAMINATION OF LICENSED DENTAL ASSISTANTS.

- Subpart 2a.

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

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

3100.8500 LICENSED DENTAL ASSISTANTS.

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

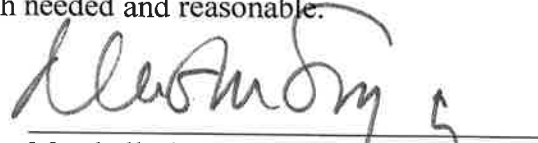
3100.8700 DENTAL HYGIENISTS.

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

CONCLUSION

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

Dated: August 9TH 2014



Marshall Shragg, MPH
Executive Director
Minnesota Board of Dentistry



MINNESOTA BOARD OF DENTISTRY

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November 26, 2014

The Honorable James Mortenson
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
600 North Robert Street
St. Paul, MN 55101

Re: In The Matter Of The Proposed Permanent Rules Of The Minnesota Board Of Dentistry Relating To Dentists, Dental Therapists, Dental Hygienists, And Licensed Dental Assistants, *Minnesota Rules* 3100.0100, 3100.0300, 3100.1100, 3100.1150, 3100.1160, 3100.1200, 3100.1300, 3100.1400, 3100.1850, 3100.3300, 3100.3400, 3100.3500, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8500, 3100.8700, and 3100.9600; OAH Docket No. 5-0902-31791; Revisor's ID # R-4228

Dear Judge Mortenson:

The Minnesota Board of Dentistry ("Board") submits this letter as its initial response to written comments and hearing testimony. The sole objection to the Board's proposed rules focuses on the deletion of the existing language "or an equivalent course," "an appropriate dental sedation/anesthesia emergency management course," "or an equivalent dental sedation/anesthesia emergency management course," and "or other equivalent organization" relating to cardiopulmonary resuscitation ("CPR") and advanced cardiac life support ("ACLS") as outlined within the following rules: Minnesota Rules 3100.0100, subparts 2a, 9a, and 15c; 3100.3600, subpart 2, item A(3), subpart 3, item A(2), subpart 5, item B, and subpart 9a, items A(4) and B(4); and 3100.5100, subpart 3, item A(3) and subpart 4, item B.

The Board has summarized and shall respond to the following list of comments or issues from the Health and Safety Institute ("HSI") and the American Safety and Health Institute ("ASHI") relative to CPR and ACLS:

[First Comment]

The Board has had the legal duty to establish "equivalency" since at least 2003, but has found its rules to be "too hard" and ultimately impossible.

[Board's Response]

Since 2004, the Board has required all licensees to complete a cardiopulmonary resuscitation ("CPR") course to maintain their biennial license and required dentists to complete an Advanced Cardiovascular Life Support ("ACLS") course, among other things, in order to administer

sedation/anesthesia. When the initial rule language was drafted prior to 2004, the Board recognized the American Heart Association (“AHA”) and the American Red Cross (“ARC”) as being the superior providers of these training services. Despite this, the Board decided to include the language “or an equivalent course” as part of the rules drafted in 2004.

From 2004 to 2014, the Board encountered many unanticipated difficulties when trying to determine whether a course was “equivalent.” Determining equivalency of a course is not a simple matter of comparing one list of requirements to another list. For courses other than the AHA or ARC, the Board discovered the following:

- 1) often different wording is used for major components in the course which leads to confusion;
- 2) not enough detailed information is provided related to content of the course;
- 3) often no indication that a hands-on component is part of the course;
- 4) descriptions of courses provide no proof that instructor training is calibrated or the instructor is required to routinely retest;
- 5) many times the course level completed is not indicated on the card;
- 6) often no indication of the actual length of the entire course;
- 7) course curriculum changes are not consistently communicated or implemented; and
- 8) compounding these problems is the fact that instructors are often unresponsive to questions from Board or licensees about the training.

The Board now understands that organizations offering CPR and ACLS courses are unregulated by any federal, state, or local agency, which means there is no national accreditation process to vouch for the legitimacy of any organization. Based upon this information, the Board finds that it lacks the ability to determine whether a course is equivalent absent regulated resources or guidelines to make any type of determination. The Board wholly believes that it is in the public’s interest to rely solely on those organizations that have established the gold standard in emergency response training, namely the AHA and the ARC.

[Second Comment]

The proposed rules would create a monopoly and duopoly markets giving the AHA and ARC unfair market control and significant influence over the price of CPR, ACLS, and PALS training courses for dental professionals.

[Board’s Response]

The Board argues that the problem is not unfair market control but rather poor regulatory controls. Organizations offering CPR and ACLS courses are completely unregulated by any federal, state, or local agency, which means there is no national accreditation process to vouch for the legitimacy of any organization.

As for the price of CPR, ACLS, and PALS training courses for dental professionals, the Board cannot overemphasize that it values and advocates for patient safety over cost when justifying rules for the practice of dentistry. The HSI/ASHI merely speculates that prices will increase for licensees but does not provide any evidence indicating such. Further, no price information for

courses exists on the websites for HSI/ASHI, so prices must be determined by the independent instructors based upon how much they are getting charged for the materials from HSI/ASHI.

[Third Comment]

The Board's licensees used HSI/ASHI training and certification throughout this period without any known problem or complaint from the Board.

[Board's Response]

The Board does not maintain any records or track the CPR and ACLS courses that have been completed by the licensees as part of a random professional development audit. Only a small percent of licensees are audited by the Board. Therefore, it is unknown if any licensees have ever completed or submitted CPR and ACLS courses from HSI/ASHI.

[Fourth Comment]

The Board's SONAR failed to identify CPR providers as a class of the public affected by the proposed rules.

[Board's Response]

Prior to and at the Rules Hearing, there were no regulated dental professionals present who were opposed to the Board's proposed rules to delete the existing language "or an equivalent course" from the rules. Throughout the rulemaking process, the Board has appropriately communicated with all licensees and the representatives of the Minnesota Dental Association, the Minnesota Dental Hygienists' Association, the Minnesota Dental Hygiene Educators Association, the Minnesota Dental Assistants Association, and the Minnesota Educators of Dental Assistants.

As for the Board's SONAR, the SONAR must contain a regulatory analysis that includes information to the extent the Board can get this information through reasonable effort. The Board used reasonable efforts to obtain information for its SONAR through discussion at public meetings. Regarding the CPR/ACLS matter, the Board only received subjective information from one organization, the HSI/ASHI. No other organizations or individuals who provide CPR/ACLS courses contacted the Board about its proposed rules. Therefore, the Board did not correlate that HSI/ASHI was a class of persons but instead considered them to be one single organization or person.

As far as HSI/ASHI's exhibits labeled Attachments A and E, these appear to be recent supporters for HSI/ASHI. In Attachment A, there is an email from James Cooper of the Spring Valley Ambulance Association that incorrectly indicated the "American Board of Dentistry," instead of the "Minnesota Board of Dentistry" which makes one question the source. In Attachment E, there are numerous letters from individuals who have businesses that provide basic CPR training for the general public, physicians, lifeguards, public safety department, firefighters, and emergency medical personnel. The contents of these letters do not specifically describe the contents of a healthcare provider level of CPR for dental professionals or provide any type of

comparison. Michelle Gillard's letter states that dental offices will choose ASHI because they are cheaper, not because ASHI is identical to the AHA.

From these letters, it is apparent that the majority of these individuals will not be affected by the Board's proposed rules as they are not currently providing CPR/ACLS training courses for licensed dental professionals. Moreover, this Board is one of numerous Boards in the State of Minnesota that requires CPR/ACLS training. The Board is attempting to standardize the CPR course options only for Minnesota dental professionals and does not believe that this single change would cause an undue financial hardship for HSI/ASHI or any other organization. In the end, the Board must continue to promote what is best for public protection.

[Fifth Comment]

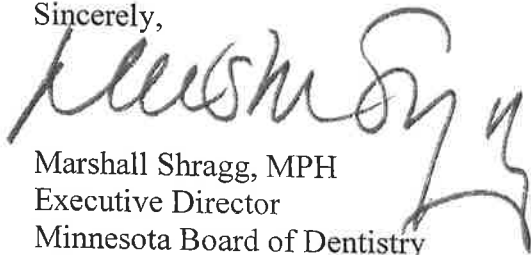
Other agencies have approved HSI/ASHI trainings as less-intrusive and less costly alternatives compared to the Board's proposal.

[Board's Response]

The Board acknowledges that CPR courses offered by the ASHI have been pre-approved by the Dental Assisting National Board ("DANB"). However, DANB does not require that dental assistants take a particular CPR course from ASHI. Therefore, a dental assistant can take a basic CPR course, which does not meet the more rigorous standard required by the Board for licensed dental assistants in Minnesota. Therefore, the Board concludes that it is easy for DANB to determine that HSI/ASHI's CPR courses are acceptable, since DANB has a much lower threshold to fulfill. The Board requires licensed dental assistants to complete Healthcare Provider CPR, which is much more difficult to compare to other CPR courses for equivalency due to its higher complexity with techniques and added components above basic CPR.

In conclusion, the Board has addressed the numerous concerns raised within HSI/ASHI's November 6, 2014, letter that was presented at the hearing. Moreover, the Board has shown that the rules are needed and reasonable. We respectfully submit that the Administrative Law Judge should recommend adoption of these rules.

Sincerely,



Marshall Shragg, MPH
Executive Director
Minnesota Board of Dentistry
(612) 548-2127



MINNESOTA BOARD OF DENTISTRY

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December 5, 2014

The Honorable James Mortenson
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
600 North Robert Street
St. Paul, MN 55101

Re: In The Matter Of The Proposed Permanent Rules Of The Minnesota Board Of Dentistry Relating To Dentists, Dental Therapists, Dental Hygienists, And Licensed Dental Assistants, *Minnesota Rules* 3100.0100, 3100.0300, 3100.1100, 3100.1150, 3100.1160, 3100.1200, 3100.1300, 3100.1400, 3100.1850, 3100.3300, 3100.3400, 3100.3500, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8500, 3100.8700, and 3100.9600; OAH Docket No. 5-0902-31791; Revisor's ID # R-4228

Dear Judge Mortenson:

The Minnesota Board of Dentistry ("Board") submits this letter as its rebuttal to additional written comments that have been received by your office. We appreciate the opportunity to clarify some issues that have been raised in the document dated November 26, 2014, from the Health and Safety Institute/American Safety and Health Institute ("HSI/ASHI").

Although the group of rules proposed by the Board is rather extensive and broad-ranging, the only area that generated any controversy relates to the Board's contention that the existing clause related to cardiopulmonary resuscitation ("CPR") training acceptable to the Board should be stricken. Those four small words, *or an equivalent course*, have created significant challenges for licensees and staff. However, the removal of those same four small words has the potential to simplify not only Board operations but — more importantly— the applications for licensure, continuing education or professional development, and renewal processes for dental professionals throughout Minnesota. The process can be simplified while maintaining the high standards of care required to ensure the competence of the State's dental workforce. This requires the removal of those four small words.

On the second page of the document, the Board disagrees with the comment about being unresponsive. On behalf of the Board, I have corresponded with HSI/ASHI on multiple occasions about their concerns over the CPR matter. The reality was that *the Board was*

responsive, but they did not like the responses they were getting. Additionally, in Judge Lipman's decision, the Board was ordered not to limit the accreditation of CPR certificates to courses from the American Heart Association ("AHA") and American Red Cross ("ARC"). The Board was NOT ordered to recognize non-AHA/ARC providers, but to *consider the equivalence* of non-AHA/ARC courses, as the current rule language requires. In response to the issue of reviewing the HSI/ASHI's programs for equivalency, the Board is unaware at this time of any dental professionals who have ever completed or submitted CPR and ACLS courses from HSI/ASHI that would have required the Board's assessment. The opponents to this proposal choose to misread and mislead.

Other commenters in opposition to the Board's proposed rules focus on the business impact to the particular vendor, whereas **the Board is concerned first and foremost about patient safety**. Costs cited address only the HSI/ASHI training at select locations, but fail to take into account (a) the costs to the individual for numerous other programs that would have to be considered should the language remain as is, and (b) the total costs of delivering the training. In Attachment 1 at page 2, Michelle Gross indicates some various costs incurred by the student to obtain a card. However, Ms. Gross fails to reveal the total cost that is charged to the student for the entire course, not just the card. This amount could certainly tip perception toward their objection on cost since no further information is provided by her. Once again, incomplete, misleading information has been provided by these commenters.

Please note that this rebuttal, although addressing the issues raised by *HSI/ASHI*, has much broader implications, as there are many more providers of CPR training than the AHA, ARC and HSI/ASHI. The sheer numbers exacerbates the difficulty of assessing and communicating equivalence as those multitudes of programs are presented to the Board for consideration, each requiring an individual review based on the curriculum being offered at the time the course was taken. The main complication for the Board is not to have to determine equivalency between the AHA, ARC, and HSI/ASHI, but that it has to determine equivalency to standards **for all of the other CPR programs** that are available to dental professionals, and which are unregulated. This is not a simple task for the Board. Comments are provided that one organization or another prefers HSI/ASHI over another training system. The fact is, there are always going to be some organizations providing training that prefer one training system to another. This submission of a group's preference still addresses only one of many organizations that the Board no longer feels it can provide comparative assessments for, and will need to limit the stress on Board resources and provide clarity and simplicity for its licensees and applicants. Further, this action is not intended to, nor does it create a monopoly. The Board's intention is to reach consistent and clear levels of training for a significant aspect of practice. Again, patient safety takes precedence over provider preference.

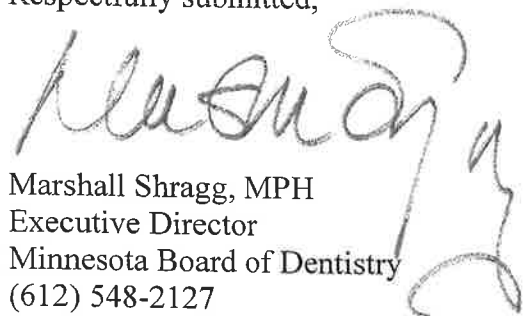
Time and time again, HSI/ASHI states that its programs conform to the 2010 AHA Guidelines

for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care Science and they provided what they refer to as a *Fact Sheet* in Attachment 2. However, this Fact Sheet does not list the necessary information that would be needed to determine equivalency such as a detailed curriculum of all the components of the courses with a brief explanation, a description of the hands-on instruction and equipment used, an example of their testing module, and an accurate depiction of the time spent on each component including the total awarded credit amount. Instead, HSI/ASHI's Fact Sheet contains a lot of irrelevant information that proves nothing. For this reason, the Board continues to rely upon the AHA and the ARC as the superior *gold standard*. It bears mentioning that the ARC was established in 1881, just four years before the Board of Dentistry was created. Moreover, the AHA was founded in 1924. Both the AHA and the ARC have longstanding histories and global recognition in comparison to the HSI/ASHI, which originated in 1996.

Regarding the November 2013 article in the *Journal of the American Medical Association* within Attachment 3, the HSI/ASHI has resurrected a specious argument based on a misinterpretation and misrepresentation of the article when they state that the authors agree that HSI/ASHI is within the same class as the AHA and the ARC, and that the authors of the article acknowledge that HSI/ASHI CPR training is on par with the AHA and the ARC. The article addresses the implications of various rates of CPR training in regions across the US. As indicated in the actual conclusion paragraph for the article, it was determined that the annual rates of US CPR training are low and vary widely across communities. These data contributed to known geographic disparities in survival of cardiac arrest and offered opportunities for future community interventions. *Nowhere* in this article is there information that supports the claims being made by HSI/ASHI, which again is misleading from the Board's perspective, and should mitigate any reliance on their submissions.

We are of the opinion that the Board— and others— through their testimony have satisfactorily demonstrated both the need and the reasonableness of the proposed rules, and look forward to your decision.

Respectfully submitted,



Marshall Shragg, MPH
Executive Director
Minnesota Board of Dentistry
(612) 548-2127



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street
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January 15, 2015

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

**Re: In the Matter of the Proposed Amendments to Permanent Rules
Relating to Licensing Dentist, Dental Hygienist, and Dental Assistant
OAH 5-0902-31791; Revisor R-4228**

Dear Mr. Shragg:

Enclosed herewith and served upon you is the **REPORT OF THE ADMINISTRATIVE LAW JUDGE** in the above-entitled matter. The Administrative Law Judge has determined there are no negative findings in these rules.

The Office of Administrative Hearings has closed this file and is returning the rule record so that the Minnesota Board of Dentistry can maintain the official rulemaking record in this matter as required by Minn. Stat. § 14.365. Please ensure that the agency's signed order adopting the rules is filed with our office. The Office of Administrative Hearings will request copies of the finalized rules from the Revisor's office following receipt of that order. Our office will then file four copies of the adopted rules with the Secretary of State, who will forward one copy to the Revisor of Statutes, one copy to the Governor, and one to the agency for its rulemaking record. The Board will then receive from the Revisor's office three copies of the Notice of Adoption of the rules.

The Board's next step is to arrange for publication of the Notice of Adoption in the State Register. Two copies of the Notice of Adoption provided by the Revisor's office should be submitted to the State Register for publication.

Marshall Shragg
January 15, 2015
Page 2

If you have any questions regarding this matter, please contact Denise Collins at (651) 361-7875.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jim Mortenson /js". The signature is fluid and cursive, with a large initial "J" and a stylized "M".

Jim Mortenson
Administrative Law Judge

Enclosure

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

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the the Proposed
Amendments to Permanent Rules of the
Minnesota Board of Dentistry Relating to
Dentists, Dental Therapists, Dental
Hygienists, and Licensured Dental
Assistants

**REPORT OF THE
ADMINISTRATIVE LAW JUDGE**

This matter came before Administrative Law Judge Jim Mortenson (ALJ) for a rulemaking hearing on November 6, 2014. The public hearing was held in Conference Room A of the University Park Plaza, 2829 University Avenue SE, Minneapolis, Minnesota.

The Minnesota Board of Dentistry (Board) proposes to amend its rules regarding: 1) the training required for advanced cardiac life support (ACLS) and cardiopulmonary resuscitation (CPR); 2) providing proper notification for reinstatement of license; 3) notifying the Board of nitrous oxide form for dental therapists; 4) changing the audit fee; 5) adding new duties regarding informed consent and retraction material for dental hygienists and licensed dental assistants; and 6) including the task of informed consent by allied dental personnel within the record keeping regulations.

The Board's proposals are not controversial. Only the proposal regarding the training required for ACLS and CPR generated negative comments and the request for hearing.

The hearing and this Report are part of a larger rulemaking process under the Minnesota Administrative Procedure Act. The Minnesota Legislature has designed this process so as to ensure that state agencies and regulatory boards have met all of the requirements that the legislature has established for adopting administrative rules.

The hearing was conducted so as to permit Board representatives and the Administrative Law Judge to hear public comment regarding the impact of the proposed rules and what changes might be appropriate. The hearing process provides the general public an opportunity to review, discuss, and critique the proposed rules.

The Board must establish that the proposed rules are necessary and reasonable; the rules are within the Board's statutory authority; and any modifications that the Board

may have made after the proposed rules were initially published in the *State Register* are within the scope of the matter that was originally announced.[†]

The Board panel at the public hearing included: Marshall Shragg, MPH, Executive Director, Minnesota Board of Dentistry; Jennifer Middleton, Assistant Attorney General; and Kathy Johnson, Paul Walker, Nancy Kearn, Teri Youngdahl, Allen Rasmussen, Amy Johnson, and Michelle Schroeder, all of the Minnesota Board of Dentistry.^{††}

Two people attended the hearing and signed the hearing register. Following statements from Board members, the proceedings continued until all interested persons, groups, or associations had an opportunity to be heard concerning the proposed rules. One member of the public, from the Minnesota Dental Hygienists Association, made statements during the hearing.

After the close of the hearing, the Administrative Law Judge kept the rulemaking record open for another 20 calendar days until November 26, 2014, to permit interested persons and the Board to submit written comments. Following the initial comment period, the hearing record was open an additional five business days so as to permit interested parties and the Board an opportunity to reply to earlier-submitted comments. The hearing record closed on December 5, 2014.

SUMMARY OF CONCLUSIONS

The Board has established that it has the statutory authority to adopt the proposed rules, that it complied with applicable procedural requirements, and that the proposed rules are necessary and reasonable.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. Regulatory Background to the Proposed Rules

1. The proposed amendments to the permanent rules relating to dentists, dental hygienists, and licensed dental assistants modify existing language in the following areas: clarifying the appropriate training required for ACLS and CPR; providing proper notification for reinstatement of license; notifying the Board of nitrous oxide form for dental therapists; changing the audit fee; adding new duties regarding informed consent and retraction material for dental hygienists and licensed dental assistants; and including the task of informed consent by allied dental personnel within the record keeping regulations.¹

[†] See, Minn. Stat. §§ 14.05 and 14.50 (2014).

^{††} See, DIGITAL RECORDING, OAH Docket No. 5-0902-31791 (November 6, 2014); Rule Hearing Register.

¹ Ex. A at 1003; Ex. D at 1; Ex. E; Ex. F at 342; Ex. G; Ex. H at 3; Ex. K-1; Ex. L at 1.

2. The proposed amendments affect the following rules: Minnesota Rules parts: 3100.0100, 3100.0300, 3100.1100, 3100.1150, 3100.1160, 3100.1200, 3100.1300, 3100.1400, 3100.1850, 3100.3300, 3100.3400, 3100.3500, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8500, 3100.8700, and 3100.9600.²

II. Rulemaking Authority

3. The Board has the authority to promulgate rules as necessary to carry out and make effective the provisions and purposes of Minn. Stat. §§ 150A.01-.12. The Board's rules may specify the training and education necessary for administering general anesthesia and intravenous conscious sedation.³

4. The Administrative Law Judge concludes that the Board has the statutory authority to amend the permanent rules relating to dentists, dental therapists, dental hygienists, and licensed dental assistants.⁴

III. Procedural Requirements of Chapter 14

A. Publications and Filings

5. On January 3, 2014, the Board posted a draft copy of the proposed rule changes on the Board's website at www.dentalboard.state.mn.us.⁵

6. On January 8, 2014, the Board posted a copy of the Request for Comments for publication in the *State Register* on the Board's website at www.dentalboard.state.mn.us.⁶

7. On January 8, 2014, the Board posted a draft copy of the Statement of Need and Reasonableness (SONAR) on the Board's website at www.dentalboard.state.mn.us.⁷

8. On January 9, 2014, the Board e-mailed the Request for Comments to all persons on the Board's rulemaking mailing list.⁸

9. On January 9, 2014, the Board contacted the Minnesota Dental Association, the Minnesota Dental Hygienists' Association, and the Minnesota Dental Assistants Association with a request to publish in each organization's newsletter or post on each organization's website the information regarding the proposed rule amendments.⁹

² Ex. A at 1003; Ex. C; Ex. D at 1; Ex. E; Ex. F at 342; Ex. G; Ex. H; Ex. K-1; Ex. K-2; Ex. L at 1.

³ Minn. Stat. § 150A.04, subd. 5.

⁴ *Id.*

⁵ Ex. H at 1; Ex. K-1 at 5.

⁶ *Id.*

⁷ *Id.*

⁸ Ex. H at 2; Ex. K-1 at 5.

⁹ *Id.*

10. On January 13, 2014, the Board's request for comments was published in the *State Register*, requesting that all comments be submitted to the Board by March 14, 2014.¹⁰

11. On January 29, 2014, the Board e-mailed nearly 10,000 licensees including dentists, dental therapists, dental hygienists, and licensed dental assistants, providing information about the proposed amendments.¹¹

12. By March 14, 2014, the end of the 60-day Request for Comments period, the Board had received comments from only two organizations, the Health and Safety Institute (HSI) and the Dental Assisting National Board (DANB). The HSI opposed the Board's proposed elimination of the phrase "equivalent course" under the rules for CPR and ACLS. The DANB informed the Board about the Isolation Exam, offered by DANB, consisting of isolation procedures, including gingival retraction.¹²

13. On August 8, 2014, the Board posted a copy of its proposed rules dated April 22, 2014, and a final copy of its SONAR dated August 8, 2014, on the Board's website.¹³

14. On August 8, 2014, the Board consulted with the Commissioner of Minnesota Management and Budget by mailing a letter seeking review. The letter included: 1) the Governor's Office Proposed Rule and SONAR form; 2) the April 22, 2014 Revisor's draft of the proposed rules; and 3) the August 8, 2014 copy of the SONAR.¹⁴

15. By way of an Order dated August 20, 2014 Administrative Law Judge Jim Mortenson approved the Board's Additional Notice Plan and Dual Notice.¹⁵

16. On or about September 9, 2014, the Board e-mailed the Dual Notice of Intent to Adopt Rules to everyone on the Board's rulemaking mailing list.¹⁶

17. On September 9, 2014, the Board e-mailed its SONAR to the Legislative Reference Library to meet the requirement set forth in Minn. Stat. §§ 14.131, .23 (2014).¹⁷

18. On September 9, 2014, the Board mailed a copy of the Dual Notice, SONAR, and draft language to the interested legislators and the Legislative Coordinating Commission.¹⁸

¹⁰ Ex. H at 2; Ex. K-1 at 6.

¹¹ Ex. H at 3; Ex. K-1 at 6.

¹² Ex. H at 3; Ex. K-1 at 6-7.

¹³ Ex. H at 3; Ex. K-1 at 7.

¹⁴ Ex. K-2.

¹⁵ Ex. H.

¹⁶ Ex. G.

¹⁷ Ex. E.

¹⁸ Ex. K-1.

19. On September 15, 2014, the Board published in the *State Register* a Request for Comments seeking comments on the following proposed rules: 3100.0100, 3100.0300, 3100.1100, 3100.1150, 3100.1160, 3100.1200, 3100.1300, 3100.1400, 3100.1850, 3100.3300, 3100.3400, 3100.3500, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8500, 3100.8700, and 3100.9600.¹⁹

20. The Dual Notice of Intent to Adopt Rules, published in the September 15, 2014 *State Register*, noticed October 15, 2014, as the deadline to submit comments or request a hearing.²⁰

21. The Board received one hearing request, on October 15, 2014, from Michael Ahern, on behalf of 30 individuals requesting a public hearing on the published proposed rules.²¹ The name and address of each person requesting the hearing was included in an attachment to the hearing request.²² The request included the portions of the rule to which they were objecting.²³

22. The Dual Notice identified the date and location of the hearing in this matter.²⁴

23. At the hearing on November 6, 2014, the Board filed copies of the following documents, as required by Minn. R. 1400.2220 (2013):

- (a) the Board's Request for Comments as published in the *State Register* on January 13, 2014;²⁵
- (b) the proposed rules dated April 22, 2014, including the Revisor's approval;²⁶
- (c) the SONAR;²⁷
- (d) the Certificate of Mailing the SONAR to the Legislative Reference Library on September 9, 2014;²⁸
- (e) the Dual Notice as mailed and as published in the *State Register* on September 15, 2014;²⁹
- (f) the Certificate of Mailing the Dual Notice to the rulemaking mailing list on September 9, 2014;³⁰

¹⁹ *Id.*; Ex. F.

²⁰ Ex. F at 342-343.

²¹ Ex. I.

²² *Id.*

²³ *Id.*

²⁴ Ex. F.

²⁵ Ex. A.

²⁶ Ex. C.

²⁷ Ex. D.

²⁸ Ex. E.

²⁹ Ex. F.

- (g) the Certificate of Giving Additional Notice Pursuant to the Additional Notice Plan;³¹
- (h) the written comments on the proposed rules that the Board received during the comment period that followed the Dual Notice;³²
- (i) the Certificate of Sending the Dual Notice and the Statement of Need and Reasonableness to Legislators on September 9, 2014,³³ and
- (j) a memorandum from the Minnesota Management and Budget Office dated October 14, 2014.³⁴

B. Additional Notice Requirements

24. Minn. Stat. §§ 14.131 and 14.23 require that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule; or alternatively, the agency must detail why these notification efforts were not made.³⁵

25. On August 19, 2014, the Board provided the Dual Notice of Intent to Adopt in the following manner, according to the Additional Notice Plan approved by the Office of Administrative Hearings on August 20, 2014:

- (a) Over the last few years, the Executive Committee, the Policy Committee, the Professional Development Committee, and the Allied Dental Education Committee of the Board have held frequent public meetings to discuss and to develop these proposed rules. The Board has disseminated official notice of these public meetings to all licensed dental professionals, association representatives, and the general public. Drafts of the proposed rules have been distributed and reviewed during these public meetings by all individuals in attendance and input has been invited.
- (b) On January 3, 2014, the Board posted a draft copy of the proposed rule changes on the Board's website at www.dentalboard.state.mn.us making it accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general public. This draft copy

³⁰ Ex. G.

³¹ Ex. H.

³² Ex. I.

³³ Ex. K-1.

³⁴ Ex. K-2.

³⁵ See Minn. Stat. §§ 14.23, .131.

identified the Board rules that will be affected by the Board's proposed rule changes.

- (c) On January 8, 2014, the Board posted a copy of the Request for Comments for publication in the State Register on the Board's website at www.dentalboard.state.mn.us. This website is accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general public.
- (d) On January 8, 2014, the Board posted a draft copy of the SONAR on the Board's website at www.dentalboard.state.mn.us.
- (e) On January 9, 2014, the Board mailed the Request for Comments to all persons on the Board's rulemaking mailing list by sending an electronic copy via e-mail to all persons on the list.
- (f) On January 9, 2014, the Board contacted the representatives of the Minnesota Dental Association (Dentists), the Minnesota Dental Hygienists' Association (Dental Hygienists), and the Minnesota Dental Assistants Association (Dental Assistants) with a request to publish in each organization's newsletter or post on each organization's website for its members the following information:

MINNESOTA BOARD OF DENTISTRY - NEW PROPOSED RULES

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

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

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

- (g) On January 13, 2014, the Board's Request for Comments¹ was published in the *State Register*, requesting that all comments be submitted to the Board by March 14, 2014. All comments received by the Board regarding the proposed rules shall be reviewed and any suggested changes shall be considered by the Board.
- (h) On January 29, 2014, the Board sent an electronic mailing to nearly 10,000 licensees including dentists, dental therapists, dental hygienists, and licensed dental assistants, containing the following information:

MINNESOTA BOARD OF DENTISTRY - NEW PROPOSED RULES

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

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

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

- (i) By March 14, 2014, the end of the 60-day Request for Comments period, the Board had received only two comments regarding its proposed rules. One from the Health and Safety Institute opposing elimination of the phrase "equivalent course" for CPR and ACLS, and another from the Dental Assisting National Board with information about their examination for isolation procedures, including gingival retraction.
- (j) On August 8, 2014, the Board posted a copy of its proposed rules dated April 22, 2014 (latest version) and a final copy of its SONAR dated August 8, 2014, on the Board's website making this information accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other

health boards; professional associations; and members of the general public.

- (k) Prior to publication of the Dual Notice in the State Register, the Board will send by electronic mail a copy of the Dual Notice of Intent to Adopt Rules, the Proposed Rules, and the Statement of Need and Reasonableness to the representatives of the Minnesota Dental Association, the Minnesota Dental Hygienists' Association, the Minnesota Dental Hygiene Educators Association, the Minnesota Dental Assistants Association, and the Minnesota Educators of Dental Assistants.³⁶

C. Notice Practice

1. Notice to Stakeholders

26. On September 9, 2014, the Board provided a copy of the Dual Notice of Intent to Adopt to its official rulemaking list (maintained under Minn. Stat. § 14.14 (2014)), and to stakeholders identified in its Additional Notice Plan.³⁷

27. The comment period on the proposed rules expired at 4:30 p.m. on October 15, 2014.³⁸

28. There are 36 days between September 9, 2014 and October 15, 2014.

29. The Board fulfilled its responsibilities under Minn. R. 1400.2080, subp. 6, to send the Dual Notice to Stakeholders “at least 33 days before the end of the comment period”

2. Notice to Legislators

30. On September 9, 2014, the Board sent a copy of the Notice of Hearing and the Statement of Need and Reasonableness to Legislators, as required by Minn. Stat. § 14.116 (2014).³⁹

31. Minn. Stat. § 14.116 requires the Board to send a copy of the Notice of Intent to Adopt and the SONAR to certain legislators on the same date that it mails its Notice of Intent to Adopt to persons on its rulemaking list and pursuant to its Additional Notice Plan.⁴⁰

32. The Board fulfilled its responsibilities to send the Dual Notice to legislators “at least 33 days before the end of the comment period”

³⁶ Ex. H.

³⁷ Ex. G.

³⁸ *Id.*

³⁹ Ex. K-1.

⁴⁰ See Minn. Stat. §§ 14.116 (2014).

3. Notice to the Legislative Reference Library

33. On September 9, 2014, the Board electronically mailed a copy of the SONAR to the Legislative Reference Library.⁴¹

34. Minn. Stat. § 14.23 requires the Board to send a copy of the SONAR to the Legislative Reference Library when the Notice of Intent to Adopt is mailed.⁴²

35. The Board fulfilled its responsibilities to send the Dual Notice to the Legislative Reference Library “at least 33 days before the end of the comment period”

D. Impact on Farming Operations

36. Minn. Stat. § 14.111 (2014) imposes additional notice requirements when the proposed rules affect farming operations. The statute requires that an agency provide a copy of any such changes to the Commissioner of Agriculture at least 30 days prior to publishing the proposed rules in the *State Register*.⁴³

37. The proposed rules do not impose restrictions or have an impact on farming operations. The Board was not required to notify the Commissioner of Agriculture.⁴⁴

E. Statutory Requirements for the SONAR

38. The Administrative Procedure Act obliges an agency adopting rules to address eight factors in its SONAR. Those factors are:

- (1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- (2) the probable costs to the Board and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- (3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- (4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Board and the reasons why they were rejected in favor of the proposed rule;

⁴¹ Ex. E.

⁴² See Minn. Stat. §§ 14.23 (2014).

⁴³ See Minn. Stat. §§ 14.111 (2014).

⁴⁴ Exs. C, D.

- (5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals;
- (6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals;
- (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; and
- (8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule and reasonableness of each difference.⁴⁵

1. The Board's Regulatory Analysis

- (a) 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.**

39. The Board asserts that the classes of people who will likely be affected by the proposed rules are the general public and the following regulated dental professionals: dentists; dental therapists; dental hygienists; and licensed dental assistants.⁴⁶

- (b) The probable costs to the Board and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

40. The Board asserts that it will not incur any increased costs beyond those currently associated with operation under existing rules. The Board does not anticipate any costs to any other agency in the implementation and enforcement of the proposed rules. The Board does not anticipate any net effect on state revenues.⁴⁷

⁴⁵ Minn. Stat. § 14.131.

⁴⁶ Ex. D at 2.

⁴⁷ *Id.*

- (c) The determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

41. The Board asserts there are no less costly or intrusive methods for achieving the purpose of the proposed rules.⁴⁸ The Board has shown that the proposed rules will improve its efficiency by eliminating the necessity to attempt to discern “equivalency” regarding CPR, ACLS, and Pediatric Advanced Life Support (PALS) courses.⁴⁹

- (d) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Board and the reasons why they were rejected in favor of the proposed rule.**

42. The status quo was considered and determined to be insufficient. The proposal was based on collaborative discussions between the professional associations representing the professionals regulated, and additional alternatives were not considered that would be effective at achieving the purpose of the proposal.⁵⁰

- (e) The probable costs of complying with the proposed rules.**

43. The Board asserts that most of the proposed rule changes simply add clarity. For the new duty of placing nonsurgical retraction material, the dental hygienists and licensed dental assistants who choose to pursue specific training to perform this duty will be responsible for the educational costs, which are unknown. Certain businesses may incur minimal costs associated with affiliating with the American Heart Association and the American Red Cross for certifying dental professionals in CPR and ACLS.⁵¹

- (f) The probable costs or consequences of not adopting the proposed rule, including those costs borne by individual categories of affected parties, such as separate classes of governmental units, businesses, or individuals.**

44. The Board maintains that the probable consequences of not adopting the proposed rules include keeping outdated and confusing language in the rules, which causes confusion for licensees, staff, and the general public.⁵² The Board also demonstrated that failing to update the rules on CPR, ACLS, and PALS courses will result in licensees risking paying for and participating in courses that are not appropriate

⁴⁸ *Id.* at 3.

⁴⁹ Testimony of Marshall Shragg; Test. of Paul Walker; Test. of Teri Youngdahl.

⁵⁰ Ex. D at 3.

⁵¹ *Id.*

⁵² *Id.*

and may need to be retaken through another provider. In addition, without the changes to the rules, Board staff will continue to struggle to make determinations about “equivalency” where there are no regulations or other guidance to use for that process.⁵³

- (g) An assessment of any differences between the proposed rules and existing federal regulation and a specific analysis of the need for and reasonableness of each difference.**

45. The Board asserts there are no federal regulations relating to the proposed rules and that regulation of professionals is primarily a function of state government.⁵⁴

- (h) An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.**

46. The Board asserts that the proposed rules cover areas that are not addressed by federal law or other Minnesota state laws.⁵⁵

2. Performance-Based Regulation

47. The Administrative Procedure Act requires an agency to describe how it has considered and implemented the legislative policy supporting performance-based regulatory systems whenever feasible. A performance-based rule is one that emphasizes superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the Board in meeting those goals.⁵⁶

48. The Board considered and implemented the legislative policy of developing rules and a regulatory program by including in its rule-by-rule analysis regarding the Board’s objectives and flexibility.⁵⁷

3. Consultation with the Commissioner of Minnesota Management and Budget (MMB)

49. As required by Minn. Stat. § 14.131, by letter dated October 14, 2014, the Executive Budget Officer of the MMB Susan Melchionne responded to a request by the Board to evaluate the fiscal impact and benefit of the proposed rules on local units of government. MMB reviewed the Board’s proposed rules and concluded that “[t]hese rule changes will have no fiscal impact on local governments.”⁵⁸

⁵³ Ex. D at 9; Test. of M. Shragg.

⁵⁴ Ex. D at 4.

⁵⁵ *Id.*

⁵⁶ Minn. Stat. §§ 14.002, 14.131 (2014).

⁵⁷ Ex. D at 4 and 9 through 17.

⁵⁸ Ex. K-2.

4. Summary

50. The Board has met the requirements set forth in Minn. Stat. § 14.131 for assessing the impact of the proposed rules, including consideration and implementation of the legislative policy supporting performance-based regulatory systems, and the fiscal impact on units of local government.

F. Cost to Small Businesses and Cities under Minn. Stat. § 14.127 (2014)

51. Minn. Stat. § 14.127 requires an agency to “determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees.” The Agency must make this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.⁵⁹

52. The Board determined that minimal costs will be associated with compliance of the proposed rules, and the cost of complying with the proposed rule changes will not exceed \$25,000 for any small business or small city.⁶⁰

53. The Board has made the determinations required by Minn. Stat. § 14.127 and approves those determinations.

G. Adoption or Amendment of Local Ordinances

54. Under Minn. Stat. § 14.128, an agency must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. The agency must make this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.⁶¹

55. The Board has determined that local units of government will not be required to adopt or amend an ordinance or regulation because the proposed rules do not require local implementation.⁶²

56. The Board has made the determination required by Minn. Stat. § 14.128 and that determination is hereby approved.

IV. Rulemaking Legal Standards

57. The Administrative Law Judge must make the following inquiries: Whether the Board has statutory authority to adopt the rule; whether the rule is unconstitutional or otherwise illegal; whether the Board has complied with the rule

⁵⁹ Minn. Stat. § 14.127.

⁶⁰ Ex. D at 9.

⁶¹ Minn. Stat. § 14.128, subd. 1.

⁶² Ex. D at 8.

adoption procedures; whether the proposed rule grants undue discretion to government officials; whether the rule constitutes an undue delegation of authority to another entity; and whether the proposed language meets the definition of a rule.⁶³

58. Under Minn. Stat. § 14.14, subd. 2, and Minn. R. 1400.2100 (2013), the Board must establish the need for, and reasonableness of, a proposed rule by an affirmative presentation of facts. In support of a rule, the Board may rely upon materials developed for the hearing record. The Board may also rely on “legislative facts” (namely, general and well-established principles that are not related to the specifics of a particular case, but which guide the development of law and policy) and the Board’s interpretation of related statutes.⁶⁴

59. A proposed rule is reasonable if the Board can “explain on what evidence it is relying and how the evidence connects rationally with the agency’s choice of action to be taken.”⁶⁵

60. By contrast, a proposed rule will be deemed arbitrary and capricious where the agency’s choice is based upon whim, is devoid of articulated reasons or, “represents its will and not its judgment.”⁶⁶

61. Consequently, the Administrative Law Judge does not “vote” for a particular policy, or select a policy the Judge considers to be in the best interest of the public or the regulated parties.⁶⁷

62. An important corollary to these standards is that when proposing new rules, an agency is entitled to make choices between different possible regulatory approaches, so long as the alternative that is selected by the agency is a rational one. Thus, while reasonable minds might differ as to whether one or another particular approach represents “the best alternative,” the agency’s selection will be approved if it is one that a rational person could have made.⁶⁸

⁶³ See Minn. R. 1400.2100.

⁶⁴ See *Mammenga v. Agency of Human Services*, 442 N.W.2d 786, 789-92 (Minn. 1989); *Manufactured Housing Institute v. Pettersen*, 347 N.W.2d 238, 240-44 (Minn. 1984); *Minnesota Chamber of Commerce v. Minnesota Pollution Control Agency*, 469 N.W.2d 100, 103 (Minn. Ct. App. 1991); see also, *United States v. Gould*, 536 F.2d 216, 220 (8th Cir. 1976).

⁶⁵ *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

⁶⁶ See *Mammenga*, 442 N.W.2d at 789; *St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm’n*, 251 N.W.2d 350, 357-58 (Minn. 1977).

⁶⁷ *Manufactured Hous. Inst.*, *supra*, at 244-45 (“the agency must explain on what evidence it is relying and how that evidence connects with the agency’s choice of action to be taken ... We do not substitute our judgment for that of the Department of Health”).

⁶⁸ *Peterson v. Minn. Dep’t of Labor & Indus.*, 591 N.W.2d 76, 79 (Minn. Ct. App. 1999); *Minnesota Chamber of Commerce*, 469 N.W.2d at 103.

V. Rule by Rule Analysis

A. Minn. R. 3100.0100, subp. 2a – DEFINITIONS - Advanced cardiac life support or ACLS

63. The existing regulations provide that an “ACLS certificate must be obtained through the America Heart Association, the American Red Cross, or an equivalent course.”⁶⁹

64. In this proceeding, the Board proposes to remove the reference to “the American Red Cross, or an equivalent course.”⁷⁰

65. The Board seeks this amendment because it has learned the American Red Cross (ARC) does not offer an ACLS course.⁷¹ The Board also determined that the provision for an “equivalent course” has created confusion by regulated parties about what courses they may take to meet the requirement, that the Board lacks the means or standards by which to determine what is an “equivalent course,” and that the reliance on a “single, nationally-recognized standard ensures clarity and consistency.”⁷²

66. This change has been challenged. The challenges are addressed below in Section N.

B. Minn. R. 3100.0100, subp. 8 – DEFINITIONS - Commission on accreditation

67. The Board seeks to repeal this provision because the organization stands alone as the Commission on Dental Accreditation and shall not be associated as an organization under the corporate business structure of the American Dental Association.⁷³

68. With this repeal, a minor editorial change will be made by adding “Dental” to various other parts or subparts throughout Chapter 3100 to properly identify the Commission on Dental Accreditation, and to ensure that there is consistency throughout Board rules and statutes.⁷⁴ The other parts are: 3100.1100, subp 1; 3100.1150, subp. 1; 3100.1160, subps. 1 and 2; 3100.1200; 3100.1300; 3100.1400; 3100.3300, subp. 4a; 3100.3400, subp. 3a; 3100.3500, subp 2a; 3100.3600, subps. 2, 4, and 5; 3100.7000, subp. 2; 3100.8500, subp. 1a and 1b; and 3100.8700, subp. 1 and 2a.⁷⁵

69. This change has not been challenged.

⁶⁹ Ex. C, at 1.

⁷⁰ *Id.*; Ex. D at 9.

⁷¹ Ex. D at 9.

⁷² *Id.*

⁷³ Ex. D at 10.

⁷⁴ *Id.*

⁷⁵ Ex. C.

C. Minn. R. 3100.0100, subp. 9a - DEFINITIONS - CPR

70. The Board has proposed to add the term “hands-on” to describe the requirements for a CPR course, as well as remove the reference to “an equivalent course.”⁷⁶

71. It was determined that requiring a hands-on component to a CPR course is necessary for participants to gain the experience and exposure to actually perform the act of CPR and prepare them for an emergency.⁷⁷

72. The removal of the reference to an “equivalent course” is to eliminate the challenges the Board has in reviewing every alternative course.⁷⁸ The inclusion of “equivalent course” has led to confusion be licensees as to what the Board would accept for regulatory purposes, sometimes resulting in license applicants taking an unacceptable course and being required to take a different, approved course.⁷⁹ The focus on a nationally-recognized standard offered through the American Heart Association (AHA) or the ARC provides ready availability, and ensures clarity and consistency.⁸⁰

73. This change has been challenged and is addressed below in Section N.

D. Minn. R. 3100.0100, subp. 15c – DEFINITIONS - Pediatric advanced life support or PALS

74. The reference to an “equivalent course” has been removed for the same reasons it has been removed from other definitions in the rule.⁸¹

75. This change has been challenged and is addressed below in Section N.

E. Minn. R. 3100.0300, subp. 4 – MEETINGS - Parliamentary procedure

76. The Board has proposed to remove the reference to the *Sturgis Standard Code of Parliamentary Procedure* for conducting business meetings of the Board and replace it with a reference to the *American Institute of Parliamentarians Standard Code of Parliamentary Procedure*.⁸²

77. The Board is proposing this change because the *Sturgis* code has been revised and renamed the *American Institute of Parliamentarians Standard Code of Parliamentary Procedure*.⁸³

⁷⁶ *Id.*; Ex. C at 1.

⁷⁷ Ex. D at 10.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Ex. C. at 1-2; *Id.*

⁸² *Id.*

⁸³ Ex. D at 10.

78. This change has not been challenged.

F. Minn. R. 3100.1850, subp. 1 – REINSTATEMENT OF LICENSE – Requirements

79. The Board has proposed changes to this rule to provide the Board with greater discretion for determinations on reinstatement of licenses for licensees who have lost licenses.⁸⁴

80. The Board also has added an appeal procedure for an applicant seeking reinstatement where the Board has denied the application for reinstatement.⁸⁵

81. This change has not been challenged.

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

82. The Board has proposed, in subparts 2 and 3 of this rule, to remove the phrase “an appropriate dental sedation/anesthesia emergency management course such as” and “dental sedation/anesthesia emergency management” to require the ACLS or PALS course and maintain “advanced” certification.⁸⁶

83. The Board has proposed, in subpart 5, to remove the options for “an equivalent course” with regard to ACLS or PALS training, to be consistent with similar changes in these rules.⁸⁷

84. These changes create specific acceptable options, in light of changes made in other parts of the rules that specify that only ARC and AHA courses are acceptable.⁸⁸

85. The Board has also proposed, in subpart 5, changing the requirement for how licensees demonstrate they have taken a CPR course when renewing their licenses. Rather than submitting a statement of the most recent course completed the change requires attesting “to maintaining consecutive and current CPR certification at the time of each license renewal.”⁸⁹

86. This change is proposed because the Board is now using a computerized renewal system, and the “attestation” is simply a different form of notice to the Board than the statement, which works more simply with the computerized system.⁹⁰

⁸⁴ Ex. C at 5-6; Ex. D at 10-11.

⁸⁵ Ex. C at 6.

⁸⁶ Ex. C at 8-9.

⁸⁷ *Id.* at 10; Ex. D at 11.

⁸⁸ Ex. D at 11.

⁸⁹ Ex. C at 10.

⁹⁰ Ex. D at 10-11.

87. The Board has proposed adding a requirement in subpart 5 for dental therapists when initially submitting certain information to the Board regarding their training on the administration of nitrous oxide and CPR.⁹¹

88. This change was made to eliminate the submission of unnecessary paperwork to the Board.⁹²

89. The Board has proposed changes to subpart 9a to remove the options for “an equivalent dental sedation/anesthesia emergency management course” with regard to ACLS or PALS training, to be consistent with similar changes in these rules.

90. These changes create specific acceptable options, in light of changes made in other parts of the rules that specify that only ARC and AHA courses are acceptable.⁹³

91. This change has been challenged and is addressed below in Section N.

H. Minn. R. 3100.5100, PROFESSIONAL DEVELOPMENT

92. The Board has proposed, in subparts 3 and 4, to remove the option for “an equivalent” CPR course, card, or certificate, outside of those offered by AHA or ARC providers or courses.⁹⁴

93. This change is made for the same reasons noted elsewhere in these findings of fact.⁹⁵

94. This change has been challenged and is addressed below in Section N.

I. Minn. R. 3100.5300, AUDIT PROCESS OF PORTFOLIO

95. The Board has proposed a language change to subpart 3 of this rule, removing “may either” and replacing it with “must impose one or both of the following options.”⁹⁶

96. This change was made to grant the Board authority to determine whether one or both of the stated options would be applied when a licensee has failed an audit, rather than limiting the Board to one option or the other.⁹⁷

97. The Board has proposed to change subpart 6 of this rule, the requirement for licensee to pay an audit fee. Currently, the rule requires a licensee to pay an audit fee after failing two consecutive professional development portfolio audits. The

⁹¹ Ex. C at 11-12, Ex. D at 12.

⁹² Ex. D at 12.

⁹³ Ex. D at 11.

⁹⁴ Ex. C at 13; *Id.* at 12.

⁹⁵ Ex. D at 12.

⁹⁶ Ex. C at 14.

⁹⁷ Ex. D at 13.

proposed rule requires a licensee to pay the audit fee after failing any two professional development portfolio audits.⁹⁸

98. This change was made to improve the professional responsibility of licensees. The Board has observed that some licensees fail to recognize the importance of maintaining professional development throughout their careers and disregard rules requiring additional training in areas that have demonstrated to be the most problematic.⁹⁹

99. These changes have not been challenged.

J. Minn. R. 3100.7000, ADVERTISING DENTAL SPECIALTY PRACTICE

100. The Board has proposed changes to subparts 1 and 2 of this rule to update language to reflect current dental practice terms, and to permit dentists to promote their practice in one or more specialty areas rather than only one.¹⁰⁰

101. This change was made to enable dentists with specialty in more than one area promote all of their specialties.¹⁰¹

102. These changes have not been challenged.

K. Minn. R. 3100.8500, LICENSED DENTAL ASSISTANTS

103. The Board has proposed changes to subparts 1 and 1b of this rule, which add new duties to licensed dental assistants. Under subpart 1, licensed dental assistants will now be able to obtain informed consent from patients for treatments.¹⁰² Under subpart 1b, licensed dental assistants will be able, following appropriate training, to place nonsurgical retraction materials on patients.¹⁰³

104. These changes are made to ensure that patients are able to provide informed consent for treatment that may occur within the scope of the expertise of the licensed dental assistant. They also improve efficiency within the dental practice.¹⁰⁴

105. These changes have not been challenged.

L. Minn. R. 3100.8700, DENTAL HYGIENISTS

106. The Board has proposed changes to subparts 1 and 2a of this rule. The changes add the same new duties to dental hygienists that have been added for licensed dental assistants. Under subpart 1, dental hygienists will now be able to obtain

⁹⁸ Ex. C at 15, Ex. D at 13.

⁹⁹ Ex. D at 13.

¹⁰⁰ Ex. C at 15-17; Ex. D at 14.

¹⁰¹ Ex. D at 14.

¹⁰² Ex. C at 17; Ex. D at 14.

¹⁰³ Ex. C at 18; Ex. D at 14-15.

¹⁰⁴ Ex. D at 14-15.

informed consent from patients for treatments.¹⁰⁵ Under subpart 2a, dental hygienists will be able, following appropriate training, to place nonsurgical retraction materials on patients.¹⁰⁶

107. These changes are made to ensure that patients are able to provide informed consent for treatment that may occur within the scope of the expertise of the dental hygienists. They also improve efficiency within the dental practice.

108. These changes have not been challenged.

M. Minn. R. 3100.9600, RECORD KEEPING

109. The Board has proposed changes to subpart 9 of this rule. This change updates requirements for dental records to note whether the dental hygienist or licensed dental assistant discussed treatment options, prognosis, benefits, and risks for each treatment within the scope of practice of the respective licensee.¹⁰⁷

110. This change is to maintain consistency with the changes proposed for Minn. R. 3100.8500 and .8700.¹⁰⁸

111. These changes have not been challenged.

N. Discussion of challenges to changes to Minn. R. sections 3100.0100, .3600, and .5100

112. The proposed changes to Minn. R. 3100.0100, .3600, and .5100 have not been challenged by the regulated parties. However, the Health and Safety Institute, which is comprised of two emergency care training companies, American Safety and Health Institute and MEDIC First Aid (collectively HSI/ASHI), opposes the changes removing language from various rules concerning “equivalent course[s].”¹⁰⁹ The changes appear at Minn. R. 3100.0100, subps. 2a, 9a, and 15c; 3100.3600, subps. 2, 3, 5, and 9a; 3100.5100, subps. 3 and 4.

113. The objection of HSI/ASHI is based on its assertion that it would be excluded from providing CPR, ACLS, and PALS training courses for dental professionals if the “equivalent course” language is removed.¹¹⁰ According to HSI/ASHI, the proposed rules “would create a monopoly and duopoly markets giving AHA and

¹⁰⁵ Ex. C at 19; Ex. D at 15.

¹⁰⁶ Ex. C at 20; Ex. D at 16.

¹⁰⁷ *Id.*

¹⁰⁸ Ex. D at 16.

¹⁰⁹ Ex. 1; November 6, 2014 Letter from Michael Ahern to Judge Mortenson; December 5, 2014, Letter from Michael Ahern to Judge Mortenson. (It is not clear how the signatories to the letter at Ex. 1 are related to HSI/ASHI or whether they have any real interest in this matter at all, given that none of the signatories appeared at the November 6, 2014 hearing or submitted any independent information about their alleged objections to the proposed rules.)

¹¹⁰ *Id.*

ARC unfair market control and significant influence over the price of CPR, ACLS, and PALS training courses for dental professionals.”¹¹¹

114. HSI/ASHI asserts that removing a burden on Board staff is not an appropriate basis for the proposed rule changes.¹¹² A less intrusive approach would have been, according to HSI/ASHI, to only include the added “hands on” requirement for CPR training, without eliminating “equivalent” courses.¹¹³ HSI/ASHI also proposes other ways to address enforcement problems noted by the Board.¹¹⁴

115. HSI/ASHI asserts that the Board should have, but failed, to consider the costs its proposed rules would have on “HSI/ASHI and the well-qualified vendors whose business is CPR training.”¹¹⁵

116. HSI/ASHI asserts that the proposed rules violate the legislative policy of supporting performance-based regulatory systems whenever feasible because of the limitation of certain training courses to those provided by only two organizations.¹¹⁶

O. Summary

117. The Administrative Law Judge finds that the Board has provided a rational explanation for the proposed rules and the grounds on which it is relying including, specifically, the rules removing “equivalent courses” from alternatives for training provided by AHA and ARC certified providers. While one group disagrees with that elimination, the Board is allowed to make rational choices between possible approaches and the Administrative Law Judge cannot properly interfere with its policy-making discretion.

118. Further, the Board is not in the business of regulating CPR, ACLS, or PALS course providers and to do so would be beyond its authority. The Board’s determination to limit courses for which licensees will be permitted to establish their required training is needed and reasonable in order to ensure the Board functions efficiently, licensees are provided clear and understandable guidance, and the general public is protected. Therefore, the changes made in the proposed rules do not cause the rules to be defective.

119. The Administrative Law Judge finds that the Board has demonstrated, by an affirmative presentation of facts, the need for and reasonableness of the rule provisions that are not specifically addressed in this Report.¹¹⁷

¹¹¹ November 6, 2014 Letter from Michael Ahern to Judge Mortenson at 3.

¹¹² *Id.* at 6-7.

¹¹³ *Id.* at 7.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 9.

¹¹⁶ *Id.* at 11.

¹¹⁷ See Minn. Stat. § 14.50.

120. The Administrative Law Judge finds that all the Board's proposed rule changes addressed in this Report are authorized by statute and that there are no other defects that would bar the adoption of those rules.¹¹⁸

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Minnesota Board of Dentistry gave notice to interested persons in this matter.
2. The Board has fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law or rule.
3. The Administrative Law Judge concludes that the Board has fulfilled its additional notice requirements.
4. The Board has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1; 14.15, subd. 3; and 14.50 (i) and (ii).
5. The Dual Notice, the proposed rules, and the SONAR complied with Minn. R. 1400.2080, subp. 5 (2013).
6. The Board has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14 and 14.50.
7. A Finding or Conclusion with regard to any particular rule subsection does not preclude, and should not discourage, the Board from further modification of the proposed rules based upon this Report and an examination of the public comments, provided that the rule finally adopted is based upon facts appearing in this rule hearing record.


Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

¹¹⁸ *Id.*

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the proposed amended rules be adopted.

Dated: January 15, 2015



JIM MORTENON
Administrative Law Judge

Reported: Digital Recording
No Transcript Prepared

NOTICE

This Report must be available for review to all affected individuals upon request for at least five working days before the Board takes any further action on the rules. The Board may then adopt the final rules or modify or withdraw its proposed rule. If the Board makes any changes in the rule, it must submit the rule to the Chief Administrative Law Judge for a review of the changes prior to final adoption. Upon adoption of a final rule, the Board must submit a copy of the Order Adopting Rules to the Chief Administrative Law Judge. After the rule's adoption, the Office of Administrative Hearings will file certified copies of the rules with the Secretary of State. At that time, the Board must give notice to all persons who requested to be informed when the rule is adopted and filed with the Secretary of State.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the Proposed Amendments to Permanent Rules Relating to Licensing Dentist, Dental Hygienist, and Dental Assistant	OAH Docket No. 5-0902-31791 Revisor R-4228
--	---

Rachel Youness certifies that on January 15, 2015, she served a true and correct copy of the attached **REPORT OF THE ADMINISTRATIVE LAW JUDGE**; by placing it in the United States mail or by courier service with postage prepaid, addressed to the following individuals:

Marshall Shragg Executive Director Minnesota Board of Dentistry 2829 University Ave SE Ste 450 Minneapolis, MN 55414	Amy Hang Governors Office 130 State Capitol 75 Constitution St Paul, MN 55155
Legislative Coordinating Commission (lcc@lcc.leg.mn)	The Honorable Lori Swanson Minnesota Attorney General 102 Capitol Building 75 Rev. Dr. Martin Luther King Jr. Blvd St. Paul, MN 55155
Paul Marinac Office of the Revisor of Statutes paul.marinac@revisor.mn.gov	Michael J. Ahern Dorsey & Whitney LLP 50 S Sixth St Ste 1500 Minneapolis, MN 55402

Office of the Revisor of Statutes

Administrative Rules



TITLE: Adopted Permanent Rules Relating to Licensing Dentists, Dental Hygienists, and Dental Assistants

AGENCY: Minnesota Board of Dentistry

MINNESOTA RULES: Chapter 3100



RULE APPROVED
OFFICE OF ADMINISTRATIVE HEARINGS

3/16/15

DATE

ADMINISTRATIVE LAW JUDGE.

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

Sandy Glass-Sirany
Sandy Glass-Sirany
Senior Assistant Revisor

152830

1.1 **Minnesota Board of Dentistry**

1.2 **Adopted Permanent Rules Relating to Licensing Dentists, Dental Hygienists, and**
1.3 **Dental Assistants**

1.4 **3100.0100 DEFINITIONS.**

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

1.6 Subp. 2a. **Advanced cardiac life support or ACLS.** "Advanced cardiac life support"
1.7 or "ACLS" refers to an advanced educational course for a health care provider that teaches
1.8 a detailed medical protocol for the provision of lifesaving cardiac care in settings ranging
1.9 from the prehospital environment to the hospital setting. The course must include advanced
1.10 airway management skills, cardiac drug usage, defibrillation, and arrhythmia interpretation.
1.11 An ACLS certificate must be obtained through the American Heart Association.

1.12 [For text of subps 2b to 7a, see M.R.]

1.13 Subp. 8. [See repealer.]

1.14 [For text of subps 8a to 9, see M.R.]

1.15 Subp. 9a. **CPR.** "CPR" refers to a comprehensive, hands-on course for a health
1.16 care provider that includes: cardiopulmonary resuscitation on an adult, child, and infant;
1.17 two-person rescuer; barrier mask or bag for ventilation; foreign body airway obstruction;
1.18 and automated external defibrillation. A CPR certificate shall be obtained through the
1.19 American Heart Association health care provider course or the American Red Cross
1.20 professional rescuer course.

1.21 [For text of subps 9b to 15b, see M.R.]

1.22 Subp. 15c. **Pediatric advanced life support or PALS.** "Pediatric advanced life
1.23 support" or "PALS" refers to an advanced life support educational course for the pediatric
1.24 health care provider that teaches the current certification standards of the American

2.1 Academy of Pediatrics or the American Heart Association. A PALS certificate must be
2.2 obtained through the American Heart Association.

2.3 [For text of subps 16 to 22, see M.R.]

2.4 **3100.0300 MEETINGS.**

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

2.6 Subp. 4. **Parliamentary procedure.** When not otherwise provided, American
2.7 Institute of Parliamentarians Standard Code of Parliamentary Procedure shall govern the
2.8 conduct of all business meetings of the board.

2.9 **3100.1100 APPLICATIONS FOR LICENSE TO PRACTICE DENTISTRY.**

2.10 Subpart 1. **Form, credentials, and certification.** A person seeking licensure
2.11 to practice dentistry within Minnesota must present to the board an application and
2.12 credentials, as determined by the board, and meet the following requirements.

2.13 A. The application must be on a form furnished by the board and must be
2.14 completely filled out.

2.15 B. The applicant shall furnish satisfactory evidence of having graduated from a
2.16 school of dentistry accredited by the Commission on Dental Accreditation.

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

2.18 [For text of subps 2 to 6, see M.R.]

2.19 **3100.1150 LICENSE TO PRACTICE DENTISTRY AS A FACULTY DENTIST.**

2.20 Subpart 1. **Licensure.**

2.21 A. In order to practice dentistry, a faculty member must be licensed by the board.

2.22 B. The board must license a person to practice dentistry as a faculty dentist if:

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

(3) the dean of a school of dentistry accredited by the Commission on Dental Accreditation certifies to the board, in accordance with the requirements of item C, that the person is a member of the school's faculty and practices dentistry; and

[For text of subitem (4), see M.R.]

C. The board must accept an applicant as a faculty dentist if the dean of a school of dentistry accredited by the Commission on Dental Accreditation provides to the board the following information:

[For text of subitems (1) to (7), see M.R.]

[For text of subp 2, see M.R.]

3100.1160 LICENSE TO PRACTICE DENTISTRY AS A RESIDENT DENTIST.

Subpart 1. Licensure.

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

B. The board must license a person to practice dentistry as a resident dentist if:

[For text of subitems (1) to (3), see M.R.]

(4) the person provides evidence of being an enrolled graduate student or a student of an advanced dental education program accredited by the Commission on Dental Accreditation; and

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

Subp. 2. Termination of licensure.

A. A person's license to practice dentistry as a resident dentist is terminated when the person is no longer an enrolled graduate student or a student of an advanced dental education program accredited by the Commission on Dental Accreditation.

4.1 B. A person licensed to practice dentistry as a resident dentist must inform
4.2 the board when the licensee is no longer an enrolled graduate student or a student of an
4.3 advanced dental education program accredited by the Commission on Dental Accreditation.

4.4 [For text of item C, see M.R.]

4.5 **3100.1200 APPLICATION FOR LICENSE TO PRACTICE DENTAL HYGIENE.**

4.6 A person seeking licensure to practice dental hygiene must present an application and
4.7 credentials as determined by the board and meet the following requirements of the board.

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

4.9 D. The applicant shall furnish satisfactory evidence of having been granted a
4.10 diploma or certificate in dental hygiene from a school accredited by the Commission
4.11 on Dental Accreditation.

4.12 [For text of items E and F, see M.R.]

4.13 **3100.1300 APPLICATION FOR LICENSE TO PRACTICE DENTAL ASSISTING.**

4.14 A person desiring to be licensed as a dental assistant shall submit to the board an
4.15 application and credentials as prescribed by the act and shall conform to the following:

4.16 A. An application on a form furnished by the board shall be completely filled out.

4.17 B. The applicant shall furnish a certified copy or its equivalent of a diploma or
4.18 certificate of satisfactory completion of a training program approved by the Commission
4.19 on Dental Accreditation or other program which, in the judgment of the board, is
4.20 equivalent. If the curriculum of the training program does not include training in the
4.21 expanded duties specified in part 3100.8500, the applicant must successfully complete a
4.22 course in these functions which has been approved by the board.

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

3100.1400 APPLICATION FOR LICENSURE BY CREDENTIALS.

A person who is already a licensed dentist or dental hygienist in another state or Canadian province desiring to be licensed to practice dentistry or dental hygiene in Minnesota shall, in order to demonstrate the person's knowledge of dental subjects and ability to practice dentistry or dental hygiene in Minnesota, comply with the requirements in items A to N.

A. The applicant shall complete an application furnished by the board.

B. The applicant shall furnish satisfactory evidence of having graduated from a school of dentistry, or dental hygiene, whichever the case may be, which has been accredited by the Commission on Dental Accreditation.

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

3100.1850 REINSTATEMENT OF LICENSE.**Subpart 1. Requirements.**

A. A person desiring the reinstatement of a license must:

(1) submit to the board a completed reinstatement application provided by the board;

(2) submit with the reinstatement application the fee specified in Minnesota Statutes, section 150A.091, subdivision 10;

(3) include with the reinstatement application a letter stating the reasons for applying for reinstatement; and

(4) comply with the applicable provisions of subparts 2 to 5.

B. Once the requirements of this subpart have been reviewed by the board, the board shall officially notify the applicant by letter as to whether the reinstatement of a license has been denied or granted by the board. If granted reinstatement, the person shall

be assigned to the biennial term to which the licensee was assigned prior to termination of the license. An applicant denied reinstatement of a license may appeal the denial by initiating a contested case hearing pursuant to Minnesota Statutes, chapter 14.

[For text of subps 2 to 5, see M.R.]

3100.3300 EXAMINATION OF DENTISTS.

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

Subp. 4a. **Additional education for two failed clinical examinations.** When an applicant fails twice any part of the clinical examination required by Minnesota Statutes, section 150A.06, subdivision 1, the applicant may not take it again until the applicant successfully completes additional education provided by an institution accredited by the Commission on Dental Accreditation. The education must cover all of the subject areas failed by the applicant in each of the two clinical examinations. The applicant may retake the examination only after the institution provides to the board information specifying the areas failed in the previous examinations and the instruction provided to address the areas failed, and certifies that the applicant has successfully completed the instruction. The applicant must take the additional instruction required in this subpart each time the applicant fails the clinical examination twice.

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

3100.3400 EXAMINATION OF DENTAL HYGIENISTS.

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

Subp. 3a. **Additional education for two failed clinical examinations.** When an applicant fails twice any part of the clinical examination required by Minnesota Statutes, section 150A.06, subdivision 2, the applicant may not take it again until the applicant successfully completes additional education provided by an institution accredited by the

Commission on Dental Accreditation. The education must cover all of the subject areas failed by the applicant in each of the two clinical examinations. The applicant may retake the examination only after the institution provides to the board information specifying the areas failed in the previous examinations and the instruction provided to address the areas failed, and certifies that the applicant has successfully completed the instruction. The applicant must take the additional instruction provided above each time the applicant fails the clinical examination twice.

Subp. 4. **Examination for continued licensure.** The board may administer any other examination it deems necessary to determine qualifications for continued licensure.

3100.3500 EXAMINATION OF LICENSED DENTAL ASSISTANTS.

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

Subp. 2a. **Additional education for two failed clinical examinations.** When an applicant fails twice any part of the clinical examination required by Minnesota Statutes, section 150A.06, subdivision 2a, the applicant may not take it again until the applicant successfully completes additional education provided by an institution accredited by the Commission on Dental Accreditation or an independent instructor approved by the board. The education must cover all of the subject areas failed by the applicant in each of the two clinical examinations. The applicant may retake the examination only after the institution or independent instructor provides to the board information specifying the areas failed in the previous examinations and the instruction provided to address the areas failed, and certifies that the applicant has successfully completed the instruction. The applicant must take the additional instruction required in this subpart each time the applicant fails the clinical examination twice.

[For text of subps 3 and 4, see M.R.]

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

[For text of subp 1, see M.R.]

Subp. 2. General anesthesia or deep sedation; educational training requirements.

A dentist may administer general anesthesia or deep sedation only pursuant to items A to C.

A. A dentist must complete either subitem (1) or (2) and subitems (3) and (4):

(1) a didactic and clinical program at a dental school, hospital, or graduate medical or dental program accredited by the Commission on Dental Accreditation, resulting in the dentist becoming clinically competent in the administration of general anesthesia. The program must be equivalent to a program for advanced specialty education in oral and maxillofacial surgery; or

[For text of subitem (2), see M.R.]

(3) the ACLS or PALS course and maintain current advanced certification thereafter; and

(4) a CPR certification course and maintain current CPR certification thereafter.

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

Subp. 3. Moderate sedation; educational training requirements. A dentist may administer moderate sedation only pursuant to items A to C.

A. A dentist must complete subitems (1) to (3):

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

(2) the ACLS or PALS course and maintain current advanced certification thereafter; and

(3) a CPR certification course and maintain current CPR certification thereafter.

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

E. A dental therapist, dental hygienist, or licensed dental assistant may administer nitrous oxide inhalation analgesia only after satisfactorily completing a course on the administration of nitrous oxide inhalation analgesia from an institution accredited by the Commission on 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 item F, see M.R.]

Subp. 5. Notice to board.

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

B. A dentist may administer general anesthesia, deep sedation, or moderate sedation only if the dentist has submitted the following information to the board on forms provided by the board: the name, address, and telephone number of the institution at which the dentist took the program or residency that complies with subparts 2, item A, subitem (1) or (2); and 3, item A, subitem (1), a certified copy of the dentist's transcript and other official record from the institution verifying that the dentist satisfactorily completed the program, residency, or course; and the name, address, and telephone number of the institution or other agency at which the dentist successfully completed the ACLS or PALS required by subparts 2, item A, subitem (3); and 3, item A, subitem (2). After this initial submission, dentists shall submit on a license renewal application or other form provided by the board a statement of the most recent course completed in ACLS or PALS.

C. A dentist not previously registered with the board according to item A or who graduated from an institution in Minnesota accredited by the Commission on Dental Accreditation prior to April 15, 2008, may administer nitrous oxide inhalation analgesia only after the dentist has submitted the information in subitems (1) and (2) to the board on forms provided by the board:

(1) the name, address, and telephone number of the institution at which the dentist took the course that complies with subpart 4, item B; and

11.1 (2) a certified copy of the dentist's transcript and other official record from
11.2 the institution verifying that the dentist has successfully completed CPR as required by
11.3 subpart 4, item C.

11.4 After the initial submission, a dentist must attest to maintaining consecutive and
11.5 current CPR certification at the time of each license renewal.

11.6 D. A dental hygienist or licensed dental assistant who graduated from an
11.7 institution in Minnesota accredited by the Commission on Dental Accreditation or
11.8 received licensure by credentials prior to September 2, 2004, may administer nitrous oxide
11.9 inhalation analgesia only after the dental hygienist or licensed dental assistant has submitted
11.10 the information in subitems (1) and (2) to the board on forms provided by the board:

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

11.12 (2) a certified copy of the dental hygienist's or licensed dental assistant's
11.13 transcript and other official record from the institution verifying that the dental hygienist or
11.14 licensed dental assistant has successfully completed CPR as required by subpart 4, item C.

11.15 After the initial submission, a dental hygienist or licensed dental assistant must attest to
11.16 maintaining consecutive and current CPR certification at the time of each license renewal.

11.17 E. A dental therapist who graduated from a board-approved dental therapy
11.18 program in Minnesota prior to August 1, 2013, may administer nitrous oxide inhalation
11.19 analgesia only after the dental therapist has submitted the information in subitems (1) and
11.20 (2) to the board on forms provided by the board:

11.21 (1) the name, address, and telephone number of the institution where the
11.22 dental therapist successfully completed the course required by subpart 4, item E; and

11.23 (2) a certified copy of the dental therapist's transcript and other official
11.24 records from the institution verifying that the dental therapist has successfully completed
11.25 CPR as required by subpart 4, item C.

12.1 After the initial submission, a dental therapist must attest to maintaining consecutive
12.2 and current CPR certification at the time of each license renewal.

12.3 [For text of subps 6 to 9, see M.R.]

12.4 Subp. 9a. **Expiration or termination of general anesthesia or moderate sedation**
12.5 **certificate; requirements.** A dentist requesting renewal or recertification of a general
12.6 anesthesia or moderate sedation certificate following expiration or termination must
12.7 comply with the requirements for the applicable interval specified in item A or B. After
12.8 successful completion of all requirements, the board shall issue a general anesthesia or
12.9 moderate sedation certificate to the dentist.

12.10 A. A dentist whose anesthesia/sedation certificate has expired as described in
12.11 subpart 9, item C, subitem (5), or who voluntarily terminated the anesthesia/sedation
12.12 certificate, within 60 calendar days after the renewal application deadline, must comply
12.13 with subitems (1) to (6):

12.14 [For text of subitems (1) to (3), see M.R.]

12.15 (4) provide official documentation as proof of current certification in
12.16 ACLS or PALS;

12.17 [For text of subitems (5) and (6), see M.R.]

12.18 B. A dentist whose anesthesia/sedation certificate has been terminated by the
12.19 board according to subpart 9, item C, subitem (5), or who voluntarily terminated the
12.20 anesthesia/sedation certificate, more than 60 calendar days after the renewal application
12.21 deadline, must comply with subitems (1) to (6):

12.22 [For text of subitems (1) to (3), see M.R.]

12.23 (4) provide official documentation of current certification in ACLS or PALS;

12.24 [For text of subitems (5) and (6), see M.R.]

13.1 [For text of item C, see M.R.]

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

13.3 **3100.5100 PROFESSIONAL DEVELOPMENT.**

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

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

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

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

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

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

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

13.20 Subp. 4. **Acceptable documentation of professional development activities.**

13.21 A licensee must record or obtain acceptable documentation of hours in professional
13.22 development activities for the licensee's portfolio. Acceptable documentation includes,
13.23 but is not limited to, the following:

13.24 A. a completed self-assessment examination;

14.1 B. a copy of the front and back of a completed CPR card from the American
14.2 Heart Association or the American Red Cross;

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

14.4 [For text of subp 5, see M.R.]

14.5 **3100.5300 AUDIT PROCESS OF PORTFOLIO.**

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

14.7 Subp. 3. **Failure of an audit.**

14.8 A. Upon failure of an audit, the appropriate board committee must impose one
14.9 or both of the following options:

14.10 (1) grant the licensee up to six months to comply with written requirements
14.11 to resolve deficiencies in professional development compliance; or

14.12 (2) initiate disciplinary proceedings against the licensee on grounds
14.13 specified in parts 3100.6100 and 3100.6200 and Minnesota Statutes, section 150A.08,
14.14 subdivision 1. Deficiencies causing audit failure may include, but are not limited to,
14.15 the following:

14.16 (a) lack of proof of documentation or participation;

14.17 (b) credit hours earned outside of renewal period being audited;

14.18 (c) excess of earned hours in a category having a maximum if a
14.19 deficiency exists;

14.20 (d) lack of earned hours in a category having a minimum if a
14.21 deficiency exists;

14.22 (e) failure to submit the portfolio;

14.23 (f) unacceptable professional development sources; or

15.1 (g) fraudulently earned or reported hours.

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

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

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

15.8 **3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.**

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

15.11 A. dental public health;

15.12 B. endodontics (endodontist);

15.13 C. oral and maxillofacial pathology (oral pathologist);

15.14 D. oral and maxillofacial radiology (oral radiologist);

15.15 E. oral and maxillofacial surgery (oral surgeon/oral maxillofacial surgeon);

15.16 F. orthodontics and dentofacial orthopedics (orthodontist);

15.17 G. pediatric dentistry (pediatric dentist /pedodontist);

15.18 H. periodontics (periodontist); and

15.19 I. prosthodontics (prosthodontist).

15.20 Subp. 2. **Specialty announcement.** Only a licensed dentist who has successfully
15.21 completed a postdoctoral course of study approved by the Commission on Dental
15.22 Accreditation in any of the designated specialty areas, or who has announced a limitation
15.23 of practice prior to 1967, or who has successfully completed certification by any of

16.1 the following specialty examining boards may announce each specialty area and may
16.2 advertise as a specialist in that area:

- 16.3 A. American Board of Dental Public Health;
- 16.4 B. American Board of Endodontics;
- 16.5 C. American Board of Oral and Maxillofacial Pathology;
- 16.6 D. American Board of Oral and Maxillofacial Radiology;
- 16.7 E. American Board of Oral and Maxillofacial Surgery;
- 16.8 F. American Board of Orthodontics;
- 16.9 G. American Board of Pediatric Dentistry;
- 16.10 H. American Board of Periodontology; and
- 16.11 I. American Board of Prosthodontics.

16.12 [For text of subp 3, see M.R.]

16.13 **3100.8500 LICENSED DENTAL ASSISTANTS.**

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

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

- 16.19 K. take photographs extraorally or intraorally;
- 16.20 L. take vital signs such as pulse rate and blood pressure as directed by a dentist;
- 16.21 and

17.1 M. obtain informed consent, according to part 3100.9600, subpart 9, for
17.2 treatments authorized by the supervising dentist pursuant to the licensed dental assistant's
17.3 scope of practice.

17.4 Subp. 1a. **Duties under indirect supervision.** A licensed dental assistant, in
17.5 addition to the services performed by an assistant described in part 3100.8400, subpart 1,
17.6 may perform the following services if a dentist is in the office, authorizes the procedures,
17.7 and remains in the office while the procedures are being performed:

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

17.9 L. etch appropriate enamel surfaces, apply and adjust pit and fissure sealants.
17.10 Before the application of pit and fissure sealants, a licensed dental assistant must have
17.11 successfully completed a course in pit and fissure sealants at a dental, dental hygiene, or
17.12 dental assisting school accredited by the Commission on Dental Accreditation;

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

17.14 Subp. 1b. **Duties under direct supervision.** A licensed dental assistant may perform
17.15 the following services if a dentist is in the dental office, personally diagnoses the condition
17.16 to be treated, personally authorizes the procedure, and evaluates the performance of the
17.17 licensed dental assistant before dismissing the patient:

17.18 A. remove excess bond material from orthodontic appliances;

17.19 B. remove bond material from teeth with rotary instruments after removal
17.20 of orthodontic appliances. Before utilizing rotary instruments for the removal of bond
17.21 material, a licensed dental assistant must have successfully completed a course in the use
17.22 of rotary instruments for the express purpose of the removal of bond material from teeth.
17.23 The course must be one that is presented by a dental, dental hygiene, or dental assisting
17.24 school accredited by the Commission on Dental Accreditation;

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

18.1 I. remove fixed orthodontic bands and brackets;

18.2 J. initiate and place an intravenous infusion line in preparation for intravenous
18.3 medications and sedation while under direct supervision of a dentist who holds a valid
18.4 general anesthesia or moderate sedation certificate. Before initiating and placing an
18.5 intravenous infusion line, a licensed dental assistant must have successfully completed
18.6 board-approved allied dental personnel courses comprised of intravenous access and
18.7 general anesthesia and moderate sedation training; and

18.8 K. place nonsurgical retraction material for gingival displacement. Before
18.9 placing nonsurgical retraction material, a licensed dental assistant must have successfully
18.10 completed a course in nonsurgical retraction material for gingival displacement at a
18.11 dental, dental hygiene, or dental assisting school accredited by the Commission on Dental
18.12 Accreditation.

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

18.14 **3100.8700 DENTAL HYGIENISTS.**

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

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

18.20 J. administer local anesthesia. Before administering local anesthesia, a dental
18.21 hygienist must have successfully completed a didactic and clinical program sponsored by
18.22 a dental or dental hygiene school accredited by the Commission on Dental Accreditation,
18.23 resulting in the dental hygienist becoming clinically competent in the administration
18.24 of local anesthesia;

19.1 K. administer nitrous oxide inhalation analgesia according to part 3100.3600,
19.2 subparts 4 and 5; and

19.3 L. obtain informed consent, according to part 3100.9600, subpart 9, for
19.4 treatments authorized by the supervising dentist pursuant to the dental hygienist's scope of
19.5 practice.

19.6 [For text of subp 2, see M.R.]

19.7 Subp. 2a. **Duties under direct supervision.** A dental hygienist may perform the
19.8 following procedures if a dentist is in the office, personally diagnoses the condition to
19.9 be treated, personally authorizes the procedure, and evaluates the performance of the
19.10 dental hygienist before dismissing the patient:

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

19.12 E. remove bond material from teeth with rotary instruments after removal
19.13 of orthodontic appliances. Before utilizing rotary instruments for the removal of bond
19.14 material, a dental hygienist must have successfully completed a course in the use of rotary
19.15 instruments for the express purpose of the removal of bond material from teeth. The
19.16 course must be one that is presented by a dental, dental hygiene, or dental assisting school
19.17 accredited by the Commission on Dental Accreditation;

19.18 F. attach prefabricated and preadjusted orthodontic appliances;

19.19 G. remove fixed orthodontic bands and brackets;

19.20 H. initiate and place an intravenous infusion line in preparation for intravenous
19.21 medications and sedation while under direct supervision of a dentist who holds a valid
19.22 general anesthesia or moderate sedation certificate. Before initiating and placing
19.23 an intravenous infusion line, a dental hygienist must have successfully completed
19.24 board-approved allied dental personnel courses comprised of intravenous access and
19.25 general anesthesia and moderate sedation training; and

I. place nonsurgical retraction material for gingival displacement. Before placing nonsurgical retraction material, a dental hygienist must have successfully completed a course in nonsurgical retraction material for gingival displacement at a dental, dental hygiene, or dental assisting school accredited by the Commission on Dental Accreditation.

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

3100.9600 RECORD KEEPING.

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

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

A. the dentist, advanced dental therapist, dental therapist, dental hygienist, or licensed dental assistant discussed with the patient the treatment options and the prognosis, benefits, and risks of each treatment that is within the scope of practice of the respective licensee; and

B. the patient has consented to the treatment chosen.

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

REPEALER. Minnesota Rules, part 3100.0100, subpart 8, is repealed.

EFFECTIVE DATE. The amendments to Minnesota Rules, parts 3100.0100; 3100.3600; and 3100.5100, are effective August 1, 2014.

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 Licensing Dentists, Dental Hygienists, and Dental Assistants

The rules proposed and published at *State Register*, Volume 39, Number 11, pages 342-353, September 15, 2014 (39 SR 342), are adopted as proposed.

1.1 **3100.0100 DEFINITIONS.**

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

1.3 Subp. 2a. **Advanced cardiac life support or ACLS.** "Advanced cardiac life support"
1.4 or "ACLS" refers to an advanced educational course for a health care provider that teaches
1.5 a detailed medical protocol for the provision of lifesaving cardiac care in settings ranging
1.6 from the prehospital environment to the hospital setting. The course must include advanced
1.7 airway management skills, cardiac drug usage, defibrillation, and arrhythmia interpretation.
1.8 An ACLS certificate must be obtained through the American Heart Association.

1.9 [For text of subps 2b to 7a, see M.R.]

1.10 Subp. 8. [Repealed, 39 SR 1455]

1.11 [For text of subps 8a to 9, see M.R.]

1.12 Subp. 9a. **CPR.** "CPR" refers to a comprehensive, hands-on course for a health
1.13 care provider that includes: cardiopulmonary resuscitation on an adult, child, and infant;
1.14 two-person rescuer; barrier mask or bag for ventilation; foreign body airway obstruction;
1.15 and automated external defibrillation. A CPR certificate shall be obtained through the
1.16 American Heart Association health care provider course or the American Red Cross
1.17 professional rescuer course.

1.18 [For text of subps 9b to 15b, see M.R.]

1.19 Subp. 15c. **Pediatric advanced life support or PALS.** "Pediatric advanced life
1.20 support" or "PALS" refers to an advanced life support educational course for the pediatric
1.21 health care provider that teaches the current certification standards of the American
1.22 Academy of Pediatrics or the American Heart Association. A PALS certificate must be
1.23 obtained through the American Heart Association.

1.24 [For text of subps 16 to 22, see M.R.]

2.1 **3100.0300 MEETINGS.**

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

2.3 Subp. 4. **Parliamentary procedure.** When not otherwise provided, American
2.4 Institute of Parliamentarians Standard Code of Parliamentary Procedure shall govern the
2.5 conduct of all business meetings of the board.

2.6 **3100.1100 APPLICATIONS FOR LICENSE TO PRACTICE DENTISTRY.**

2.7 Subpart 1. **Form, credentials, and certification.** A person seeking licensure
2.8 to practice dentistry within Minnesota must present to the board an application and
2.9 credentials, as determined by the board, and meet the following requirements.

2.10 A. The application must be on a form furnished by the board and must be
2.11 completely filled out.

2.12 B. The applicant shall furnish satisfactory evidence of having graduated from a
2.13 school of dentistry accredited by the Commission on Dental Accreditation.

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

2.15 [For text of subps 2 to 6, see M.R.]

2.16 **3100.1150 LICENSE TO PRACTICE DENTISTRY AS A FACULTY DENTIST.**

2.17 Subpart 1. **Licensure.**

2.18 A. In order to practice dentistry, a faculty member must be licensed by the board.

2.19 B. The board must license a person to practice dentistry as a faculty dentist if:

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

2.21 (3) the dean of a school of dentistry accredited by the Commission on
2.22 Dental Accreditation certifies to the board, in accordance with the requirements of item C,
2.23 that the person is a member of the school's faculty and practices dentistry; and

3.1 [For text of subitem (4), see M.R.]

3.2 C. The board must accept an applicant as a faculty dentist if the dean of a
3.3 school of dentistry accredited by the Commission on Dental Accreditation provides to the
3.4 board the following information:

3.5 [For text of subitems (1) to (7), see M.R.]

3.6 [For text of subp 2, see M.R.]

3.7 **3100.1160 LICENSE TO PRACTICE DENTISTRY AS A RESIDENT DENTIST.**

3.8 Subpart 1. **Licensure.**

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

3.10 B. The board must license a person to practice dentistry as a resident dentist if:

3.11 [For text of subitems (1) to (3), see M.R.]

3.12 (4) the person provides evidence of being an enrolled graduate student or
3.13 a student of an advanced dental education program accredited by the Commission on
3.14 Dental Accreditation; and

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

3.16 Subp. 2. **Termination of licensure.**

3.17 A. A person's license to practice dentistry as a resident dentist is terminated
3.18 when the person is no longer an enrolled graduate student or a student of an advanced
3.19 dental education program accredited by the Commission on Dental Accreditation.

3.20 B. A person licensed to practice dentistry as a resident dentist must inform
3.21 the board when the licensee is no longer an enrolled graduate student or a student of an
3.22 advanced dental education program accredited by the Commission on Dental Accreditation.

3.23 [For text of item C, see M.R.]

4.1 **3100.1200 APPLICATION FOR LICENSE TO PRACTICE DENTAL HYGIENE.**

4.2 A person seeking licensure to practice dental hygiene must present an application and
4.3 credentials as determined by the board and meet the following requirements of the board.

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

4.5 D. The applicant shall furnish satisfactory evidence of having been granted a
4.6 diploma or certificate in dental hygiene from a school accredited by the Commission
4.7 on Dental Accreditation.

4.8 [For text of items E and F, see M.R.]

4.9 **3100.1300 APPLICATION FOR LICENSE TO PRACTICE DENTAL ASSISTING.**

4.10 A person desiring to be licensed as a dental assistant shall submit to the board an
4.11 application and credentials as prescribed by the act and shall conform to the following:

4.12 A. An application on a form furnished by the board shall be completely filled out.

4.13 B. The applicant shall furnish a certified copy or its equivalent of a diploma or
4.14 certificate of satisfactory completion of a training program approved by the Commission
4.15 on Dental Accreditation or other program which, in the judgment of the board, is
4.16 equivalent. If the curriculum of the training program does not include training in the
4.17 expanded duties specified in part 3100.8500, the applicant must successfully complete a
4.18 course in these functions which has been approved by the board.

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

4.20 **3100.1400 APPLICATION FOR LICENSURE BY CREDENTIALS.**

4.21 A person who is already a licensed dentist or dental hygienist in another state or
4.22 Canadian province desiring to be licensed to practice dentistry or dental hygiene in
4.23 Minnesota shall, in order to demonstrate the person's knowledge of dental subjects and
4.24 ability to practice dentistry or dental hygiene in Minnesota, comply with the requirements
4.25 in items A to N.

A. The applicant shall complete an application furnished by the board.

B. The applicant shall furnish satisfactory evidence of having graduated from a school of dentistry, or dental hygiene, whichever the case may be, which has been accredited by the Commission on Dental Accreditation.

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

3100.1850 REINSTATEMENT OF LICENSE.

Subpart 1. Requirements.

A. A person desiring the reinstatement of a license must:

(1) submit to the board a completed reinstatement application provided by the board;

(2) submit with the reinstatement application the fee specified in Minnesota Statutes, section 150A.091, subdivision 10;

(3) include with the reinstatement application a letter stating the reasons for applying for reinstatement; and

(4) comply with the applicable provisions of subparts 2 to 5.

B. Once the requirements of this subpart have been reviewed by the board, the board shall officially notify the applicant by letter as to whether the reinstatement of a license has been denied or granted by the board. If granted reinstatement, the person shall be assigned to the biennial term to which the licensee was assigned prior to termination of the license. An applicant denied reinstatement of a license may appeal the denial by initiating a contested case hearing pursuant to Minnesota Statutes, chapter 14.

[For text of subps 2 to 5, see M.R.]

3100.3300 EXAMINATION OF DENTISTS.

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

6.1 Subp. 4a. **Additional education for two failed clinical examinations.** When an
6.2 applicant fails twice any part of the clinical examination required by Minnesota Statutes,
6.3 section 150A.06, subdivision 1, the applicant may not take it again until the applicant
6.4 successfully completes additional education provided by an institution accredited by the
6.5 Commission on Dental Accreditation. The education must cover all of the subject areas
6.6 failed by the applicant in each of the two clinical examinations. The applicant may retake
6.7 the examination only after the institution provides to the board information specifying
6.8 the areas failed in the previous examinations and the instruction provided to address the
6.9 areas failed, and certifies that the applicant has successfully completed the instruction.
6.10 The applicant must take the additional instruction required in this subpart each time the
6.11 applicant fails the clinical examination twice.

6.12 Subp. 5. **Examination for continued licensure.** The board may administer any
6.13 other examination it deems necessary to determine qualification for continued licensure.

6.14 **3100.3400 EXAMINATION OF DENTAL HYGIENISTS.**

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

6.16 Subp. 3a. **Additional education for two failed clinical examinations.** When an
6.17 applicant fails twice any part of the clinical examination required by Minnesota Statutes,
6.18 section 150A.06, subdivision 2, the applicant may not take it again until the applicant
6.19 successfully completes additional education provided by an institution accredited by the
6.20 Commission on Dental Accreditation. The education must cover all of the subject areas
6.21 failed by the applicant in each of the two clinical examinations. The applicant may retake
6.22 the examination only after the institution provides to the board information specifying
6.23 the areas failed in the previous examinations and the instruction provided to address the
6.24 areas failed, and certifies that the applicant has successfully completed the instruction.
6.25 The applicant must take the additional instruction provided above each time the applicant
6.26 fails the clinical examination twice.

7.1 Subp. 4. **Examination for continued licensure.** The board may administer any
7.2 other examination it deems necessary to determine qualifications for continued licensure.

7.3 **3100.3500 EXAMINATION OF LICENSED DENTAL ASSISTANTS.**

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

7.5 Subp. 2a. **Additional education for two failed clinical examinations.** When an
7.6 applicant fails twice any part of the clinical examination required by Minnesota Statutes,
7.7 section 150A.06, subdivision 2a, the applicant may not take it again until the applicant
7.8 successfully completes additional education provided by an institution accredited by
7.9 the Commission on Dental Accreditation or an independent instructor approved by the
7.10 board. The education must cover all of the subject areas failed by the applicant in each
7.11 of the two clinical examinations. The applicant may retake the examination only after
7.12 the institution or independent instructor provides to the board information specifying the
7.13 areas failed in the previous examinations and the instruction provided to address the
7.14 areas failed, and certifies that the applicant has successfully completed the instruction.
7.15 The applicant must take the additional instruction required in this subpart each time the
7.16 applicant fails the clinical examination twice.

7.17 [For text of subps 3 and 4, see M.R.]

7.18 **3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,**
7.19 **MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE**
7.20 **INHALATION ANALGESIA.**

7.21 [For text of subp 1, see M.R.]

7.22 Subp. 2. **General anesthesia or deep sedation; educational training requirements.**
7.23 A dentist may administer general anesthesia or deep sedation only pursuant to items A to C.

7.24 A. A dentist must complete either subitem (1) or (2) and subitems (3) and (4):

7.25 (1) a didactic and clinical program at a dental school, hospital, or graduate
7.26 medical or dental program accredited by the Commission on Dental Accreditation,

8.1 resulting in the dentist becoming clinically competent in the administration of general
8.2 anesthesia. The program must be equivalent to a program for advanced specialty education
8.3 in oral and maxillofacial surgery; or

8.4 [For text of subitem (2), see M.R.]

8.5 (3) the ACLS or PALS course and maintain current advanced certification
8.6 thereafter; and

8.7 (4) a CPR certification course and maintain current CPR certification
8.8 thereafter.

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

8.10 Subp. 3. **Moderate sedation; educational training requirements.** A dentist may
8.11 administer moderate sedation only pursuant to items A to C.

8.12 A. A dentist must complete subitems (1) to (3):

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

8.14 (2) the ACLS or PALS course and maintain current advanced certification
8.15 thereafter; and

8.16 (3) a CPR certification course and maintain current CPR certification
8.17 thereafter.

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

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

8.20 A dentist may administer nitrous oxide inhalation analgesia only according to items A
8.21 to D and subpart 5, items A and C. A dental therapist may administer nitrous oxide
8.22 inhalation analgesia only according to items C to F. A dental hygienist may administer
8.23 nitrous oxide inhalation analgesia only according to items C to F and subpart 5, item
8.24 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 and D, see M.R.]

E. A dental therapist, dental hygienist, or licensed dental assistant may administer nitrous oxide inhalation analgesia only after satisfactorily completing a course on the administration of nitrous oxide inhalation analgesia from an institution accredited by the Commission on 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 item F, see M.R.]

Subp. 5. Notice to board.

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

10.1 B. A dentist may administer general anesthesia, deep sedation, or moderate
10.2 sedation only if the dentist has submitted the following information to the board on forms
10.3 provided by the board: the name, address, and telephone number of the institution at
10.4 which the dentist took the program or residency that complies with subparts 2, item A,
10.5 subitem (1) or (2); and 3, item A, subitem (1), a certified copy of the dentist's transcript and
10.6 other official record from the institution verifying that the dentist satisfactorily completed
10.7 the program, residency, or course; and the name, address, and telephone number of the
10.8 institution or other agency at which the dentist successfully completed the ACLS or PALS
10.9 required by subparts 2, item A, subitem (3); and 3, item A, subitem (2). After this initial
10.10 submission, dentists shall submit on a license renewal application or other form provided
10.11 by the board a statement of the most recent course completed in ACLS or PALS.

10.12 C. A dentist not previously registered with the board according to item A or
10.13 who graduated from an institution in Minnesota accredited by the Commission on Dental
10.14 Accreditation prior to April 15, 2008, may administer nitrous oxide inhalation analgesia
10.15 only after the dentist has submitted the information in subitems (1) and (2) to the board
10.16 on forms provided by the board:

10.17 (1) the name, address, and telephone number of the institution at which the
10.18 dentist took the course that complies with subpart 4, item B; and

10.19 (2) a certified copy of the dentist's transcript and other official record from
10.20 the institution verifying that the dentist has successfully completed CPR as required by
10.21 subpart 4, item C.

10.22 After the initial submission, a dentist must attest to maintaining consecutive and
10.23 current CPR certification at the time of each license renewal.

10.24 D. A dental hygienist or licensed dental assistant who graduated from an
10.25 institution in Minnesota accredited by the Commission on Dental Accreditation or
10.26 received licensure by credentials prior to September 2, 2004, may administer nitrous oxide

11.1 inhalation analgesia only after the dental hygienist or licensed dental assistant has submitted
11.2 the information in subitems (1) and (2) to the board on forms provided by the board:

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

11.4 (2) a certified copy of the dental hygienist's or licensed dental assistant's
11.5 transcript and other official record from the institution verifying that the dental hygienist or
11.6 licensed dental assistant has successfully completed CPR as required by subpart 4, item C.

11.7 After the initial submission, a dental hygienist or licensed dental assistant must attest to
11.8 maintaining consecutive and current CPR certification at the time of each license renewal.

11.9 E. A dental therapist who graduated from a board-approved dental therapy
11.10 program in Minnesota prior to August 1, 2013, may administer nitrous oxide inhalation
11.11 analgesia only after the dental therapist has submitted the information in subitems (1) and
11.12 (2) to the board on forms provided by the board:

11.13 (1) the name, address, and telephone number of the institution where the
11.14 dental therapist successfully completed the course required by subpart 4, item E; and

11.15 (2) a certified copy of the dental therapist's transcript and other official
11.16 records from the institution verifying that the dental therapist has successfully completed
11.17 CPR as required by subpart 4, item C.

11.18 After the initial submission, a dental therapist must attest to maintaining consecutive
11.19 and current CPR certification at the time of each license renewal.

11.20 [For text of subps 6 to 9, see M.R.]

11.21 Subp. 9a. **Expiration or termination of general anesthesia or moderate sedation**
11.22 **certificate; requirements.** A dentist requesting renewal or recertification of a general
11.23 anesthesia or moderate sedation certificate following expiration or termination must
11.24 comply with the requirements for the applicable interval specified in item A or B. After

12.1 successful completion of all requirements, the board shall issue a general anesthesia or
12.2 moderate sedation certificate to the dentist.

12.3 A. A dentist whose anesthesia/sedation certificate has expired as described in
12.4 subpart 9, item C, subitem (5), or who voluntarily terminated the anesthesia/sedation
12.5 certificate, within 60 calendar days after the renewal application deadline, must comply
12.6 with subitems (1) to (6):

12.7 [For text of subitems (1) to (3), see M.R.]

12.8 (4) provide official documentation as proof of current certification in
12.9 ACLS or PALS;

12.10 [For text of subitems (5) and (6), see M.R.]

12.11 B. A dentist whose anesthesia/sedation certificate has been terminated by the
12.12 board according to subpart 9, item C, subitem (5), or who voluntarily terminated the
12.13 anesthesia/sedation certificate, more than 60 calendar days after the renewal application
12.14 deadline, must comply with subitems (1) to (6):

12.15 [For text of subitems (1) to (3), see M.R.]

12.16 (4) provide official documentation of current certification in ACLS or PALS;

12.17 [For text of subitems (5) and (6), see M.R.]

12.18 [For text of item C, see M.R.]

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

12.20 **3100.5100 PROFESSIONAL DEVELOPMENT.**

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

12.22 Subp. 3. **Professional development activities.** Professional development activities
12.23 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).

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

(3) A CPR certification course is mandatory for each licensee to maintain licensure. The CPR course must be 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.

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

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

Subp. 4. Acceptable documentation of professional development activities.

A licensee must record or obtain acceptable documentation of hours in professional development activities for the licensee's portfolio. Acceptable documentation includes, but is not limited to, the following:

A. a completed self-assessment examination;

B. a copy of the front and back of a completed CPR card from the American Heart Association or the American Red Cross;

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

[For text of subp 5, see M.R.]

3100.5300 AUDIT PROCESS OF PORTFOLIO.

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

14.1 Subp. 3. **Failure of an audit.**

14.2 A. Upon failure of an audit, the appropriate board committee must impose one
14.3 or both of the following options:

14.4 (1) grant the licensee up to six months to comply with written requirements
14.5 to resolve deficiencies in professional development compliance; or

14.6 (2) initiate disciplinary proceedings against the licensee on grounds
14.7 specified in parts 3100.6100 and 3100.6200 and Minnesota Statutes, section 150A.08,
14.8 subdivision 1. Deficiencies causing audit failure may include, but are not limited to,
14.9 the following:

14.10 (a) lack of proof of documentation or participation;

14.11 (b) credit hours earned outside of renewal period being audited;

14.12 (c) excess of earned hours in a category having a maximum if a
14.13 deficiency exists;

14.14 (d) lack of earned hours in a category having a minimum if a
14.15 deficiency exists;

14.16 (e) failure to submit the portfolio;

14.17 (f) unacceptable professional development sources; or

14.18 (g) fraudulently earned or reported hours.

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

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

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

15.1 **3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.**

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

- 15.4 A. dental public health;
- 15.5 B. endodontics (endodontist);
- 15.6 C. oral and maxillofacial pathology (oral pathologist);
- 15.7 D. oral and maxillofacial radiology (oral radiologist);
- 15.8 E. oral and maxillofacial surgery (oral surgeon/oral maxillofacial surgeon);
- 15.9 F. orthodontics and dentofacial orthopedics (orthodontist);
- 15.10 G. pediatric dentistry (pediatric dentist /pedodontist);
- 15.11 H. periodontics (periodontist); and
- 15.12 I. prosthodontics (prosthodontist).

15.13 Subp. 2. **Specialty announcement.** Only a licensed dentist who has successfully
15.14 completed a postdoctoral course of study approved by the Commission on Dental
15.15 Accreditation in any of the designated specialty areas, or who has announced a limitation
15.16 of practice prior to 1967, or who has successfully completed certification by any of
15.17 the following specialty examining boards may announce each specialty area and may
15.18 advertise as a specialist in that area:

- 15.19 A. American Board of Dental Public Health;
- 15.20 B. American Board of Endodontics;
- 15.21 C. American Board of Oral and Maxillofacial Pathology;
- 15.22 D. American Board of Oral and Maxillofacial Radiology;
- 15.23 E. American Board of Oral and Maxillofacial Surgery;

- 16.1 F. American Board of Orthodontics;
- 16.2 G. American Board of Pediatric Dentistry;
- 16.3 H. American Board of Periodontology; and
- 16.4 I. American Board of Prosthodontics.

16.5 [For text of subp 3, see M.R.]

16.6 **3100.8500 LICENSED DENTAL ASSISTANTS.**

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

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

- 16.12 K. take photographs extraorally or intraorally;
- 16.13 L. take vital signs such as pulse rate and blood pressure as directed by a dentist;
- 16.14 and
- 16.15 M. obtain informed consent, according to part 3100.9600, subpart 9, for
- 16.16 treatments authorized by the supervising dentist pursuant to the licensed dental assistant's
- 16.17 scope of practice.

16.18 Subp. 1a. **Duties under indirect supervision.** A licensed dental assistant, in
16.19 addition to the services performed by an assistant described in part 3100.8400, subpart 1,
16.20 may perform the following services if a dentist is in the office, authorizes the procedures,
16.21 and remains in the office while the procedures are being performed:

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

- 16.23 L. etch appropriate enamel surfaces, apply and adjust pit and fissure sealants.
- 16.24 Before the application of pit and fissure sealants, a licensed dental assistant must have

17.1 successfully completed a course in pit and fissure sealants at a dental, dental hygiene, or
17.2 dental assisting school accredited by the Commission on Dental Accreditation;

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

17.4 Subp. 1b. **Duties under direct supervision.** A licensed dental assistant may perform
17.5 the following services if a dentist is in the dental office, personally diagnoses the condition
17.6 to be treated, personally authorizes the procedure, and evaluates the performance of the
17.7 licensed dental assistant before dismissing the patient:

17.8 A. remove excess bond material from orthodontic appliances;

17.9 B. remove bond material from teeth with rotary instruments after removal
17.10 of orthodontic appliances. Before utilizing rotary instruments for the removal of bond
17.11 material, a licensed dental assistant must have successfully completed a course in the use
17.12 of rotary instruments for the express purpose of the removal of bond material from teeth.
17.13 The course must be one that is presented by a dental, dental hygiene, or dental assisting
17.14 school accredited by the Commission on Dental Accreditation;

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

17.16 I. remove fixed orthodontic bands and brackets;

17.17 J. initiate and place an intravenous infusion line in preparation for intravenous
17.18 medications and sedation while under direct supervision of a dentist who holds a valid
17.19 general anesthesia or moderate sedation certificate. Before initiating and placing an
17.20 intravenous infusion line, a licensed dental assistant must have successfully completed
17.21 board-approved allied dental personnel courses comprised of intravenous access and
17.22 general anesthesia and moderate sedation training; and

17.23 K. place nonsurgical retraction material for gingival displacement. Before
17.24 placing nonsurgical retraction material, a licensed dental assistant must have successfully
17.25 completed a course in nonsurgical retraction material for gingival displacement at a

dental, dental hygiene, or dental assisting school accredited by the Commission on Dental Accreditation.

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

3100.8700 DENTAL HYGIENISTS.

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

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

J. administer local anesthesia. Before administering local anesthesia, a dental hygienist must have successfully completed a didactic and clinical program sponsored by a dental or dental hygiene school accredited by the Commission on Dental Accreditation, resulting in the dental hygienist becoming clinically competent in the administration of local anesthesia;

K. administer nitrous oxide inhalation analgesia according to part 3100.3600, subparts 4 and 5; and

L. obtain informed consent, according to part 3100.9600, subpart 9, for treatments authorized by the supervising dentist pursuant to the dental hygienist's scope of practice.

[For text of subp 2, see M.R.]

Subp. 2a. **Duties under direct supervision.** A dental hygienist may perform the following procedures if a dentist is in the office, personally diagnoses the condition to be treated, personally authorizes the procedure, and evaluates the performance of the dental hygienist before dismissing the patient:

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

19.1 E. remove bond material from teeth with rotary instruments after removal
19.2 of orthodontic appliances. Before utilizing rotary instruments for the removal of bond
19.3 material, a dental hygienist must have successfully completed a course in the use of rotary
19.4 instruments for the express purpose of the removal of bond material from teeth. The
19.5 course must be one that is presented by a dental, dental hygiene, or dental assisting school
19.6 accredited by the Commission on Dental Accreditation;

19.7 F. attach prefabricated and preadjusted orthodontic appliances;

19.8 G. remove fixed orthodontic bands and brackets;

19.9 H. initiate and place an intravenous infusion line in preparation for intravenous
19.10 medications and sedation while under direct supervision of a dentist who holds a valid
19.11 general anesthesia or moderate sedation certificate. Before initiating and placing
19.12 an intravenous infusion line, a dental hygienist must have successfully completed
19.13 board-approved allied dental personnel courses comprised of intravenous access and
19.14 general anesthesia and moderate sedation training; and

19.15 I. place nonsurgical retraction material for gingival displacement. Before placing
19.16 nonsurgical retraction material, a dental hygienist must have successfully completed a
19.17 course in nonsurgical retraction material for gingival displacement at a dental, dental
19.18 hygiene, or dental assisting school accredited by the Commission on Dental Accreditation.

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

19.20 **3100.9600 RECORD KEEPING.**

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

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

19.23 A. the dentist, advanced dental therapist, dental therapist, dental hygienist,
19.24 or licensed dental assistant discussed with the patient the treatment options and the

20.1 prognosis, benefits, and risks of each treatment that is within the scope of practice of the
20.2 respective licensee; and

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

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

20.5 **REPEALER.** Minnesota Rules, part 3100.0100, subpart 8, is repealed.

20.6 **EFFECTIVE DATE.** The amendments to Minnesota Rules, parts 3100.0100; 3100.3600;
20.7 and 3100.5100, are effective August 1, 2014.

1.1 **Minnesota Board of Dentistry**1.2 **Proposed Permanent Rules Relating to Licensing Dentists, Dental Hygienists, and**
1.3 **Dental Assistants**1.4 **3100.0100 DEFINITIONS.**1.5 [For text of subps 1 and 2, see M.R.]

1.6 Subp. 2a. **Advanced cardiac life support or ACLS.** "Advanced cardiac life
1.7 support" or "ACLS" refers to an advanced educational course for a health care provider
1.8 that teaches a detailed medical protocol for the provision of lifesaving cardiac care in
1.9 settings ranging from the prehospital environment to the hospital setting. The course
1.10 must include advanced airway management skills, cardiac drug usage, defibrillation, and
1.11 arrhythmia interpretation. An ACLS certificate must be obtained through the American
1.12 Heart Association, ~~the American Red Cross, or an equivalent course.~~

1.13 [For text of subps 2b to 7a, see M.R.]1.14 Subp. 8. [See repealer.]1.15 [For text of subps 8a to 9, see M.R.]

1.16 Subp. 9a. **CPR.** "CPR" refers to a comprehensive, hands-on course for a health
1.17 care provider that includes: cardiopulmonary resuscitation on an adult, child, and infant;
1.18 two-person rescuer; barrier mask or bag for ventilation; foreign body airway obstruction;
1.19 and automated external defibrillation. A CPR certificate shall be obtained through the
1.20 American Heart Association health care provider course, or the American Red Cross
1.21 professional rescuer course, ~~or an equivalent course.~~

1.22 [For text of subps 9b to 15b, see M.R.]

1.23 Subp. 15c. **Pediatric advanced life support or PALS.** "Pediatric advanced life
1.24 support" or "PALS" refers to an advanced life support educational course for the pediatric
1.25 health care provider that teaches the current certification standards of the American

2.1 Academy of Pediatrics or the American Heart Association. A PALS certificate must be
2.2 obtained through the American Heart Association ~~or an equivalent course.~~

2.3 [For text of subps 16 to 22, see M.R.]

2.4 **3100.0300 MEETINGS.**

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

2.6 Subp. 4. **Parliamentary procedure.** When not otherwise provided, ~~Sturgis~~
2.7 American Institute of Parliamentarians Standard Code of Parliamentary Procedure shall
2.8 govern the conduct of all business meetings of the board.

2.9 **3100.1100 APPLICATIONS FOR LICENSE TO PRACTICE DENTISTRY.**

2.10 Subpart 1. **Form, credentials, and certification.** A person seeking licensure
2.11 to practice dentistry within Minnesota must present to the board an application and
2.12 credentials, as determined by the board, and meet the following requirements.

2.13 A. The application must be on a form furnished by the board and must be
2.14 completely filled out.

2.15 B. The applicant shall furnish satisfactory evidence of having graduated from a
2.16 school of dentistry accredited by the Commission on Dental Accreditation.

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

2.18 [For text of subps 2 to 6, see M.R.]

2.19 **3100.1150 LICENSE TO PRACTICE DENTISTRY AS A FACULTY DENTIST.**

2.20 Subpart 1. **Licensure.**

2.21 A. In order to practice dentistry, a faculty member must be licensed by the board.

2.22 B. The board must license a person to practice dentistry as a faculty dentist if:

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

3.1 (3) the dean of a school of dentistry accredited by the Commission on
3.2 Dental Accreditation certifies to the board, in accordance with the requirements of item C,
3.3 that the person is a member of the school's faculty and practices dentistry; and

3.4 [For text of subitem (4), see M.R.]

3.5 C. The board must accept an applicant as a faculty dentist if the dean of a
3.6 school of dentistry accredited by the Commission on Dental Accreditation provides to the
3.7 board the following information:

3.8 [For text of subitems (1) to (7), see M.R.]

3.9 [For text of subp 2, see M.R.]

3.10 **3100.1160 LICENSE TO PRACTICE DENTISTRY AS A RESIDENT DENTIST.**

3.11 Subpart 1. **Licensure.**

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

3.13 B. The board must license a person to practice dentistry as a resident dentist if:

3.14 [For text of subitems (1) to (3), see M.R.]

3.15 (4) the person provides evidence of being an enrolled graduate student or
3.16 a student of an advanced dental education program accredited by the Commission on
3.17 Dental Accreditation; and

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

3.19 Subp. 2. **Termination of licensure.**

3.20 A. A person's license to practice dentistry as a resident dentist is terminated
3.21 when the person is no longer an enrolled graduate student or a student of an advanced
3.22 dental education program accredited by the Commission on Dental Accreditation.

4.1 B. A person licensed to practice dentistry as a resident dentist must inform
4.2 the board when the licensee is no longer an enrolled graduate student or a student of an
4.3 advanced dental education program accredited by the Commission on Dental Accreditation.

4.4 [For text of item C, see M.R.]

4.5 **3100.1200 APPLICATION FOR LICENSE TO PRACTICE DENTAL HYGIENE.**

4.6 A person seeking licensure to practice dental hygiene must present an application and
4.7 credentials as determined by the board and meet the following requirements of the board.

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

4.9 D. The applicant shall furnish satisfactory evidence of having been granted a
4.10 diploma or certificate in dental hygiene from a school accredited by the Commission
4.11 on Dental Accreditation.

4.12 [For text of items E and F, see M.R.]

4.13 **3100.1300 APPLICATION FOR LICENSE TO PRACTICE DENTAL ASSISTING.**

4.14 A person desiring to be licensed as a dental assistant shall submit to the board an
4.15 application and credentials as prescribed by the act and shall conform to the following:

4.16 A. An application on a form furnished by the board shall be completely filled out.

4.17 B. The applicant shall furnish a certified copy or its equivalent of a diploma or
4.18 certificate of satisfactory completion of a training program approved by the Commission
4.19 on Dental Accreditation or other program which, in the judgment of the board, is
4.20 equivalent. If the curriculum of the training program does not include training in the
4.21 expanded duties specified in part 3100.8500, the applicant must successfully complete a
4.22 course in these functions which has been approved by the board.

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

3100.1400 APPLICATION FOR LICENSURE BY CREDENTIALS.

A person who is already a licensed dentist or dental hygienist in another state or Canadian province desiring to be licensed to practice dentistry or dental hygiene in Minnesota shall, in order to demonstrate the person's knowledge of dental subjects and ability to practice dentistry or dental hygiene in Minnesota, comply with the requirements in items A to N.

A. The applicant shall complete an application furnished by the board.

B. The applicant shall furnish satisfactory evidence of having graduated from a school of dentistry, or dental hygiene, whichever the case may be, which has been accredited by the Commission on Dental Accreditation.

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

3100.1850 REINSTATEMENT OF LICENSE.

Subpart 1. **Requirements.** ~~Upon complying with the requirements in this part, the applicant's license shall be reinstated.~~

A. A person desiring the reinstatement of a license ~~shall~~ must:

~~A:~~ (1) submit to the board a completed reinstatement application provided by the board;

~~B:~~ (2) submit with the reinstatement application the fee specified in Minnesota Statutes, section 150A.091, subdivision 10;

~~C:~~ (3) include with the reinstatement application a letter stating the reasons for applying for reinstatement; and

~~D:~~ (4) comply with the applicable provisions of subparts 2 to 5.

B. ~~Upon~~ Once the requirements of this subpart have been reviewed by the board, the board shall officially notify the applicant by letter as to whether the reinstatement of a

license has been denied or granted by the board. If granted reinstatement, the person shall be assigned to the biennial term to which the licensee was assigned prior to termination of the license. An applicant denied reinstatement of a license may appeal the denial by initiating a contested case hearing pursuant to Minnesota Statutes, chapter 14.

[For text of subps 2 to 5, see M.R.]

3100.3300 EXAMINATION OF DENTISTS.

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

Subp. 4a. **Additional education for two failed clinical examinations.** When an applicant fails twice any part of the clinical examination required by Minnesota Statutes, section 150A.06, subdivision 1, the applicant may not take it again until the applicant successfully completes additional education provided by an institution accredited by the Commission on Dental Accreditation. The education must cover all of the subject areas failed by the applicant in each of the two clinical examinations. The applicant may retake the examination only after the institution provides to the board information specifying the areas failed in the previous examinations and the instruction provided to address the areas failed, and certifies that the applicant has successfully completed the instruction. The applicant must take the additional instruction required in this subpart each time the applicant fails the clinical examination twice.

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

3100.3400 EXAMINATION OF DENTAL HYGIENISTS.

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

Subp. 3a. **Additional education for two failed clinical examinations.** When an applicant fails twice any part of the clinical examination required by Minnesota Statutes, section 150A.06, subdivision 2, the applicant may not take it again until the applicant

7.1 successfully completes additional education provided by an institution accredited by the
7.2 Commission on Dental Accreditation. The education must cover all of the subject areas
7.3 failed by the applicant in each of the two clinical examinations. The applicant may retake
7.4 the examination only after the institution provides to the board information specifying
7.5 the areas failed in the previous examinations and the instruction provided to address the
7.6 areas failed, and certifies that the applicant has successfully completed the instruction.
7.7 The applicant must take the additional instruction provided above each time the applicant
7.8 fails the clinical examination twice.

7.9 Subp. 4. **Examination for continued licensure.** The board may administer any
7.10 other examination it deems necessary to determine qualifications for continued licensure.

7.11 **3100.3500 EXAMINATION OF LICENSED DENTAL ASSISTANTS.**

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

7.13 Subp. 2a. **Additional education for two failed clinical examinations.** When an
7.14 applicant fails twice any part of the clinical examination required by Minnesota Statutes,
7.15 section 150A.06, subdivision 2a, the applicant may not take it again until the applicant
7.16 successfully completes additional education provided by an institution accredited by
7.17 the Commission on Dental Accreditation or an independent instructor approved by the
7.18 board. The education must cover all of the subject areas failed by the applicant in each
7.19 of the two clinical examinations. The applicant may retake the examination only after
7.20 the institution or independent instructor provides to the board information specifying the
7.21 areas failed in the previous examinations and the instruction provided to address the
7.22 areas failed, and certifies that the applicant has successfully completed the instruction.
7.23 The applicant must take the additional instruction required in this subpart each time the
7.24 applicant fails the clinical examination twice.

7.25 [For text of subps 3 and 4, see M.R.]

8.1 **3100.3600 ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,**
8.2 **MODERATE SEDATION, MINIMAL SEDATION, AND NITROUS OXIDE**
8.3 **INHALATION ANALGESIA.**

8.4 [For text of subp 1, see M.R.]

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

8.6 A dentist may administer general anesthesia or deep sedation only pursuant to items A to C.

8.7 A. A dentist must complete either subitem (1) or (2) and subitems (3) and (4):

8.8 (1) a didactic and clinical program at a dental school, hospital, or graduate
8.9 medical or dental program accredited by the Commission on Dental Accreditation,
8.10 resulting in the dentist becoming clinically competent in the administration of general
8.11 anesthesia. The program must be equivalent to a program for advanced specialty education
8.12 in oral and maxillofacial surgery; or

8.13 [For text of subitem (2), see M.R.]

8.14 (3) ~~an appropriate dental sedation/anesthesia emergency management~~
8.15 ~~course such as the ACLS or PALS course~~ and maintain current dental sedation/anesthesia
8.16 ~~emergency management~~ advanced certification thereafter; and

8.17 (4) a CPR certification course and maintain current CPR certification
8.18 thereafter.

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

8.20 **Subp. 3. Moderate sedation; educational training requirements.** A dentist may
8.21 administer moderate sedation only pursuant to items A to C.

8.22 A. A dentist must complete subitems (1) to (3):

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

9.1 (2) ~~an appropriate dental sedation/anesthesia emergency management~~
9.2 ~~course such as the~~ ACLS or PALS ~~course~~ and maintain current dental sedation/anesthesia
9.3 ~~emergency management~~ advanced certification thereafter; and

9.4 (3) a CPR certification course and maintain current CPR certification
9.5 thereafter.

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

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

9.8 A dentist may administer nitrous oxide inhalation analgesia only according to items A
9.9 to D and subpart 5, items A and C. A dental therapist may administer nitrous oxide
9.10 inhalation analgesia only according to items C to F. A dental hygienist may administer
9.11 nitrous oxide inhalation analgesia only according to items C to F and subpart 5, item
9.12 D. A licensed dental assistant may administer nitrous oxide inhalation analgesia only
9.13 after a maximum dosage has been prescribed by a dentist for a specific patient, and it is
9.14 administered according to items C to F and subpart 5, item D.

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

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

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

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

10.9 [For text of item F, see M.R.]

10.10 Subp. 5. **Notice to board.**

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

10.12 B. A dentist may administer general anesthesia, deep sedation, or moderate
10.13 sedation only if the dentist has submitted the following information to the board on forms
10.14 provided by the board: the name, address, and telephone number of the institution at
10.15 which the dentist took the program or residency that complies with subparts 2, item A,
10.16 subitem (1) or (2); and 3, item A, subitem (1), a certified copy of the dentist's transcript and
10.17 other official record from the institution verifying that the dentist satisfactorily completed
10.18 the program, residency, or course; and the name, address, and telephone number of the
10.19 institution or other agency at which the dentist successfully completed the ACLS, or
10.20 ~~PALS, or an equivalent course~~ required by subparts 2, item A, subitem (3); and 3, item
10.21 A, subitem (2). After this initial submission, dentists shall submit on a license renewal
10.22 application or other form provided by the board a statement of the most recent course
10.23 completed in ACLS, or PALS, ~~or an equivalent course~~.

10.24 C. A dentist not previously registered with the board according to item A or
10.25 who graduated from an institution in Minnesota accredited by the Commission on Dental
10.26 Accreditation prior to April 15, 2008, may administer nitrous oxide inhalation analgesia

11.1 only after the dentist has submitted the information in subitems (1) and (2) to the board
11.2 on forms provided by the board:

11.3 (1) the name, address, and telephone number of the institution at which the
11.4 dentist took the course that complies with subpart 4, item B; and

11.5 (2) a certified copy of the dentist's transcript and other official record from
11.6 the institution verifying that the dentist has successfully completed CPR as required by
11.7 subpart 4, item C.

11.8 After the initial submission, a dentist ~~shall submit on the license renewal application~~
11.9 ~~or other form provided by the board a statement of the most recent course completed in~~
11.10 must attest to maintaining consecutive and current CPR certification at the time of each
11.11 license renewal.

11.12 D. A dental hygienist or licensed dental assistant who graduated from an
11.13 institution in Minnesota accredited by the Commission on Dental Accreditation or
11.14 received licensure by credentials prior to September 2, 2004, may administer nitrous oxide
11.15 inhalation analgesia only after the dental hygienist or licensed dental assistant has submitted
11.16 the information in subitems (1) and (2) to the board on forms provided by the board:

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

11.18 (2) a certified copy of the dental hygienist's or licensed dental assistant's
11.19 transcript and other official record from the institution verifying that the dental hygienist or
11.20 licensed dental assistant has successfully completed CPR as required by subpart 4, item C.

11.21 After the initial submission, ~~the~~ a dental hygienist or licensed dental assistant shall
11.22 ~~submit on the license renewal application or other form provided by the board a statement~~
11.23 ~~of the most recent course completed in~~ must attest to maintaining consecutive and current
11.24 CPR certification at the time of each license renewal.

11.25 E. A dental therapist who graduated from a board-approved dental therapy
11.26 program in Minnesota prior to August 1, 2013, may administer nitrous oxide inhalation

12.1 analgesia only after the dental therapist has submitted the information in subitems (1) and
12.2 (2) to the board on forms provided by the board:

12.3 (1) the name, address, and telephone number of the institution where the
12.4 dental therapist successfully completed the course required by subpart 4, item E; and

12.5 (2) a certified copy of the dental therapist's transcript and other official
12.6 records from the institution verifying that the dental therapist has successfully completed
12.7 CPR as required by subpart 4, item C.

12.8 After the initial submission, a dental therapist must attest to maintaining consecutive
12.9 and current CPR certification at the time of each license renewal.

12.10 [For text of subps 6 to 9, see M.R.]

12.11 Subp. 9a. **Expiration or termination of general anesthesia or moderate sedation**
12.12 **certificate; requirements.** A dentist requesting renewal or recertification of a general
12.13 anesthesia or moderate sedation certificate following expiration or termination must
12.14 comply with the requirements for the applicable interval specified in item A or B. After
12.15 successful completion of all requirements, the board shall issue a general anesthesia or
12.16 moderate sedation certificate to the dentist.

12.17 A. A dentist whose anesthesia/sedation certificate has expired as described in
12.18 subpart 9, item C, subitem (5), or who voluntarily terminated the anesthesia/sedation
12.19 certificate, within 60 calendar days after the renewal application deadline, must comply
12.20 with subitems (1) to (6):

12.21 [For text of subitems (1) to (3), see M.R.]

12.22 (4) provide official documentation as proof of current certification in ACLS;
12.23 or PALS, or an equivalent dental sedation/anesthesia-emergency management course;

12.24 [For text of subitems (5) and (6), see M.R.]

13.1 B. A dentist whose anesthesia/sedation certificate has been terminated by the
13.2 board according to subpart 9, item C, subitem (5), or who voluntarily terminated the
13.3 anesthesia/sedation certificate, more than 60 calendar days after the renewal application
13.4 deadline, must comply with subitems (1) to (6):

13.5 [For text of subitems (1) to (3), see M.R.]

13.6 (4) provide official documentation of current certification in ACLS, or
13.7 PALS, ~~or an equivalent dental sedation/anesthesia emergency management course;~~

13.8 [For text of subitems (5) and (6), see M.R.]

13.9 [For text of item C, see M.R.]

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

13.11 **3100.5100 PROFESSIONAL DEVELOPMENT.**

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

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

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

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

13.21 (3) A CPR certification course is mandatory for each licensee to maintain
13.22 licensure. The CPR course must be ~~equivalent to~~ the American Heart Association
13.23 healthcare provider course or the American Red Cross professional rescuer course. The

14.1 licensee must maintain a consecutive and current CPR certificate when renewing a license
14.2 or permit each biennial term.

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

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

14.5 **Subp. 4. Acceptable documentation of professional development activities.**

14.6 A licensee must record or obtain acceptable documentation of hours in professional
14.7 development activities for the licensee's portfolio. Acceptable documentation includes,
14.8 but is not limited to, the following:

14.9 A. a completed self-assessment examination;

14.10 B. a copy of the front and back of a completed CPR card or certificate from the
14.11 American Heart Association, or the American Red Cross, ~~or other equivalent organization;~~

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

14.13 [For text of subp 5, see M.R.]

14.14 **3100.5300 AUDIT PROCESS OF PORTFOLIO.**

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

14.16 **Subp. 3. Failure of an audit.**

14.17 A. Upon failure of an audit, the appropriate board committee ~~may either~~ must
14.18 impose one or both of the following options:

14.19 (1) grant the licensee up to six months to comply with written requirements
14.20 to resolve deficiencies in professional development compliance; or

14.21 (2) initiate disciplinary proceedings against the licensee on grounds
14.22 specified in parts 3100.6100 and 3100.6200 and Minnesota Statutes, section 150A.08,
14.23 subdivision 1. Deficiencies causing audit failure may include, but are not limited to,
14.24 the following:

- 15.1 ~~(1)~~ (a) lack of proof of documentation or participation;
- 15.2 ~~(2)~~ (b) credit hours earned outside of renewal period being audited;
- 15.3 ~~(3)~~ (c) excess of earned hours in a category having a maximum if a
15.4 deficiency exists;
- 15.5 ~~(4)~~ (d) lack of earned hours in a category having a minimum if a
15.6 deficiency exists;
- 15.7 ~~(5)~~ (e) failure to submit the portfolio;
- 15.8 ~~(6)~~ (f) unacceptable professional development sources; or
- 15.9 ~~(7)~~ (g) fraudulently earned or reported hours.

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

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

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

15.16 **3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.**

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

- 15.19 A. dental public health;
- 15.20 ~~A~~ B. endodontics (endodontist);
- 15.21 C. oral and maxillofacial pathology (oral pathologist);
- 15.22 ~~B~~ D. oral and maxillofacial radiology (oral and maxillofacial radiologist);
- 15.23 ~~C~~ E. oral and maxillofacial surgery (oral surgeon/oral maxillofacial surgeon);

- 16.1 ~~D. oral pathology (oral pathologist);~~
16.2 ~~E F. orthodontics and dentofacial orthopedics (orthodontist);~~
16.3 ~~F G. pediatric dentistry (pediatric dentist/pedodontist);~~
16.4 ~~G H. periodontics (periodontist); and~~
16.5 ~~H I. prosthodontics (prosthodontist); and.~~
16.6 ~~I. public health.~~

16.7 Subp. 2. **Postdoctoral course completion Specialty announcement.** Only a
16.8 licensed ~~dentists~~ dentist who ~~have~~ has successfully completed a postdoctoral course of
16.9 study approved by the Commission on Dental Accreditation in ~~one~~ any of the designated
16.10 specialty areas, or who has announced a limitation of practice prior to 1967, or who
16.11 ~~have~~ has successfully completed certification by ~~one~~ any of the following specialty
16.12 examining boards; may announce each specialty practice area and may advertise as a
16.13 specialist in that area: ~~American Board of Dental Public Health, American Board of~~
16.14 ~~Endodontics, American Board of Oral and Maxillofacial Radiology, American Board of~~
16.15 ~~Oral and Maxillofacial Surgery, American Board of Oral Pathology, American Board of~~
16.16 ~~Orthodontics, American Board of Pediatric Dentistry, American Board of Periodontology,~~
16.17 ~~and American Board of Prosthodontics.~~

- 16.18 A. American Board of Dental Public Health;
16.19 B. American Board of Endodontics;
16.20 C. American Board of Oral and Maxillofacial Pathology;
16.21 D. American Board of Oral and Maxillofacial Radiology;
16.22 E. American Board of Oral and Maxillofacial Surgery;
16.23 F. American Board of Orthodontics;
16.24 G. American Board of Pediatric Dentistry;

17.1 H. American Board of Periodontology; and

17.2 I. American Board of Prosthodontics.

17.3 [For text of subp 3, see M.R.]

17.4 **3100.8500 LICENSED DENTAL ASSISTANTS.**

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

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

17.10 K. take photographs extraorally or intraorally; and

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

17.13 M. obtain informed consent, according to part 3100.9600, subpart 9, for
17.14 treatments authorized by the supervising dentist pursuant to the licensed dental assistant's
17.15 scope of practice.

17.16 Subp. 1a. **Duties under indirect supervision.** A licensed dental assistant, in
17.17 addition to the services performed by an assistant described in part 3100.8400, subpart 1,
17.18 may perform the following services if a dentist is in the office, authorizes the procedures,
17.19 and remains in the office while the procedures are being performed:

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

17.21 L. etch appropriate enamel surfaces, apply and adjust pit and fissure sealants.
17.22 Before the application of pit and fissure sealants, a licensed dental assistant must have
17.23 successfully completed a course in pit and fissure sealants at a dental, dental hygiene, or
17.24 dental assisting school accredited by the Commission on Dental Accreditation;

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

18.2 Subp. 1b. **Duties under direct supervision.** A licensed dental assistant may perform
18.3 the following services if a dentist is in the dental office, personally diagnoses the condition
18.4 to be treated, personally authorizes the procedure, and evaluates the performance of the
18.5 licensed dental assistant before dismissing the patient:

18.6 A. remove excess bond material from orthodontic appliances;

18.7 B. remove bond material from teeth with rotary instruments after removal
18.8 of orthodontic appliances. Before utilizing rotary instruments for the removal of bond
18.9 material, a licensed dental assistant must have successfully completed a course in the use
18.10 of rotary instruments for the express purpose of the removal of bond material from teeth.
18.11 The course must be one that is presented by a dental, dental hygiene, or dental assisting
18.12 school accredited by the Commission on Dental Accreditation;

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

18.14 I. remove fixed orthodontic bands and brackets; ~~and~~

18.15 J. initiate and place an intravenous infusion line in preparation for intravenous
18.16 medications and sedation while under direct supervision of a dentist who holds a valid
18.17 general anesthesia or moderate sedation certificate. Before initiating and placing an
18.18 intravenous infusion line, a licensed dental assistant must have successfully completed
18.19 board-approved allied dental personnel courses comprised of intravenous access and
18.20 general anesthesia and moderate sedation training; and

18.21 K. place nonsurgical retraction material for gingival displacement. Before
18.22 placing nonsurgical retraction material, a licensed dental assistant must have successfully
18.23 completed a course in nonsurgical retraction material for gingival displacement at a
18.24 dental, dental hygiene, or dental assisting school accredited by the Commission on Dental
18.25 Accreditation.

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

19.2 **3100.8700 DENTAL HYGIENISTS.**

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

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

19.8 J. administer local anesthesia. Before administering local anesthesia, a dental
19.9 hygienist must have successfully completed a didactic and clinical program sponsored by
19.10 a dental or dental hygiene school accredited by the Commission on Dental Accreditation,
19.11 resulting in the dental hygienist becoming clinically competent in the administration
19.12 of local anesthesia; ~~and~~

19.13 K. administer nitrous oxide inhalation analgesia according to part 3100.3600,
19.14 subparts 4 and 5; and

19.15 L. obtain informed consent, according to part 3100.9600, subpart 9, for
19.16 treatments authorized by the supervising dentist pursuant to the dental hygienist's scope of
19.17 practice.

19.18 [For text of subp 2, see M.R.]

19.19 Subp. 2a. **Duties under direct supervision.** A dental hygienist may perform the
19.20 following procedures if a dentist is in the office, personally diagnoses the condition to
19.21 be treated, personally authorizes the procedure, and evaluates the performance of the
19.22 dental hygienist before dismissing the patient:

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

19.24 E. remove bond material from teeth with rotary instruments after removal
19.25 of orthodontic appliances. Before utilizing rotary instruments for the removal of bond

20.1 material, a dental hygienist must have successfully completed a course in the use of rotary
20.2 instruments for the express purpose of the removal of bond material from teeth. The
20.3 course must be one that is presented by a dental, dental hygiene, or dental assisting school
20.4 accredited by the Commission on Dental Accreditation;

20.5 F. attach prefabricated and preadjusted orthodontic appliances;

20.6 G. remove fixed orthodontic bands and brackets; ~~and~~

20.7 H. initiate and place an intravenous infusion line in preparation for intravenous
20.8 medications and sedation while under direct supervision of a dentist who holds a valid
20.9 general anesthesia or moderate sedation certificate. Before initiating and placing
20.10 an intravenous infusion line, a dental hygienist must have successfully completed
20.11 board-approved allied dental personnel courses comprised of intravenous access and
20.12 general anesthesia and moderate sedation training; and

20.13 I. place nonsurgical retraction material for gingival displacement. Before placing
20.14 nonsurgical retraction material, a dental hygienist must have successfully completed a
20.15 course in nonsurgical retraction material for gingival displacement at a dental, dental
20.16 hygiene, or dental assisting school accredited by the Commission on Dental Accreditation.

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

20.18 **3100.9600 RECORD KEEPING.**

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

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

20.21 A. the dentist, advanced dental therapist, ~~or~~ dental therapist, dental hygienist,
20.22 or licensed dental assistant discussed with the patient the treatment options and the
20.23 prognosis, benefits, and risks of each treatment that is within the scope of practice of the
20.24 respective licensee; and

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

- 21.1 [For text of subps 10 to 14, see M.R.]
- 21.2 **REPEALER.** Minnesota Rules, part 3100.0100, subpart 8, is repealed.
- 21.3 **EFFECTIVE DATE.** The amendments to Minnesota Rules, parts 3100.0100; 3100.3600;
- 21.4 and 3100.5100, are effective August 1, 2014.

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to Licensing Dentists, Dental Hygienists, and Dental Assistants

AGENCY: Minnesota Board of Dentistry

MINNESOTA RULES: Chapter 3100

The attached rules are approved for
publication in the State Register

A handwritten signature in blue ink that reads "Sandy Glass-Sirany".

Sandy Glass-Sirany
Senior Assistant Revisor



MINNESOTA BOARD OF DENTISTRY

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

Minnesota Board of Dentistry

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

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

I, Kathy T. Johnson, certify that on September 9, 2014, I mailed an electronic copy of the Board's Statement of Need and Reasonableness to the Legislative Reference Library using the e-mail address: sonars@lrl.leg.mn. The copy of the Statement of Need and Reasonableness was electronically mailed to comply with Minnesota Statutes, sections 14.131 and 14.23.

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

Kathy T. Johnson
Legal Analyst Liaison
Minnesota Board of Dentistry



MINNESOTA BOARD OF DENTISTRY

University Park Plaza, 2829 University Avenue SE, Suite 450

Minneapolis, MN 55414-3249 www.dentalboard.state.mn.us

Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260

MN Relay Service for Hearing Impaired 800.627.3529

September 9, 2014

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

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

Dear Librarian:

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

We plan to publish a Dual Notice of Intent to Adopt Rules in the September 15, 2014, State Register.

The Board has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Board is sending the Library an electronic copy of the Statement of Need and Reasonableness about the same time we are mailing our Dual Notice.

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

Yours very truly,

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

Kathy T. Johnson
Legal Analyst Liaison
Minnesota Board of Dentistry

Enclosures: Statement of Need and Reasonableness



MINNESOTA BOARD OF DENTISTRY

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

I, Kathy T. Johnson, certify that on September 9, 2014, 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 September 9, 2014.

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

Kathy T. Johnson
Legal Analyst Liaison
Minnesota Board of Dentistry



MINNESOTA BOARD OF DENTISTRY

University Park Plaza, 2829 University Avenue SE, Suite 450

Minneapolis, MN 55414-3249 www.dentalboard.state.mn.us

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

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 August 20, 2014.

1. Over the last few years, the Executive Committee, the Policy Committee, the Professional Development Committee, and the Allied Dental Education Committee of the Board have held frequent public meetings to discuss and to develop these proposed rules. The Board has disseminated official notice of these public meetings to all licensed dental professionals, association representatives, and the general public. Drafts of the proposed rules have been distributed and reviewed during these public meetings by all individuals in attendance, and input has been invited.
2. On January 3, 2014, the Board posted a draft copy of the proposed rule changes on the Board's website at www.dentalboard.state.mn.us making it accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general public. This draft copy identified the Board rules that will be affected by the Board's proposed rule changes.
3. On January 8, 2014, the Board posted a copy of the Request for Comments for publication in the State Register on the Board's website at www.dentalboard.state.mn.us. This website is accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general public.
4. On January 8, 2014, the Board posted a draft copy of the Statement of Need and Reasonableness ("SONAR") on the Board's website at www.dentalboard.state.mn.us.

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

Page 2

5. On January 9, 2014, the Board mailed the Request for Comments to all persons on the Board's rulemaking mailing list by sending an electronic copy via e-mail to all persons on the list.
6. On January 9, 2014, the Board contacted the representatives of the Minnesota Dental Association (Dentists), the Minnesota Dental Hygienists' Association (Dental Hygienists), and the Minnesota Dental Assistants Association (Dental Assistants) with a request to publish in each organization's newsletter or post on each organization's website for its members the following information:

MINNESOTA BOARD OF DENTISTRY – NEW PROPOSED RULES

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

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

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

7. On January 13, 2014, the Board's Request for Comments was published in the State Register, requesting that all comments be submitted to the Board by March 14, 2014. All comments received by the Board regarding the proposed rules shall be reviewed and any suggested changes shall be considered by the Board.

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

Page 3

8. On January 29, 2014, the Board sent a broadcast electronic mailing to nearly 10,000 licensees including, dentists, dental therapists, dental hygienists, and licensed dental assistants, containing the following information:

MINNESOTA BOARD OF DENTISTRY – NEW PROPOSED RULES

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

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

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

9. By March 14, 2014, the end of the 60-day Request for Comments period, the Board had only received two comments regarding its proposed rules. One from the Health and Safety Institute opposing eliminating the phrase "equivalent course" for CPR and ACLS, and another from the Dental Assisting National Board with information about their examination for isolation procedures, including gingival retraction.
10. On August 8, 2014, the Board posted a copy of its proposed rules dated April 22, 2014 (latest version) and a final copy of its SONAR dated August 8, 2014, on the Board's website making this information accessible to the following individuals: all dentists; dental therapists; dental hygienists; dental assistants; state legislators; other health boards; professional associations; and members of the general public.

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

Page 4

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

A handwritten signature in black ink, appearing to read "Kathy T. Johnson". The signature is fluid and cursive, with the first name "Kathy" being more prominent than the last name "Johnson".

Kathy T. Johnson
Legal Analyst Liaison
Minnesota Board of Dentistry



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street
Saint Paul, Minnesota 55101

Mailing Address:
P.O. Box 64620
St. Paul, Minnesota 55164-0620

Voice: (651) 361-7900
TTY: (651) 361-7878
Fax: (651) 539-0300

August 21, 2014

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

Re: *In the Matter of the Proposed Amendments to Permanent Rules Relating to Licensing Dentist, Dental Hygienist, and Dental Assistants*
OAH 5-0902-31791; Revisor R-4228

Dear Mr. Shragg:

Enclosed herewith and served upon you please find the **ORDER ON REVIEW OF ADDITIONAL NOTICE PLAN AND DUAL NOTICE** in the above-entitled matter.

For the convenience of the Office of Administrative Hearings, the Administrative Law Judge requests the Minnesota Board of Dentistry to change the contact information on page three of the Dual Notice, at lines 1-2 of the paragraph titled Notice of Hearing, to read "Judge Mortenson's Legal Assistant Denise Collins can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7900 and FAX 651-539-0300 or denise.collins@state.mn.us."

If you have any questions regarding this matter, please contact Denise Collins at 651-361-7875 or denise.collins@state.mn.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Mortenson", is written over a horizontal line.

JIM MORTENSON
Administrative Law Judge

JRM:klm
Enclosure

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

In the Matter of the Proposed Amendments
to Permanent Rules of the Minnesota
Board of Dentistry Relating to Dentists,
Dental Therapists, Dental Hygienists, and
Licensed Dental Assistants

**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 (Board) request for a legal review under Minn. R. 1400.2060 and 1400.2080 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 has posted a draft copy of the proposed rule changes on the Board's website, mailed the Request for Comments to all persons on the Board's rulemaking mailing list, contacted representatives of various dental associations, and sent an electronic broadcast to nearly 10,000 licensees.

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: August 20, 2014



JIM MORTENSON
Administrative Law Judge



MINNESOTA BOARD OF DENTISTRY

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

Minnesota Board of Dentistry

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

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

I, Kathy T. Johnson, certify that on September 9, 2014, 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 Liaison
Minnesota Board of Dentistry



MINNESOTA BOARD OF DENTISTRY

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September 9, 2014

COMMITTEES

Senate: Health and Human Services Committee

Sen. Tony Lourey and Sen. Julie Rosen

House: Health and Human Services Policy Committee

Rep. Tina Liebling and Rep. Tara Mack

House: Health and Human Services Finance Committee

Rep. Thomas Huntley and Rep. Jim Abeler

Legislative Coordinating Commission

100 Rev Dr Martin Luther King Jr Blvd

72 State Office Building

St. Paul, MN 55155-1206

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

Dear Legislators:

Executive Summary:

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

September 9, 2014
Legislators
Page 2

Minnesota Statutes, section 14.116, states:

"14.116 NOTICE TO LEGISLATURE.

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

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

We plan to publish a Dual Notice of Intent to Adopt Rules in the September 15, 2014, State Register and are now mailing the Notice under section 14.14 or 14.22.

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

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

Yours very truly,

A handwritten signature in dark ink, appearing to read "Marshall Shragg", with a stylized flourish at the end.

Marshall Shragg, MPH
Executive Director
Minnesota Board of Dentistry

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



MINNESOTA BOARD OF DENTISTRY

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Minnesota Board of Dentistry

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

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

I certify that on August 8, 2014, at the City of Minneapolis, County of Hennepin, State of Minnesota, I consulted with the Commissioner of Minnesota Management and Budget in compliance with Minnesota Statutes, section 14.131, by mailing a letter with these enclosures:

1. The Governor's Office Proposed Rule and SONAR Form.
2. The April 22, 2014 Revisor's draft of the proposed rules
3. The August 8, 2014 copy of the SONAR.

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

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

as their last known address.

Kathy T. Johnson
Legal Analyst Liaison
Minnesota Board of Dentistry



MINNESOTA BOARD OF DENTISTRY

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MN Relay Service for Hearing Impaired 800.627.3529

August 8, 2014

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

Dear Ms. Melchionne:

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."

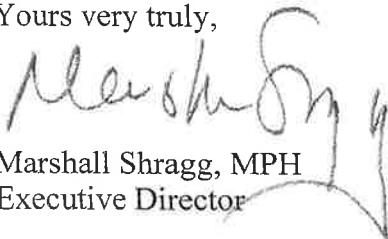
Enclosed for your review are copies of the following documents on proposed rules relating to dentists, dental therapists, dental hygienists, and licensed dental assistants.

1. The Governor's Office Proposed Rule and SONAR Form.
2. The April 22, 2014 Revisor's draft of the proposed rules.
3. The August 8, 2014 copy of the SONAR.

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

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

Yours very truly,



Marshall Shragg, MPH
Executive Director



Office Memorandum

Date: October 14th, 2014

To: Marshall Shragg, Executive Director
Minnesota Board of Dentistry

From: Susan Melchionne, Executive Budget Officer
Budget Division, Minnesota Management and Budget

Phone: 651-201-8035

Subject: M.S. 14.131 Review of Rules Proposed by the Minnesota Board of Dentistry
Relating to Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants;
Minnesota Rules 3100; Revisor's ID Number 4228

Background

The Minnesota Board of Dentistry is proposing to modify existing regulatory language generally pertaining to all of the Board's licensees. These changes include:

- Clarifying certain professional training requirements
- Providing for proper notification for reinstatement of licensure
- Allowing for the administration of nitrous oxide by dental therapists following proper training and notification of that training to the Board
- Allowing the Board to charge an audit fee after any two failed professional development portfolio reviews, versus after two *consecutive* failures
- Adding new duties regarding informed consent for dental hygienists and licensed dental assistants
- Recognizing additional specialty areas of dentistry that can be advertised and allowing for multiple specialties to be advertised
- Additional housekeeping amendments

The purposes of these proposed changes are to provide clarity and consistency in training, licensure and advertising requirements, to ensure patient safety when being treated by a dental professional, and to update informed consent requirements.

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

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

October 14, 2014

Page 2

Evaluation

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

There are no costs or financial benefits to local governments anticipated as a result of these changes. According to the SONAR, the changes do not require a local government to adopt or amend any ordinance or other regulation in order to comply with the rules. The proposed changes may have a fiscal impact on dental professionals licensed by the Board. These costs could include courses required for licensure, or failed audit fees. Certain business seeking affiliation with the American Heart Association or the American Red Cross for certifying dental professionals in cardiopulmonary resuscitation (CPR) and advanced cardiovascular life support (ACLS) may also incur minimal costs. However, these costs would be incurred by the licensee or business, not any local government.

Based on this information, I believe that the Minnesota Board of Dentistry has adequately analyzed and presented the potential costs and benefits of the proposed rules. These rule changes will have no fiscal impact on local governments.

cc: Angela Vogt, MMB Budget Division Team Leader

Minnesota Board of Dentistry

ORDER ADOPTING RULES

Adoption of Permanent Rules Of The Minnesota Board Of Dentistry Relating To Dentists, Dental Therapists, Dental Hygienists, And Licensed Dental Assistants, *Minnesota Rules* 3100.0100, 3100.0300, 3100.1100, 3100.1150, 3100.1160, 3100.1200, 3100.1300, 3100.1400, 3100.1850, 3100.3300, 3100.3400, 3100.3500, 3100.3600, 3100.5100, 3100.5300, 3100.7000, 3100.8500, 3100.8700, and 3100.9600; Revisor's ID # R-4228

BACKGROUND INFORMATION

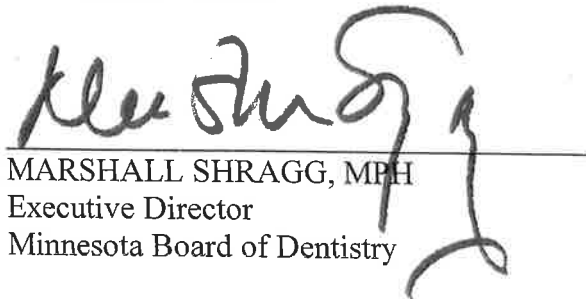
1. The Minnesota Board of Dentistry has complied with all notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law. The Board authorized proposing the rules at its meeting on September 27, 2013, and a quorum was present.
2. The Board adopts the Administrative Law Judge's Report dated January 15, 2015, and incorporates the Report into this Order.
3. The rules are needed and reasonable.
4. The Board adopted the rules at its meeting on May 2, 2014, a quorum was present, and the undersigned was authorized to sign this order.

ORDER

The above-named rules, in the form published in the State Register on September 15, 2014, are adopted under my authority in Minnesota Statutes section 150A.04.

MARCH 3RD, 2015

Date


MARSHALL SHRAGG, MPH
Executive Director
Minnesota Board of Dentistry

1.1 **Minnesota Board of Dentistry**

1.2 **Adopted Permanent Rules Relating to Licensing Dentists, Dental Hygienists, and**
1.3 **Dental Assistants**

1.4 **3100.0100 DEFINITIONS.**

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

1.6 Subp. 2a. **Advanced cardiac life support or ACLS.** "Advanced cardiac life support"
1.7 or "ACLS" refers to an advanced educational course for a health care provider that teaches
1.8 a detailed medical protocol for the provision of lifesaving cardiac care in settings ranging
1.9 from the prehospital environment to the hospital setting. The course must include advanced
1.10 airway management skills, cardiac drug usage, defibrillation, and arrhythmia interpretation.
1.11 An ACLS certificate must be obtained through the American Heart Association.

1.12 [For text of subps 2b to 7a, see M.R.]

1.13 Subp. 8. [See repealer.]

1.14 [For text of subps 8a to 9, see M.R.]

1.15 Subp. 9a. **CPR.** "CPR" refers to a comprehensive, hands-on course for a health
1.16 care provider that includes: cardiopulmonary resuscitation on an adult, child, and infant;
1.17 two-person rescuer; barrier mask or bag for ventilation; foreign body airway obstruction;
1.18 and automated external defibrillation. A CPR certificate shall be obtained through the
1.19 American Heart Association health care provider course or the American Red Cross
1.20 professional rescuer course.

1.21 [For text of subps 9b to 15b, see M.R.]

1.22 Subp. 15c. **Pediatric advanced life support or PALS.** "Pediatric advanced life
1.23 support" or "PALS" refers to an advanced life support educational course for the pediatric
1.24 health care provider that teaches the current certification standards of the American

2.1 Academy of Pediatrics or the American Heart Association. A PALS certificate must be
2.2 obtained through the American Heart Association.

2.3 [For text of subps 16 to 22, see M.R.]

2.4 **3100.0300 MEETINGS.**

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

2.6 Subp. 4. **Parliamentary procedure.** When not otherwise provided, American
2.7 Institute of Parliamentarians Standard Code of Parliamentary Procedure shall govern the
2.8 conduct of all business meetings of the board.

2.9 **3100.1100 APPLICATIONS FOR LICENSE TO PRACTICE DENTISTRY.**

2.10 Subpart 1. **Form, credentials, and certification.** A person seeking licensure
2.11 to practice dentistry within Minnesota must present to the board an application and
2.12 credentials, as determined by the board, and meet the following requirements.

2.13 A. The application must be on a form furnished by the board and must be
2.14 completely filled out.

2.15 B. The applicant shall furnish satisfactory evidence of having graduated from a
2.16 school of dentistry accredited by the Commission on Dental Accreditation.

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

2.18 [For text of subps 2 to 6, see M.R.]

2.19 **3100.1150 LICENSE TO PRACTICE DENTISTRY AS A FACULTY DENTIST.**

2.20 Subpart 1. **Licensure.**

2.21 A. In order to practice dentistry, a faculty member must be licensed by the board.

2.22 B. The board must license a person to practice dentistry as a faculty dentist if:

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

(3) the dean of a school of dentistry accredited by the Commission on Dental Accreditation certifies to the board, in accordance with the requirements of item C, that the person is a member of the school's faculty and practices dentistry; and

[For text of subitem (4), see M.R.]

C. The board must accept an applicant as a faculty dentist if the dean of a school of dentistry accredited by the Commission on Dental Accreditation provides to the board the following information:

[For text of subitems (1) to (7), see M.R.]

[For text of subp 2, see M.R.]

3100.1160 LICENSE TO PRACTICE DENTISTRY AS A RESIDENT DENTIST.

Subpart 1. Licensure.

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

B. The board must license a person to practice dentistry as a resident dentist if:

[For text of subitems (1) to (3), see M.R.]

(4) the person provides evidence of being an enrolled graduate student or a student of an advanced dental education program accredited by the Commission on Dental Accreditation; and

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

Subp. 2. Termination of licensure.

A. A person's license to practice dentistry as a resident dentist is terminated when the person is no longer an enrolled graduate student or a student of an advanced dental education program accredited by the Commission on Dental Accreditation.

4.1 B. A person licensed to practice dentistry as a resident dentist must inform
4.2 the board when the licensee is no longer an enrolled graduate student or a student of an
4.3 advanced dental education program accredited by the Commission on Dental Accreditation.

4.4 [For text of item C, see M.R.]

4.5 **3100.1200 APPLICATION FOR LICENSE TO PRACTICE DENTAL HYGIENE.**

4.6 A person seeking licensure to practice dental hygiene must present an application and
4.7 credentials as determined by the board and meet the following requirements of the board.

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

4.9 D. The applicant shall furnish satisfactory evidence of having been granted a
4.10 diploma or certificate in dental hygiene from a school accredited by the Commission
4.11 on Dental Accreditation.

4.12 [For text of items E and F, see M.R.]

4.13 **3100.1300 APPLICATION FOR LICENSE TO PRACTICE DENTAL ASSISTING.**

4.14 A person desiring to be licensed as a dental assistant shall submit to the board an
4.15 application and credentials as prescribed by the act and shall conform to the following:

4.16 A. An application on a form furnished by the board shall be completely filled out.

4.17 B. The applicant shall furnish a certified copy or its equivalent of a diploma or
4.18 certificate of satisfactory completion of a training program approved by the Commission
4.19 on Dental Accreditation or other program which, in the judgment of the board, is
4.20 equivalent. If the curriculum of the training program does not include training in the
4.21 expanded duties specified in part 3100.8500, the applicant must successfully complete a
4.22 course in these functions which has been approved by the board.

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

3100.1400 APPLICATION FOR LICENSURE BY CREDENTIALS.

A person who is already a licensed dentist or dental hygienist in another state or Canadian province desiring to be licensed to practice dentistry or dental hygiene in Minnesota shall, in order to demonstrate the person's knowledge of dental subjects and ability to practice dentistry or dental hygiene in Minnesota, comply with the requirements in items A to N.

A. The applicant shall complete an application furnished by the board.

B. The applicant shall furnish satisfactory evidence of having graduated from a school of dentistry, or dental hygiene, whichever the case may be, which has been accredited by the Commission on Dental Accreditation.

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

3100.1850 REINSTATEMENT OF LICENSE.**Subpart 1. Requirements.**

A. A person desiring the reinstatement of a license must:

(1) submit to the board a completed reinstatement application provided by the board;

(2) submit with the reinstatement application the fee specified in Minnesota Statutes, section 150A.091, subdivision 10;

(3) include with the reinstatement application a letter stating the reasons for applying for reinstatement; and

(4) comply with the applicable provisions of subparts 2 to 5.

B. Once the requirements of this subpart have been reviewed by the board, the board shall officially notify the applicant by letter as to whether the reinstatement of a license has been denied or granted by the board. If granted reinstatement, the person shall

be assigned to the biennial term to which the licensee was assigned prior to termination of the license. An applicant denied reinstatement of a license may appeal the denial by initiating a contested case hearing pursuant to Minnesota Statutes, chapter 14.

[For text of subps 2 to 5, see M.R.]

3100.3300 EXAMINATION OF DENTISTS.

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

Subp. 4a. **Additional education for two failed clinical examinations.** When an applicant fails twice any part of the clinical examination required by Minnesota Statutes, section 150A.06, subdivision 1, the applicant may not take it again until the applicant successfully completes additional education provided by an institution accredited by the Commission on Dental Accreditation. The education must cover all of the subject areas failed by the applicant in each of the two clinical examinations. The applicant may retake the examination only after the institution provides to the board information specifying the areas failed in the previous examinations and the instruction provided to address the areas failed, and certifies that the applicant has successfully completed the instruction. The applicant must take the additional instruction required in this subpart each time the applicant fails the clinical examination twice.

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

3100.3400 EXAMINATION OF DENTAL HYGIENISTS.

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

Subp. 3a. **Additional education for two failed clinical examinations.** When an applicant fails twice any part of the clinical examination required by Minnesota Statutes, section 150A.06, subdivision 2, the applicant may not take it again until the applicant successfully completes additional education provided by an institution accredited by the

Commission on Dental Accreditation. The education must cover all of the subject areas failed by the applicant in each of the two clinical examinations. The applicant may retake the examination only after the institution provides to the board information specifying the areas failed in the previous examinations and the instruction provided to address the areas failed, and certifies that the applicant has successfully completed the instruction. The applicant must take the additional instruction provided above each time the applicant fails the clinical examination twice.

Subp. 4. **Examination for continued licensure.** The board may administer any other examination it deems necessary to determine qualifications for continued licensure.

3100.3500 EXAMINATION OF LICENSED DENTAL ASSISTANTS.

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

Subp. 2a. **Additional education for two failed clinical examinations.** When an applicant fails twice any part of the clinical examination required by Minnesota Statutes, section 150A.06, subdivision 2a, the applicant may not take it again until the applicant successfully completes additional education provided by an institution accredited by the Commission on Dental Accreditation or an independent instructor approved by the board. The education must cover all of the subject areas failed by the applicant in each of the two clinical examinations. The applicant may retake the examination only after the institution or independent instructor provides to the board information specifying the areas failed in the previous examinations and the instruction provided to address the areas failed, and certifies that the applicant has successfully completed the instruction. The applicant must take the additional instruction required in this subpart each time the applicant fails the clinical examination twice.

[For text of subps 3 and 4, see M.R.]

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

[For text of subp 1, see M.R.]

Subp. 2. General anesthesia or deep sedation; educational training requirements.

A dentist may administer general anesthesia or deep sedation only pursuant to items A to C.

A. A dentist must complete either subitem (1) or (2) and subitems (3) and (4):

(1) a didactic and clinical program at a dental school, hospital, or graduate medical or dental program accredited by the Commission on Dental Accreditation, resulting in the dentist becoming clinically competent in the administration of general anesthesia. The program must be equivalent to a program for advanced specialty education in oral and maxillofacial surgery; or

[For text of subitem (2), see M.R.]

(3) the ACLS or PALS course and maintain current advanced certification thereafter; and

(4) a CPR certification course and maintain current CPR certification thereafter.

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

Subp. 3. Moderate sedation; educational training requirements. A dentist may administer moderate sedation only pursuant to items A to C.

A. A dentist must complete subitems (1) to (3):

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

(2) the ACLS or PALS course and maintain current advanced certification thereafter; and

9.1 (3) a CPR certification course and maintain current CPR certification
9.2 thereafter.

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

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

9.5 A dentist may administer nitrous oxide inhalation analgesia only according to items A
9.6 to D and subpart 5, items A and C. A dental therapist may administer nitrous oxide
9.7 inhalation analgesia only according to items C to F. A dental hygienist may administer
9.8 nitrous oxide inhalation analgesia only according to items C to F and subpart 5, item
9.9 D. A licensed dental assistant may administer nitrous oxide inhalation analgesia only
9.10 after a maximum dosage has been prescribed by a dentist for a specific patient, and it is
9.11 administered according to items C to F and subpart 5, item D.

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

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

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

9.23 E. A dental therapist, dental hygienist, or licensed dental assistant may
9.24 administer nitrous oxide inhalation analgesia only after satisfactorily completing a course
9.25 on the administration of nitrous oxide inhalation analgesia from an institution accredited
9.26 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 item F, see M.R.]

Subp. 5. Notice to board.

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

B. A dentist may administer general anesthesia, deep sedation, or moderate sedation only if the dentist has submitted the following information to the board on forms provided by the board: the name, address, and telephone number of the institution at which the dentist took the program or residency that complies with subparts 2, item A, subitem (1) or (2); and 3, item A, subitem (1), a certified copy of the dentist's transcript and other official record from the institution verifying that the dentist satisfactorily completed the program, residency, or course; and the name, address, and telephone number of the institution or other agency at which the dentist successfully completed the ACLS or PALS required by subparts 2, item A, subitem (3); and 3, item A, subitem (2). After this initial submission, dentists shall submit on a license renewal application or other form provided by the board a statement of the most recent course completed in ACLS or PALS.

C. A dentist not previously registered with the board according to item A or who graduated from an institution in Minnesota accredited by the Commission on Dental Accreditation prior to April 15, 2008, may administer nitrous oxide inhalation analgesia only after the dentist has submitted the information in subitems (1) and (2) to the board on forms provided by the board:

(1) the name, address, and telephone number of the institution at which the dentist took the course that complies with subpart 4, item B; and

11.1 (2) a certified copy of the dentist's transcript and other official record from
11.2 the institution verifying that the dentist has successfully completed CPR as required by
11.3 subpart 4, item C.

11.4 After the initial submission, a dentist must attest to maintaining consecutive and
11.5 current CPR certification at the time of each license renewal.

11.6 D. A dental hygienist or licensed dental assistant who graduated from an
11.7 institution in Minnesota accredited by the Commission on Dental Accreditation or
11.8 received licensure by credentials prior to September 2, 2004, may administer nitrous oxide
11.9 inhalation analgesia only after the dental hygienist or licensed dental assistant has submitted
11.10 the information in subitems (1) and (2) to the board on forms provided by the board:

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

11.12 (2) a certified copy of the dental hygienist's or licensed dental assistant's
11.13 transcript and other official record from the institution verifying that the dental hygienist or
11.14 licensed dental assistant has successfully completed CPR as required by subpart 4, item C.

11.15 After the initial submission, a dental hygienist or licensed dental assistant must attest to
11.16 maintaining consecutive and current CPR certification at the time of each license renewal.

11.17 E. A dental therapist who graduated from a board-approved dental therapy
11.18 program in Minnesota prior to August 1, 2013, may administer nitrous oxide inhalation
11.19 analgesia only after the dental therapist has submitted the information in subitems (1) and
11.20 (2) to the board on forms provided by the board:

11.21 (1) the name, address, and telephone number of the institution where the
11.22 dental therapist successfully completed the course required by subpart 4, item E; and

11.23 (2) a certified copy of the dental therapist's transcript and other official
11.24 records from the institution verifying that the dental therapist has successfully completed
11.25 CPR as required by subpart 4, item C.

12.1 After the initial submission, a dental therapist must attest to maintaining consecutive
12.2 and current CPR certification at the time of each license renewal.

12.3 [For text of subps 6 to 9, see M.R.]

12.4 Subp. 9a. **Expiration or termination of general anesthesia or moderate sedation**
12.5 **certificate; requirements.** A dentist requesting renewal or recertification of a general
12.6 anesthesia or moderate sedation certificate following expiration or termination must
12.7 comply with the requirements for the applicable interval specified in item A or B. After
12.8 successful completion of all requirements, the board shall issue a general anesthesia or
12.9 moderate sedation certificate to the dentist.

12.10 A. A dentist whose anesthesia/sedation certificate has expired as described in
12.11 subpart 9, item C, subitem (5), or who voluntarily terminated the anesthesia/sedation
12.12 certificate, within 60 calendar days after the renewal application deadline, must comply
12.13 with subitems (1) to (6):

12.14 [For text of subitems (1) to (3), see M.R.]

12.15 (4) provide official documentation as proof of current certification in
12.16 ACLS or PALS;

12.17 [For text of subitems (5) and (6), see M.R.]

12.18 B. A dentist whose anesthesia/sedation certificate has been terminated by the
12.19 board according to subpart 9, item C, subitem (5), or who voluntarily terminated the
12.20 anesthesia/sedation certificate, more than 60 calendar days after the renewal application
12.21 deadline, must comply with subitems (1) to (6):

12.22 [For text of subitems (1) to (3), see M.R.]

12.23 (4) provide official documentation of current certification in ACLS or PALS;

12.24 [For text of subitems (5) and (6), see M.R.]

13.1 [For text of item C, see M.R.]

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

13.3 **3100.5100 PROFESSIONAL DEVELOPMENT.**

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

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

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

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

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

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

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

13.20 Subp. 4. **Acceptable documentation of professional development activities.**
13.21 A licensee must record or obtain acceptable documentation of hours in professional
13.22 development activities for the licensee's portfolio. Acceptable documentation includes,
13.23 but is not limited to, the following:

13.24 A. a completed self-assessment examination;

14.1 B. a copy of the front and back of a completed CPR card from the American
14.2 Heart Association or the American Red Cross;

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

14.4 [For text of subp 5, see M.R.]

14.5 **3100.5300 AUDIT PROCESS OF PORTFOLIO.**

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

14.7 **Subp. 3. Failure of an audit.**

14.8 A. Upon failure of an audit, the appropriate board committee must impose one
14.9 or both of the following options:

14.10 (1) grant the licensee up to six months to comply with written requirements
14.11 to resolve deficiencies in professional development compliance; or

14.12 (2) initiate disciplinary proceedings against the licensee on grounds
14.13 specified in parts 3100.6100 and 3100.6200 and Minnesota Statutes, section 150A.08,
14.14 subdivision 1. Deficiencies causing audit failure may include, but are not limited to,
14.15 the following:

14.16 (a) lack of proof of documentation or participation;

14.17 (b) credit hours earned outside of renewal period being audited;

14.18 (c) excess of earned hours in a category having a maximum if a
14.19 deficiency exists;

14.20 (d) lack of earned hours in a category having a minimum if a
14.21 deficiency exists;

14.22 (e) failure to submit the portfolio;

14.23 (f) unacceptable professional development sources; or

15.1 (g) fraudulently earned or reported hours.

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

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

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

15.8 **3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.**

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

15.11 A. dental public health;

15.12 B. endodontics (endodontist);

15.13 C. oral and maxillofacial pathology (oral pathologist);

15.14 D. oral and maxillofacial radiology (oral radiologist);

15.15 E. oral and maxillofacial surgery (oral surgeon/oral maxillofacial surgeon);

15.16 F. orthodontics and dentofacial orthopedics (orthodontist);

15.17 G. pediatric dentistry (pediatric dentist /pedodontist);

15.18 H. periodontics (periodontist); and

15.19 I. prosthodontics (prosthodontist).

15.20 Subp. 2. **Specialty announcement.** Only a licensed dentist who has successfully
15.21 completed a postdoctoral course of study approved by the Commission on Dental
15.22 Accreditation in any of the designated specialty areas, or who has announced a limitation
15.23 of practice prior to 1967, or who has successfully completed certification by any of

16.1 the following specialty examining boards may announce each specialty area and may
16.2 advertise as a specialist in that area:

- 16.3 A. American Board of Dental Public Health;
- 16.4 B. American Board of Endodontics;
- 16.5 C. American Board of Oral and Maxillofacial Pathology;
- 16.6 D. American Board of Oral and Maxillofacial Radiology;
- 16.7 E. American Board of Oral and Maxillofacial Surgery;
- 16.8 F. American Board of Orthodontics;
- 16.9 G. American Board of Pediatric Dentistry;
- 16.10 H. American Board of Periodontology; and
- 16.11 I. American Board of Prosthodontics.

16.12 [For text of subp 3, see M.R.]

16.13 **3100.8500 LICENSED DENTAL ASSISTANTS.**

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

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

- 16.19 K. take photographs extraorally or intraorally;
- 16.20 L. take vital signs such as pulse rate and blood pressure as directed by a dentist;
- 16.21 and

17.1 M. obtain informed consent, according to part 3100.9600, subpart 9, for
17.2 treatments authorized by the supervising dentist pursuant to the licensed dental assistant's
17.3 scope of practice.

17.4 Subp. 1a. **Duties under indirect supervision.** A licensed dental assistant, in
17.5 addition to the services performed by an assistant described in part 3100.8400, subpart 1,
17.6 may perform the following services if a dentist is in the office, authorizes the procedures,
17.7 and remains in the office while the procedures are being performed:

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

17.9 L. etch appropriate enamel surfaces, apply and adjust pit and fissure sealants.
17.10 Before the application of pit and fissure sealants, a licensed dental assistant must have
17.11 successfully completed a course in pit and fissure sealants at a dental, dental hygiene, or
17.12 dental assisting school accredited by the Commission on Dental Accreditation;

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

17.14 Subp. 1b. **Duties under direct supervision.** A licensed dental assistant may perform
17.15 the following services if a dentist is in the dental office, personally diagnoses the condition
17.16 to be treated, personally authorizes the procedure, and evaluates the performance of the
17.17 licensed dental assistant before dismissing the patient:

17.18 A. remove excess bond material from orthodontic appliances;

17.19 B. remove bond material from teeth with rotary instruments after removal
17.20 of orthodontic appliances. Before utilizing rotary instruments for the removal of bond
17.21 material, a licensed dental assistant must have successfully completed a course in the use
17.22 of rotary instruments for the express purpose of the removal of bond material from teeth.
17.23 The course must be one that is presented by a dental, dental hygiene, or dental assisting
17.24 school accredited by the Commission on Dental Accreditation;

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

18.1 I. remove fixed orthodontic bands and brackets;

18.2 J. initiate and place an intravenous infusion line in preparation for intravenous
18.3 medications and sedation while under direct supervision of a dentist who holds a valid
18.4 general anesthesia or moderate sedation certificate. Before initiating and placing an
18.5 intravenous infusion line, a licensed dental assistant must have successfully completed
18.6 board-approved allied dental personnel courses comprised of intravenous access and
18.7 general anesthesia and moderate sedation training; and

18.8 K. place nonsurgical retraction material for gingival displacement. Before
18.9 placing nonsurgical retraction material, a licensed dental assistant must have successfully
18.10 completed a course in nonsurgical retraction material for gingival displacement at a
18.11 dental, dental hygiene, or dental assisting school accredited by the Commission on Dental
18.12 Accreditation.

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

18.14 **3100.8700 DENTAL HYGIENISTS.**

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

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

18.20 J. administer local anesthesia. Before administering local anesthesia, a dental
18.21 hygienist must have successfully completed a didactic and clinical program sponsored by
18.22 a dental or dental hygiene school accredited by the Commission on Dental Accreditation,
18.23 resulting in the dental hygienist becoming clinically competent in the administration
18.24 of local anesthesia;

19.1 K. administer nitrous oxide inhalation analgesia according to part 3100.3600,
19.2 subparts 4 and 5; and

19.3 L. obtain informed consent, according to part 3100.9600, subpart 9, for
19.4 treatments authorized by the supervising dentist pursuant to the dental hygienist's scope of
19.5 practice.

19.6 [For text of subp 2, see M.R.]

19.7 Subp. 2a. **Duties under direct supervision.** A dental hygienist may perform the
19.8 following procedures if a dentist is in the office, personally diagnoses the condition to
19.9 be treated, personally authorizes the procedure, and evaluates the performance of the
19.10 dental hygienist before dismissing the patient:

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

19.12 E. remove bond material from teeth with rotary instruments after removal
19.13 of orthodontic appliances. Before utilizing rotary instruments for the removal of bond
19.14 material, a dental hygienist must have successfully completed a course in the use of rotary
19.15 instruments for the express purpose of the removal of bond material from teeth. The
19.16 course must be one that is presented by a dental, dental hygiene, or dental assisting school
19.17 accredited by the Commission on Dental Accreditation;

19.18 F. attach prefabricated and preadjusted orthodontic appliances;

19.19 G. remove fixed orthodontic bands and brackets;

19.20 H. initiate and place an intravenous infusion line in preparation for intravenous
19.21 medications and sedation while under direct supervision of a dentist who holds a valid
19.22 general anesthesia or moderate sedation certificate. Before initiating and placing
19.23 an intravenous infusion line, a dental hygienist must have successfully completed
19.24 board-approved allied dental personnel courses comprised of intravenous access and
19.25 general anesthesia and moderate sedation training; and

20.1 I. place nonsurgical retraction material for gingival displacement. Before placing
20.2 nonsurgical retraction material, a dental hygienist must have successfully completed a
20.3 course in nonsurgical retraction material for gingival displacement at a dental, dental
20.4 hygiene, or dental assisting school accredited by the Commission on Dental Accreditation.

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

20.6 **3100.9600 RECORD KEEPING.**

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

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

20.9 A. the dentist, advanced dental therapist, dental therapist, dental hygienist,
20.10 or licensed dental assistant discussed with the patient the treatment options and the
20.11 prognosis, benefits, and risks of each treatment that is within the scope of practice of the
20.12 respective licensee; and

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

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

20.15 **REPEALER.** Minnesota Rules, part 3100.0100, subpart 8, is repealed.

20.16 **EFFECTIVE DATE.** The amendments to Minnesota Rules, parts 3100.0100; 3100.3600;
20.17 and 3100.5100, are effective August 1, 2014.

Office of the Revisor of Statutes

Administrative Rules

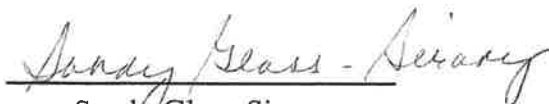


TITLE: Adopted Permanent Rules Relating to Licensing Dentists, Dental Hygienists, and Dental Assistants

AGENCY: Minnesota Board of Dentistry

MINNESOTA RULES: Chapter 3100

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



Sandy Glass-Sirany
Senior Assistant Revisor

2013 Administrative Rule Preliminary Proposal Form

Revisor's ID Number: 4228

Submitting Agency: Minnesota Board of Dentistry Date: December 23, 2013

Rule Contact: Kathy T. Johnson

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

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

☐

Exempt

☐

Expedited

☒

Permanent

Title: (Short descriptive title)	Proposed Amendments to Rules Governing Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants
Chapter Number(s):	Minnesota Rules Chapter 3100
Supporters, opponents and possible controversies:	Supporters: Board members, statewide dental organizations and associations, and individual licensees. Opponents: Unknown. Controversies: Unknown.
Agency impact:	The proposed rules will modify existing language in the following areas: advanced life support; CPR; reinstatement of license; nitrous oxide form from dental therapist; audit fee; new duties regarding informed consent and retraction material for dental hygienists and licensed dental assistants; and record keeping.
If Exempt or Expedited rule process:	Not applicable.
Describe the need for the rule and provide background information:	The need for each proposed rule is outlined within the section entitled Rule-By-Rule Analysis of the Board's Statement of Need and Reasonableness, which also includes the pertinent background information.
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

12/23/13
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

2014 Administrative Rule Proposed Rule and SONAR Form

Revisor's ID Number: 4228

Submitting Agency: Minnesota Board of Dentistry

Date: August 8, 2014

Rule Contact: Kathy T. Johnson

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

Phone #: 612-548-2134

Title: (Short descriptive title)	Proposed Amendments to Rules Governing Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants
Chapter number(s):	Minnesota Rules Chapter 3100
Comments received during Request for Comments:	Two Comments Received: 1) Health and Safety Institute ("HSI") who opposed the Board's proposed rules where certain language had been eliminated regarding an "equivalent course" for CPR and ACLS. The HSI also suggested specifically naming, the American Safety & Health Institute, a division of HSI, in the Board's proposed rules concerning CPR and ACLS. 2) Dental Assisting National Board, Inc. ("DANB") who wanted to inform the Board about a current examination, the Isolation Exam, which is offered through DANB consisting of isolation procedures, including gingival retraction.
Statement of Need and Reasonableness (SONAR) Executive Summary:	The proposed rules will modify existing language in the following areas: clarifying the appropriate training required for advanced cardiac life support and CPR; providing proper notification for reinstatement of license; notifying the Board of nitrous oxide form for dental therapists; changing the audit fee; adding new duties regarding informed consent and retraction material for dental hygienists and licensed dental assistants; and including the task of informed consent by allied dental personnel within the record keeping regulations. The proposed rules also include amendments that are housekeeping in nature.
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> The Health and Safety Institute who objects to eliminating the "equivalent course" language for CPR and ACLS and wants their courses to be accepted by the Board. <i>Controversies:</i> At this point, the Board now realizes that it is incapable of making the determination as to whether a CPR or ACLS course is equivalent or not to the American Heart Association or the American Red Cross due to lack of resources and guidance.
List significant changes from preliminary proposal:	No significant changes from preliminary proposal.
Other:	

**2014 Administrative Rule
Proposed Rule and SONAR Form**

Minnesota Board of Dentistry

August 8, 2014

Page 2

**Fiscal
Impact:**

☐

Yes

☒

No

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

AGENCY: Attach draft rules and SONAR.

Kleoh Sy

Executive Director's Signature

AUGUST 8TH, 2014

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

Johnson, Kathy T (HLB)

From: Hang, Amy (GOV)
Sent: Tuesday, August 12, 2014 11:56 AM
To: Johnson, Kathy T (HLB)
Subject: 4228

Hi, Kathy –

The Office of the Governor has reviewed and approved the SONAR form for 4228 relating to Rules Governing Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants.

You may now proceed with the Notice of Intent to Adopt Rules.

Thank you,

Amy Hang | Policy Coordinator
Office of Governor Mark Dayton & Lt. Governor Yvonne Pretnner Solon
116 Veterans Service Building
20 W 12 Street
Saint Paul, MN 55155
Office: 651-201-3420 | Cell: 651-356-4038 | Fax: 651-797-1870

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**2014 Administrative Rule
Final Rule Form**

Revisor's ID Number: **4228**

Submitting Agency: Minnesota Board of Dentistry

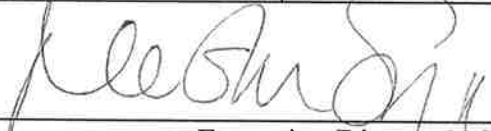
Date: January 20, 2015

Rule Contact: Kathy T. Johnson

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

Phone #: 612-548-2134

Title: (Short descriptive title)	Proposed Amendments to Rules Governing Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants
Chapter number(s):	Minnesota Rules Chapter 3100
Comments/controversies received since Notice of Intent to Adopt:	The Health and Safety Institute ("HSI") opposed the Board's proposed rules that eliminated language regarding an "equivalent course" for CPR and ACLS.
If a hearing was requested explain why and attach ALJ Report:	HSI through its attorney generated more than 25 requests for a hearing occurring on November 6, 2014, where only HSI's attorney appeared at the hearing. HSI stated that the aforementioned change would exclude HSI from providing these training courses to dental professionals and provided various arguments. In the ALJ report, the Judge determined that there are no negative findings with the Board's proposed rules.
List changes from draft rules proposal:	No changes to draft rules proposal.


Executive Director's Signature

1/20/2015
Date

THIS SECTION TO BE COMPLETED BY THE GOVERNOR'S OFFICE

I have reviewed the above information and have approved this administrative rule. The Agency may formally submit this rule to the Office of Administrative Hearings for approval and filing with the Office of Secretary of State.

Governor's Policy Advisor

Date

Johnson, Kathy T (HLB)

From: Dressel, Elizabeth (GOV)
Sent: Monday, March 02, 2015 9:50 AM
To: Johnson, Kathy T (HLB)
Subject: 4228

Kathy,

The Office of the Governor has reviewed and approved the Final Form for 4228, relating to rules Governing Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants.

You may now proceed with the Filing of the Order Adopting Rules.

Thank you,

Elizabeth

Elizabeth Dressel | Policy Coordinator
Office of Governor Mark Dayton & Lt. Governor Tina Smith
116 Veterans Service Building
20 W 12th Street
Saint Paul, MN 55155
Office: 651-201-3420 | Fax: 651-797-1870

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MINNESOTA BOARD OF DENTISTRY


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Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260
MN Relay Service for Hearing Impaired 800.627.3529

Minnesota Board of Dentistry

CERTIFICATE OF MAILING A NOTICE OF HEARING TO THOSE WHO REQUESTED A HEARING AND/OR SUBMITTED WRITTEN COMMENTS

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

I certify that on October 30, 2014, I mailed a Notice of Hearing by depositing the Notice in the State of Minnesota's central mail system for proper postage to be affixed and subsequently placed in the United States mail, to all persons who requested a hearing. The Notice is given pursuant to Minnesota Statutes, section 14.25, subdivision 1. Copies of the Notice and of the mailing list are attached to this Certificate.


KATHY T. JOHNSON
Legal Analyst Liaison
Minnesota Board of Dentistry



MINNESOTA BOARD OF DENTISTRY

University Park Plaza, 2829 University Avenue SE, Suite 450

Minneapolis, MN 55414-3249 www.dentalboard.state.mn.us

Phone 612.617.2250 • Toll Free 888.240.4762 • Fax 612.617.2260

MN Relay Service for Hearing Impaired 800.627.3529

NOTICE OF HEARING TO THOSE WHO REQUESTED A HEARING AND/OR SUBMITTED WRITTEN COMMENTS

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

To persons who requested a hearing and/or submitted written comments in support of or in opposition to the proposed rules. In accordance with Minnesota Statutes, section 14.25, subdivision 1, this Notice is being sent to all persons who requested a hearing. This Notice is also being sent to all persons who submitted written comments concerning the proposed rules.

There will be a hearing. In the September 15 2014, State Register, beginning on page 342, the Minnesota Board of Dentistry published a Dual Notice relating to: clarifying the appropriate training required for advanced cardiac life support and CPR; providing proper notification for reinstatement of license; notifying the Board of nitrous oxide form for dental therapists; changing the audit fee; adding new duties regarding informed consent and retraction material for dental hygienists and licensed dental assistants; and including the task of informed consent by allied dental personnel within the record keeping regulations.

The Notice stated that a hearing would be held on the proposed rules if 25 or more persons submitted written requests for a hearing. We have received a sufficient number of requests for a hearing. The hearing will be conducted as stated in the State Register in 4th Floor Conference Room A, University Park Plaza, 2829 University Avenue SE, Minneapolis, Minnesota 55414, starting at **1:00 p.m. on Thursday, November 6, 2014.**

Administrative Law Judge. The hearing will be conducted by Administrative Law Judge James Mortenson, who 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, and fax (651) 539-0300. Questions concerning the rule hearing procedure should be directed to Denise Collins, Legal Assistant for the Administrative Law Judge.

Agency Contact Person. The agency contact person is: Kathy Johnson, Minnesota Board of Dentistry, University Park Plaza, 2829 University Avenue SE, Suite 450, Minneapolis, Minnesota 55414-3249, phone: (612) 548-2134, Fax: 612/617-2260. Minnesota Relay Service for hearing impaired: 800/627-3529. Questions or comments concerning the rules should be directed to the agency contact person. A copy of the Dual Notice, as published in the State Register on September 15, 2014, is available upon request from the agency contact person.

Date: October 30, 2014

Marshall Shragg, Executive Director
Minnesota Board of Dentistry

Johnson, Kathy T (HLB)

From: Dressel, Elizabeth (GOV)
Sent: Tuesday, March 31, 2015 1:44 PM
To: Johnson, Kathy T (HLB)
Subject: 4228

Kathy,

The Office of the Governor has received the Adopted Rule from the Office of the Secretary of State for 4228, relating to rules Governing Dentists, Dental Therapists, Dental Hygienists, and Licensed Dental Assistants.

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

Thank you,

Elizabeth

Elizabeth Dressel | Policy Coordinator
Office of Governor Mark Dayton & Lt. Governor Tina Smith
116 Veterans Service Building
20 W 12th Street
Saint Paul, MN 55155
Office: 651-201-3420 | Fax: 651-797-1870

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