

Minnesota Attorney General: Administrative Rules Proceedings

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SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Dale J. Forseth
Executive Secretary
Board of Dentistry

: Bill Miller, SAAG, Health Division

DATE: 2/18/81

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 6-4692

SUBJECT: In the Matter of Proposed Amendments to Dentistry Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising, and Clarification and Reorganization of Existing Rules.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

JSA/gy
Enc.
cc: Duane R. Harves, Chief Hearing Examiner
Susan Robertson LCRAR

Our File No. 663

1/13 Submission withdrawn.

RULE REVIEW CHECKLIST

DATE RULE RECEIVED ~~12/29/80~~ 2/13/81 Adopted w/a hearing X
DATE FOR REVIEW Adopted w/o a hearing
DATE DUE ~~4/19/81~~ 2/27/81 Temporary rule

Approved 2/18 Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 2/18.

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting, combined with F. of F.

✓ Notice of Intent to Solicit Outside Opinion
SR. 9.12.77

✓ Order for rulemaking
6.26.80 Date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice of rulemaking
5.22.80 At least 30 days prior to hearing/adoption

✓ Mailing list ~~Certificate~~ + Receipt of Secy. State's List

✓ Publication in State Register
5.19.80 At least 30/20 days prior to hearing/adoption

✓ Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
✓ Approving H.E.'s Report
Approving agency action

✓ Agency's Findings of Fact combined w/ Order Adopting

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of Proposed Amendments to Dentistry Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising and Clarification and Reorganization of Existing Rules

BOARD OF DENTISTRY'S FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULES

The Minnesota Board of Dentistry (hereinafter "Board") held a hearing on the above-entitled matter at 9:30 AM on Thursday, June 26, 1980, in Room 105 of the Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, after proper notice had been given as required by Minn. Stat. §§ 15.0411 to 15.0417 and 15.052.

Interested persons were given an opportunity to present written and oral information, statements, arguments, and testimony. After having considered all the evidence upon the records, files and proceedings herein, and applicable statutory standards and criteria, and having confirmed the need for the above-captioned rules, the Board hereby adopts as its own the Findings and Conclusions of the Hearing Examiner in his Report dated September 2, 1980 (DEN-80-001-PE), with the following additional Findings of Fact and Conclusions in response to concerns raised by the Hearing Examiner in his Report.

A copy of the Hearing Examiner's Findings and Conclusions is attached hereto and made a part hereof.

The Board makes the following additional:

Applications to Practice Dentistry—7 MCAR § 3.011E

1. In Findings 9, the Hearing Examiner found that the use of the language "[A]pplicant must complete such pre-clinical and clinical testing procedures at the School of Dentistry, University of Minnesota, or its equivalent, as the board may approve . . ." allows agency discretion without governing criteria. The Hearing Examiner suggested that the Board either delete the discretionary

language or define standards of equivalency. The Board finds that changing the language to read "or its substantial equivalent, to determine" and the substitution of the word "shall" for "may" would remove the Board's discretion in the process and would allow an applicant to meet the requirement if he/she can show that his/her training is substantially equivalent to that required by the University of Minnesota Dental School. The term "substantial" is a legal term of art which has been used by courts and legislative bodies to denote a specific burden of proof in the context of a given factual situation. The Board intends to use the term in the same way. As a practical matter, the Board has not been presented with any case where the use of a program other than that through the University of Minnesota has been proposed or considered. The Board believes, however, that the use of such might prove of benefit to some applicant in the future, and to completely eliminate the possibility of flexibility would be unfair to an otherwise qualified applicant and to the public. This change is consistent with the Hearing Examiner's Findings and is not a substantial change.

Advertising--7 MCAR §§ 3.044 and 3.063

2. In Findings 13, the Hearing Examiner found that the Board had not established the reasonableness of proposed rules 7 MCAR §§ 3.044A and 3.063 due to the fact that the statutory amendment mandating a change in state policy regarding such names is effective on July 1, 1981, and not immediately. These proposed rules would have deleted language requiring that the name of the participating dentist be included in the corporate name. The real question to be asked is whether the current prohibition is reasonable. The Board submits that such name regulation serves no public purpose. The Board proposed deleting this language because other regulatory agencies have permitted the use of a corporate name which does not include the name of the professional individual without adverse effect on the public and without implying superiority or quasi-public sponsorship. The Board has other rules forbidding any public statement which may mislead or tend to defraud the public.

In addition, as the Hearing Examiner noted, the Minnesota Legislature in 1980 removed the language in Minn. Stat. § 150A.11, subd. 1 which required inclusion of a dentist's name in the corporate name. This law becomes effective

July 1, 1981. The Board originally proposed that these rules become effective before this date. In response to the Hearing Examiner's concerns, the Board has decided to make the rules changes effective with the effectiveness of the statute. As the amendment merely refers the reader to the applicable statute, the rule as adopted is reasonable and is adopted.

CONCLUSIONS

1. That the rules be adopted as follows in accordance with the Hearing Examiner's Report dated September 2, 1980, and in accordance with the foregoing Findings of Fact:

a. Amend 7 MCAR § 3.011E.3 to read:

> After successful completion of steps 1 and 2, the applicant must complete such pre-clinical and clinical testing procedures at the School of Dentistry, University of Minnesota, or its substantial equivalent, as the Board shall approve, to determine whether the applicant has the clinical proficiency in dentistry comparable to that of a student who has graduated from the University of Minnesota, School of Dentistry.

(Board Findings 1)

b. Amend 7 MCAR § 3.014G to read:

> An applicant must appear before the Board for a personal interview to determine applicant's fitness to practice dentistry or dental hygiene pursuant to Minn. Stat. § 150A.06, subd. 4.

(Hearing Examiner's Report Findings 10, Conclusions 4)

c. Withdraw the proposed amendments to 7 MCAR § 3.034G.

(Hearing Examiner's Report Findings 12, Conclusions 4 and 5)

d. Withdraw the proposed amendments to 7 MCAR § 3.031A.

(Hearing Examiner's Report Findings 11, Conclusions 4 and 5)

e. Amend 7 MCAR § 3.044A as follows:

> Any name which incorporates the use of the name of a state, city, or other political subdivision in whole or in part or which connotes unusual or superior dental ability, or which is likely to create a false or unjustified expectation of favorable results shall be in violation of section 150A.11, subd. 1 of the Act and Minn. Stat. § 319A.07.

(Board Findings 2)

f. Amend 7 MCAR § 3.063 as follows:

The names of professional corporations shall be governed by Minn. Stat. § 319A.07 and 7 MCAR § 3.044.

(Board Findings 2)

g. A footnote shall be appended to 7 MCAR §§ 3.044A and 3.063 noting that the newly adopted language shall be effective July 1, 1981, the effective date of the relevant statutory change, and that the language of the current rule will remain effective until that date.

2. That the Board has demonstrated the need for and reasonableness of the amendments to the Board rules. Based upon the foregoing Findings of Fact and Conclusions, the Board issues the following:

ORDER

IT IS HEREBY ORDERED:

That the attached amendments to Board rules relating to applications for licensure, fees, licensure by credentials, auxiliary personnel services, advertising, and clarification and reorganization of existing rules identified as: 7 MCAR § 3.002D, O, P, Q, R, S, T; 7 MCAR § 3.004; 7 MCAR § 3.005B; 7 MCAR § 3.011C, E, G; 7 MCAR § 3.012B, F; 7 MCAR § 3.013B; 7 MCAR § 3.014; 7 MCAR § 3.015A, C, D; 7 MCAR § 3.016; 7 MCAR §§ 3.017-3.020; 7 MCAR § 3.021F; 7 MCAR § 3.022; 7 MCAR § 3.025B; 7 MCAR § 3.032A, B; 7 MCAR § 3.033; 7 MCAR § 3.034B, C, G; 7 MCAR § 3.044; 7 MCAR § 3.045; 7 MCAR § 3.046B; and 7 MCAR § 3.063 are adopted this 5th day of February, 1981, pursuant to the authority vested in me by law.

STATE OF MINNESOTA

BOARD OF DENTISTRY

DALE J. FORSETH
Executive Secretary

BOARD OF DENTISTRY

RULES AS ADOPTED

7 MCAR § 3.002 Definitions.

D. "Auxiliary" means a dental hygienist, registered dental assistant, assistant, and dental technician.

O. "Person" includes an individual, corporation, partnership, association or any other legal entity.

P. "Registered dental assistant" means an assistant registered by the Board pursuant to § 150A.06, subd. 2.a, of the Act.

Q. "Registrant" means a registered dental assistant.

R. "Registry" means the centralized recordkeeping service of the American Dental Association, Continuing Education Registry.

S. "Sponsor" means an organization approved by the Board pursuant to 7 MCAR § 3.052 to offer CDE courses.

T. "Supervision" shall be defined in one of the following classifications:

7 MCAR § 3.004 Officers. The officers of the Board shall consist of a President, a Vice-President, and a Secretary, as provided in

§ 150A.03, subd. 1, of the Act. Election of officers may be held at any regular or special meeting.

7 MCAR § 3.005 Fees

B. Annual license or registration fees. Each dentist, dental hygienist and registered dental assistant shall submit with his annual license or registration renewal application a fee as established by the Board not to exceed the following amounts:

1. Dentist -- $38.00

2. Dental hygienist -- $15.00

3. Registered dental assistant -- $10.00

7 MCAR § 3.011 Applications to practice dentistry.

C. The applicant must furnish certification of having passed all parts of a national board examination as defined in Rule 7 MCAR § 3.002N.

E. 3. After successful completion of steps 1 and 2, the applicant must complete such pre-clinical and clinical testing procedures at the School of Dentistry, University of Minnesota, or its substantial equivalent, as the Board shall approve, to determine whether the applicant has the clinical proficiency in dentistry comparable to

that of a student who has graduated from the University of Minnesota, School of Dentistry.

4. Only after successful completion of steps 1, 2, and 3 will the Board certify the applicant's eligibility to take a national board examination as defined in 7 MCAR § 3.002N.

5. Only upon completion of the first four steps may the applicant make application to the Board to take the examination for licensure.

G. The applicant shall furnish a testimonial of good professional character from an authorized representative of the dental school from which the applicant graduated and a certification by the secretary of the Board of Dental Examiners of the state or Canadian Province in which he is licensed. Provided, however, the Board may in its discretion and for good cause waive the certification of good professional character by an authorized representative of the dental school.

7 MCAR § 3.012 Application to practice dental hygiene.

B. Applicants must furnish certification that they have passed the National Board Examination as defined in 7 MCAR § 3.002N.

F. The applicant shall furnish evidence of good professional character satisfactory to the Board and certification from the Board of Dental Examiners in the state or Canadian Province in which he is already licensed.

7 MCAR § 3.013 Application for registration as a registered dental assistant.

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 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 7 MCAR § 3.032A, applicant must successfully complete a course in these functions which has been approved by the Board.

7 MCAR § 3.014 Application for Licensure by Credentials.
Any 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, must present to the Board an application and credentials, as prescribed by the Act. The applicant shall conform to the following rules of the Board:

A. The applicant shall complete an application and credential verfication questionnaire on forms 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 Accreditation.

C. An applicant for licensure as a dentist must have been in active practice in another state or Canadian Province for at least three years immediately preceding application, United States Governmental service may be included, and submit at least three references from other dentists. The application must include a physician's statement attesting to the applicant's physical and mental condition.

D. An applicant for licensure as a dental hygienist must have been in active practice in another state or Canadian Province for at least one year immediately preceding application, and must submit at least two character references from dentists and two references from practicing hygienists.

E. Each applicant must submit with the application a fee as prescribed in 7 MCAR § 3.005C.

F. For identification purposes, the applicant shall furnish one notarized unmounted passport-type photograph, 3" X 3", taken not more than six (6) months before the date of application.

G. An applicant must appear before the Board for a personal interview to determine the applicant's fitness to practice dentistry or dental hygiene pursuant to § 150A.06, subd. 4.

H. An applicant shall successfully complete an examination designed to test knowledge of Minnesota laws relating to the practice of dentistry and the rules of the Board.

7 MCAR § 3.015 Requirements for all applicants.

A. Every applicant shall provide evidence of having fulfilled all the requirements of the Act.

C. Incomplete applications shall be returned to the applicant with the tendered fee, together with a statement setting forth the reason for such rejection.

D. Nothing contained in these rules shall be construed to limit the Board's authority to seek from an applicant such other information pertinent to the character, education, and experience of the applicant insofar as it relates to the applicant's ability to practice as a licensee or registrant as the Board may deem necessary in order to pass on the applicant's qualification.

7 MCAR § 3.016 Expiration of license and registration and renewal thereof.

Each dentist, dental hygienist and each registered dental assistant shall submit an application for renewal of his license or

registration together with the necessary fee no later than December 31, of the year preceding that for which the license or registration renewal is requested. The application form shall provide a place for the renewal applicant's signature and shall solicit information to include but not be limited to the applicant's office address or addresses, the number of his license or registration certificate whether such licensee or registrant has been engaged during the year preceding the year for which renewal is sought in the active practice of dentistry or dental hygiene or has worked as a registered dental assistant, and if so, whether within or without the state, and such other information which may be reasonably requested by the Board.

7 MCAR §§ 3.017 - 3.020 Reserved for future use.

7 MCAR § 3.021 Written examination procedures: dentists, dental hygienists, and registered dental assistants.

F. Notes, textbooks or other informative data shall not be brought to the examination rooms.

7 MCAR § 3.022 Scope of clinical examinations: dentists, dental hygienists, and registered dental assistants applicants.

7 MCAR § 3.025 Scope of written examination, dental hygienists.

B. At the discretion of the Board, any dental hygienist duly licensed to practice as such in another state which has and

maintains laws regulating the practice of dental hygiene by dental hygienists, equivalent to this state's, who is of good professional character and is desirous of licensure in this state and presents a certificate from the examining board of the state in which the applicant is licensed so certifying, may be exempted from taking a National Board examination provided the applicant has been licensed for five or more years.

7 MCAR § 3.032 Registered dental assistants.

A. 2. Take impressions for study casts and opposing casts.

4. Place and remove rubber dam.

6. Perform mechanical polishing to clinical crowns only and not to include any instrumentation. Prior examination for calculus and instrumentation must be done by the dentist or hygienist.

9. Place and remove periodontal packs.

B. A dental assistant, who by virtue of academic achievement which is equal to or greater than that of a registered assistant and is currently qualified in Minnesota in related

health profession may, at the Board's discretion, be permitted to take dental radiographs after successful completion of an approved course. Such permission shall not be granted until such dental assistant shall have filed with the Board an application for permission, along with proof of successful completion of such course.

7 MCAR § 3.033 REPEALED

7 MCAR § 3.034 Dental hygienists. Dental hygienists may perform:

B. Complete prophylaxis to include scaling, root planning, soft tissue currettage, polishing of fillings, and temporary replacement of restorations.

C. Preliminary charting of the oral cavity and surrounding structures to include case histories, and periodontal charting; this does not infer the making of a diagnosis.

G. Procedures A, B, C, D, and F may be carried out under the general supervision of a dentist. Examination and diagnosis must be accomplished only by a dentist.

7 MCAR § 3.044 Names.

Any name which incorporates the use of the name of a state, city, or other political subdivision in whole or in part or which

connotes unusual or superior dental ability, or which is likely to create a false or unjustified expectation of favorable results shall be in violation of § 150A.11, subd. 1, of the Act and Minn. Stat. § 319A.07.

NOTE: The amendment to this rule is effective July 1, 1981, the effective date of Minn. Stat. § 150A.11 Prior to that date, the text of the current rule will apply.

7 MCAR § 3.045 Professional advertising.

A. A person shall not, on behalf of himself, a partner, associate or any other dentist affiliated with him through a corporation or association, use or participate in the use of any form of public communication containing a false, fraudulent, misleading or deceptive statement of claim.

1. A false, fraudulent, misleading or deceptive statement or claim is one which:

a. Contains a misrepresentation of fact;

b. Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts;

c. Is self-laudatory or is intended or is likely to create false or unjustified expectations of favorable results;

d. Implies unusual or superior dental ability;

e. Contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived.

B. A person shall not compensate or give anything of value to a representative of the press, radio, television, or other communicative medium in anticipation of or in return for professional publicity unless the fact of compensation is made known in such publicity.

C. A person shall not directly or indirectly offer, give, receive, or agree to receive any fee or other consideration to or from a third party for referral of a patient in connection with the performance of professional services.

D. Fees may be advertised for routine services only.

1. A routine Service is defined as one which is performed frequently in the dentist's practice; is usually provided at a set fee; is provided with little or no variance

in technique; and includes all professionally recognized components within generally accepted standards. If the following routine dental services are advertised, they must adhere to these minimum standards (which are examples of the comprehensiveness required to satisfy the above definition):

a. Examination - a study by the dentist of all the structures of the oral cavity, including the recording of the condition of all such structures and appropriate history thereof, including as a minimum the charting of caries, identification of periodontal disease and occlusal discrepancies, and the detection of oral abnormalities. If an examination fee is advertised, the same advertisement must include the following additional diagnostic procedures and their fees:

(1) Radiographs (x-rays) - x-rays of the oral structures to be used for purposes of diagnosis and which included either: 1) a panograph and four bitewings, or 2) intra-oral full mouth review utilizing a minimum of fourteen periapical and four bitewing films. Any films must be adequate to provide a complete radiographic study.

(2) Diagnosis - A written opinion of items found in an examination.

(3) Treatment Planning - A written itemized treatment recommendation and written itemized fee estimate provided to the patient.

b. Denture - Either a full upper or full lower replacement of the natural dentition with artificial teeth. If the service advertised is for a denture which is partially prefabricated or is intended to be used as an emergency or temporary denture, such fact shall be fully set forth in the text of the advertisement. The fee shall include a reasonable period for readjustment.

c. Prophylaxis - The removal of calculus (tarter) and stains from the exposed and unexposed surfaces of the teeth by scaling and polishing.

d. Extractions - This service is for the removal of non-impacted teeth and includes necessary x-rays, anesthesia, preoperative and post-operative care.

2. At the request of the Board, the licensee, office or professional corporation shall bear the burden of proving that any advertised services are, in fact, "routine dental services" as defined.

3. Related services which may be required in conjunction with the advertised services, and for which addiational fees will be charged, must be identified as such in the advertisement.

E. Advertising a range of fees for a given service is prohibited.

F. Advertised fees must be honored for those seeking the advertised services during the entire time period stated in the advertisement, whether or not the services are actually rendered in that time. If no time period is stated, the advertised fees shall be so honored for 30 days or until the next scheduled publication, whichever is later.

G. Any advertising must include the corporation, partnership, or individual dentist's (dentists') name and address.

H. Advertisements shall not:

1. Include descriptive words or phrases which are qualitative representations or comparative claims such as, but not limited to: painless, high quality, low prices and reasonable;

2. Include testimonials and endorsements; including but not limited to character references, statements of benefits from dental services received, or expressions of appreciation for dental services;

3. Include the use of celebrities;

4. Use dramatization or graphic illustrations to imply patient satisfaction;

5. Reveal a patient's identity or personally identifiable facts, data, or information obtained in a professional capacity;

6. After one year, include the name of any dentists formerly practicing at or associated with any advertised location;

7. Indicate or imply affiliation with any organization other than the dental practice being advertised.

I. Advertising of a practice in a dental specialty:

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

Endodontics (Endodontist);
Oral and Maxillofacial Surgery (Oral Surgeon/Oral and Maxillofacial Surgeon);
Oral Pathology (Oral Pathologist);
Orthodontics (Orthodontist);
Pedodontics (Pedodontist);
Periodontics (Periodontist);
Prosthodontics (Prosthodontist);
Public Health

a. Only licensed dentists who have successfully completed a post-doctoral course approved by the Commission on Accreditation in one of the specialty areas, or who announced a limitation of practice prior to 1967, or who have been approved by one of the following specialty examining boards, may announce specialty practice and may advertise as a specialist: American Board of Dental Public Health, American Board of Endodontics, American Board of Oral Surgery, American Board of Oral Pathology, American Board of Orthodontics, American Board of Pedodontics, American Board of Periodontology, and American Board of Prosthodontics.

b. 7 MCAR § 3.045I.(a) does not prohibit a dentist who does not meet the above education or experience criteria from restricting his practice to one or more specific

areas of dentistry. Such individuals may not use the terms specialist, specialty, specializing, or limited to. The advertising must state that the services are being provided by a general dentist.

J. Failing to respond within 30 days to written communications from the Board of Dentistry or failure to make available to the Board any relevant records with respect to an inquiry or complaint about the licensee's advertising practices shall constitute a violation of § 150A.08, subd. 1(5) of the Act an 7 MCAR § 3.045. The period of 30 days shall commence on the date with such communication was sent from the Board by certified mail with return receipt requested to the address appearing in the last registration.

7 MCAR § 3.046 Disply of name and certificates.

B. Every licensed dentist, upon changing his place of business, and every dental hygienist and registered dental assistant upon changing his address, shall within 30 days thereafter, furnish the Board with the new address. A practicing dentist shall inform the Board of the office address(es).

7 MCAR § 3.063 Corporation names.

After July 1, 1981, the names of professional corporations shall be governed by Minn. Stat. § 319A.07 and & MCAR § 3.044

NOTE: See footnote appended to 7 MCAR § 3.044.

APPROVED AS TO FORM AND LEGALITY

2-18 19 81

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry Linder

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 18 1981
Joan Anderson Growe
Secretary of State

3:35 p.m.

ATTORNEY GENERAL

WILLIAM MILLER
Special Assistant
Attorney General
Health Division

JUDITH V. WEHRWEIN
Legal Assistant

296-4347

January 12, 1981

Board of Dentistry Rules on Licensure, etc.

Pursuant to your conversation with Jerry Anderson on Friday, January 9, 1981, I am returning the above referenced rules to you with the understanding that this constitutes a withdrawal of submission of the rules to this office, and bringing to your attention the following items:

.002 S.
Correct cite is "7 MCAR § 3.052"

.011 E.3
Delete "as the Board may approve."

.031
In 2nd line, colon should be changed to a semi-colon.
Also, the Board has not responded completely to the finding of fact and conclusion of inadequate demonstration of reasonableness by the Hearing Examiner as regards the following: "monitor a patient who has been inducted by a dentist into nitrous-oxide-oxygen relative analgesia under direct supervision of a dentist."

.032 A.6.
"clinical" should be inserted between "to" and "crowns."

.044
Correct cite is "§ 150 A. 11"

.045 I.1.a.
Semi-colon after "specialist" should be changed to a colon.

.045 I.1.b.
Correct cite is "7 MCAR § 3.045 I.a."

.045 and .063
As adopted, these rules as they relate to names of professional corporations are illegal in that the rules contravene existing law, change to which does not become effective under Laws 1980, Chapter 596, Section 5, until July 1, 1981, An effective date, written into the rules and consistent with Chapter 596, would appear to resolve the illegality.

I believe Mr. Anderson discussed with you the question of resubmission to the Chief Hearing Examiner. Mr. Anderson will be on vacation until January 19, so you may wish to delay further discussion, if any is necessary, until his return. However, if there are questions I may help with, please feel free to call me.

Please note the rules are returned to you without the copies of documents relevant to our review of the rules and therefore retained for our file.

JVW:jb
Enc.

Any changes are indicated in red. (Not all changes are so indicated — see my note re page 9.

BOARD OF DENTISTRY

PROPOSED RULES

7 MCAR § 3.002 Definitions.

D. "Auxiliary" means a dental hygienist, registered dental assistant, ~~and~~ assistant, and dental technician.

O. "Person" includes an individual, corporation, partnership, association or any other legal entity.

~~O.~~ P. "Registered dental assistant" means an assistant registered by the Board pursuant to § ~~150A.16~~ 150A.06, subd. 2a of the Act.

~~P.~~ Q. "Registrant" means a registered dental assistant.

~~Q.~~ R. "Registry" means the centralized recordkeeping service of the American Dental Association, Continuing Education Registry.

~~R.~~ S. "Sponsor" means an organization approved by the Board pursuant to MCAR § 3.052 to offer CDE courses.

~~S.~~ T. "Supervision" shall be defined in one of the following classifications:

7 MCAR § 3.004 Officers. The officers of the Board shall consist of a President, a Vice-President, and a Secretary-~~Treasurer~~, as provided in § 150A.03, subd. 1, of the Act. Election of officers may be held at any regular or special meeting.

7 MCAR § 3.005 Fees.

B. Annual license or registration fees. Each dentist, dental hygienist and registered dental assistant shall submit with his annual license or registration renewal application a fee as established by the Board not to exceed ~~in~~ the following amounts:

1. Dentist -- $38.00

2. Dental hygienist -- $15.00

3. Registered dental assistant -- $10.00

7 MCAR § 3.011 Applications to practice dentistry.

C. The applicant must furnish certification of having passed all parts of ~~the~~ a national board examination as defined in Rule 7 MCAR § 3.002N.

E. 3. After successful completion of steps 1 and 2, the ~~Board may then certify the applicant as eligible to take National Board examination.~~ applicant must complete such pre-clinical and clinical testing procedures at the School of Dentistry, University of Minnesota, or its substantial equivalent, as the Board may approve, to determine whether the applicant has the clinical proficiency in dentistry comparable to that of a student who has graduated from the University of Minnesota, School of Dentistry.

~~4. Upon the evidence of passage of National Board examination, applicants of dental schools not accredited by the Commission on Accreditation must complete such testing procedures, clinical training in the School of Dentistry, University of Minnesota, or its equivalent, as the Board may prescribe in order to establish that the knowledge, skill and competence of the applicant to practice dentistry is equivalent in all respects to that of a graduate of a dental school accredited by the Commission on Accreditation and approved by the Board.~~

4. Only after successful completion of steps 1, 2, and 3 will the Board certify the applicant's eligibility to take a national board examination as defined in 7 MCAR § 3.002N.

5. Only upon completion of the first four steps may the applicant make application to the Board to take the examination for licensure.

G. The applicant shall furnish a testimonial of good ~~moral~~ professional character from an authorized representative of the dental school from which the applicant graduated. ~~If he is a member of a dental society, he shall furnish the recommendation of the president or secretary of the society,~~ and a certification by the secretary of the Board of Dental Examiners of the state or Canadian Province in which he is licensed. Provided, however, the Board may in its discretion and for good cause waive the certification of good ~~moral~~ professional character by an authorized representative of the dental school.

7 MCAR § 3.012 Application to practice dental hygiene.

B. Applicants must furnish certification that they have passed the National Board Examination, as defined in 7 MCAR § 3.002N.

F. The applicant shall furnish evidence of good ~~moral~~ professional character satisfactory to the Board and certification from the Board Of Dental Examiners in the state or Canadian Province in which he is already licensed.

7 MCAR § 3.013 Application for registration as a registered dental assistant.

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 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 ~~DE-31-and-32A.~~ 7 MCAR § 3.032A, applicant must successfully complete a course in these functions which has been approved by the Board.

Rule 7 MCAR § 3.014 Application for Licensure by Credentials. Any 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, must present to the Board an application and credentials, as prescribed by the Act. The applicant shall conform to the following rules of the Board:

A. The applicant shall complete an application and credential verification questionnaire on forms 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 Accreditation.

C. An applicant for licensure as a dentists must have been in active practice in another state or Canadian Province for at least three years immediately preceding application, United States Governmental service may be included, and submit at least three references from other dentists. The application must include a physician's statement attesting to the applicant's physical and mental condition.

D. An applicant for licensure as a dental hygienist must have been in active practice in another state or Canadian Province for at least one year immediately preceding application, and must submit at least two character references from dentists and two references from practicing hygienists.

E. Each applicant must submit with the application a fee as prescribed in 7 MCAR § 3.005C.

F. For identification purposes, the applicant shall furnish one notarized unmounted passport-type photograph, 3" x 3", taken not more than six (6) months before the date of application.

G. An applicant must appear before the Board for a personal interview to determine the applicant's fitness to practice dentistry or dental hygiene ~~in Minnesota~~ pursuant to § 150A.06, subd. 4.

H. An applicant shall successfully complete an examinaton designed to test knowledge of Minnesota laws relating to the practice of dentistry and the rules of the Board.

~~7 MCAR § 3.014~~ 7 MCAR § 3.015 Requirements for all ~~applications~~ applicants.

A. Every applicant shall provide evidence of having fulfilled all the requirements of the Act.

~~A.~~C. Incomplete applications shall be returned to the applicant with the tendered fee, together with a statement setting forth the reason for such rejection.

~~C.~~D. Nothing contained in these rules shall be construed to limit the Board's authority to seek from an applicant such other information pertinent to the character, education, and experience of the applicant insofar as it relates to the applicant's ability to practice as a licensee or registrant as the Board may deem necessary in order to pass on the applicant's qualification.

~~7 MCAR § 3.015~~ 7 MCAR § 3.016 Expiration of license and registration and renewal thereof. ~~Any person already registered by the Board as of the effective date of this rule shall submit to the Board no later than December 31, 1976, or within one (1) month after the effective date of this rule, whichever occurs last, an initial registration renewal application as prescribed below together with~~

~~the fee prescribed in 7 MCAR § 8.005B.~~ Each dentist, dental hygienist and each registered dental assistant, ~~except as modified by the immediately preceeding sentence,~~ shall submit an application for renewal of his license or registration together with the necessary fee no later than ~~January 1,~~ December 31, of the year preceding that for which the license or registration renewal is requested. The application form shall provide a place for the renewal applicant's signature and shall solicit information to include but not be limited to the applicant's office address or addresses, the number of his license or registration certificate whether such licensee or registrant has been engaged during the year preceding the year for which renewed licensure or registration is sought in the active practice of dentistry or dental hygiene or has worked as a registered dental assistant, and if so, whether within or without the state, and such other information which may be reasonably requested by the Board.

~~7 MCAR §§ 3.016~~ 7 MCAR §§ 3.017 - 3.020 Reserved for future use.

7 MCAR § 3.021 Written examination procedures: dentists, dental hygienists, and registered dental assistants.

F. Notes, ~~testbooks,~~ textbooks or other informative data shall not be brought to the examination rooms.

7 MCAR § 3.022 Scope of clinical examinations: dentists, dental hygienists, and registered dental assistants applicants.

7 MCAR § 3.025 Scope of written examination, dental hygienists.

B. At the discretion of the Board, any dental hygienist duly licensed to practice as such in another state which has and maintains laws regulating the practice of dental hygiene by dental hygienists, equivalent to this state's, who is of good ~~moral~~ professional character and is desirous of ~~moving to this~~ licensure in this state and presents a certificate from the examining board of the state in which the applicant is licensed so certifying, may be exempted from taking a National Board examination provided the applicant has been licensed for five or more years.

7 MCAR § 3.031 Assistants. Assistants may:

A. Retract a patient's cheek, tongue or other parts of tissue during a dental operation: assist with the placement or removal of a rubber dam and accessories used for its placement and retention, as directed by an operating dentist during the course of a dental operation; remove such debris as is normally created or accumulated during the course of treatment being rendered by a licensed dentist during or after operative procedures by the dentist by the use of vacuum devices, compressed air, mouthwash and water; monitor a patient who has been inducted by a dentist into nitrous oxide-oxygen relative analgesia under the direct supervision of a dentist; provide any assistance, including the placement of articles and topical medication in a patient's oral cavity in response to a specific direction to do so by a licensed dentist who is then and there actually engaged in performing a dental operation as defined in the

Act and who is then actually in a position to give personal supervision to the redition of such assistance. In addition, assistants may aid dental hygienists and registered assistants in the performance of their duties as defined in 7 MCAR § 3.032B, and 7 MCAR § 3.034.

7 MCAR § 3.032 Registered dental assistants.

A. 4. Place and remove rubber dam.

9. Place and Rremove periodontal packs.

~~11.---Monitor-a-patient-who-has-been-inducted-by-a-dentist into-nitrous-oxide-oxygen-relative-analgesia.~~

B. A dental assistant, who by virtue of academic achievement which is equal to or greater than that of a registered assistant, and is currently ~~registered-or-licensed~~ qualified in Minnesota in related health profession may, at the Board's discretion, be permitted to take dental radiographs after successful completion of an approved course. Such permission shall not be granted until such dental assistant shall have filed with the Board an application for permission, along with proof of successful completion of such course. ~~and-proof-of-current-Minnesota-licensure-or-registration in-an-allied-health-profession.~~

7 MCAR § 3.033 REPEALED ~~Display of certificate of registered dental assistant. In each office in which there is employed a registered dental assistant there shall be prominently displayed the certificate of registration of said registered dental assistant.~~

[~~This deleted material moved to 7 MCAR § 3.046~~]

(~~INCLUDED IN 7 MCAR § 3.046B~~)

7 MCAR ~~§~~ 3.034 Dental hygienists. Dental hygienists may perform:

B. Complete prophylaxis to include scaling, root planning, soft tissue currettage, polishing of fillings, and ~~placement of~~ temporary ~~cement material~~ replacement of ~~lost~~ restorations.

C. Preliminary ~~examination~~ charting of the oral cavity and surrounding structures to include case histories, and periodontal ~~examination~~ charting ~~recording of clinical findings;~~ this does not ~~infer~~ the making of a diagnosis.

G. Administer local anesthesia after successful completion of a course approved by the Board. Withdrawn

~~G.~~ H. Procedures A, B, C, and D, and F may be carried out under the general supervision of a dentist. ~~whether or not a dentist is present or supervising, but acting under his direction.~~ Examination and diagnosis must be accomplished only by a dentist.

7 MCAR § 3.044 ~~Practice of dentistry under any name except the licensee's own proper name.~~ Names.

A. ~~The use of the words, "clinic," "institute," or any other title that may suggest a public or semi-private activity, or teaching institution or that could be interpreted to imply superiority over other practitioners, shall constitute the unlawful practice of dentistry by an individual or under the name of a corporation, company association, or trade name, as those terms are used in § 150A.11, subd. 1 of the Act and shall be grounds for discipline under § 150A.08, subd. 1.~~ Any name which incorporates the use of the name of a state, city, or other political subdivision in whole or in part or which connotes unusual or superior dental ability, or which is likely to create a false or unjustified expectation of favorable results shall be in violation of § 150A.11, subd. 1 of the Act and Minn. Stat. § 319A.07.

see HE 13 FoF 3

B. ~~The title on a building wherein one or more dentists practice shall be used as an address only.~~

7 MCAR § 3.045 Professional advertising. ~~There shall be no public advertising by dentists other than as provided for herein. Dentists shall be permitted to insert a professional card in the local press, in programs and in yearbooks, providing that such professional card contain the name of the dentist and his title or degree using the abbreviation "D.D.S." or "D.M.D" only. Institutional advertising promoting dentistry generally, by dental associations and groups~~

~~is encouraged and approved, provided individual dentists are not advertised therein. A dentist shall be permitted to use signs to advertise his name, the fact that he is engaged in the practice of dentistry, the location of his office and his office hours. These signs shall be limited to a total area of not more than six hundred (600) square inches and shall not contain letters more than seven (7) inches in height. Such signs shall not be specially luminated or have other attention-getting properties or characteristics. No sign shall be permitted to hang over or beyond the edge of the public thoroughfare. Within thirty (30) days immediately following the opening of an office, changing locations, association or type of practice, announcement cards may be mailed to bona fide patients and members of the health science professions and placed in the local press for not more than two consecutive issues, but such cards shall not be greater in size than eight column inches nor more than two columns in width and four inches in depth. Such announcement cards shall state only the dentist's name, degree, or any specialty as recognized by the Board, office location, telephone number and office hours. Professional cards shall not be greater in size than two inches by three and one half inches and shall include only the dentist's name, degree or any specialty, office location, telephone number and office hours. Residence telephone number may be included. All directory listings shall~~

~~be-consistent-in-style-and-text-with-the-custom-of--dentists-of the-community.--A-dentist-may-permit-one-listing-of-his-name in-the-alphabetical-and-may-permit-only-listing-of-his-name-in the-commercial-section-of-the-telephone-directory.--A-dentist may-permit-one-listing-of-his-name-in-other-directories-provided that-all-dentists-in-similar-circumstances-have-access-to-the same-listing.--Such-listing-shall-be-limited-to-the-dentist's name,-dental-degree,-"D.D.S."-or-"D.M.D."-using-the-abbreviation only,-any-specialty-to-which-the-dentist-confines-his-practice exclusively,-office-location,-residence-and-office-telephone numbers,-residence-address,-and-hours-during-which-the-telephone-will-be-answered.~~

A. A person shall not, on behalf of himself, a partner, associate or any other dentist affiliated with him through a corporation or association, use or participate in the use of any form of public communication containing a false, fraudulent, misleading or deceptive statement or claim.

1. A false, fraudulent, misleading or deceptive statement or claim is one which:

a. Contains a misrepresentation of fact;

b. Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts;

c. Is self-laudatory or is intended or is likely to create false or unjustified expectations of favorable results;

d. Implies unusual or superior dental ability;

e. Contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived.

B. A person shall not compensate or give anything of value to a representative of the press, radio, television, or other communicative medium in anticipation of or in return for professional publicity unless the fact of compensation is made known in such publicity.

C. A person shall not directly or indirectly offer, give, receive, or agree to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.

D. Fees may be advertised for routine services only.

1. A routine service is defined as one which is performed frequently in the dentist's practice; is usually provided at a set fee; is provided with little or no variance in technique; and includes all professionally recognized components within generally accepted standards. If the following routine dental services are advertised, they must adhere to these minimum standards (which are examples of the comprehensiveness required to satisfy the above definition):

a. Examination - a study by the dentists of all of the structures of the oral cavity, including the recording of the condition of all such structures and appropriate history thereof, including as a minimum the charting of caries, identification of periodontal disease and occlusal discrepancies, and the detection of oral abnormalities. If an examination fee is advertised, the same advertisement must include the following additional diagnostic procedures and their fees:

(1) Radiographs (x-rays) - x-rays of the oral structures to be used for purposes of diagnosis and which included either: 1) a panograph and four bitewings, or 2) an intra-oral full mouth review utilizing a minimum of fourteen

periapical and four bitewing films. Any films must be adequate to provide a complete radiographic study.

(2) Diagnosis - A written opinion of items found in an examination.

(3) Treatment Planning - A written itemized treatment recommendation and written itemized fee estimate provided to the patient.

b. Denture - Either a full upper or full lower replacement of the natural dentition with artificial teeth. If the service advertised is for a denture which is partially prefabricated or is intended to be used as an emergency or temporary denture, such fact shall be fully set forth in the text of the advertisement. The fee shall include a reasonable period for readjustment.

c. Prophylaxis - The removal of calculus (tarter) and stains from the exposed and unexposed surfaces of the teeth by

scaling and polishing.

d. Extractions - This service is for the removal of non-impacted teeth and includes necessary x-rays, anesthesia, preoperative and post-operative care.

2. At the request of the Board, the licensee, office or professional corporation shall bear the burden of proving that any advertised services are, in fact, "routine dental services" as defined.

3. Related services which may be required in conjunction with the advertised services, and for which additional fees will be charged, must be identified as such in the advertisement.

E. Advertising a range of fees for a given service is prohibited.

F. Advertised fees must be honored for those seeking the advertised services during the entire time period stated in the advertisement, whether or not the services are actually rendered in that time. If no time period is stated, the advertised fees shall be so honored for 30 days or until the next scheduled publication. whichever is later.

G. Any advertising must include the corporation, partnership, or individual dentist's (dentists') name and address.

H. Advertisements shall not:

1. Include descriptive words or phrases which are qualitative representations or comparative claims such as, but not limited to: painless, high quality, low prices and reasonable;

2. Include testimonials and endorsements, including but not limited to character references, statements of benefits from dental services received, or expressions of appreciation for dental services;

3. Include the use of celebrities;

4. Use dramatization or graphic illustrations to imply patient satisfaction;

5. Reveal a patient's identity or personally identifiable facts, data, or information obtained in a professional capacity;

6. After one year, include the name of any dentists formerly practicing at or associated with any advertised location;

7. Indicate or imply affiliation with any organization other than the dental practice being advertised.

I. Advertising of practice in a dental specialty:

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

Endodontics (Endodontist);
Oral and Maxillofacial surgery (Oral Surgeon/Oral and Maxillofacial Surgeon);
Oral Pathology (Oral Pathologist);
Orthodontics (Orthodontist);
Pedodontics (Pedodontist);
Periodontics (Periodontist);
Prosthodontics (Prosthodontist);
Public Health

a. Only licensed dentists who have successfully completed a post-doctoral course approved by the Commission on Accreditation in one of the specialty areas, or who announced a limitation of practice prior to 1967, or who have been approved by one of the following specialty examining boards, may announce specialty practice and may advertise as a specialist: American Board of Dental Public Health, American Board of Endodontics, American Board of Oral Surgery, American Board of Oral Pathology, American Board of Orthodontics, American Board of Pedodontics, American Board of periodontology, and American Board of Prosthodontics.

b. 7 MCAR § 3.045I.a. does not prohibit a dentist who does not meet the above education or experience criteria from restricting his practice to one or more specific areas of dentistry. Such individuals may not use the terms specialist, specialty, specializing, or limited to. The advertising must state that the services are being provided by a general dentist.

J. Failing to respond within 30 days to written communications from the Board of Dentistry or failure to make available to the Board any relevant records with respect to an inquiry or complaint about the licensee's advertising practices shall constitute a violation of § 150A.08, subd. 1(5) of the Act and 7 MCAR § 3.045. The period of 30 days shall commence on the date when such communication was sent from the Board by certified mail with return receipt requested to the address appearing in the last registration.

& MCAR § 3.046 Display of name and certificates.

B. Every licensed dentists, upon changing his place of business, and every dental hygienist and registered dental assistant upon changing his address, shall within ~~ten~~ 30 days thereafter, furnish the ~~secretary-treasurer of the~~ Board with ~~his~~ the new address. A practicing dentist shall inform the Board of ~~his~~ the office address(es)

7 MCAR § 3.063 Corporation Nnames. ~~The use of any name for a corporation other than the name or names of one or more of the participating dentists followed by the word "Chartered," "Limited," "Ltd.," "Professional Association," or "P.A." is declared to be an~~ see HE 13 FofF 3

~~unlawful attempt to imply superiority or quasi public sponsorship in violation of Minn. Stat. § 319A.07 of the Minnesota Professional Corporations Act and 7 MCAR § 3.044.~~ The names of professional corporations shall be governed by Minn. Stat. § 319A.07 and 7 MCAR § 3.044.

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Attorney General's Office
Health Division

SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Health

Office Memorandum

TO : Jerry Anderson
Special Assistant
Attorney General

DATE: February 12, 1981

FROM : William G. Miller
Special Assistant
Attorney General

PHONE: 341-7272

SUBJECT: In the Matter of Proposed Amendments to Dentistry Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising and Clarification and Reorganization of Existing Rules

I have enclosed for your review the relevant documents for the above-referenced set of rules. Please contact me with any questions or comments.

WGM:sd

Enclosures

RECEIVED
FEB 13 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

DEN-80-001-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF DENTISTRY

IN THE MATTER OF PROPOSED AMENDMENTS TO DENTISTRY RULES RELATING TO APPLICATIONS FOR LICENSURE, FEES, LICENSURE BY CREDENTIALS, AUXILIARY PERSONNEL SERVICES, ADVERTISING, AND CLARIFICATION AND REORGANIZATION OF EXISTING RULES.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on June 26, 1980, before Peter C. Erickson, a Hearing Examiner of the State Office of Administrative Hearings, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Board of Dentistry; and

WHEREAS, the Board of Dentistry has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4-4f; and

WHEREAS, the Board of Dentistry has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 15.0412, subd. 4d and 4e, and 5 052, subd. 4, and 9 MCAR § 2.111; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Board of Dentistry has met all requirements of Minn. Stat. § 15.0412, subd. 4-4f, and has corrected the defects as delineated by the Hearing Examiner and the Chief Hearing Examiner.

NOW, THEREFORE, upon receipt of this Order, the Board of Dentistry has the responsibility of submitting the complete hearing record and the rules as adopted by the Board of Dentistry to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4e and 4f.

Dated: February 11, 1980.

DUANE R. HARVES
Chief Hearing Examiner

DEN-80-001-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF DENTISTRY

In the Matter of Proposed Amendments to Dentistry Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising, and Clarification and Reorganization of Existing Rules.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Administrative Hearings at 9:30 a.m. on Thursday, June 26, 1980 in Room 105 of the Department of Health Building, Minneapolis, Minnesota.

William G. Miller, Special Assistant Attorney General, appeared on behalf of the Minnesota Board of Dentistry. Dr. Robert McDonnell, President of the Board, and Dale Forseth, Executive Secretary, appeared and testified on behalf of the Board of Dentistry in support of the proposed rules. The hearing continued until all interested groups or persons had had an opportunity to testify concerning the adoption of the proposed rules. Pursuant to Minn. Stat. § 15.0412, the Chief Hearing Examiner granted an extension through September 2, 1980, for the completion of this Report.

The Agency must wait at least five working days before taking any final action on the rule; during that period, this Report must be made available to all interested persons upon request. This Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Agency of actions which will correct the defects and the Agency may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in the cases where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Agency may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Agency does not elect to adopt the recommendations, it may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Laws of Minnesota 1980, Chapter 615, § 6, subd. 4d.

If the Agency elects to adopt the recommendations of the Hearing Examiner and makes no other changes, then it shall submit the rule to the Attorney General for his review of form and legality. However, if the Agency makes changes in the rule other than those recommended by the Hearing Examiner, then it shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in subdivision 4e of the same statute.

Then, whenever the Agency finally submits the rule to the Attorney General, it shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based on all the records and proceedings herein, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On April 22, 1980, the Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On May 19, 1980, a Notice of Hearing and a copy of the proposed rules were published at 4 State Register 1798.

3. On May 22, 1980, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On May 30, 1980, the Board filed the following documents:

(a) The Order for Hearing and authorizing resolution.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list.
(e) The Secretary of State's Certificate and list.
(f) The Statement of Need and Reasonableness.
(g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 2 State Register 483 (September 12, 1977).
(h) The names of Board personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.

The documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. The record remained open through July 16, 1980 for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

6. Statutory authority to promulgate the proposed rules is contained in Minn. Stat. §§ 150A.04, subd. 5, and 150A.11, subd. 2 (1978).

7. Many of the rule amendments proposed by the Board are merely of a housekeeping variety or simply clarify the purpose and intent of the present language. This Report will not address those noncontroversial rule amendments which are adequately supported in the Statement of Need and Reasonableness. As to those amendments, the Examiner finds that need and reasonableness has been established by the Board of Dentistry. The only rule amendments that will be specifically addressed in this Report are those about which questions of need, reasonableness and compliance with the substantive and procedural requirements of law have been raised.

8. At the hearing, the Board proposed the following additional amendments to 7 MCAR § 3.032:

7 MCAR § 3.032 Registered dental assistants.

A.2. Take impressions for study casts and opposing casts ~~for fixed partial denture prosthesis.~~

6. Perform mechanical polishing to clinical crowns only and not to include any instrumentation. Prior examination for calculus and instrumentation must be done by the dentist or hygienist.

p.9

Dr. McDonnell testified that both of these changes are housekeeping in nature and clarify the intent of the rule. There was no public comment on these amendments. Although this language was not published in the State Register, it falls within the scope of the noticed subject matter. The Examiner finds these additional amendments to be both needed and reasonable and not substantially different from the rule as proposed to be amended.

9. The amendments proposed to 7 MCAR § 3.011 E. place the requirements for the licensure of graduates of non-accredited dental schools into a logical sequence of steps. Paragraph E.3. states that the "applicant must complete such pre-clinical testing procedures at the School of Dentistry, University of Minnesota, or its equivalent, as the board may approve, to determine. . ." (Emphasis added) This language seems to set the criteria of equivalency as the standard for approval; however, it states that the board "may" approve. The use of the word "may" in this instance, without governing criteria which must be adhered to, is inappropriate as it allows unbridled agency discretion. To correct the defect, the Board must either delete the discretionary clause or provide standards of equivalency which, if met, will require approval. As proposed, the rule is in violation of the substantive requirements of Minn. Stat. § 15.0412, subd. 3, which requires that rules be specific. See, inter alia, the report from the Attorney General's office dated June 24, 1980, regarding the form and legality of the Water Appropriation rules.

10. Proposed new rule 7 MCAR § 3.014 implements the authority contained in Minn. Stat. § 150A.06, subd. 4, to grant licensure to dentists and dental hygienists who are already licensed in other states or Canadian Provinces. Section 3.014 G. states that the Applicant "must appear before the board . . . to determine the Applicant's fitness to practice dentistry . . ." This language, standing by itself, appears to impart discretionary authority upon the Board to judge fitness with no specific criteria to follow. It is Minn. Stat. § 150A.06, subd. 1, which allows this discretion, however. The Rule merely paraphrases the statutory language. As a matter of drafting, the Examiner suggests that the Board amend the rule to read, "Pursuant to Minn. Stat. § 150.06, subd. 1, an applicant must . . . ", for rule clarity. This Finding is only a suggestion and does not imply any other reasons for a change in the rule as proposed.

11. The amendment proposed to 7 MCAR § 3.031 would permit a dental assistant to "monitor a patient who has been inducted by a dentist into nitrous oxide-oxygen relative analgesia." The present rules allow only registered dental assistants and dental hygienists to do such monitoring. The Board contends that a dental assistant can be trained to safely monitor a patient in nitrous oxide-oxygen relative analgesia without special education. The current rules mandate educational prerequisites and the successful completion of an examination for licensure as a dental hygienist or a registered dental assistant. There are no requirements for a dental assistant.

Dr. Eugene Schoener testified that the word "monitor" needs clarification or limitation in the rule. He stated that three stages are involved in nitrous oxide-oxygen relative analgesia: induction, maintenance and recovery. Dr. Schoener contends that the recovery stage is the only stage that a dental assistant should be able to monitor. Juanita B. Luis, Assistant Counsel for St. Paul Fire and Marine Insurance Co., also criticized the rule for failure

to define "monitor". The Minnesota Association of Nurse Anesthetists had similar comments and urged that specific course-work be mandated before dental assistants are permitted to monitor patients.

The majority of comments from the public opposed patient monitoring by unregistered assistants. The Minnesota Dental Hygienists Association opposes the proposed amendent because they feel a formal education is required to enable an assistant to safely monitor a patient in nitrous oxide-oxygen relative analgesia. Dr. Harold Roelike, University of Minnesota School of Dentistry, Dental Assisting Program, testified that the job of monitoring a patient cannot safely be given to an assistant who is not formally trained. Dr. Ralph Christensen and Dr. Harvey Gilbert also argued that the potential dangers of general anesthesia are too great to allow an untrained assistant to monitor.

In the Statement of Need and Reasonableness, the Board makes the unsupported statement that assistants can be trained to safely monitor patients. This assumes that the employer-dentist will administer adequate on-the-job training. There is no indication in the rule as to what might constitute appropriate training. In view of the overwhelming opposition to the rule, supported by specific statements concerning the complexities of monitoring and the potential risk to the patient, the Examiner finds that the Board has not demonstrated the reasonableness of the proposed amendment. The defect cannot be corrected in this rule-hearing proceeding. The rule should be left as presently written, allowing only formally trained registered dental assistants and dental hygienists to assume the function of monitoring patients in oxide-oxygen relative analgesia.

language added p. 8 see FoFF 2

12. A proposed amendment to 7 MCAR § 3.034 would allow dental hygienists to administer local anesthetic upon successful completion of a "course approved by the Board." The Board asserts that this rule would enable a hygienist to provide uninterrupted service to the patient during root planing and soft tissue currettage, procedures which may require anesthesia. The Board contends that the "public safety would be protected since the dental hygienist would be required to complete a Board-approved course in this area before providing this type of service." The rule does not, however, list any criteria for the Board to use when determining whether a course should be approved.

The Minnesota Dental Hygienists' Association supports the proposed rule for the reasons of patient comfort and uninterrupted care. The Association documented its position with the Forsyth Study, which evidences the success of hygienists in the use of local anesthetics, and the report of the Comptroller General to the U. S. Congress which recites the benefits of expanded auxiliary functions. The Association presented evidence on the safe and effective use of local anesthetics by hygienists in states where it is permitted and stressed the fact that use of a hygienist for this function is left to the discretion of the individual dentist.

The Minnesota Dental Hygienist Educators' Association also joined in support of the proposed rule but recognized the educational implications of an "approved course". Materials were submitted regarding suggested course content. Additionally, materials on course content were supplied by the Minnesota Association of Nurse Anesthetists. The Anesthetists stressed the need for adequate education before hygienists are allowed to administer local anesthesia.

Additional testimony in support of the proposed rule was given by: Ms. Donna Aker, director of the dental hygiene program at the University of Minnesota; Ms. Linda Dolan, American Dental Hygienist Association Trustee; Dr. John Mooney, member of the Idaho State Board of Dentistry; and Drs. Bruce Keyworth, J. M. Rasmussen, and B. W. McNamara.

Opposition to the rule focussed primarily on the dangers of local anesthesia and the level of education required to administer local anesthesia safely. Dr. Arnold Hill, representing the Minnesota Dental Association, spoke in opposition to the rule and submitted material enumerating the dangers of local anesthesia and comparing the course-work taken by dentists and hygienists. Dr. Norman Holte, professor at the University of Minnesota, testified that he was opposed to the rule for the reason that dental hygienists are "not prepared to assume the responsibililty for reactions to local anesthetics." Dr. Holte went on to give examples of adverse reactions and stated that a doctor's training is needed to recognize and remedy those reactions. Dr. L. Edward Evans, president of the Minnesota component of the American Society of Dental Anesthesiology, stated that the Society was opposed to the administration of local anesthesia by non-dentist personnel.

Comments from the St. Paul Fire and Marine Insurance Co. and the Minnesota Dental Association voiced concern over the dentist's responsibility for the hygienist and the resultant increase in the cost of malpractice insurance. Mr. Miller commented that the Statement of Need and Reasonableness was incorrect in stating that a hygienist could administer local anesthesia under the general supervision of a dentist. Rather, the level of supervision should be indirect, a more stringent standard. The Examiner points out, however, that there is nothing in the proposed rule which mandates any level of supervision by a dentist if a hygienist administers local anesthesia.

The Board has taken the position that some kind of extra course-work will be required to enable hygienists to administer anesthesia. The rule merely states that the course must be "approved by the Board." The focal point for the opposition to the proposed rule was the fact that adequate education is a necessity for the safe administration of anesthesia. Proposed curriculums were submitted by the Minnesota Dental Hygienist Educators Association and the Minnesota Association of Nurse Anesthetists. Because the Board has not delineated what might constitute an appropriate course and left that determination to their own unbridled discretion, the Examiner finds that the reasonableness of the proposed rule has not been established. In order to correct this defect, the level of supervision, along with course content must be set out in order to evaluate the reasonableness of the proposal. These changes must be based on the record made in this proceeding, however.

Rule withdrawn see p. 11 of Rule as Prop.

13. Proposed new rules 7 MCAR §§ 3.044, 3.045, 3.046 and 3.063 completely revise the standards for professional advertising in an attempt to comply with recent case law and maintain public safeguards. The Antitrust Division of the Office of the Attorney General submitted comments which suggested that an earlier version of the rule be adopted; one which contains much less detail on prohibited practices. The Attorney General's Office stated that the prohibitions contained in §§ 3.045 D. and H. are overly protective; however, it was admitted that the proposed rules "may be legally sufficient."

Dr. Vernon L. Amundson, Chairman of the Committee on Constitution, Bylaws and Ethics of the Minnesota Dental Association, commented in opposition to any use of electronic broadcast media for advertisement purposes. Additionally, Dr. Amundson supports a more restricted manner in which dentists may identify a nonspecialty practice. Dr. Bruce Keyworth testified in opposition to the removal of the prohibition of the use of the words "clinic" and "institute" in conjunction with a dental practice name. He stated that use of those terms is misleading to the public.

Arthur Gillen, counsel for the Minnesota Dental Association, commented in opposition to the use of electronic media for advertising and contends that the name of "one or more of the dentists practicing be included in the name of the practice." He argues that the intent of Chapter 596, § 5, 1980 Laws, which will not become effective until July 1, 1981, is that the dentist's own name, and not the name of a professional corporation, be advertised to the public.

The rule now in effect, § 3.063 clearly states that the "name or names of one or more of the participating dentists" must appear in the corporation name if a dental practice is incorporated. This language has been stricken in the proposed rules. Although the new rules do not state that a corporation name need not include the name of a practicing dentist, only compliance with Minn. Stat. § 319A.07 and 7 MCAR § 3.044 is mandated. Section 5 of Chapter 596, 1980 Laws, strikes languge contained in Minn. Stat. § 150A.11, subd. 1, which requires that the proper name of the dentist be included in the practice name. Section 5 of Chapter 596 is not effective until July 1, 1981, however. The current law, Minn. Stat. § 150A.11, subd. 1 (1978), and 7 MCAR § 3.063, requires that a practicing dentist's name be included in the dental practice name.

The proposed rules, as drafted, are unclear as to how a corporation name may be used by a dental practice. Because of this defect, the Examiner finds that the Board has not established the reasonableness of proposed §§ 3.044 and 3.063. This defect can be corrected by adding language which specifies requirements for the use of a dentist's name as part of a corporate name. The Examiner finds that the Board has established the need for and reasonableness of the remainder of the advertising rules although the other comments addressed in this Finding should be considered by the Board prior to taking final action.

no change p.12 and p.21 FoF3.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. The Board of Dentistry gave due, timely and adequate legal notice of the hearing.

2. All relevant procedural requirements of law or rule within the meaning of Minn. Laws 1980, Ch. 615, § 6, subd. 4c, have been met.

3. The Board of Dentistry has documented its statutory authority to promulgate the proposed rules and has met all other substantive requirements of law or rule with the exception noted in Finding 9.

4. The Board of Dentistry has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts with the exceptions noted in Findings 11, 12 and 13.

5. Correction of the defects as suggested by the Examiner in Findings 9, 11 and 13, and any other changes proposed by the agency, would not result in a rule which is substantially different from the rule as published in the State Register within the meaning of Minn. Laws 1980, Ch. 615, § 6, subd. 4d. The addition of course requirements to 7 MCAR § 3.034, as suggested in Finding 12, may result in a rule which is substantially different. If the defects in § 3.034 are corrected, the rule must be resubmitted to the Chief Hearing Examiner pursuant to Minn. Stat. § 15.0412, subd. 4e, for a no substantial change determination.

6. Due to Conclusions 3 and 4, this Report has been submitted to the Chief Hearing Examiner for approval pursuant to Minn. Laws 1980, Ch. 615, § 6, subd. 4d (to be codified as Minn. Stat. § 15.0412, subd. 4d).

7. That any Findings which might properly be termed Conclusions, and any Conclusions which might properly be termed Findings are hereby adopted as such.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

That the Board of Dentistry adopt the proposed rules consistent with the Conclusions above.

Dated this 2 day of September, 1980.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

If you wish to be notified when the Hearing Examiner's Report is available, please put your name and address on one of the envelopes supplied.

RULE HEARING REGISTER

PLEASE PRINT CLEARLY

NAME	REPRESENTING	COMPLETE ADDRESS	TELEPHONE	CHECK HERE IF YOU WISH TO MAKE A STATEMENT AT THE HEARING	CHECK HERE IF YOU WISH TO BE NOTIFIED BY THE AGENCY WHEN THE HEARING RECORD HAS BEEN SUBMITTED TO THE ATTORNEY GENERAL
TOM CATANIA	State Atty General's Office	2nd Fl Ford Bldg 117 University St. Paul	296-0534		✓
Joyce Bartle	MDHSA + Myself	5040 Upton Ave So. Mpls, Mn. 55410	920-5890		✓
Edward Evans BJS	Am. Soc of Dental Anesthesiology	1 Osage 8 Prof Bldg	757-7360	✓	
	No Side Dental Soc	11441 Osage St NW. Coon Rapids			
DONNA AKER	Mayo Dental Hyg	5-164 Health Sc. Bldg Mayo Mpls, Mn 55455	376-4437	✓	✓
Les Block		7140 Chowen Ave S	377-8111		✓
Judy Kiehl	MDAA	1180 Steeplewood Rd. Woodbury, 55125	7295754		✓
Dominic SPOSETO	MDA	2236 Marshall Ave St Paul	55104		✓
SUSAN NALBANDO	MDHA - LEGIS. COMM.	67 BARTON AVE S.E.	554/14		✓
James E. Hinrichs		8900 Penn Ave S. suite 302	884-2282		✓
Dennis J Brundstetter	MDA. Leg. Comm.	1919 Excelsior Ave. W. Hopkins 55343	935-3675		✓
Tom LARKIN	Mpls. Distr. Dent Soc.	5100 - EDEN AVE. EDINA 55436	929-0641		✓
Judy Kemp	Bemidji AUTI	Rt 5 Box 332 Bemidji, Mn. 56601	218 586-2458		✓
Dr Ramsey Gilbert	Lin Lewis Brk	1490 Charlton Blvd	335-4245		
BM Olson	MDH	—			
ART Gillen	MDA	402 DROVERS BK BLDG SO St Paul	451-1831		✓

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MARY LOU HAIDER	MN DENTAL HYGIENE EDUCATORS' ASSOC.	1757 PRINCETON AVE. ST. PAUL, MN 55105	699-9975	X	X
JANE MYRE	MDHA CONSULTANT TO BOARD	7033 OLIVER Ave So.	866-1674	X	X
KATHY NEWELL	MN. DENTAL HYGIENE EDUCATORS' ASSO.	1645 MARION ST ST. PAUL MN 55117	488-6238	/	X
Kathy Brown	MEDA & MDAA	Evergreen Village Park #102 Sartell, Mn. 56377	251-8407	/	X
Lois Bard	MDHA	5609 Dale Ave Edina 55436	929 5787		
BRYCE JINGLE Mahan	M.D.H.A.	805 4th Ave S.W. Austin	433-5036		X
Vickie Michelich	MDHA - President	116 W. College St Duluth MN 55812	218-728-6211		X
NANCY D. STOKES	MDHA - President-elect	715 CARLTON AVE. CLOQUET MN 55720	218-879-4634		X
Lynda J. Young	MDHA	1824 Twin Circle Dr.-Mendota Hgts. 55118	454-8659 376-4104	X	X
James McGrane	Normandale Community College	9700 France Ave South Bloomington	830-9366		
[illegible]	MDA	200 FIRST ST. S.W. ROCHESTER MINN 55901	507-284-2433		
N.O. HOLTE	MINN DENT ASSN	5824 COLUMBUS AVE MPLS, MINN 55417	866-2394		X
BRUCE A. KEYNORTH	MYSELF	5373 HYLAND PL BLOOMINGTON MN 55437	830-1242	X	X
GEORGIA MAJERUS	myself	10219 ZENITH LANE Bloomington MN	835-5158		X
Jane Olson	" Normandale C College & Dental Hygiene Study Club	2417 Garfield Ave So. Apt. #211, Mpls., MN 55405	874-7298		X
E.V. Schoener	"	321 Choate Bldg Winona 55987		maybe	✓
T.M. Speidel	self	6-320 HSUA 515 Delaware SE	376-4077	X	✓
Helen Tuchner	Minn Dental Assn	9-372 HSUA.	376-4106		✓
Carol Lindig	MDAA	9-372 HS Unit A U of M	373-3254		✓
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]

CERTIFICATE OF BOARD'S

ADOPTION OF RULES RESOLUTION

I, Dale J. Forseth, do hereby certify that I am the Executive Secretary of the Minnesota Board of Dentistry, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the said Board of Dentistry duly and properly called and held on the 20th day of September, 1980; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"RESOLVED, that the amendments to the dentistry rules relating to applications for licensure, fees, licensure by credentials, auxiliary personnel services, advertising, and clarification and reorganization of existing rules identified as 7 MCAR §§ 3.002-2.063 are found to be reasonable, necessary and supported by the evidence contained in the record, and are hereby approved and adopted, pursuant to authority vested in us by Minn. Stat. § 150A.04, subd. 5 and that Dale Forseth, Executive Secretary of the Minnesota Board of Dentistry, be and hereby is authorized to sign an order adopting those rules and to execute any and all other documents which may be necessary to effectuate these rules.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 17th day of October, 1980.

STATE OF MINNESOTA

BOARD OF DENTISTRY

Dale J. Forseth

DALE J. FORSETH
Executive Secretary

SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Health

Office Memorandum

TO : Jerry Anderson
Special Assistant
Attorney General
Administration Division

RECEIVED
DEC 29 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

DATE: December 29, 1980

FROM : William G. Miller
Special Assistant
Attorney General

PHONE: 341-7272

SUBJECT: In the Matter of the Proposed Amendments to Dentistry Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising, and Clarification and Reorganization of Existing Rules.

I have enclosed the original hearing record in the above-referenced matter for your review pursuant to Minn. Stat. § 15.0412. Also enclosed is another set of copies of specific documents required by your office.

The record includes the following:

1. Board of Dentistry's Findings of Fact, Conclusions and Order Adopting Rules;
2. Certificate of Board's adoption of Rules Resolution;
3. Rules as Adopted by the Board of Dentistry;
4. Rules as Proposed (post-hearing changes are marked in red);
5. Report of the Chief Hearing Examiner;
6. Report of the Hearing Examiner;
7. Transcript of the hearing of June 26, 1980, which includes the following exhibits:

    1. Certificate of Board of Dentistry Authorizing Resolution;
    2. Order for Hearing;
    3. Notice of Hearing;
    4. Statement of Number of Persons Expected to Attend;
    5. Proposed Rules as Published in the State Register on May 19, 1980;
    6. Statement of Need and Reasonableness (with Exhibit 12 as an addendum);
    7. Affidavit of Receipt of the Secretary of State's List;
    8. Affidavit of Mailing;

9. Notice of Intent to Obtain Information on Proposed Rules from Non-Agency Sources, as published in the State Register on September 12, 1977;

10. Materials received following publication of the Notice of Intent (some of the materials received are attached as exhibits to the Statement of Need and Reasonableness);

11. Amendments to the Rules as Proposed; and

12. Addendum to Statement of Need and Reasonableness.

8. Letters Received following the Hearing (Exhibits 1-19); and

9. Certificate of Compliance with Rule Making Procedures.

WGM:BC:cs

Enclosures

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Board of Dentistry

Proposed Amendments to Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising and Classification, and Reorganization of Existing Rules

Notice Of Hearing

A public hearing concerning the proposed amendments to the rules captioned-above will be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, on June 26, 1980, commencing at 9:30 a.m. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, Telephone number: (612) 296-5938, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. All such statements will be entered into and become part of the record. For those wishing to submit written statements or exhibits, it is requested that at least two (2) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411, 15.0417, and 15.052, and by 9 MCAR §§ 2.010-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the Hearing Examiner.

If adopted, the proposed amendments would make the following changes:

1. An amendment to 7 MCAR § 3.005 would permit the board to set licensure fees below, but not above, the fees already established by rule.

2. An amendment to 7 MCAR § 3.011 E. would carry out the provisions of Minn. Stat. § 150A.06, subd. 1 (1978) by requiring graduates of nonaccredited dental schools who are seeking licensure to pass a clinical examination prior to taking the National Board examination.

3. Amendments to 7 MCAR § 3.014 would carry out the provisions of Minn. Stat. § 150A.06, subd. 4 (1978) which authorizes the board to grant licensure to dentists and dental hygienists who are already licensed in other states or Canada. The proposed rule specifies the procedures and requirements for licensure.

4. An amendment to 7 MCAR § 3.015 would update the present rule and would carry out the provisions of Minn. Stat. § 150A.09, subd. 1 (1978) which requires annual registration of all registered dental assistants.

5. Amendments to 7 MCAR §§ 3.031, 3.032 A. and 3.034 would carry out the provisions of Minn. Stat. § 150A.10, subd. 2 (1978) which authorized the board to specify what functions dentists may delegate to registered and nonregistered assistants. The proposed rule would allow an assistant to monitor a patient who has been given nitrous oxide anesthesia by a dentist. It would allow registered dental assistants to remove rubber dams and place peridontal packs. The proposed rule would also allow dental hygienists to place any sealants, not just cement, for the

temporary replacement of restorations and to administer local anesthesia under the direct supervision of a dentist.

6. An amendment to 7 MCAR § 3.032 B. would clarify the intent of the Board at the time the rule was adopted to allow qualified persons in allied health fields, such as X ray technicians, to take dental radiographs.

7. An amendment to 7 MCAR § 3.044 would permit the use of the words clinic or institute, except when used with the name of a state, city, or political subdivision. It would prohibit the use of specific adjectives which would create false expectations of favorable results.

8. Amendments to 7 MCAR § 3.045 would carry out the provisions of Minn. Stat. § 150A.11, subd. 2 (1978) permitting the board to establish rules for professional advertising and would conform to the US Supreme Court decision allowing professional advertising. The proposed rule establishes limitations on advertising, services that can be advertised, the criteria that will be used to define these services, and what types of advertising would violate this rule.

9. An amendment to 7 MCAR § 3.045I would identify all of the recognized specialty areas in dentistry and the specialty credentialling bodies. The rule would prohibit any dentist from using the term specialist unless the dentist has met the education and experience criteria provided by the amendment.

10. An amendment to 7 MCAR § 3.063 would remove the restrictions on the use of such words as "chartered" and would instead require that the use of these terms conform to the provisions of Minn. Stat. § 319A.07 (1978), the Professional Corporations Act.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to Dale Forseth, Minnesota Board of Dentistry, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414. Additional copies will be available at the door on the date of the hearing.

Twenty-five (25) days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include all of the evidence which the agency intends to present at the hearing to justify both the need for and the reasonableness of the proposed rule. However, additional evidence may be submitted in response to questions raised by interested persons. You are therefore urged to both review the Statement of Need and Reasonableness before the hearing and to attend the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

The statutory authority of the Board of Dentistry to adopt these rules is contained in Minn. Stat. §§ 150A.04 subd. 5 (1978).

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155. Telephone Number: (612) 296-5615.

May 5, 1980

Dale J. Forseth
Executive Secretary

Amendments as Proposed

7 MCAR § 3.002 Definitions.

D. "Auxiliary" means a dental hygienist, registered dental assistant, ~~and~~ assistant, and dental technician.

O. "Person" includes an individual, corporation, partnership, association or any other legal entity.

P.~~O.~~ "Registered dental assistant" means an assistant registered by the board pursuant to § ~~150A.16~~ 150A.06, subd. 2a of the Act.

Q.~~P.~~ "Registrant" means a registered dental assistant.

R.~~Q.~~ "Registry" means the centralized recordkeeping service of the American Dental Association, Continuing Education Registry.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

S.R. "Sponsor" means an organization approved by the board pursuant to § 3.052 to offer CDE courses.

T.S. "Supervision" shall be defined in one of the following classifications:

7 MCAR § 3.004 Officers. The officers of the board shall consist of a President, a Vice-President, and a Secretary-Treasurer, as provided in § 150A.03, subd. 1, of the Act. Election of officers may be held at any regular or special meeting.

7 MCAR § 3.005 Fees.

B. Annual license or registration fees. Each dentist, dental hygienist and registered dental assistant shall submit with his annual license or registration renewal application a fee as established by the Board not to exceed in the following amounts:

1. Dentist—$38.00
2. Dental hygienist—$15.00.
3. Registered dental assistant—$10.00.

7 MCAR § 3.011 Applications to practice dentistry.

C. The applicant must furnish certification of having passed all parts of the a national board examination as defined in Rule 7 MCAR § 3.002 N.

E. 3. After successful completion of steps 1 and 2, the board may then certify the applicant as eligible to take National Board examination. applicant must complete such pre-clinical and clinical testing procedures at the School of Dentistry, University of Minnesota, or its equivalent, as the board may approve, to determine whether the applicant has the clinical proficiency in dentistry comparable to that of a student who has graduated from the University of Minnesota, School of Dentistry.

4. Upon the evidence of passage of National Board examination, applicants of dental schools not accredited by the Commission on Accreditation must complete such testing procedures, clinical training in the School of Dentistry, University of Minnesota, or its equivalent, as the board may prescribe in order to establish that the knowledge, skill and competence of the applicant to practice dentistry is equivalent in all respects to that of a graduate of a dental school accredited by the Commission on Accreditation and approved by the board.

4. Only after successful completion of steps 1, 2, and 3 will the board certify the applicant's eligibility to take a national board examination as defined in 7 MCAR § 3.002 N.

5. Only Upon completion of the first four steps may the applicant may make application to the board to take the examination for licensure.

G. The applicant shall furnish a testimonial of good moral professional character from an authorized representative of the dental school from which the applicant graduated. If he is a member of a dental society, he shall furnish the recommendation of the president or secretary of the society, and a certification by the secretary of the Board of Dental Examiners of the state or Canadian Province in which he is licensed. Provided, however, the board may in its discretion and for good cause waive the certification of good moral professional character by an authorized representative of the dental school.

7 MCAR § 3.012 Application to practice dental hygiene.

B. Applicants must furnish certification that they have passed the National Board Examination as defined in 7 MCAR § 3.002N.

F. The applicant shall furnish evidence of good moral professional character satisfactory to the Board and certification from the Board Of Dental Examiners in the state or Canadian Province in which he is already licensed.

7 MCAR § 3.013 Application for registration as a registered dental assistant.

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 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 DE 31 and 32 A. 7 MCAR § 3.032 A., applicant must successfully complete a course in these functions which has been approved by the board.

7 MCAR § 3.014 Application for licensure by credentials. Any 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, must present to the board an application and credentials, as prescribed by the Act. The applicant shall conform to the following rules of the board:

A. The applicant shall complete an application and credential verification questionnaire on forms 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 Accreditation.

C. An applicant for licensure as a dentists must have been in active practice in another state or Canadian Province for at least three years immediately preceding application. United States Governmental service may be included, and submit at least three references from other dentists. The application must include a physician's statement attesting to the applicant's physical and mental condition.

D. An applicant for licensure as a dental hygienist must have been in active practice in another state or Canadian Province for at least one year immediately preceding application, and must submit at least two character references from dentists and two references from practicing hygienists.

E. Each applicant must submit with the application a fee as prescribed in 7 MCAR § 3.005 C.

F. For identification purposes, the applicant shall furnish one notarized unmounted passport-type photograph, 3" x 3", taken not more than six (6) months before the date of application.

G. An applicant must appear before the board for a personal interview to determine the applicant's fitness to practice dentistry or dental hygiene in Minnesota.

H. An applicant shall successfully complete an examination designed to test knowledge of Minnesota laws relating to the practice of dentistry and the rules of the board.

~~7 MCAR § 3.014~~ 7 MCAR § 3.015 Requirements for all ~~Applications~~ applicants.

A. Every applicant shall provide evidence of having fulfilled all the requirements of the Act.

C.~~A.~~ Incomplete applications shall be returned to the applicant with the tendered fee, together with a statement setting forth the reason for such rejection.

D.~~C.~~ Nothing contained in these rules shall be construed to limit the board's authority to seek from an applicant such other information pertinent to the character, education, and experience of the applicant insofar as it relates to the applicant's ability to practice as a licensee or registrant as the board may deem necessary in order to pass on the applicant's qualification.

~~7 MCAR § 3.015~~ 7 MCAR § 3.016 Expiration of license and registration and renewal thereof. ~~Any person already registered by the board as of the effective date of this rule shall submit to the board no later than December 31, 1976, or within one (1) month after the effective date of this rule, whichever occurs last, an initial registration renewal application as prescribed below together with the fee prescribed in 7 MCAR § 8.005B.~~ Each dentist, dental hygienist and each registered dental assistant~~, except as modified by the immediately preceding sentence,~~ shall submit an application for renewal of his license or registration together with the necessary fee no later than ~~January 1,~~ December 31, of the year preceding that for which the license or registration renewal is requested. The application form shall provide a place for the renewal applicant's signature and shall solicit information to include but not be limited to the applicant's office address or addresses, the number of his license or registration certificate whether such licensee or registrant has been engaged during the year preceding the year for which renewed licensure or registration is sought in the active practice of dentistry or dental hygiene or has worked as a registered dental assistant, and if so, whether within or without the state, and such other information which may be reasonably requested by the Board.

~~7 MCAR §§ 3.016~~ 7 MCAR §§ 3.017-3.020 Reserved for future use.

7 MCAR § 3.021 Written examination procedures: dentists, dental hygienists, and registered dental assistants.

F. Notes, ~~testbooks,~~ textbooks or other informative data shall not be brought to the examination rooms.

7 MCAR § 3.022 Scope of clinical examinations: dentists, dental hygienists, and registered dental assistants applicants.

7 MCAR § 3.025 Scope of written examination, dental hygienists.

B. At the discretion of the board, any dental hygienist duly licensed to practice as such in another state which has and maintains laws regulating the practice of dental hygiene by dental hygienists, equivalent to this state's, who is of good moral professional character and is desirous of ~~moving to this~~ licensure in this state and presents a certificate from the examining board of the state in which the applicant is licensed so certifying, may be exempted from taking a National Board examination provided the applicant has been licensed for five or more years.

7 MCAR § 3.031 Assistants. Assistants may:

A. Retract a patient's cheek, tongue or other parts of tissue during a dental operation; assist with the placement or removal of a rubber dam and accessories used for its placement and retention, as directed by an operating dentist during the course of a dental operation; remove such debris as is normally created or accumulated during the course of treatment being rendered by a licensed dentist during or after operative procedures by the dentist by the use of vacuum devices, compressed air, mouthwash and water; monitor a patient who has been inducted by a dentist into nitrous oxide-oxygen relative analgesia; provide any assistance, including the placement of articles and topical medication in a patient's oral cavity in response to a specific direction to do so by a licensed dentist who is then and there actually engaged in performing a dental operation as defined in the Act and who is then actually in a position to give personal supervision to the rendition of such assistance. In addition, assistants may aid dental hygienists and registered assistants in the performance of their duties as defined in 7 MCAR § 3.032 B., and 7 MCAR § 3.034.

7 MCAR § 3.032 Registered dental assistants.

A. 4. Place and remove rubber dam.

9. Place and ~~R~~remove periodontal packs.

~~11. Monitor a patient who has been inducted by a dentist into nitrous oxide-oxygen relative analgesia.~~

B. A dental assistant, who by virtue of academic achievement which is equal to or greater than that of a registered assistant, and is currently ~~registered or licensed~~ qualified in Minnesota in related health profession may, at the Board's discretion, be permitted to take dental radiographs after successful completion of an approved course. Such permission shall not be granted until such dental assistant shall have filed with the Board an application for permission, along with proof of suc-

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

cessful completion of such course. ~~and proof of current Minnesota licensure or registration in an allied health profession.~~

~~7 MCAR § 3.033 Display of certificate of registered dental assistant. In each office in which there is employed a registered dental assistant there shall be prominently displayed the certificate of registration of said registered dental assistant.~~ [This deleted material is moved to 7 MCAR § 3.046 B.]

7 MCAR § 3.034 Dental hygienists. Dental hygienists may perform:

B. Complete prophylaxis to include scaling, root planning, soft tissue curettage, polishing of fillings, and ~~placement of~~ temporary ~~cement material~~ replacement of ~~lost~~ restorations.

C. Preliminary ~~examination~~ charting of the oral cavity and surrounding structures to include case histories, and periodontal ~~examination and~~ charting ~~recording of clinical findings~~; this does not infer the making of a diagnosis.

G. Administer local anesthesia after successful completion of a course approved by the Board.

H.~~G.~~ Procedures A., B., C., ~~and~~ D., and F. may be carried out under the general supervision of a dentist. ~~whether or not a dentist is present or supervising, but acting under his direction.~~ Examination and diagnosis must be accomplished only by a dentist.

7 MCAR § 3.044 ~~Practice of dentistry under any name except the licensee's own proper name.~~ Names.

A. ~~The use of the words, "clinic," "institute," or any other title that may suggest a public or semi-private activity, or teaching institution or that could be interpreted to imply superiority over other practitioners, shall constitute the unlawful practice of dentistry by an individual or under the name of a corporation, company association, or trade name, as those terms are used in § 150A.11, subd. 1 of the Act and shall be grounds for discipline under § 150A.08, subd. 1.~~ Any name which incorporates the use of the name of a state, city, or other political subdivision in whole or in part or which connotes unusual or superior dental ability, or which is likely to create a false or unjustified expectation of favorable results shall be in violation of § 150A.11, subd. 1 of the Act and Minn. Stat. § 319A.07.

~~B. The title on a building wherein one or more dentists practice shall be used as an address only.~~

7 MCAR § 3.045 Professional advertising. ~~There shall be no public advertising by dentists other than as provided for herein. Dentists shall be permitted to insert a professional card in the local press, in programs and in yearbooks, providing that such professional card contain the name of the dentist and his title or degree using the abbreviation "D.D.S." or "D.M.D." only. Institutional advertising promoting dentistry generally, by dental associations and groups is encouraged and approved, provided individual dentists are not advertised therein. A dentist shall be permitted to use signs to advertise his name, the fact that he is engaged in the practice of dentistry, the location of his office and his office hours. These signs shall be limited to a total area of not more than six hundred (600) square inches and shall not contain letters more than seven (7) inches in height. Such signs shall not be specially luminated or have other attention-getting properties or characteristics. No sign shall be permitted to hang over or beyond the edge of the public thoroughfare. Within thirty (30) days immediately following the opening of an office, changing locations, association or type of practice, announcement cards may be mailed to bona fide patients and members of the health science professions and placed in the local press for not more than two consecutive issues, but such cards shall not be greater insize than eight column inches nor more than two columns in width and four inches in depth. Such announcement cards shall state only the dentist's name, degree, or any specialty as recognized by the Board, office location, telephone number and office hours. Professional cards shall not be greater in size than two inches by three and one half inches and shall include only the dentist's name, degree or any specialty, office location, telephone number and office hours. Residence telephone number may be included. All directory listings shall be consistent in style and text with the custom of dentists of the community. A dentist may permit one listing of his name in the alphabetical and may permit only listing of his name in the commercial section of the telephone directory. A dentist may permit one listing of his name in other directories provided that all dentists in similar circumstances have access to the same listing. Such listing shall be limited to the dentist's name, dental degree, "D.D.S." or "D.M.D." using the abbreviation only, any specialty to which the dentist confines his practice exclusively, office location, residence and office telephone numbers, residence address, and hours during which the telephone will be answered.~~

A. A person shall not, on behalf of himself, a partner, associate or any other dentist affiliated with him through a corporation or association, use or participate in the use of any form of public communication containing a false, fraudulent, misleading or deceptive statement or claim.

1. A false, fraudulent, misleading or deceptive statement or claim is one which:

a. Contains a misrepresentation of fact;

b. Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts;

c. Is self-laudatory or is intended or is likely to create false or unjustified expectations of favorable results;

d. Implies unusual or superior dental ability;

e. Contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived.

B. A person shall not compensate or give anything of value to a representative of the press, radio, television, or other communicative medium in anticipation of or in return for professional publicity unless the fact of compensation is made known in such publicity.

C. A person shall not directly or indirectly offer, give, receive, or agree to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.

D. Fees may be advertised for routine services only.

1. A routine service is defined as one which is performed frequently in the dentist's practice; is usually provided at a set fee; is provided with little or no variance in technique; and includes all professionally recognized components within generally accepted standards. If the following routine dental services are advertised, they must adhere to these minimum standards (which are examples of the comprehensiveness required to satisfy the above definition):

a. Examination—a study by the dentists of all of the structures of the oral cavity, including the recording of the condition of all such structures and appropriate history thereof, including as a minimum the charting of caries, identification of periodontal disease and occlusal discrepancies, and the detection of oral abnormalities. If an examination fee is advertised, the same advertisement must include the following additional diagnostic procedures and their fees:

(1) Radiographs (X-rays)—X-rays of the oral structures to be used for purposes of diagnosis and which included either: 1) a panograph and four bitewings, or 2) an intraoral full mouth review utilizing a minimum of fourteen periapical and four bitewing films. Any films must be adequate to provide a complete radiographic study.

(2) Diagnosis—a written opinion of items found in an examination.

(3) Treatment planning—A written itemized treatment recommendation and written itemized fee estimate provided to the patient.

b. Denture—either a full upper or full lower replacement of the natural dentition with artificial teeth. If the service advertised is for a denture which is partially prefabricated or is intended to be used as an emergency or temporary denture, such fact shall be fully set forth in the text of the advertisement. The fee shall include a reasonable period for readjustment.

c. Prophylaxis—the removal of calculus (tartar) and stains from the exposed and unexposed surfaces of the teeth by scaling and polishing.

d. Extractions—this service is for the removal of non-impacted teeth and includes necessary x-rays, anesthesia, preoperative and post-operative care.

2. At the request of the board, the licensee, office or professional corporation shall bear the burden of proving that any advertised services, are in fact "routine dental services" as defined.

3. Related services which may be required in conjunction with the advertised services, and for which additional fees will be charged, must be identified as such in the advertisement.

E. Advertising a range of fees for a given service is prohibited.

F. Advertised fees must be honored for those seeking the advertised services during the entire time period stated in the advertisement, whether or not the services are actually rendered in that time. If no time period is stated, the advertised fees shall be so honored for 30 days or until the next scheduled publication, whichever is later.

G. Any advertising must include the corporation, partnership, or individual dentist's (dentists') name and address.

H. Advertisements shall not:

1. Include descriptive words or phrases which are qualitative representations or comparative claims such as, but not limited to: painless, high quality, low prices and reasonable;

2. Include testimonials and endorsements, including but not limited to character references, statements of benefits from dental services received, or expressions of appreciation for dental services;

3. Include the use of celebrities;

4. Use dramatization or graphic illustrations to imply patient satisfaction;

5. Reveal a patient's identity or personally identifiable facts, data, or information obtained in a professional capacity;

6. After one year, include the name of any dentists formerly practicing at or associated with any advertised location;

7. Indicate or imply affiliation with any organization other than the dental practice being advertised.

I. Advertising of practice in a dental specialty:

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

Endodontics (Endodontist);
Oral and Maxillofacial surgery (Oral Surgeon/Oral and Maxillofacial Surgeon);
Oral Pathology (Oral Pathologist);
Orthodontics (Orthodontist);
Pedodontics (Pedodontist);
Periodontics (Peroidontist);
Prosthodontics (Prosthodontist);
Public Health

a. Only licensed dentists who have successfully completed a post-doctoral course approved by the Commission

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on Accreditation in one of the specialty areas, or who announced a limitation of practice prior to 1967, or who have been approved by one of the following specialty examining boards, may announce specialty practice and may advertise as a specialist: American Board of Dental Public Health, American Board of Endodontics, American Board of Oral Surgery, American Board of Oral Pathology, American Board of Orthodontics, American Board of Pedodontics, American Board of periodontology, and American Board of Prosthodontics.

b. 7 MCAR § 3.045I. a. does not prohibit a dentist who does not meet the above education or experience criteria from restricting his practice to one or more specific areas of dentistry. Such individuals may not use the terms specialist, specialty, specializing, or limited to. The advertising must state that the services are being provided by a general dentist.

J. Failing to respond within 30 days to written communications from the Board of Dentistry or failure to make available to the board any relevant records with respect to an inquiry or complaint about the licensee's advertising practices shall constitute a violation of § 150A.08, subd. 1 (5) of the Act and 7 MCAR § 3.045. The period of 30 days shall commence on the date when such communication was sent from the Board by certified mail with return receipt requested to the address appearing in the last registration.

7 MCAR § 3.046 Display of name and certificates.

B. Every licensed dentist, upon changing his place of business, and every dental hygienist and registered dental assistant upon changing his address, shall within ~~ten~~ 30 days thereafter, furnish the ~~secretary-treasurer of the~~ Board with ~~his~~ the new address. A practicing dentist shall inform the Board of ~~his~~ the office address(es).

7 MCAR § 3.063 Corporation ~~N~~names. ~~The use of any name for a corporation other than the name or names of one or more of the participating dentists followed by the word "Chartered," "Limited," "Ltd.," "Professional Association," or "P.A." is declared to be an unlawful attempt to imply superiority or quasi-public sponsorship in violation of Minn. Stat. § 319A.07 of the Minnesota Professional Corporations Act and 7 MCAR § 3.044.~~ The names of professional corporations shall be governed by Minn. Stat § 319A.07 and 7 MCAR § 3.044.

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STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of Proposed Amendments to Dentistry Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising, and Clarification and Reorganization of Existing Rules

BOARD OF DENTISTRY'S FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULES

The Minnesota Board of Dentistry (hereinafter "Board") held a hearing on the above-entitled matter at 9:30 AM on Thursday, June 26, 1980, in Room 105 of the Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, after proper notice had been given as required by Minn. Stat. §§ 15.0411 to 15.0417 and 15.052.

Interested persons were given an opportunity to present written and oral information, statements, arguments, and testimony. After having considered all the evidence upon the records, files and proceedings herein, and applicable statutory standards and criteria, and having confirmed the need for the above-captioned rules, the Board hereby adopts as its own the Findings and Conclusions of the Hearing Examiner in his report dated September 2, 1980 (DEN-80-001-PE), with the following additional Findings of Fact and Conclusions in response to concerns raised by the Hearing Examiner in his Report.

A copy of the Hearing Examiner's Findings and Conclusions is attached hereto and made a part hereof.

The Board makes the following additional:

FINDINGS OF FACT

Applications to Practice Dentistry—7 MCAR § 3.011E

p. 2

1. In Finding of Fact #9 the Hearing Examiner found that the use of the language "... applicant must complete such pre-clinical and clinical testing procedures at the School of Dentistry, University of Minnesota, or its equivalent, as

the board may approve . . ." allows agency discretion without governing criteria. The Hearing Examiner suggested that the Board either delete the discretionary language or define standards of equivalency. The Board finds that changing the language to read "or its substantial equivalent, to determine . . ." would remove the Board's discretion in the process and would allow an applicant to meet the requirement if he/she can show that his/her training is substantially equivalent to that required by the University of Minnesota Dental School. The term "substantial" is a legal term of art which has been used by courts and legislative bodies to denote a specific burden of proof in the context of a given factual situation. The Board intends to use the term in the same way. As a practical matter, the Board has not been presented with any case where the use of a program other than that through the University of Minnesota has been proposed or considered. The Board believes, however, that the use of such might prove of benefit to some applicant in the future, and to completely eliminate the possibility of flexibility would be unfair to an otherwise qualified applicant and to the public. This change is consistent with the Hearing Examiner's finding and is not a substantial change.

Auxiliary Personnel: Assistants—7 MCAR § 3.031A

P 8

2. In Finding of Fact #11 the Hearing Examiner found that the Board had not established the reasonableness of the proposed rule which would have allowed a dental assistant to monitor a patient who had been inducted by a dentist into nitrous oxide-oxygen relative analgesia.

The Board policy, as was noted in the Statement of Need and Reasonableness, is to expand the functions which may be delegated from dentists to auxiliaries to save professional time.

The Board believes that assistants can be safely and effectively trained in an in-office setting to monitor patients who are under nitrous oxide analgesia. The assistant would be trained by the dentist and would be supervised by the dentist. The Board continues to believe that having an in-office trained assistant to monitor a patient would protect the patient by ensuring that the patient would not be left unattended while under nitrous oxide analgesia.

The Board recognizes that the use of nitrous oxide involves substantial risk, as was pointed out at the hearing by the Minnesota Dental Hygienists Association and the Minnesota Registered Dental Assistants Association. Treatment to relieve any distress caused by the use of the gas must, of course, be limited to trained professionals. However, the ability to recognize the signs which indicate such distress can be given to a lay person of good judgment through in-office training by the dentist. The Board's main concern is that no patient ever be left completely unattended while under nitrous oxide analgesia. This is best accomplished by expanding, rather than strictly limiting, those persons who can perform this function.

Advertising—7 MCAR §§ 3.044 and 3.063

3. In Finding of Fact #13 the Hearing Examiner found that the Board had not established the reasonableness of proposed rules 7 MCAR §§ 3.044A and 3.063. These proposed rules would have deleted language requiring that the name of the participating dentist be included in the corporate name. The real question to be asked is whether the current prohibition is reasonable. The Board submits that such name regulation serves no public purpose. The Board proposed deleting this language because other regulatory agencies have permitted the use of a corporate name which does not include the name of the professional individual without adverse effect on the public and without implying superiority or quasi-public sponsorship. The Board has other rules forbidding any public statement which may mislead or tend to defraud the public.

In addition, as the Hearing Examiner noted, the Minnesota Legislature in 1980 removed the language in Minn. Stat. § 150A.11, subd. 1 which required inclusion of a dentist's name in the corporate name. This law becomes effective July 1, 1981. Although these rules become effective before this date, it is clear that the Legislature has given its approval for use of a corporate name which does not include a dentist's name. Therefore, the Board believes that the rule as proposed is reasonable and should be adopted.

CONCLUSIONS

1. That the rules be adopted as follows in accordance with the Hearing Examiner's Report dated September 2, 1980, and in accordance with the foregoing Findings of Fact:

a. Amend 7 MCAR § 3.011E.3. to read:

After successful completion of steps 1 and 2, the applicant must complete such pre-clinical and clinical testing procedures at the School of Dentistry, University of Minnesota, or its substantial equivalent, to determine whether the applicant has the clinical proficiency in dentistry comparable to that of a student who has graduated from the University of Minnesota, School of Dentistry.

? see p. 2

(Board's Finding #1)

b. Amend 7 MCAR § 3.014G to read:

An applicant must appear before the Board for a personal interview to determine applicant's fitness to practice dentistry or dental hygiene pursuant to Minn. Stat. § 150A.06, subd. 4.

✓ p. 6.

(Hearing Examiner's Report, Finding #10, Conclusion #4)

c. Amend 7 MCAR § 3.032A by deleting No. 11 and by adding the following language to 7 MCAR § 3.031A:

see p. 8 " under direct supervision of a dentist" also added in final form

Monitor a patient who has been inducted by a dentist into nitrous oxide-oxygen relative analgesia.

(Board's Finding #2)

d. Withdraw the proposed amendments to 7 MCAR § 3.034G.

✓ p. 10

(Hearing Examiner's Report, Finding #12, Conclusions #4 and #5)

e. Amend 7 MCAR § 3.044A as follows:

Any name which incorporates the use of the name of a state, city, or other political subdivision in whole or in part or which connotes unusual or superior dental ability, or which is likely to create a false or unjusitified expectation of favorable results shall be in violation of section 150A.11, subd 1 of the Act and Minn. Stat. § 319A.07.

✓ p. 10

(Board's Finding #3)

f. Amend 7 MCAR § 3.063 as follows:

The names of professional corporations shall be governed by Minn. Stat. § 319A.07 and 7 MCAR § 3.044.

✓ p. 18.

(Board's Finding #3)

2. That the Board has demonstrated the need for and reasonableness of the amendments to the Board of Dentistry rules. Based upon the foregoing Findings of Fact and Conclusions, the Board issues the following:

ORDER

IT IS HEREBY ORDERED:

That the attached amendments to dentistry rules relating to applications for licensure, fees, licensure by credentials, auxiliary personnel services, advertising, and clarification and reorganization of existing rules identified as: 7 MCAR § 3.002D, O, P, Q, R, S, T; 7 MCAR § 3.004; 7 MCAR § 3.005B; 7 MCAR § 3.011C, E, G; 7 MCAR § 3.012B, F; 7 MCAR § 3.013B; 7 MCAR § 3.014; 7 MCAR § 3.015A, C, D; 7 MCAR § 3.016; 7 MCAR §§ 3.017-3.020; 7 MCAR § 3.021F; 7 MCAR § 3.022; 7 MCAR § 3.025B; 7 MCAR § 3.031A; 7 MCAR § 3.032A, B; 7 MCAR § 3.033; 7 MCAR § 3.034B, C, G; 7 MCAR § 3.044; 7 MCAR § 3.045; 7 MCAR § 3.046B; and 7 MCAR § 3.063 are adopted this 10th day of December, 1980, pursuant to the authority vested in me by law.

STATE OF MINNESOTA

BOARD OF DENTISTRY

Dale J. Forseth

DALE J. FORSETH
Executive Secretary

DEN-80-001-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF DENTISTRY

In the Matter of Proposed Amendments to Dentistry Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising, and Clarification and Reorganization of Existing Rules.

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Laws 1980, Ch. 615, § 6, subd. 4d (to be codified as Minn. Stat. § 15.0412, subd. 4d) which provides in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of section 15.0412, subdivisions 4 through 4f, it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to subdivision 4, clause (c), and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects and specifically as to any finding of substantial change or of failure to comply with Minn. Laws 1980, Ch. 615, § 6 (to be codified as Minn. Stat. § 15.0412, subd. 4-4f), or of failure to establish need for and reasonableness of the proposed rule.

In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defect in

regard to substantial change and the requirements of Minn. Laws 1980, Ch. 615, § 6 (to be codified as Minn. Stat. § 15.0412, subd. 4-4f) have been corrected.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

not done as of 1.8.80

Dated this 4th day of September, 1980.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

9-12-77
2 SR. 483

RECEIVED
MAY 30 1980
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA BOARD OF DENTISTRY

In the Matter of Proposed Adoption and Amendment of Rules of the Minnesota Board of Dentistry

NOTICE OF INTENT TO OBTAIN INFORMATION ON PROPOSED RULES FROM NON-AGENCY SOURCES

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Minn. Stat. § 15.0412 subd. 6 (1976), that the Minnesota Board of Dentistry will propose the adoption of new rules and the amendment and revision of existing rules.

All interested parties desiring to submit data or views relating to the proposed adoption, amendment or revision of the rules related to the subject matters noted below should address their comments (either written or oral) to Mr. Dale Forseth, in care of the Board of Dentistry, Minnesota Department of Health Building, Room 339, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, telephone (612) 296-5313. Material and comments submitted for consideration should be pertinent to the matter at hand.

NOTICE IS ALSO HEREBY GIVEN that the Board will hold an informational hearing for the purpose of soliciting ideas and information from the public regarding the Board's rules. This informational hearing will be held on September 30, 1977, at 7:00 p.m. in the Board Room of the Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota. Any materials submitted to the Board pursuant to this notice will be placed on the record of any formal rules promulgation hearing held pursuant to this notice.

The subject matters to be addressed pursuant to this notice include:

Licensure by credentials, requirements for licensure of graduates from non-accredited dental schools, expanded duties for registered assistants, monitoring of patients induced into nitrous-oxide relative analgesia, third party payment, time limits for accepting registrant's applications, sanitary standards, professional advertising and data or views that interested parties may wish prepared for adoption, amendment or revision.

Bk 49

Any materials submitted shall be reviewed and considered by the Board during the preparation of the proposed rules. Notice of the public hearing on the proposed rules shall be published in the State Register and given to all interested parties who have registered with the Secretary of State's Office in accordance with the provisions of the Administrative Procedure Act.

Under the provisions of Minn. Stat. § 10A.01 subd. 11 (1976), any individual representing persons or associations attempting to influence administrative action, such as the promulgation of these proposed rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual. The State Ethics Commission is located at Room 401, State Office Building, Saint Paul, Minnesota 55155.

Dated: August 25, 1977.

STATE OF MINNESOTA

BOARD OF DENTISTRY

DALE FORSETH
Executive Secretary

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of Proposed Amendments to Dentistry Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising, and Classification and Reorganization of Existing Rules

ORDER FOR HEARING

To effectively implement Minn. Stat. § 150A.04, subd. 5 (1978), the Minnesota Board of Dentistry deems it necessary to consider adoption of the proposed amendments captioned-above pursuant to the authority invested in it by the above-referenced statute.

NOW, THEREFORE, IT IS ORDERED this 5th day of May, 1980, that a public hearing on the proposed rules captioned-above be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, on June 26, 1980, commencing at 9:30 AM, and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard.

IT IS FURTHER ORDERED that notice of said hearing be published in the State Register and be given to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose and to all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA

BOARD OF DENTISTRY

Dale J. Forseth

DALE J. FORSETH
Executive Secretary

CERTIFICATE OF BOARD OF DENTISTRY

AUTHORIZING RESOLUTION

I, Dale Forseth, do hereby certify that I am the Executive Secretary of the Minnesota Board of Dentistry, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board duly and properly called and held on the 29th day of April, 1979, that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> RESOLVED, that Dale J. Forseth, Executive Secretary of the Minnesota Board of Dentistry, be and hereby is granted the authority and directed to call a hearing for the purpose of promulgating new rules and amendments to the current rules of the Board relating to the qualifications, scope of practice, licensure, examination, discipline, continuing education and advertising practices of those licensee's under the Board's jurisdiction, as well as perform any and all acts incidental thereto, including but without being limited thereto, signing an order for hearing and notice of hearing as well as requesting the appointment of a hearing examiner and complying with all applicable provisions of the Minnesota Administrative Procedure Act and the Rules of the Office of Hearing Examiners.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22nd day of April, 1980.

STATE OF MINNESOTA

BOARD OF DENTISTRY

Dale J. Forseth

DALE FORSETH
Executive Secretary

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of Proposed Amendments to Dentistry Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising, and Classification and Reorganization of Existing Rules

NOTICE OF HEARING

A public hearing concerning the proposed amendments to the rules captioned-above will be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, on June 26, 1980, commencing at 9:30 AM. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, Telephone Number: (612) 296-5938, either before the hearing or within five working days after the close of the hearing. The Hearing Examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. All such statements will be entered into and become part of the record. For those wishing to submit written statements or exhibits, it is requested that at least two (2) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of

such interests. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411, 15.0417, and 15.052, and by 9 MCAR §§ 2.010-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the Hearing Examiner.

If adopted, the proposed amendments would make the following changes:

1. An amendment to 7 MCAR § 3.005 would permit the Board to set licensure fees below, but not above, the fees already established by rule.

2. An amendment to 7 MCAR § 3.011E would carry out the provisions of Minn. Stat. § 150A.06, subd. 1 (1978) by requiring graduates of nonaccredited dental schools who are seeking licensure to pass a clinical examination prior to taking the National Board examination.

3. Amendments to 7 MCAR § 3.014 would carry out the provisions of Minn. Stat. § 150A.06, subd. 4 (1978) which authorizes the Board to grant licensure to dentists and dental hygenists who are already licensed in other states or Canada. The proposed rule specifies the procedures and requirements for licensure.

4. An amendment to 7 MCAR § 3.015 would update the present rule and would carry out the provisions of Minn. Stat. § 150A.09, subd. 1 (1978) which requires annual registration of all registered dental assistants.

3

5. Amendments to 7 MCAR §§ 3.031, 3.032A, and 3.034 would carry out the provisions of Minn. Stat. § 150A.10, subd. 2 (1978) which authorized the Board to specify what functions dentists may delegate to registered and nonregistered assistants. The proposed rule would allow an assistant to monitor a patient who has been given nitrous oxide anesthesia by a dentist. It would allow registered dental assistants to remove rubber dams and place peridontal packs. The proposed rule would also allow dental hygenists to place any sealants, not just cement, for the temporary replacement of restorations and to administer local anesthesia under the direct supervision of a dentist.

6. An amendment to 7 MCAR § 3.032B would clarify the intent of the Board at the time the rule was adopted to allow qualified persons in allied health fields, such as X ray technicians, to take dental radiographs.

7. An amendment to 7 MCAR § 3.044 would permit the use of the words clinic or institute, except when used with the name of a state, city, or political subdivision. It would prohibit the use of specific adjectives which would create false expectations of favorable results.

8. Amendments to 7 MCAR § 3.045 would carry out the provisions of Minn. Stat. § 150A.11, subd. 2 (1978) permitting the Board to establish rules for professional advertising and would conform to the US Supreme Court decision allowing professional advertising. The proposed rule establishes limitations on advertising, services that can be advertised, the criteria that will be used to define these services, and what types of advertising would violate this rule.

9. An amendment to 7 MCAR § 3.045I would identify all of the recognized specialty areas in dentistry and the specialty credentialling bodies. The rule would prohibit any dentist from using the term specialist unless the dentist has met the education and experience criteria provided by the amendment.

10. An amendment to 7 MCAR § 3.063 would remove the restrictions on the use of such words as "chartered" and would instead require that the use of these terms conform to the provisions of Minn. Stat. § 319A.07 (1978), the Professional Corporations Act.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to Dale Forseth, Minnesota Board of Dentistry, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414. Additional copies will be available at the door on the date of the hearing.

Twenty-five (25) days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include all of the evidence which the agency intends to present at the hearing to justify both the need for and the reasonableness of the proposed rule. However, additional evidence may be submitted in response to questions raised by interested persons. You are therefore urged to both review the Statement of Need and Reasonableness before the hearing and to attend the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

The statutory authority of the Board of Dentistry to adopt these rules is contained in Minn. Stat. §§ 150A.04, subd. 5 (1978).

Any person may request notification of the date on which the Hearing Examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner, in the case of the Hearing Examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officals; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officals.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, Telephone Number: (612) 296-5615.

Dated: May 5, 1980

STATE OF MINNESOTA

BOARD OF DENTISTRY

Dale J. Forseth

DALE J. FORSETH
Executive Secretary

RECEIVED
MAY 30 1980
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

COUNTY OF HENNEPIN

In the Matter of the Proposed Amendments Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising and Classification, and Reorganization of Existing Rules

AFFIDAVIT OF MAILING

Arlayne Nelson, being first duly sworn, deposes and says:

That on the 22nd day of May, 1980, at the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the Certification of the Secretary of State attached and made a part hereof as Exhibit A, to all persons and associations at the addresses listed on Exhibit B, attached and made a part hereof, as well as to all members of the Minnesota Legislature as of the date of mailing.

Arlayne J Nelson

Subscribed and sworn to before me this 22nd day of May, 1980.

Alice D. Hummer

ALICE D. HUMMER
Notary Public, Ramsey Co. Minn.
My Commission Expires
Nov. 18, 1981

Exh. 9

RECEIVED
MAY 30 1980
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of Proposed Amendments to Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising and Classification, and Reorganization of Existing Rules

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Dale J. Forseth, being duly sworn upon oath, deposes and says:

1. That he is an employee of the Minnesota Board of Dentistry.

2. That on the 2nd day of May, 1980, he called the Minnesota Secretary of State's Office and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules or amendments thereto pursuant to Minn. Stat. § 15.0412, subd. 4 (1978).

3. That on the 13th day of May , 1980, in response to the above request, the Secretary of State provided him with such a list, a photocopy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Dale J. Forseth

DALE J. FORSETH

Subscribed and sworn before me
this 22nd day of May, 1980

Alice D. Hummer

ALICE D. HUMMER
Notary Public, Ramsey Co. Minn.
My Commission Expires
Nov. 18, 1981

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of Proposed Amendments to Dentistry Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising, and Clarification and Reorganization of Existing Rules

BOARD OF DENTISTRY'S FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULES

The Minnesota Board of Dentistry (hereinafter "Board") held a hearing on the above-entitled matter at 9:30 AM on Thursday, June 26, 1980, in Room 105 of the Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, after proper notice had been given as required by Minn. Stat. §§ 15.0411 to 15.0417 and 15.052.

Interested persons were given an opportunity to present written and oral information, statements, arguments, and testimony. After having considered all the evidence upon the records, files and proceedings herein, and applicable statutory standards and criteria, and having confirmed the need for the above-captioned rules, the Board hereby adopts as its own the Findings and Conclusions of the Hearing Examiner in his report dated September 2, 1980 (DEN-80-001-PE), with the following additional Findings of Fact and Conclusions in response to concerns raised by the Hearing Examiner in his Report.

A copy of the Hearing Examiner's Findings and Conclusions is attached hereto and made a part hereof.

The Board makes the following additional:

FINDINGS OF FACT

Applications to Practice Dentistry—7 MCAR § 3.011E

1. In Finding of Fact #9 the Hearing Examiner found that the use of the language "... applicant must complete such pre-clinical and clinical testing procedures at the School of Dentistry, University of Minnesota, or its equivalent, as

the board may approve . . ." allows agency discretion without governing criteria. The Hearing Examiner suggested that the Board either delete the discretionary language or define standards of equivalency. The Board finds that changing the language to read "or its substantial equivalent, to determine . . ." would remove the Board's discretion in the process and would allow an applicant to meet the requirement if he/she can show that his/her training is substantially equivalent to that required by the University of Minnesota Dental School. The term "substantial" is a legal term of art which has been used by courts and legislative bodies to denote a specific burden of proof in the context of a given factual situation. The Board intends to use the term in the same way. As a practical matter, the Board has not been presented with any case where the use of a program other than that through the University of Minnesota has been proposed or considered. The Board believes, however, that the use of such might prove of benefit to some applicant in the future, and to completely eliminate the possibility of flexibility would be unfair to an otherwise qualified applicant and to the public. This change is consistent with the Hearing Examiner's finding and is not a substantial change.

Auxiliary Personnel: Assistants---7 MCAR § 3.031A

2. In Finding of Fact #11 the Hearing Examiner found that the Board had not established the reasonableness of the proposed rule which would have allowed a dental assistant to monitor a patient who had been inducted by a dentist into nitrous oxide-oxygen relative analgesia.

The Board policy, as was noted in the Statement of Need and Reasonableness, is to expand the functions which may be delegated from dentists to auxiliaries to save professional time.

The Board believes that assistants can be safely and effectively trained in an in-office setting to monitor patients who are under nitrous oxide analgesia. The assistant would be trained by the dentist and would be supervised by the dentist. The Board continues to believe that having an in-office trained assistant to monitor a patient would protect the patient by ensuring that the patient would not be left unattended while under nitrous oxide analgesia.

The Board recognizes that the use of nitrous oxide involves substantial risk, as was pointed out at the hearing by the Minnesota Dental Hygienists Association and the Minnesota Registered Dental Assistants Association. Treatment to relieve any distress caused by the use of the gas must, of course, be limited to trained professionals. However, the ability to recognize the signs which indicate such distress can be given to a lay person of good judgment through in-office training by the dentist. The Board's main concern is that no patient ever be left completely unattended while under nitrous oxide analgesia. This is best accomplished by expanding, rather than strictly limiting, those persons who can perform this function.

Advertising---7 MCAR §§ 3.044 and 3.063

3. In Finding of Fact #13 the Hearing Examiner found that the Board had not established the reasonableness of proposed rules 7 MCAR §§ 3.044A and 3.063. These proposed rules would have deleted language requiring that the name of the participating dentist be included in the corporate name. The real question to be asked is whether the current prohibition is reasonable. The Board submits that such name regulation serves no public purpose. The Board proposed deleting this language because other regulatory agencies have permitted the use of a corporate name which does not include the name of the professional individual without adverse effect on the public and without implying superiority or quasi-public sponsorship. The Board has other rules forbidding any public statement which may mislead or tend to defraud the public.

In addition, as the Hearing Examiner noted, the Minnesota Legislature in 1980 removed the language in Minn. Stat. § 150A.11, subd. 1 which required inclusion of a dentist's name in the corporate name. This law becomes effective July 1, 1981. Although these rules become effective before this date, it is clear that the Legislature has given its approval for use of a corporate name which does not include a dentist's name. Therefore, the Board believes that the rule as proposed is reasonable and should be adopted.

CONCLUSIONS

1. That the rules be adopted as follows in accordance with the Hearing Examiner's Report dated September 2, 1980, and in accordance with the foregoing Findings of Fact:

a. Amend 7 MCAR § 3.011E.3. to read:

> After successful completion of steps 1 and 2, the applicant must complete such pre-clinical and clinical testing procedures at the School of Dentistry, University of Minnesota, or its substantial equivalent, to determine whether the applicant has the clinical proficiency in dentistry comparable to that of a student who has graduated from the University of Minnesota, School of Dentistry.

(Board's Finding #1)

b. Amend 7 MCAR § 3.014G to read:

> An applicant must appear before the Board for a personal interview to determine applicant's fitness to practice dentistry or dental hygiene pursuant to Minn. Stat. § 150A.06, subd. 4.

(Hearing Examiner's Report, Finding #10, Conclusion #4)

c. Amend 7 MCAR § 3.032A by deleting No. 11 and by adding the following language to 7 MCAR § 3.031A:

> Monitor a patient who has been inducted by a dentist into nitrous oxide-oxygen relative analgesia.

(Board's Finding #2)

d. Withdraw the proposed amendments to 7 MCAR § 3.034G.

(Hearing Examiner's Report, Finding #12, Conclusions #4 and #5)

e. Amend 7 MCAR § 3.044A as follows:

> Any name which incorporates the use of the name of a state, city, or other political subdivision in whole or in part or which connotes unusual or superior dental ability, or which is likely to create a false or unjusitified expectation of favorable results shall be in violation of section 150A.11, subd 1 of the Act and Minn. Stat. § 319A.07.

(Board's Finding #3)

f. Amend 7 MCAR § 3.063 as follows:

> The names of professional corporations shall be governed by Minn. Stat. § 319A.07 and 7 MCAR § 3.044.

(Board's Finding #3)

2. That the Board has demonstrated the need for and reasonableness of the amendments to the Board of Dentistry rules. Based upon the foregoing Findings of Fact and Conclusions, the Board issues the following:

ORDER

IT IS HEREBY ORDERED:

That the attached amendments to dentistry rules relating to applications for licensure, fees, licensure by credentials, auxiliary personnel services, advertising, and clarification and reorganization of existing rules identified as: 7 MCAR § 3.002D, O, P, Q, R, S, T; 7 MCAR § 3.004; 7 MCAR § 3.005B; 7 MCAR § 3.011C, E, G; 7 MCAR § 3.012B, F; 7 MCAR § 3.013B; 7 MCAR § 3.014; 7 MCAR § 3.015A, C, D; 7 MCAR § 3.016; 7 MCAR §§ 3.017-3.020; 7 MCAR § 3.021F; 7 MCAR § 3.022; 7 MCAR § 3.025B; 7 MCAR § 3.031A; 7 MCAR § 3.032A, B; 7 MCAR § 3.033; 7 MCAR § 3.034B, C, G; 7 MCAR § 3.044; 7 MCAR § 3.045; 7 MCAR § 3.046B; and 7 MCAR § 3.063 are adopted this 10th day of December, 1980, pursuant to the authority vested in me by law.

STATE OF MINNESOTA

BOARD OF DENTISTRY

DALE J. FORSETH
Executive Secretary

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of Proposed Amendments to Dentistry Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising, and Clarification and Reorganization of Existing Rules

STATEMENT OF NEED FOR AND FACTS ESTABLISHING REASONABLENESS OF AMENDMENTS

The Minnesota Board of Dentistry (hereinafter "Board"), pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), hereby affirmatively presents the need for and facts establishing the reasonableness of adopting the above-captioned amendments to the Board rules. The statutory authority for the proposed amendments is set forth in Minn. Stat. ch. 150A (1978) and in particular in Minn. Stat. § 150A.04, subd. 5 (1978), Minn. Stat. § 150A.10 (1978) and Minn. Stat. § 150A.11 (1978). The approval of the Commissioner of Finance for provisions relating to fee adjustments is contained in a document entitled "Commissioner of Finance Approval." Terms used throughout this statement will have the definitions given them in 7 MCAR § 3.002.

The need to adopt these proposed amendments to the Board's existing rules arises primarily out of necessary revisions to 7 MCAR § 3.045 brought about by the United States Supreme Court action pertaining to professional advertising. Further rule changes are necessary to clarify the Board's requirements for licensure by credentials (reciprocity) and for licensure of graduates of dental schools that are not approved by the Commission on Accreditation and to bring the Board's rules into conformance with Minn. Laws 1978 ch. 770. Several amendments are also proposed to lessen unnecessary restriction on services that can be delegated by Minnesota dentists to dental auxiliaries. Finally, some of the proposed rule changes are not substantive but, rather, organizational in nature. Each of the matters is more fully explained below:

7 MCAR § 3.002

Minn. Rule 7 MCAR § 3.002, the definitions section, includes the following proposed changes:

D. The word "dental" has been added to hygientist to more clearly define the position and to conform with professional and academic usage and the usage found in statute;

O. A definition of "person" has been added since some dental practices are organized as corporations or partnerships. This definition is the standard legal definition of a person and distinquishes "person" from "individual";

P. The changes in the statute cite contained in the definition of "registered dental assistant" are made to correct a printing error in the existing rules.

All other changes in this section involve mere renumbering.

7 MCAR § 3.004

The proposed amendment to this section to change the position of secretary-treasurer to that of secretary is made to conform to the changes in Minn. Stat. § 150A.03, subd. 1 (1978) made by Minn. Laws 1978 ch. 770 § 1, which deleted the position of treasurer.

7 MCAR § 3.005

The intent of the proposed changes in 7 MCAR § 3.005 is to allow the Board to reduce fees whenever it finds that its projected revenue will exceed projected expenditures. This amendment would permit the Board to set fees below, but not beyond, the fees already established by rule. Minn. Stat. § 16A.128 (1978) already allows the Commissioner of Finance to approve the adjustment of fees without a public hearing as long as the amount of fee requested equals anticipated expenditures. The Board, however, believes that it is convenient for the profession and the public to have information regarding fees in the rules document itself. It is anticipated that fees can be lowered in the next few years. The figures contained in Exhibit 1, attached hereto, provide the basis upon which the Board bases its belief that fees can be reduced in the near future.

7 MCAR § 3.011

The addition in 7 MCAR § 3.011C of the phase "as defined in Minn. Rule 7 MCAR § 3.002N" simply refers the reader to the definition section which defines "national board."

The proposed amendments to Rules 7 MCAR § 3.011E are intended to place into logical sequence the Board requirements for licensure of graduates of non-accredited dental schools. The existing rules require graduates pass a national board examination followed by a series of tests, evaluation, and possible clinical training before being permitted to take the state licensure examination. The proposed amendment would put the events in proper sequence by requiring that the applicant successfully complete the clinical evaluation before taking a national board examination, which would avoid the unfortunate situation where the candidate could spend considerable time preparing for the national board and, after having completed the national board examination, discover that he/she is not qualified for the clinical examination for licensure.

Amendments to Rule 7 MCAR § 3.011G are proposed to conform with Minn. Laws 1978 ch. 770, which added "Canadian Provinces" to the legislatively mandated "reciprocity" provisions. In 7 MCAR § 3.011G the Board is also proposing to change the requirement that an applicant provide a testimonial of good moral character and instead furnish evidence of "good professional character." The Board is proposing this change because it believes that an applicant's character qualifications should be reasonably related to the profession for which the applicant is seeking licensure. As an analogy which may be relevant to this issue, the legislature has already expressed its belief that a licensee should not be disqualified from engaging in professional practice because of a prior conviction of a crime unless the licensee's criminal behavior is reasonably related to his profession. Minn. Stat. § 364.03 (1978). The Board believes that an examination into the professional character of an applicant is necessary for the Board to fulfill its duties and responsibilities to the public.

7 MCAR § 3.012

Deletion of reference to good moral character in 7 MCAR § 3.012F relating to dental hygienists is proposed for the reasons stated above. The addition of a requirement that the applicant for licensure by credentials (reciprocity) must provide evidence of licensure in another state or Canadian Province is necessary

because the Board needs proof that the applicant is, in fact, currently licensed to practice in another state or Canadian Province. The inclusion of "Canadian Province" in the license reciprocity rule is made for the reasons cited above.

7 MCAR § 3.013

The change in the rule number referred to in 7 MCAR § 3.013 is made to conform the old form of the citation to the current citation in the Minnesota Code of Agency Rules.

7 MCAR § 3.014

The need to adopt a new rule to be numbered 7 MCAR § 3.014 is found in Minn. Stat. § 150A.06, subd. 4 (1978) which authorizes the Board to grant licensure to dentists and dental hygienists who are already licensed in other states or Canadian Provinces, providing that the applicants can provide suitable evidence of qualification and character reputation. Since the Board is authorized to grant these licenses, it is necessary to specify the procedure for licensure of prospective candidates.

Proposed Rule 7 MCAR § 3.014A and B are requirements for every licensure candidate, not just those candidates for licensure by credentials, and the purpose is evident. Proposed Rule 7 MCAR § 3.014C requires a dentist to have practiced for at least three (3) years immediately preceding application. The Board has found that three (3) years of dental experience is necessary to validate the credentials of applicants applying under this rule. The three-year requirement would not prohibit individuals with less experience from licensure since these individuals may apply for licensure through the procedures for original licensure outlined in Board Rule 7 MCAR § 3.011.

The requirement for a physician's statement attesting to the applicant's physical and mental condition is necessary and reasonable to insure that the applicant is not applying because the condition of the applicant's physical and mental health prevents the applicant from practicing in another state or in a Canadian Province. It is also necessary to insure that the applicant's physical and mental health does not pose a danger to the public.

The one-year experience requirement for dental hygienists proposed in Rule 7 MCAR § 3.014D is the minimum requirement necessary for the Board to determine a dental hygienist's credentials. The shorter experience requirement for

dental hygienists reflects the fact that, while hygienists do have a specific scope of permissible professional service, they do perform their service within the supervision of a licensed dentist. The danger to the public is thus lessened by the additional protection of a supervising dentist. Character references from former employers and from practicing dental hygienists are necessary to assist the Board in judging the applicant's qualifications for licensure, especially in light of the shorter time period of practice required for reciprocal licensure of dental hygienists.

The requirements spelled out in Board Rule 7 MCAR § 3.014E, F, G, and H are the same as required for applicant's applying under Rules 7 MCAR §§ 3.011, 3.012, and 3.013 and are self-explanatory. The fee rule referenced in proposed 7 MCAR § 3.014E is a rule not being amended by these proposed changes.

The need for a personal interview as proposed in Rule 7 MCAR § 3.014G is to allow the Board to sufficiently explore the applicant's knowledge of dentistry to determine the applicant's fitness to practice as required in Minn. Stat. § 150A.06, subd. 1 (1978) for dentists and Minn. Stat. § 150A.06, subd. 2 (1978) for dental hygienists. Since the applicant is not required to take an examination to demonstrate competence for licensure in this state, the Board has the responsibility to determine the applicant's basic knowledge of dentistry.

7 MCAR §§ 3.015, 3.016, 3.017

Because of the proposed addition of a new section to be entitled 7 MCAR § 3.014, it is necessary to change the numbers of existing Rules 7 MCAR § 3.014 to 7 MCAR § 3.015, 7 MCAR § 3.015 to 7 MCAR § 3.016 and 7 MCAR § 3.016 to 7 MCAR § 3.017.

7 MCAR § 3.016

Existing Rule 7 MCAR § 3.015 (proposed Rule 7 MCAR § 3.016) was adopted because of the enactment of Minn. Laws 1976, ch. 263, which required annual registration of registered dental assistants. The first sentence of the rule was intended to establish requirements for registered dental assistants who were registered prior to the effective date of the Act. This provision is no longer applicable and is, therefore, being deleted.

Minn. Stat. § 150A.09, subd. 1 (1978) requires licensees and registrants to submit an annual renewal application to the Board on or before the expiration date of the license or registration. Since the expiration date is December 31 of each year, it is proposed that the rule be amended to reflect the due date as December 31 and not January 1, which is the day following expiration.

7 MCAR §§ 3.021, 3.022, 3.025

In Rules 7 MCAR §§ 3.021, 3.022 and 3.025, the proposed changes would replace the word "hygienist" with "dental hygienist" to clarify the title and in 7 MCAR § 3.021 would correct the typographical error in the spelling of "textbooks."

Additional proposed amendments to Rule 7 MCAR § 3.025 would change "moral" to "professional" to conform to the changes in 7 MCAR § 3.011G. It would also change "moving to this state" to "licensure in this state" to clarify the obvious meaning of this section since the Board authority is in the area of licensure.

7 MCAR §§ 3.031, 3.032, 3.034

Minn. Stat. § 150A.10 (1978) authorizes the Board to specify functions which dentists may delegate to auxiliaries. The Board has in the past, and proposes to add in the future to the list of delegable functions, those functions for which it can be determined that the public interest in both economy and safety can be properly and demonstrably met. The issue of delegation of function was the subject of much discussion at the Public Forums held by the Board on October 1, 1977, and January 12, 1978. The exhibits referenced below relative to this issue stem from the Board's efforts to receive public participation on the question of delegation.

Since a dental assistant can be trained to safely monitor a patient who has been inducted by a dentist into nitrous oxide-oxygen relative analgesia without special education, the Board recommends amending Rule 7 MCAR § 3.031 to include the monitoring of patients under nitrous oxide-oxygen relative analgesia as a function delegable to assistants.

For the same reason the Board recommends an amendment to Rule 7 MCAR § 3.032A to allow registered dental assistants to remove rubber dams and place peridontal packs. Rule 7 MCAR § 3.032A already permits a registered dental assistant to place rubber dams, and it takes no additional skill to remove rubber dams. Rule 7 MCAR § 3.032A also permits a registered dental assistant to remove

periodontal packs, and since the placement of periodontal packs is a reversible procedure involving much the same level of skill, the Board recommends that registered dental assistants be allowed to place periodontal packs.

Existing Rule 7 MCAR § 3.034B permits a dental hygienist to place temporary cement material to replace lost restorations. Because there is now a variety of materials other than cement which can be used for the temporary replacement of restorations, it is recommended that the Rule be amended to permit the dental hygienist to use these materials.

The purpose for amending 7 MCAR § 3.034C is to clarify the intent of the existing rule. The proposed amendment would substitute the word "charting" for "examination." Since the word "examination" has come to imply the making of a diagnosis, which only a dentist is authorized to do, the Board believes that "charting" more accurately describes the function of a dental hygienist. For the same reason, it is proposed that the phrase "recording of clinical findings" be deleted since it also implies a diagnosis.

The proposed addition of a section to be entitled 7 MCAR § 3.034G would allow a dental hygienist to administer local anesthesia under the general supervision of a dentist. Two procedures which dental hygienists can perform and which may require local anesthesia are root planing and soft tissue currettage. This rule would allow the dental hygienist to administer local anesthesia and therefore provide uninterrupted service to the patient. The public safety would be protected since the dental hygienist would be required to complete a Board approved course in this area before providing this type of service. See, Exhibit 2.

With respect to the proposed amendments for 7 MCAR § 3.034H, it is recommended that the application of pit and fissure sealants be included in the functions which a dental hygienist may perform whether or not a dentist is present and supervising. Since the application of sealants is a routine service for which a dental hygienist has been trained in an academic setting, the Board believes it is reasonable to allow dental hygienists to apply sealants without the necessity of a dentist being present. See, Exhibit 3.

7 MCAR § 3.032

The purpose for amending Rule 7 MCAR § 3.032B is to clarify the Board's intent at the time the rule was first adopted. The intent was to permit qualified persons, licensed or registered in allied health professions, to take dental

radiographs; however, for example, X ray technicians are not currently licensed or registered in the state, but are credentialed by a national certifying board and these credentials are recognized in Minnesota. Therefore, it is recommended that reference to licensure and registration be stricken from the rule and the term "qualified in Minnesota" be used instead.

7 MCAR § 3.033

To maintain consistency within the rules, it is proposed that Rule 7 MCAR § 3.033, which requires that registered dental assistants display their certificates, be repealed and that this requirement be included in Rule 7 MCAR § 3.046, which requires dentists and dental hygienists to display their licenses and certificates.

7 MCAR § 3.044

Under existing Rule 7 MCAR § 3.044, any name that includes the words "clinic," or "institute" implies superiority over other dental practices. The Board believes that the only time the use of the words "clinic" or "institute" imply superiority is when the words are used in conjunction with the name of a state, city or other political subdivision. However, the amended rule would prohibit the use of adjectives such as "best," "superior," "painless," "quick," etc. which would tend to create expectation of favorable results as a violation of Minn. Stat. § 319A.07 (Supp. 1979) and Minn. Stat. § 150A.11, subd. 1 (1978). See also, Friedman v. Rogers, 47 U.S.L.W. 4151 (1979) which held that regulation of trade names does not violate the First Amendment.

7 MCAR § 3.045

Minn. Stat. § 150A.11, subd. 2 (1978) permits the Board to establish reasonable rules pertaining to professional advertising. The Board believes that many of the advertising regulations contained in existing Rule 7 MCAR § 3.045 are not consistent with the times, are too restrictive, and for the most part unenforceable, and do little for the protection of the public. In addition, the United States Supreme Court in Bates v. State Bar of Arizona, 433 U.S. 350 (1977) and other cases made it clear that advertising of professional services is protected by the First Amendment of the United States Constitution, which guarantees the right of free speech and press. In a statement from the Antitrust Division of the

Office of the Minnesota Attorney General, attached hereto as Exhibit 4, it was their opinion that existing Rule 7 MCAR § 3.045 may deny to Minnesota dentists the right of free speech and press, not only in violation of the federal constitution, but also the state constitution. The statement also concluded that the U.S. Supreme Court (in Bates) held that "attorney advertising could not validly be subjected to blanket suppression by the state," and in the opinion of the State Attorney General's Office, Antitrust Division, existing Rule 7 MCAR § 3.045 is "essentially a blanket restriction on advertising." It is clear that states do have a valid interest in the regulation of professions, however, and professional advertising may still be restricted, but only where the public purpose for regulating the advertisement outweighs the resulting impingement upon freedom of speech. Thus, following some specific guidance offered in Bates as to what type of advertising restrictions may be permissible, the Board proposes the amendments to 7 MCAR § 3.045. Copies of some of the materials related to this question presented to the Board by members of the public and the profession are attached hereto as Exhibit 5.

These amendments are explained as follows:

7 MCAR § 3.045A

The United States Supreme Court, in the Bates case cited to above and in Virginia State Board of Pharmacy v. Virginia Citizen's Consumer Counsel, 425 U.S. 748 (1976) has found that "some forms of commercial speech regulations are surely permissible." 433 U.S. at 383; 425 U.S. at 770. It is clear that false, fraudulent, misleading or deceptive advertising may be forbidden by a regulatory agency. The Board's proposed rules are based upon the premise that truthful, accurate and meaningful advertising of the availability of professional services is of benefit to the consumers of those services. The converse of this belief is that the public has the right to be protected against advertising which is false, fraudulent, misleading or deceptive. The Board's proposed rules address the issue in precisely these terms.*/

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*/ Proposed Rule 7 MCAR § 3.045A is based closely upon rules recently adopted by the Minnesota Supreme Court to apply to attorneys.

The United States Supreme Court has given regulatory agencies some assistance in determining what types of communication might be considered deceptive or misleading. Obviously, statements containing a misrepresentation of fact, or a deceptively partial disclosure of relevant fact fall within the scope of communication which may be regulated under Bates. The Court went further, however, and recognized that "advertising claims as to the quality of service are not susceptable to measurement or verification; accordingly, such claims may be so likely to be misleading as to warrant restriction." (Emphasis added.) The five subsections (1.a.-1.e.) of this rule which serve as definition of a "false, fraudulent, misleading or deceptive statement or claim" fall squarely within the limits of regulation presented by Bates.

7 MCAR § 3.045B

As stated in the preceding paragraph, the public and private benefits from commercial speech derive from confidence in its accuracy and reliability. The Board, in proposing Rule 7 MCAR § 3.045B, believes the reliability of information disseminated to the public would be impaired if the promotion of a service was made by a person or organization which may economically benefit by the promotion, unless the existence of the compensation for the promotion is made known to the public. Such a requirement would also serve to remove the appearance of any impropriety in the dealings of the media with the professionals for whom promotional services are given.

7 MCAR § 3.045C

The Board proposes to forbid the use of referral fees or "kickbacks" as a means of promoting professional services. Patient referrals should be made in the best interests of the patient and with the object of enhancing the care given to that patient. The permitting of an economic motive into the referral process can only serve to direct the professionals' attention away from the interests of the patient. Forbidding referral fees removes this economic motive, and avoids the appearance of improriety which might otherwise be present in the referral process.

7 MCAR § 3.045D

The court in Bates determined that the only professional services that lend themselves to fee advertising are "routine" services. The examples given by the court related to routine services by attorneys include uncontested divorces,

simple adoptions, uncontested personal bankruptcies, and changes of names. The Board has attempted to draw upon the court's examples in order to fashion a definition of "routine service" in the context of the practice of Dentistry. Under the rule, a routine service is one which is performed frequently in the dentist's office, is usually provided at a set fee, with little or no variance in technique and includes all of the components generally professionally recognized as being included in a particular service.

Announcing that a particular dental service is available at a set fee may be inherently deceptive without a standardization of what is to be included in the routine dental service. The Board has chosen four of the most common dental services, and has specified the procedures which must be included within these services if the services are advertised by the professional. The Board has chosen to do so first of all as an example of "routine service" as defined in the rule, and secondly as a way of informing both the profession and the public of what is encompassed by these four terms, which the Board believes are among the most likely to be advertised. The components listed within each defined service are those professionally recognized as being a necessary part of the professional service.

7 MCAR § 3.045D3 in general, and D1(a)(1-3) in particular, would require that if a fee is advertised for a routine service, any related service which may be required in conjunction with the advertised service must be identified. This requirement would serve to alert the patient of the precise nature of what was included within the fee quoted, further the public's understanding of the nature of required dental services and protect the public from unexpected charges.

7 MCAR § 3.045D

The Bates court included as one of its indices of a "routine service" the fact that the service is performed at a fixed rate. The Board has adopted this language into its definition of "routine service." The publishing of a range of fees, rather than a fixed fee, for a particular service would diminish the ability of the public to exercise its legitimate right to comparison shop by price. Should a practitioner not be able to quote a set and standard fee for a particular service, that service is not routine, and hence not susceptable to price advertising.

7 MCAR § 3.045F

In order for an advertisement of fees to be of value to the public, the duration during which the fee offer is open must be made known. This proposed rule would permit the advertising practitioners to specify the period during which the offer would remain open, and sets a reasonable time period for acceptance of such an offer should the practitioner choose to not make the offer time specific.

7 MCAR § 3.045G

The permitting of professional advertising, especially in a health care context, is a historically relatively new phenomena. If the Board, the profession, and the public had a volume of precedent upon which to draw, the regulating of such advertising could perhaps be accomplished solely through general language such as used in 7 MCAR § 3.045A. However, for the better understanding of all parties involved in this issue, the Board believes that it is necessary to provide the profession and the public with more specific guidance as to what practices the Board would deem as "false, fraudulent, misleading or deceptive."

Qualitative or comparative claims are, as the Bates case noted, "not susceptable to measurement and verification" and therefore "may be so likely to be misleading as to warrant restrictions." The Board has chosen to restrict the use of such claims as inherently misleading, and of no real value to the consumer of dental services.

The Supreme Court has consistently held that reasonable restrictions as to form, manner, time and place of advertisements are permissible restraints. The Board's proposed ban on the use of testimonials, celebrity endorsements and dramatizations of patient satisfaction is precisely within the reasoning of the court. The use of these methods of advertising is not designed to transmit the sort of commercial information which the court has deemed protected by the First Amendment. Similarly, the Board proposes to ban the revealing of a patient's identity, both to guarantee the confidentiality of the professional-client relationship and to avoid the appearance of patient endorsment of the professional services.

The Board also believes that the use of the names of any professionals no longer associated with the advertiser, or the implication of association of the advertiser with any organization other than the dental practice being advertised is

inherently misleading and should be regulated.

7 MCAR § 3.045I

A license to practice dentistry in Minnesota grants to the holder the right to provide all professional services covered by the Dental Practice Act (Minn. Stat. ch. 150A). However, much the same as attorneys or medical doctors, a dentist can choose to limit the areas in which he/she cares to practice.

Nothing in this proposed rule forbids a practitioner from limiting his/her practice to one or more areas. However, the term "specialist" or "specialty" has come to have an implication, in the minds of the public, of advanced training or experience, or recognition or certification by an independent or governmental agency of special skills or competence.

For this reason, the Board proposes to limit the use of the terms "specialist" or "specialty" and their equivalent to describe the type of training and background the public reasonably believes is contemplated by that term. The Board has compiled a list of currently recognized specialties and certifying and accrediting boards. Only a dentist who has met the criteria spelled out in the rule may hold him/herself out as a specialist in the areas listed in the rule. The Board anticipates that advancements in dentistry may necessitate the expansion of the list of both specialties and accrediting agencies. This can be accomplished by amending this rule at such time as the inclusion of such is deemed reasonable.

The Board's list of specialties was drawn from an examination of the certification programs,and academic training programs which are, in fact, available at the present time, and from the specialty areas that are currently recognized by the profession. For a thorough examination of the programs and appoved schooling, see Exhibit 6, attached hereto and made a part hereof.

7 MCAR § 3.045J

This section would provide the Board with the means of investigating complaints and possible violations of the Board rules on advertising and would provide specific notice to practitioners of their duty to comply with the Board rules and to cooperate with the Board's investigation. Under the terms of this section, refusal to make available to the Board records related to professional advertising would constitute conduct contrary to the best interests of the public and hence subject the practitioner to disciplinary action. Without such a provision, the proposed rules would have little or no protective value to the public.

7 MCAR § 3.046

As explained in the materials related to 7 MCAR § 3.033 above, information pertaining to the posting of registered dental assistants' annual certificates should be within the rule that refers to the licenses and certificates of dentists and dental hygienists. Therefore, it is recommended that 7 MCAR § 3.033 be repealed and that the requirement for the posting of registered dental assistants' certificates be included in the proposed amendment to 7 MCAR § 3.046.

Because the Board must maintain an active file on licensees and registrants for licensure, registration verification, and for renewal purposes, it is essential that not only dentists but also dental hygienists and registered dental assistants report address changes. This would help avoid assessment of late penalty fees and, in some instances, eventual revocation or suspension of licenses or registrations when notices for payment are not deliverable. However, it is not reasonable that an address change be reported within 10 days as is currently required of dentists, when 30 days is more practical and would not affect Board operation.

7 MCAR § 3.063

Minn. Stat. § 319A.07 (1978) prohibits the use of names that imply superiority, and requires corporation names to end with the words "Chartered," "Limited," the abbreviation "Ltd.," the words "Professional Association," or the abbreviation "P.A." Existing Rule 7 MCAR § 3.063 declares that the use of any corporation name other than a dentist's name followed by the words "Chartered," "Limited," "Professional Association," or "P.A." is an unlawful attempt to imply superiority or quasi-public sponsorship in violation of Minn. Stat. § 310A.07 and existing 7 MCAR § 3.044. Other regulatory agencies permit the use of names other than the name of the professional individual without adverse effect on the public and without implying superiority or quasi-public sponsorship; therefore, it is recommended that 7 MCAR § 3.063 be amended to delete the existing language in its entirety and to add reference to amended 7 MCAR § 3.044 and Minn. Stat. § 319A.07.

Dated: May _____, 1980

STATE OF MINNESOTA

BOARD OF DENTISTRY

_____

DALE J. FORSETH
Executive Secretary

CERTIFICATE OF COMPLIANCE WITH

RULE MAKING PROCEDURES

I, Special Assistant Attorney General William G. Miller, do hereby declare that I have examined the proposed Dentistry rules relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising, and Clarification and Reorganization of Existing Rules and all related documents and that, based on such examinations and my personal familiarity with the applicable procedures, the Rule Making Procedures have been followed.

Dated: December 23, 1980

WILLIAM G. MILLER
Special Assistant
Attorney General

STATE OF MINNESOTA

BOARD OF DENTISTRY

In the Matter of the Proposed Amendments to Dentistry Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising, and Clarification and Reorganization of Existing Rules.

AFFIDAVIT OF MAILING NOTICE OF SUBMITTAL TO ATTORMEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Patricia A. Bradford, being first duly sworn, deposes and says:

That on the 29 day of December, 1980, in the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of Transmittal to the Attorney General by depositing in the United States mail at said City of Minneapolis, a copy thereof, properly enveloped, with postage prepaid, to all persons and association at the addresses listed on the attached list of persons who requested notice that the hearing record has been submitted to the Attorney General.

Patricia A. Bradford

Subscribed and sworn to before me this 29 day of December, 1980.

Arlayne Nelson

[illegible] NELSON
[illegible] COUNTY, MN
[illegible] 1987



STATE OF MINNESOTA

BOARD OF DENTISTRY

In the Matter of the Proposed Amendments to Dentistry Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising, and Clarification and Reorganization of Existing Rules.

NOTICE OF TRANSMITTAL TO ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Attorney General's Office on this date, December 29, 1980, for review as to form and legality. Pursuant to 1 MCAR § 1.036B., the Attorney General shall retain the rules for at least seven days after receipt to allow any person to comment on the legality of the rules. Thereafter, the Office of the Attorney General shall conduct its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Attorney General's Office, G-25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155; telephone (612) 296-7030.

If you are interested in determining what changes, if any, were made in the proposed rules after the hearing and before submission to the Attorney General you may contact Dale J. Forseth, 717 S.E. Delaware Street, Suite 338, Minneapolis, Minnesota 55414; telephone (612) 296-5313.

STATE BOARD OF DENTISTRY MINNESOTA

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Health Division