

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1431 08.0004, 0414

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 12-16-85
DATE FOR REVIEW 12-26-85
DATE DUE 12-30-85

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 12/30/85 Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 12.18.85
disapproved _____

___✓___ Rule as Adopted

_____ Rule as Proposed

___✓___ Order Adopting 12.9.85 Date combined with FF

___✓___ Notice of Intent to Solicit Outside Opinion SR. 2.1.82 + comments
12.31.84 + comments

___✓___ Order for rulemaking
_____ date of Hearing

___✓___ Certificate of Board's Authorizing Resolution

___✓___ Notice of rulemaking
✓ Sufficiency

___✓___ Affidavit of Mailing Notice or rulemaking
8.21.85 At least 30 days prior to ~~hearing~~/adoption

___✓___ Affidavit, Discretionary Mailing

___✓___ Mailing list Certificate

___✓___ Publication in State Register
8.26.85 At least ~~30~~/20 days prior to ~~hearing~~/adoption

___N/A___ 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 includes small biz statement of non-applicability

___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

___N/A___ Affidavit of Mailing Notice of Submission to Attorney General

___✓___ Notice of Submission to the Attorney General

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: DICK WEXLER
Assistant Attorney General

DATE: 1/28/86

FROM: JUDITH V. WEHRWEIN JVW
Legal Assistant

PHONE: 297-3471

SUBJECT: Board of Dentistry Rules, return of originals

In accordance with your January 17 request, please find enclosed the originals of documents relating to five sets of Board of Dentistry rules. The copies sent January 17 have been placed in our files.

Please note, we cannot return our file copy of the rules as adopted as submitted on December 16, 1985; we must retain this copy because it is stamped approved by the Attorney General and filed by the Secretary of State.

Only our file on dental auxiliary rules contained copies of comments received by the Board. These are also enclosed. I am told that all other comments were returned to Dale Forseth.

Please call if you have any questions about this.

JVW:pmf

SF-00006-04

DEPARTMENT : ATTORNEY GENERAL - Health

PHONE : 341-7272

DATE : January 17, 1986

TO : Judith Wehrwein
204 Administration Building
50 Sherburne Avenue

FROM : Richard A. Wexler
Assistant Attorney General

STATE OF MINNESOTA

Office Memorandum

SUBJECT : Board of Dentistry Rules

Attached pursuant to our telephone conversation of January 16, 1986, are copies of all the documents relating to the five sets of Board of Dentistry rules which your office recently approved. Please return the originals of these documents to me.

Also, I did not receive from your office with the memoranda of approval the comments received by the Board, in response to the notice of intent to solicit outside information or during the 30 day comment period for the continuing dental education rules and the dental auxiliary rules. Please return them to me.

Thanks for your help.

RAW:dsc

Enclosure

RECEIVED
JAN 24 1986
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL

TO : DALE J. FORSETH, Executive Director
Board of Dentistry

DATE: 12/31/85

ATTN: RICHARD A. WEXLER
Assistant Attorney General

FROM : J. MICHAEL MILES JMM
Assistant Attorney General

PHONE: 296-6555

SUBJECT: In the Matter of Proposed Amendments to Dentistry Rules Relating to Dental Practice Names and Advertising, Minn. Rules parts 3100.6400, 3100.6500, 3100.6600, 3100.7100; and repeal of Minn. Rules part 3100.6600, subpart 2

The above-referenced rule has been approved as to its legality by the Attorney General on December 31, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

JMM:pmf

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR1231

AG copy

Board of Dentistry

Adopted Rules Relating to Names and Advertising

Rules as Adopted

3100.6400 IMPROPER AND UNJUSTIFIED NAMES.

Any name used for a dental practice 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 Minnesota Statutes, sections 150A.11, subdivision 1 and 319A.07.

3100.6500 COMMUNICATING DECEPTIVE STATEMENT OR CLAIM.

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.

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 intended or is likely to create false or unjustified expectations of favorable results;

D. appeals to an individual's anxiety in an excessive or unfair way;

E. contains material claims of superiority that cannot be substantiated;

F. misrepresents a dentist's credentials, training, experience, or ability; or

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

3100.6600 ADVERTISING DENTAL FEES AND SERVICES.

Subpart 1. **Routine services.** If the following routine

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

dental services are advertised, either the advertised service must include the listed components or the advertisement must disclose the components which are not included.

A. Examination: a study by the dentist of all the structures of the oral cavity, including the appropriate recording or charting of the condition of all such structures and appropriate history thereof, the identification of periodontal disease and occlusal discrepancies, the detection of caries and oral abnormalities, and the development of a treatment plan. If ~~the examination does not include~~ there is a charge in addition to the examination fee for radiographs ~~or~~ and/or the provision to the patient of a written opinion of the items found in the examination (i.e., diagnosis) or of a written itemized treatment recommendation and itemized fee (i.e., treatment plan), such ~~facts~~ fact shall be disclosed in the advertisement. FF FF

B. Radiographs (X rays): adequate X rays of the oral structures to provide necessary radiographic study.

C. Denture: either a complete maxillary or complete mandibular replacement of the natural dentition with artificial teeth. If the service advertised is for a denture which is partially prefabricated, intended for a partial replacement of the natural dentition, intended to be used as an emergency or temporary denture, or if any advertised fee does not include a reasonable number of readjustments, such facts shall be disclosed in the advertisement.

D. Prophylaxis (cleaning): the removal of calculus (tartar) and stains from the clinically exposed surfaces of the teeth.

E. Extractions: the removal of nonimpacted teeth , including necessary X rays, anesthesia, preoperative, and postoperative care.

Subp. 2. [See Repealer.]

Subp. 2a. **Set fees.** Set fees may be advertised for any service where the dentist intends to charge a standard price for the service.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Subp. 3. **Identification of related services and additional fees.** 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.

Subp. 4. **Range of fees.** When a range of fees is advertised, the advertisement must disclose the basic factors on which the actual fees will be determined.

Subp. 5. [Unchanged.]

3100.7100 PROHIBITED ADVERTISEMENTS.

Advertisements shall not:

A. reveal a patient's identity or personally identifiable facts, data, or information obtained in a professional capacity without having first obtained a written waiver of patient confidentiality; or

B. after one year, include the name of any dentists formerly practicing at or associated with any advertised location.

REPEALER. Minnesota Rules, part 3100.6600, subpart 2, is repealed.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 31 1985
Joan Anderson Growe
Secretary of State

10:15 AM

APPROVED AS TO FORM AND LEGALITY
12/30 19 85
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
ASSISTANT ATTORNEY GENERAL

Rules as Proposed

3100.6400 IMPROPER AND UNJUSTIFIED NAMES.

Any name ~~which incorporates the use of the name of a state, city, or other political subdivision in whole or in part or~~ used for a dental practice 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 Minnesota Statutes, sections 150A.11, subdivision 1 and 319A.07.

3100.6500 COMMUNICATING DECEPTIVE STATEMENT OR CLAIM.

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.

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~~ appeals to an individual's anxiety in an excessive or unfair way;

E. contains material claims of superiority that cannot be substantiated;

F. misrepresents a dentist's credentials, training, experience, or ability; or

~~E.~~ G. contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived.

3100.6600 ADVERTISING DENTAL FEES AND SERVICES.

Subpart 1. Routine services. ~~Fees may be advertised for routine services only. 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~~

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

~~variance-in-technique;-and-includes-all-professionally recognized-components-within-generally-accepted-standards.~~ If the following routine dental services are advertised, ~~they~~ either the advertised service must ~~adhere-to-these-minimum standards;-which-are-examples-of-the-comprehensiveness-required to-satisfy-this-definition:~~ include the listed components or the advertisement must disclose the components which are not included.

A. Examination: a study by the dentist of all the structures of the oral cavity, including the appropriate recording or charting 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 caries and oral abnormalities.~~--If-an-examination-fee-is-advertised,-the-same advertisement-must-include-the-following-additional-diagnostic procedures-and-their-fees:~~, and the development of a treatment plan. If the examination does not include radiographs or the provision to the patient of a written opinion of the items found in the examination (i.e., diagnosis) or of a written itemized treatment recommendation and itemized fee (i.e., treatment plan), such facts shall be disclosed in the advertisement.

~~(1)~~ B. Radiographs (X rays): adequate X rays of the oral structures ~~to-be-used-for-purposes-of-diagnosis-and-which include-either-a-panograph-and-four-bitewings,-or-intraoral-full mouth-review-utilizing-a-minimum-of-14-periapical-and-four bitewing-films.--Any-films-must-be-adequate~~ to provide a complete necessary 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.~~ C. Denture: either a ~~full-upper~~ complete maxillary or ~~full-lower~~ complete mandibular replacement of the natural dentition with artificial teeth. If the service

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

advertised is for a denture which is partially prefabricated ~~or is~~, intended for a partial replacement of the natural dentition, intended to be used as an emergency or temporary denture, or if any advertised fee does not include a reasonable number of readjustments, such ~~fact~~ facts shall be ~~fully-set forth~~ disclosed in the ~~text-of-the~~ advertisement. ~~The-fee-shall include-a-reasonable-period-for-readjustment.~~

~~C.~~ D. Prophylaxis (cleaning): the removal of calculus (tartar) and stains from the clinically exposed and ~~unexposed~~ surfaces of the teeth ~~by-scaling-and-polishing~~.

~~B.~~ E. Extractions: ~~this-service-is-for~~ the removal of nonimpacted teeth ~~and-includes~~, including necessary X rays, anesthesia, preoperative, and postoperative care.

Subp. 2. [See Repealer.]

Subp. 2a. Set fees. Set fees may be advertised for any service where the dentist intends to charge a standard price for the service.

Subp. 3. Identification of related services and additional fees. 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.

Subp. 4. Range of fees. ~~Advertising~~ When a range of fees ~~for-a-given-service-is-prohibited~~ is advertised, the advertisement must disclose the basic factors on which the actual fees will be determined.

Subp. 5. [Unchanged.]

3100.7100 PROHIBITED ADVERTISEMENTS.

Advertisements shall not:

~~A. 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";~~

~~B.--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;~~

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

~~C.--include-the-use-of-celebrities;~~

~~D.--use-dramatization-or-graphic-illustrations-to imply-patient-satisfaction;~~

~~E.~~ reveal a patient's identity or personally identifiable facts, data, or information obtained in a professional capacity without having first obtained a written waiver of patient confidentiality; or

~~F.~~ B. after one year, include the name of any dentists formerly practicing at or associated with any advertised location;~~-or~~

~~G.--indicate-or-imply-affiliation-with-any organization-other-than-the-dental-practice-being-advertised.~~

REPEALER. Minnesota Rules, part 3100.6600, subpart 2, is repealed.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD740

Agency: Board of Dentistry

Division:

Agency Contact: Dale Forseth

Minnesota Rules: Parts 3100.6400; 3100.6500; 3100.6600; and 3100.7100

Title: Proposed Rules Relating to Names and Advertising

Type of Rules: Permanent

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

Linda S. Jessen
Assistant Deputy Revisor
Phone: 297-2953

Date: March 6, 1985

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of Proposed Amendments to Dentistry Rules Relating to Dental Practice Names and Advertising, Minn. Rules parts 3100.6400, 3100.6500, 3100.6600, 3100.7100; and repeal of Minn. Rules part 3100.6600, subpart 2

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE AMENDMENTS WITHOUT A PUBLIC HEARING

Notice of the Board's intent to adopt the above-entitled rule changes without a public hearing was published in the State Register on August 26, 1985, and was sent by United States mail on August 21, 1985, to all persons on the list maintained by the agency pursuant to Minn. Stat. §§ 14.14, subd. 1a, and 14.22 (1984), and to others whom the Board believed might have an interest in the proposed amendments.

All persons were given the opportunity to submit comment on the rule for at least 30 days after notice of proposed rulemaking without a public hearing was published and mailed. The Board did not receive any requests for a public hearing.

No requests for notice of submission to the attorney general were received by the agency. Two letters of comment on the rule were received.

Based on the comments and evidence in the record, the Board finds the following:

Letters of comment were submitted by the Federal Trade Commission (hereinafter "FTC") and Pearle Health Services, Inc. (hereinafter "Pearle"). The letters from Pearle and the FTC were generally supportive of the proposed amendments. Each did recommend one change, each with respect to the same rule.

Minn. Rule pt. 3100.6600, subp. 1A, regulates the advertisement of examinations. The last sentence of Item A, as proposed, requires that if radiographs

and a written diagnosis and treatment plan are not included in an examination, the advertising dentist must disclose those facts in the advertisement. Both Pearle and the FTC interrupted the rule to place a burden on advertising dentists, which currently is not imposed upon nonadvertising dentists, to provide a written diagnosis and treatment plan regardless of whether requested by the patient. The FTC also questioned whether including radiographs in this provision was appropriate.

The amendment was proposed by the Board with one purpose in mind, that being to prevent consumers from being misled by advertisements about examinations. The rule, as worded, did not accurately convey what was intended with respect to written diagnoses and treatment plans.

The proposed rule infers that an advertising dentist must always provide a written diagnosis and treatment plan, regardless of whether requested by the patient, or alternatively disclose that the written information is not included in the examination. It was not the Board's purpose to impose this obligation on advertising dentists (or infer that nonadvertising dentists should do the same). The Board's purpose was instead only to require those dentists who advertise and who charge, in addition to the examination fee, an extra fee for a written diagnosis and treatment plan to disclose that fact in the advertisement. This requirement would put the patient, who wants the diagnosis and plan of treatment in writing, on notice that it will cost extra for the written information. It would not require the dentist to always provide the information in writing regardless of whether asked for by the patient.

There are two underlying reasons behind what the Board was trying to accomplish in the rule. When a patient goes to a dentist for an examination, the patient wants the dentist to determine what, if anything, is wrong (i.e., diagnosis), and if something is wrong, to determine what must be done in order to correct the problem and how much the corrective action will cost (i.e., a treatment plan). The patient also

expects to have those determinations communicated to him/her. This is what the patient is paying for. From the patient's perspective, it makes no difference in terms of cost whether the information is conveyed orally or in writing. Thus, if a dentist advertises a fee for an examination but when asked by the patient for a written diagnosis and treatment plan charges an additional fee, the patient most likely will feel that s/he has been misled. This conclusion is buttressed by the fact, of which the Board takes notice, that Minnesota dentists generally will provide upon request and as part of the cost of an examination a written diagnosis and treatment plan.

Including radiographs in the rule was also for the sole purpose of preventing patients from being misled by advertisements about examinations. The Board is aware that dentists charge for examinations and X rays in many different ways. But in this instance the practice of Minnesota dentists is irrelevant. What is important is the perception of patients. Patients generally are not knowledgeable about dentistry and do not know what is included in an examination. When they ask for one, and ask for its cost, it is only reasonable for them to assume that the quoted price includes everything that will enable the dentist to render a diagnosis and develop a treatment plan. Thus, when a patient asks for only an examination and then receives a bill for an examination and radiographs, the patient will feel that s/he has been deceived. In order to assure that patients will not be misled by advertisements about examinations, the Board is requiring that dentists disclose whether X rays will be charged as an item separate from the examination.

As with the provision of a written diagnosis and treatment plan, the rule as proposed does not exactly express the Board's intent with respect to radiographs. It appears to require that radiographs always be taken as a part of an examination which, as a matter of acceptable dental practice, is incorrect. The Board wants to leave the decision of whether X rays are necessary and how many are needed in the hands of the

examining dentist. All the Board intends by the rule is to assure that a patient, when reading an advertisement about examinations, will not be misled by thinking that radiographs will be included in the cost of the examination when in fact they will not be.

In order to correct the wrong impression given by the rule as proposed with respect to radiographs and written diagnosis and treatment plans and in keeping with the Board's intent to only establish rules which are aimed solely at the issue of whether an advertisement contains truthful and nonmisleading information, the Board is changing the last sentence of Minn. Rules pt. 3100.6600, subp. 1A to read as follows with the language proposed for deletion indicated by ~~strickout~~ and the new language indicated by underlining:

> If ~~the examination does not include~~ there is a charge in addition to the examination fee for radiographs and/or the provision to the patient of a written opinion of the items found in the examination (i.e., diagnosis) or of a written itemized treatment recommendation and itemized fee (i.e., treatment plan), such ~~facts~~ fact shall be disclosed in the advertisement.

The modification more clearly expresses the Board's original intent, as explained above, and is a change in emphasis rather than of substance.

The FTC also questioned the proposed amendment to Minn. Rule pt. 3100.6600, subp. 4, which permits the advertising of a range of fees as long as the advertisement discloses the basic factors on which the actual fee will be determined. The concern expressed by the FTC related to the use of the phrase "basic factors." However, the FTC stated that it would not object because the Board's Statement of Need and Reasonableness noted that the phrase would be broadly interpreted so as to not impose an undue burden on dentists who advertise a range of fees.

The above-captioned rule amendments, with the modifications noted herein, are needed and reasonable.

NOW, THEREFORE, IT IS HEREBY ORDERED that these rule changes identified as Minn. Rules pts. 3100.6400, 3100.6500, 3100.6600, and 3100.7100 are adopted and Minn. Rules pt. 3100.6600, subp. 2 is repealed this 9th day of ~~November~~ December, 1985, pursuant to authority vested in the Board by Minn. Stat. §§ 150A.04, subd. 5; 150A.11, subds. 1 and 2; 214.15; 319A.07; and 319A.18.

This Order is executed pursuant to the Board's Resolution Adopting Rules approved by the Board on November 16, 1985.

STATE OF MINNESOTA

BOARD OF DENTISTRY

DALE J. FORSETH
Executive Director

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

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In the Matter of Proposed Amendments to Dentistry Rules Relating to Dental Practice Names and Advertising, Minn. Rules parts 3100.6400, 3100.6500, 3100.6600, 3100.7100; and repeal of Minn. Rules part 3100.6600, subpart 2

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There are two underlying reasons behind what the Board was trying to accomplish in the rule. When a patient goes to a dentist for an examination, the patient wants the dentist to determine what, if anything, is wrong (i.e., diagnosis), and if something is wrong, to determine what must be done in order to correct the problem and how much the corrective action will cost (i.e., a treatment plan). The patient also

expects to have those determinations communicated to him/her. This is what the patient is paying for. From the patient's perspective, it makes no difference in terms of cost whether the information is conveyed orally or in writing. Thus, if a dentist advertises a fee for an examination but when asked by the patient for a written diagnosis and treatment plan charges an additional fee, the patient most likely will feel that s/he has been misled. This conclusion is buttressed by the fact, of which the Board takes notice, that Minnesota dentists generally will provide upon request and as part of the cost of an examination a written diagnosis and treatment plan.

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As with the provision of a written diagnosis and treatment plan, the rule as proposed does not exactly express the Board's intent with respect to radiographs. It appears to require that radiographs always be taken as a part of an examination which, as a matter of acceptable dental practice, is incorrect. The Board wants to leave the decision of whether X rays are necessary and how many are needed in the hands of the

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In order to correct the wrong impression given by the rule as proposed with respect to radiographs and written diagnosis and treatment plans and in keeping with the Board's intent to only establish rules which are aimed solely at the issue of whether an advertisement contains truthful and nonmisleading information, the Board is changing the last sentence of Minn. Rules pt. 3100.6600, subp. 1A to read as follows with the language proposed for deletion indicated by ~~strickout~~ and the new language indicated by underlining:

> If ~~the examination does not include~~ there is a charge in addition to the examination fee for radiographs and/or the provision to the patient of a written opinion of the items found in the examination (i.e., diagnosis) or of a written itemized treatment recommendation and itemized fee (i.e., treatment plan), such ~~facts~~ fact shall be disclosed in the advertisement.

The modification more clearly expresses the Board's original intent, as explained above, and is a change in emphasis rather than of substance.

The FTC also questioned the proposed amendment to Minn. Rule pt. 3100.6600, subp. 4, which permits the advertising of a range of fees as long as the advertisement discloses the basic factors on which the actual fee will be determined. The concern expressed by the FTC related to the use of the phrase "basic factors." However, the FTC stated that it would not object because the Board's Statement of Need and Reasonableness noted that the phrase would be broadly interpreted so as to not impose an undue burden on dentists who advertise a range of fees.

The above-captioned rule amendments, with the modifications noted herein, are needed and reasonable.

NOW, THEREFORE, IT IS HEREBY ORDERED that these rule changes identified as Minn. Rules pts. 3100.6400, 3100.6500, 3100.6600, and 3100.7100 are adopted and Minn. Rules pt. 3100.6600, subp. 2 is repealed this 9th day of ~~November,~~ December, 1985, pursuant to authority vested in the Board by Minn. Stat. §§ 150A.04, subd. 5; 150A.11, subds. 1 and 2; 214.15; 319A.07; and 319A.18.

This Order is executed pursuant to the Board's Resolution Adopting Rules approved by the Board on November 16, 1985.

STATE OF MINNESOTA

BOARD OF DENTISTRY

DALE J. FORSETH
Executive Director

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

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

Department of Administration State Register & Public Documents Division

Notice of Publication of the 1982-83 *Minnesota Guidebook to State Agency Services*

The *Minnesota Guidebook to State Agency Services* 1982-83 is now available in a new, revised edition. The 4th edition of the *Guidebook*, almost 750 pages, guides readers through requirements, forms and fees, applications and complaint filing, and tells the length of waiting time for obtaining services.

A new section on agency rulemaking and administrative law gives a clear explanation of the process that directs agencies to set rules of procedure that have the force and effect of law.

The *Guidebook* tells how to obtain grants, scholarships, assistance programs, information services, maps, guides and studies. It lists statewide emergency numbers, hotlines, crisis shelters and information-referral services. The *Guidebook* gives direct access to all state agencies and explains what each agency does, how it is organized, who is in charge and why it was established.

The *Guidebook* also has the only complete listing of licenses and permits required in Minnesota, for the professions and occupations as well as recreation and vehicles. The book tells where to obtain them, how much they cost, what applications to fill out and how to renew them.

The legislative and judicial branches of state government are described along with legislative and judicial commissions, law board admission requirements, professional standards for lawyers and judges, and legislative committees and their chairpersons.

Copies of the *Guidebook* are available through the Minnesota State Documents Center and cost $9.00 plus 45¢. *State Register* subscribers no longer receive a free copy of the *Guidebook*. All orders must be prepaid and purchase orders cannot be accepted. For more information, call 297-3000. Send orders to the Minnesota State Documents Center, 117 University Avenue, St. Paul, MN 55155.

Board of Dentistry

Notice of Intent to Solicit Information or Opinions from Non-agency Sources on Rule Revisions

Notice is hereby given, pursuant to Minn. Stat. § 15.0412, subd. 6, that the Minnesota Board of Dentistry (hereinafter "board") is reviewing its rules to determine if any amendments are needed. Accordingly, the board is soliciting information and opinions from sources outside the agency for the purpose of revising board rules.

All interested or affected persons or groups desiring to submit information and comments relating to the adoption, amendment or revision of board rules should address their comments (either written or oral) to Mr. Dale Forseth, Executive

Secretary, Minnesota Board of Dentistry, Minnesota Department of Health Building, Room 339, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, telephone (612) 296-5313. Any written material received by the board shall become part of the record in the event that the board decides to amend its rules and proceeds with institution of the rule-making process.

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

January 18, 1982

Dale J. Forseth, Executive Secretary

Department of Education
Vocational-Technical Education Division

Notice of Public Hearing on Revisions of 1982 Area Vocational-Technical Institute Aid Distribution Levels

This is to announce that a public hearing will be held on Monday, February 8, at 1:00 p.m. in Room 716 of the Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, on the recommended revisions of the Fiscal Year 1982 area vocational-technical institute aid distribution levels.

Office of the Governor

Notice of Appointment of Department Head

In accordance with Minnesota Statute § 15.06, subd. 2, notice is hereby given of the appointment of Allan L. Rudell as Commissioner of the Minnesota Department of Finance on January 21, 1982.

Metropolitan Council
Metropolitan Health Board

Public Hearing for the Joint Consideration of I. Proposed 1982 Health Systems Plan for the Metropolitan Area and Health Guide Chapter of the Metropolitan Development Guide; 1982 Annual Implementation Plan; and Application for Renewal of HSA Designation

The Metropolitan Council and Metropolitan Health Board will jointly hold a public hearing on Thursday, February 25, 1982, at 7 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, Saint Paul, Minnesota 55101 for the purpose of receiving written and oral comments on the proposed 1982 Health Systems Plan and Health Guide Chapter of the Metropolitan Development Guide; 1982 Annual Implementation Plan and 1982 Application for Renewal of the Metropolitan Council/Metropolitan Health Board's HSA Designation. Copies of the Health Systems Plan and Health Guide Chapter, Annual Implementation Plan, and the 1982 HSA Application are available for public inspection beginning January 25, 1982, at the following locations:

Metropolitan Council Library
300 Metro Square Building
St. Paul, Mn. 55101

Minneapolis Public Library
Government Document Room
300 Nicollet Mall
Minneapolis, Mn. 55401

St. Paul Public Library
Science and Industry Room
90 West Fourth Street
St. Paul, Mn. 55102

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

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

Board of Dentistry

Outside Opinion Sought Concerning Proposed Amendments to Rules Governing Advertising of Dentists and Dental Services

On November 15, 1984, the Federal Trade Commission advised the Minnesota Board of Dentistry (Board) that the Commission believes that under current antitrust standards, the above captioned rules could have the effect of unreasonably restraining the advertising of dentists and dental services.

Notice is hereby given that the Board is seeking information or opinions from sources outside the agency in preparing to amend the above captioned rules governing advertising. The promulgation of these rules is authorized by Minnesota Statutes, sections 150A.04, subd. 5 and 214.15, which permits the Board to adopt rules relating to advertising format and substance and rules necessary to carry out the provisions and purposes of Minnesota Statutes, chapter 150A.

The Board requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to: Dale J. Forseth, Executive Secretary, Board of Dentistry, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440. Oral statements will be received during regular business hours over the telephone at 612-623-5313 and in person at the above address.

All statements of information and comment shall be accepted until January 24, 1985. The Board intends to consider all statements of information and comment at its regularly scheduled meeting on January 26, 1985. Any written material received by the Board shall become part of the record in the event that the amendments are promulgated.

December 21, 1984

Dale J. Forseth
Executive Secretary

Minnesota State Agricultural Society
Minnesota State Fair

Annual Meeting Notice

The 126th annual meeting of the Minnesota State Agricultural Society, governing body of the State Fair, will be held Jan. 12, 13 and 14 at the Radisson South Hotel in Bloomington. The annual meeting will be followed by a meeting of the society's board of managers Jan. 14.

A complete program of all scheduled meetings is available during regular business hours at the Administration Building on the fairgrounds in St. Paul, or at the hotel during the meeting.

Minnesota Supreme Court
Judicial Planning Division
State Court Administrator

Public Hearing on Proposed Guidelines for Community Dispute Resolution Centers Under Minnesota Laws, 1984, Chapter 654

Notice is hereby given that the State Court Administrator and the Community Dispute Resolution Subcommittee of the Judicial Planning Committee shall meet on January 11, 1985, at 9:00 o'clock a.m., at the Auditorium, A Level, Hennepin County Government Center, Minneapolis, Minnesota, for the purpose of conducting a public hearing on proposed guidelines for community dispute resolution centers.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of Proposed Amendments to Dentistry Rules Relating to Dental Practice Names and Advertising, Minn. Rules parts 3100.6400, 3100.6500 3100.6600, 3100.7100; and repeal of Minn. Rules part 3100.6600, subpart 2

ORDER FOR NOTICE OF INTENT TO AMEND RULES WITHOUT A PUBLIC HEARING, NOTICE OF INTENT TO AMEND RULES WITH A PUBLIC HEARING IF 25 OR MORE PERSONS REQUEST A HEARING, AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN 25 PERSONS REQUEST A HEARING

IT IS HEREBY ORDERED with respect to the above captioned matter that a Notice of Intent to Amend Rules Without a Public Hearing, Notice of Intent to Amend Rules With a Public Hearing if 25 or More Persons Request a Hearing, and Notice of Intent to Cancel Hearing if Fewer Than 25 Persons Request a Hearing be given to all persons who have registered their names with the Minnesota Board of Dentistry for that purpose pursuant to Minn. Stat. § 14.14, subd. 1.a (1984) and that said Notice be published in the State Register.

IT IS FURTHER ORDERED that if less than 25 persons request a hearing pursuant to the Notice referenced in the preceding paragraph, the hearing shall be cancelled and all remaining procedures for the amending of rules without a public hearing shall be followed.

IT IS FURTHER ORDERED that if 25 or more persons request a public hearing, the hearing shall be held in Room 118B, Minnesota Department of Health

Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, on October 8, 1985, commencing at 9:30 AM, and continuing until all interested or affected persons have had an opportunity to participate.

Dated: August 8, 1985

STATE OF MINNESOTA

BOARD OF DENTISTRY

DALE J. FORSETH
Executive Secretary

CERTIFICATE OF BOARD OF DENTISTRY

AUTHORIZING 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 Board duly and properly called and held on the 22nd day of June, 1985, that a quorum was present at the meeting, that a majority of those present voted for the resolution and that the resolution is set forth in the minutes of the 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: (1) to sign the statement of need and reasonableness and to sign and publish an order and a notice of intent to adopt amendments to the Board's rules relating to advertising, Minn. Rules pts. 3100.6400 to 3100.6600 and 3100.7100, and repeal to Minn Rules, pt. 3100.6600, subp. 2, such notice to be in the alternative specifying the Board's intent to adopt the amendments without a public hearing, and if the statutorily required number of persons request a hearing, providing notice of the hearing; (2) to proceed with a hearing if the statutorily required number of persons request a hearing in response to the notice; (3) to cancel the hearing and proceed by noncontroversial rulemaking if less than the statutorily required number of persons request hearing; (4) to take whatever action is necessary, should the Office of Administrative Hearings or the Attorney General's Office have objections to the alternative notice specified above, to satisfy the objections and to proceed either without a public hearing or with a hearing as the situation dictates and as necessary to proceed as quickly as possible; and (5) to perform any and all acts incidental to the foregoing, including requesting the appointment of an administrative law judge, and complying with all applicable provisions of the Minnesota Administrative Procedure Act and the rules of the Office of Administrative Hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 8th day of August, 1985.

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 Dental Practice Names and Advertising, Minn. Rules parts 3100.6400, 3100.6500, 3100.6600, 3100.7100; and repeal of Minn. Rules part 3100.6600, subpart 2

ALTERNATIVE NOTICES

NOTICE OF INTENT TO AMEND RULES WITHOUT A PUBLIC HEARING, NOTICE OF INTENT TO AMEND RULES WITH A PUBLIC HEARING IF 25 OR MORE PERSONS REQUEST A HEARING, AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN 25 PERSONS REQUEST A HEARING

I.

EXPLANATION OF ALTERNATIVE NOTICES

The Minnesota Board of Dentistry is hereby giving notice of its intent to amend rules without a public hearing under the noncontroversial rulemaking procedure of Minn. Stat. §§ 14.22 to 14.28 (1984). However, in case 25 or more persons request a hearing, thus necessitating that one be held pursuant to Minn. Stat. § 14.25 (1984), and in order to expedite the rulemaking process should that occur, the Board is at the same time hereby giving notice of the hearing on the proposed rule amendments pursuant to Minn. Stat. §§ 14.131 to 14.20 (1984). The hearing will, of course, be cancelled if 25 or more people do not request that one be held. With the comment period closing on September 25, 1985, there will be 13 days before the scheduled hearing date. This 13-day period will give interested persons ample time to contact the Board to find out whether the hearing will be cancelled and to plan accordingly.

II.

NOTICE OF INTENT TO AMEND RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Minnesota Board of Dentistry proposes to adopt the above captioned rule changes without a public hearing unless 25 or more persons submit written requests for a public hearing. The Board has determined that the

proposed changes will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.22 to 14.28 (1984).

Interested persons shall have 30 days from the date this Notice is published in the State Register to submit comments in support of or in opposition to the proposed rule amendments. The 30 days will expire on September 25, 1985. Comment is encouraged. Each comment should identify the portion of the proposed amendment being addressed, the reason for the comment, and any change proposed to the amendment by the comment. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Board and do not result in a substantial change in the proposed language.

In addition to submitting comments, interested persons may request in writing during the 30-comment period that a hearing be held on the proposed rule amendments. Any person requesting a hearing should state his or her name, address, and telephone number, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any changes they want made to the proposed amendments. If a person desires that a hearing be held on only a portion of the proposed amendments, it is requested that the Board be informed of the specific amendments on which a hearing is being requested at the time that the hearing request is made. This will enable the Board to limit the hearing, if one is held, to the specific issues of concern. A public hearing will be held only if 25 or more persons submit in writing requests for a hearing on the proposed amendments or a portion thereof by September 25, 1985. If a hearing is required, it will be held in accordance with the provisions of Minn. Stat. §§ 14.131 to 14.20 (1984) and the hearing notice provided below.

Comments or written requests for a public hearing should be submitted to:

Dale J. Forseth
Executive Secretary
Minnesota Board of Dentistry
717 Delaware Street Southeast
Minneapolis, Minnesota 55414
Telephone: (612) 623-5313

The statutory authority of the Board of Dentistry to make the proposed rule changes is contained in Minn. Stat. §§ 150A.04, subd. 5; 150A.11, subd. 2; and 214.15 (1984).

If adopted, the proposed amendments would: (1) delete the prohibition of using the name of a state, city, or other political subdivision in whole or in part in the name of a dental practice; (2) delete from the definition of false, fraudulent, misleading, or deceptive advertising any statement or claim which is self-laudatory or which implies unusual or superior dental ability and adds to the definition that individual's anxiety, claims a superiority which cannot be substantiated, or misrepresents a dentist's credentialing, training, experience, or ability; (3) require that any routine dental service, as listed in the rule, which is advertised must include the components specified in the rule or disclose those components excluded; (4) redefine routine dental services, i.e., examination, radiographs, denture, prophylaxis, and extractions by focusing on the results they should provide a patient as opposed to the methods of performing them; (5) allow dentists to advertise set fees where the dentist intends to charge a standard price for the service; (6) require the disclosure of the basic factors to be considered when a range of fees is advertised; (7) delete from the list of prohibited advertisements descriptive words or phrases which are qualitative representations or comparative claims, testimonials and endorsements, use of celebrities, items which imply patient satisfaction, statements of affiliation with any organization other than the dental practice being advertised; (8) change the prohibition against the release of patient information to permit it if a written waiver of patient confidentiality is first obtained;

and (9) make certain editorial changes. The proposed changes would amend Minn. Rules pts. 3100.6400, 3100.6500, 3100.6600, and 3100.7100; and would repeal Minn. Rules pt. 3100.6600, subp. 2. The proposed rule amendments will be published in the State Register issue of August 26, 1985, and a free copy of them may be obtained from the Board by writing or telephoning Dale Forseth at the address or telephone number listed above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed changes and identifies the data and information relied upon to support the proposed changes has been prepared and may be obtained from the Board by writing or telephoning Dale Forseth at the address or telephone number listed above.

Promulgation of the proposed rule changes will not result in the expenditure of public monies by local public bodies nor have an impact on agricultural land; therefore no further information need be provided under Minn. Stat. § 14.11 (1984).

It is the position of the Board that it is not subject to Minn. Stat. § 14.115 (1984) regarding small business considerations in rulemaking. The basis for this position, and the Board's evaluation of the applicability of the methods contained in Minn. Stat. § 14.115, subd. 2 (1984), for reducing the impact of the proposed amendments, should it be determined that the Board is governed by section 14.115, are addressed in the Statement of Need and Reasonableness.

Upon adoption of the proposed amendments without a public hearing, the amendments as proposed, this Notice, the Statement of Need and Reasonableness, all written comments received, the amendments as adopted, and a statement explaining any differences between the amendments as proposed and as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the

Attorney General, or who wish to receive a copy of the amendments as adopted, should submit a written request to Dale J. Forseth at the address listed above.

III.

NOTICE OF INTENT TO AMEND RULES WITH A PUBLIC HEARING IF 25 OR MORE PERSONS REQUEST A HEARING

PLEASE NOTE THAT IF 25 OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITH RESPECT TO THE ABOVE CAPTIONED RULE AMENDMENTS WITHIN THE 30-DAY COMMENT PERIOD PURSUANT TO THE NOTICE GIVEN IN PART II ABOVE, A HEARING WILL BE HELD ON OCTOBER 8, 1985, IN ACCORDANCE WITH THE FOLLOWING NOTICE OF PUBLIC HEARING.

NOTICE IS HEREBY GIVEN that a public hearing in the above captioned matter will be held pursuant to Minn. Stat. §§ 14.131 to 14.20 (1984), in Room 118B of the Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, on October 8, 1985, commencing at 9:30 AM.

All interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of hearing which is to be included in the hearing record may be mailed to Peter C. Erickson, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, telephone (612) 341-7606. Unless a longer period not to exceed 20 calendar days is ordered by the Administrative Law Judge at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. Written material received during this period will be available for review at the Office of Administrative Hearings. The Board and interested persons may respond in writing within three business days after the submission period ends to any new information submitted. No additional evidence may be submitted

during the three-day period. This rule hearing procedure is governed by Minn. Stat. §§ 14.131 to 14.20 (1984) and by Minn. Rules pts. 1400.0200 to 1400.1200 (1984), as amended in 9 S.R. 2276 (April 8, 1985), promulgated by the Office of Administrative Hearings. Questions about procedure may be directed to the Administrative Law Judge.

If adopted, the proposed amendments would: (1) delete the prohibition of using the name of a state, city, or other political subdivision in whole or in part in the name of a dental practice; (2) delete from the definition of false, fraudulent, misleading, or deceptive advertising any statement or claim which is self-laudatory or which implies unusual or superior dental ability and adds to the definition that individual's anxiety, claims a superiority which cannot be substantiated, or misrepresents a dentist's credentialing, training, experience, or ability; (3) require that any routine dental service, as listed in the rule, which is advertised must include the components specified in the rule or disclose those components excluded; (4) redefine routine dental services, i.e., examination, radiographs, denture, prophylaxis, and extractions by focusing on the results they should provide a patient as opposed to the methods of performing them; (5) allow dentists to advertise set fees where the dentist intends to charge a standard price for the service; (6) require the disclosure of the basic factors to be considered when a range of fees is advertised; (7) delete from the list of prohibited advertisements descriptive words or phrases which are qualitative representations or comparative claims, testimonials and endorsements, use of celebrities, items which imply patient satisfaction, statements of affiliation with any organization other than the dental practice being advertised; (8) change the prohibition against the release of patient information to permit it if a written waiver of patient confidentiality is first obtained; and (9) make certain editorial changes. The proposed changes would amend Minn. Rules pts. 3100.6400, 3100.6500, 3100.6600, and 3100.7100; and would repeal Minn. Rules pt. 3100.6600, subp. 2. The proposed rule amendments will be published in the State

Register issue of August 26, 1985, and a free copy of them may be obtained from the Board by writing or telephoning Dale Forseth at the address or telephone number listed above in Part II of this Notice.

The statutory authority of the Board of Dentistry to make the proposed rule changes is contained in Minn. Stat. §§ 150A.04, subd. 5; 150A.11, subd. 2; and 214.15 (1984).

The proposed rule changes may be modified as a result of the rule hearing process. Those who are potentially affected in any manner by the substance of the proposed changes are therefore advised to participate in the process.

Please be aware that the Board of Dentistry is giving simultaneous notice of its intent to adopt five separate sets of amendments to its rules, the above captioned amendments being one of them. The hearing on each set has been scheduled for the same date, time, and place. Consequently, it is possible that rule amendments other than those covered by this Notice will also be heard at the same time. It is suggested that any one interested in the rule amendments covered by this Notice should not only ask the Board about whether the hearing on these amendments will be held but, if it will be held, also ask whether any other rules will be heard at the same time. If 25 or more people request a hearing on more than one of the sets of rule amendments being proposed by the Board, an order in which they will be heard will be established and interested persons informed upon request.

Minnesota Statutes 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 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 provices certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone: (612) 296-5615.

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Board's offices and at the Office of Administrative Hearings. This Statement of Need and Reasonableness contains the verbatim evidence and argument which the Board will present at the hearing justifying both the need for and the reasonableness of the proposed rule amendments. Copies of the Statement of Need and Reasonableness may be reviewed at the Board's offices or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Please note that any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the Board may not take any final action on the rule amendments for a period of five working days. 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 Administrative Law Judge. Any person may request notification of the date on which the rule amendments were adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rule amendments are filed. If you want to be so notified, you may so indicate at the hearing or send a request in writing to the Board at any time prior to the filing of the rule amendments with the Secretary of State.

Promulgation of these proposed rule changes will not result in the expenditure of public monies by local public bodies nor have any impact on agricultural land; therefore, no further information need be provided under Minn. Stat. § 14.11 (1984).

It is the position of the Board that it is not subject to Minn. Stat. § 14.115 (1984) regarding small business considerations in rulemaking. The basis for this position, and the Board's evaluation of the applicability of the methods contained in Minn. Stat. § 14.115, subd. 2 (1984), for reducing the impact of the proposed amendments, should it be determined that the Board is governed by section 14.115, are addressed in the Statement of Need and Reasonableness.

IV.

NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN 25 PERSONS REQUEST A HEARING

PLEASE NOTE THAT THE HEARING, NOTICE OF WHICH IS GIVEN IN PART III ABOVE, WILL BE CANCELLED IF FEWER THAN 25 PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE GIVEN IN PART II ABOVE.

To be informed whether the hearing noticed in Part III above will be held, please call the Board before September 26, 1985, and leave your name, address and telephone number. You will be notified after September 26, 1985, if the hearing has been cancelled. You may also call the Board after September 26, 1985, for oral confirmation regarding the scheduled hearing.

Dated: August 8, 1985

DALE J. FORSETH
Executive Secretary
Board of Dentistry

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

In the Matter of Proposed
Amendments to Dentistry Rules
Relating to Dental Practice Names
and Advertising, Minn. Rules
parts 3100.6400, 3100.6500,
3100.6600, 3100.7100; and
repeal of Minn. Rules
part 3100.6600, subpart 2

AFFIDAVIT OF MAILING

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

That on the 21st day of August, 1985, at the City of Minneapolis, County of Hennepin, State of Minnesota he served the attached rulemaking notices by depositing in the State of Minnesota Central Mail System for United States mailing at the Minnesota Department of Health Building in the said City of Minneapolis one copy each thereof, properly enveloped, with postage prepaid, to all persons and associations who have requested that their names be placed on file with the Minnesota Board of Dentistry pursuant to Minn. Stat. §§ 14.14, subd. 16 and 14.22 (1984), for the purpose of receiving notice of the proposed adoption of rules by the Minnesota Board of Dentistry.

Dale J. Forseth

DALE J. FORSETH
Executive Secretary

Subscribed and sworn to before me
this 21st day of August, 1985.

Arlayne J. Nelson

ARLAYNE J. NELSON
NOTARY PUBLIC
HENNEPIN COUNTY, MN
MY COMMISSION EXPIRES
APRIL 14, 1987

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of Proposed Amendments to Dentistry Rules Relating to Dental Practice Names and Advertising, Minn. Rules parts 3100.6400, 3100.6500, 3100.6600, 3100.7100; and repeal of Minn. Rules part 3100.6600, subpart 2

ALTERNATIVE NOTICES

NOTICE OF INTENT TO AMEND RULES WITHOUT A PUBLIC HEARING, NOTICE OF INTENT TO AMEND RULES WITH A PUBLIC HEARING IF 25 OR MORE PERSONS REQUEST A HEARING, AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN 25 PERSONS REQUEST A HEARING

I.

EXPLANATION OF ALTERNATIVE NOTICES

The Minnesota Board of Dentistry is hereby giving notice of its intent to amend rules without a public hearing under the noncontroversial rulemaking procedure of Minn. Stat. §§ 14.22 to 14.28 (1984). However, in case 25 or more persons request a hearing, thus necessitating that one be held pursuant to Minn. Stat. § 14.25 (1984), and in order to expedite the rulemaking process should that occur, the Board is at the same time hereby giving notice of the hearing on the proposed rule amendments pursuant to Minn. Stat. §§ 14.131 to 14.20 (1984). The hearing will, of course, be cancelled if 25 or more people do not request that one be held. With the comment period closing on September 25, 1985, there will be 13 days before the scheduled hearing date. This 13-day period will give interested persons ample time to contact the Board to find out whether the hearing will be cancelled and to plan accordingly.

II.

NOTICE OF INTENT TO AMEND RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Minnesota Board of Dentistry proposes to adopt the above captioned rule changes without a public hearing unless 25 or more persons submit written requests for a public hearing. The Board has determined that the

proposed changes will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.22 to 14.28 (1984).

Interested persons shall have 30 days from the date this Notice is published in the State Register to submit comments in support of or in opposition to the proposed rule amendments. The 30 days will expire on September 25, 1985. Comment is encouraged. Each comment should identify the portion of the proposed amendment being addressed, the reason for the comment, and any change proposed to the amendment by the comment. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Board and do not result in a substantial change in the proposed language.

In addition to submitting comments, interested persons may request in writing during the 30-comment period that a hearing be held on the proposed rule amendments. Any person requesting a hearing should state his or her name, address, and telephone number, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any changes they want made to the proposed amendments. If a person desires that a hearing be held on only a portion of the proposed amendments, it is requested that the Board be informed of the specific amendments on which a hearing is being requested at the time that the hearing request is made. This will enable the Board to limit the hearing, if one is held, to the specific issues of concern. A public hearing will be held only if 25 or more persons submit in writing requests for a hearing on the proposed amendments or a portion thereof by September 25, 1985. If a hearing is required, it will be held in accordance with the provisions of Minn. Stat. §§ 14.131 to 14.20 (1984) and the hearing notice provided below.

Comments or written requests for a public hearing should be submitted to:

Dale J. Forseth
Executive Secretary
Minnesota Board of Dentistry
717 Delaware Street Southeast
Minneapolis, Minnesota 55414
Telephone: (612) 623-5313

The statutory authority of the Board of Dentistry to make the proposed rule changes is contained in Minn. Stat. §§ 150A.04, subd. 5; 150A.11, subd. 2; and 214.15 (1984).

If adopted, the proposed amendments would: (1) delete the prohibition of using the name of a state, city, or other political subdivision in whole or in part in the name of a dental practice; (2) delete from the definition of false, fraudulent, misleading, or deceptive advertising any statement or claim which is self-laudatory or which implies unusual or superior dental ability and adds to the definition that individual's anxiety, claims a superiority which cannot be substantiated, or misrepresents a dentist's credentialing, training, experience, or ability; (3) require that any routine dental service, as listed in the rule, which is advertised must include the components specified in the rule or disclose those components excluded; (4) redefine routine dental services, i.e., examination, radiographs, denture, prophylaxis, and extractions by focusing on the results they should provide a patient as opposed to the methods of performing them; (5) allow dentists to advertise set fees where the dentist intends to charge a standard price for the service; (6) require the disclosure of the basic factors to be considered when a range of fees is advertised; (7) delete from the list of prohibited advertisements descriptive words or phrases which are qualitative representations or comparative claims, testimonials and endorsements, use of celebrities, items which imply patient satisfaction, statements of affiliation with any organization other than the dental practice being advertised; (8) change the prohibition against the release of patient information to permit it if a written waiver of patient confidentiality is first obtained;

and (9) make certain editorial changes. The proposed changes would amend Minn. Rules pts. 3100.6400, 3100.6500, 3100.6600, and 3100.7100; and would repeal Minn. Rules pt. 3100.6600, subp. 2. The proposed rule amendments will be published in the State Register issue of August 26, 1985, and a free copy of them may be obtained from the Board by writing or telephoning Dale Forseth at the address or telephone number listed above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed changes and identifies the data and information relied upon to support the proposed changes has been prepared and may be obtained from the Board by writing or telephoning Dale Forseth at the address or telephone number listed above.

Promulgation of the proposed rule changes will not result in the expenditure of public monies by local public bodies nor have an impact on agricultural land; therefore no further information need be provided under Minn. Stat. § 14.11 (1984).

It is the position of the Board that it is not subject to Minn. Stat. § 14.115 (1984) regarding small business considerations in rulemaking. The basis for this position, and the Board's evaluation of the applicability of the methods contained in Minn. Stat. § 14.115, subd. 2 (1984), for reducing the impact of the proposed amendments, should it be determined that the Board is governed by section 14.115, are addressed in the Statement of Need and Reasonableness.

Upon adoption of the proposed amendments without a public hearing, the amendments as proposed, this Notice, the Statement of Need and Reasonableness, all written comments received, the amendments as adopted, and a statement explaining any differences between the amendments as proposed and as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the

Attorney General, or who wish to receive a copy of the amendments as adopted, should submit a written request to Dale J. Forseth at the address listed above.

III.

NOTICE OF INTENT TO AMEND RULES WITH A PUBLIC HEARING IF 25 OR MORE PERSONS REQUEST A HEARING

PLEASE NOTE THAT IF 25 OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITH RESPECT TO THE ABOVE CAPTIONED RULE AMENDMENTS WITHIN THE 30-DAY COMMENT PERIOD PURSUANT TO THE NOTICE GIVEN IN PART II ABOVE, A HEARING WILL BE HELD ON OCTOBER 8, 1985, IN ACCORDANCE WITH THE FOLLOWING NOTICE OF PUBLIC HEARING.

NOTICE IS HEREBY GIVEN that a public hearing in the above captioned matter will be held pursuant to Minn. Stat. §§ 14.131 to 14.20 (1984), in Room 118B of the Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, on October 8, 1985, commencing at 9:30 AM.

All interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of hearing which is to be included in the hearing record may be mailed to Peter C. Erickson, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, telephone (612) 341-7606. Unless a longer period not to exceed 20 calendar days is ordered by the Administrative Law Judge at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. Written material received during this period will be available for review at the Office of Administrative Hearings. The Board and interested persons may respond in writing within three business days after the submission period ends to any new information submitted. No additional evidence may be submitted

during the three-day period. This rule hearing procedure is governed by Minn. Stat. §§ 14.131 to 14.20 (1984) and by Minn. Rules pts. 1400.0200 to 1400.1200 (1984), as amended in 9 S.R. 2276 (April 8, 1985), promulgated by the Office of Administrative Hearings. Questions about procedure may be directed to the Administrative Law Judge.

If adopted, the proposed amendments would: (1) delete the prohibition of using the name of a state, city, or other political subdivision in whole or in part in the name of a dental practice; (2) delete from the definition of false, fraudulent, misleading, or deceptive advertising any statement or claim which is self-laudatory or which implies unusual or superior dental ability and adds to the definition that individual's anxiety, claims a superiority which cannot be substantiated, or misrepresents a dentist's credentialing, training, experience, or ability; (3) require that any routine dental service, as listed in the rule, which is advertised must include the components specified in the rule or disclose those components excluded; (4) redefine routine dental services, i.e., examination, radiographs, denture, prophylaxis, and extractions by focusing on the results they should provide a patient as opposed to the methods of performing them; (5) allow dentists to advertise set fees where the dentist intends to charge a standard price for the service; (6) require the disclosure of the basic factors to be considered when a range of fees is advertised; (7) delete from the list of prohibited advertisements descriptive words or phrases which are qualitative representations or comparative claims, testimonials and endorsements, use of celebrities, items which imply patient satisfaction, statements of affiliation with any organization other than the dental practice being advertised; (8) change the prohibition against the release of patient information to permit it if a written waiver of patient confidentiality is first obtained; and (9) make certain editorial changes. The proposed changes would amend Minn. Rules pts. 3100.6400, 3100.6500, 3100.6600, and 3100.7100; and would repeal Minn. Rules pt. 3100.6600, subp. 2. The proposed rule amendments will be published in the State

Register issue of August 26, 1985, and a free copy of them may be obtained from the Board by writing or telephoning Dale Forseth at the address or telephone number listed above in Part II of this Notice.

The statutory authority of the Board of Dentistry to make the proposed rule changes is contained in Minn. Stat. §§ 150A.04, subd. 5; 150A.11, subd. 2; and 214.15 (1984).

The proposed rule changes may be modified as a result of the rule hearing process. Those who are potentially affected in any manner by the substance of the proposed changes are therefore advised to participate in the process.

Please be aware that the Board of Dentistry is giving simultaneous notice of its intent to adopt five separate sets of amendments to its rules, the above captioned amendments being one of them. The hearing on each set has been scheduled for the same date, time, and place. Consequently, it is possible that rule amendments other than those covered by this Notice will also be heard at the same time. It is suggested that any one interested in the rule amendments covered by this Notice should not only ask the Board about whether the hearing on these amendments will be held but, if it will be held, also ask whether any other rules will be heard at the same time. If 25 or more people request a hearing on more than one of the sets of rule amendments being proposed by the Board, an order in which they will be heard will be established and interested persons informed upon request.

Minnesota Statutes 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 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 provices certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone: (612) 296-5615.

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Board's offices and at the Office of Administrative Hearings. This Statement of Need and Reasonableness contains the verbatim evidence and argument which the Board will present at the hearing justifying both the need for and the reasonableness of the proposed rule amendments. Copies of the Statement of Need and Reasonableness may be reviewed at the Board's offices or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Please note that any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the Board may not take any final action on the rule amendments for a period of five working days. 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 Administrative Law Judge. Any person may request notification of the date on which the rule amendments were adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rule amendments are filed. If you want to be so notified, you may so indicate at the hearing or send a request in writing to the Board at any time prior to the filing of the rule amendments with the Secretary of State.

Rules as Proposed

3100.6400 IMPROPER AND UNJUSTIFIED NAMES.

Any name ~~which incorporates the use of the name of a state, city, or other political subdivision in whole or in part or~~ used for a dental practice 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 Minnesota Statutes, sections 150A.11, subdivision 1 and 319A.07.

3100.6500 COMMUNICATING DECEPTIVE STATEMENT OR CLAIM.

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.

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~~ appeals to an individual's anxiety in an excessive or unfair way;

E. contains material claims of superiority that cannot be substantiated;

F. misrepresents a dentist's credentials, training, experience, or ability; or

~~B.~~ G. contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived.

3100.6600 ADVERTISING DENTAL FEES AND SERVICES.

Subpart 1. Routine services. ~~Fees may be advertised for routine services only. 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~~

APPROVED IN THE REVISOR OF STATUTES OFFICE BY: LSJ

Promulgation of these proposed rule changes will not result in the expenditure of public monies by local public bodies nor have any impact on agricultural land; therefore, no further information need be provided under Minn. Stat. § 14.11 (1984).

It is the position of the Board that it is not subject to Minn. Stat. § 14.115 (1984) regarding small business considerations in rulemaking. The basis for this position, and the Board's evaluation of the applicability of the methods contained in Minn. Stat. § 14.115, subd. 2 (1984), for reducing the impact of the proposed amendments, should it be determined that the Board is governed by section 14.115, are addressed in the Statement of Need and Reasonableness.

IV.

NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN 25 PERSONS REQUEST A HEARING

PLEASE NOTE THAT THE HEARING, NOTICE OF WHICH IS GIVEN IN PART III ABOVE, WILL BE CANCELLED IF FEWER THAN 25 PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE GIVEN IN PART II ABOVE.

To be informed whether the hearing noticed in Part III above will be held, please call the Board before September 26, 1985, and leave your name, address and telephone number. You will be notified after September 26, 1985, if the hearing has been cancelled. You may also call the Board after September 26, 1985, for oral confirmation regarding the scheduled hearing.

Dated: August 8, 1985

DALE J. FORSETH
Executive Secretary
Board of Dentistry

~~variance-in-technique;-and-includes-all-professionally recognized-components-within-generally-accepted-standards.~~ If the following routine dental services are advertised, ~~they~~ either the advertised service must ~~adhere-to-these-minimum standards,-which-are-examples-of-the-comprehensiveness-required to-satisfy-this-definition:~~ include the listed components or the advertisement must disclose the components which are not included.

A. Examination: a study by the dentist of all the structures of the oral cavity, including the appropriate recording or charting 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 caries and oral abnormalities~~.--If-an-examination-fee-is-advertised,-the-same advertisement-must-include-the-following-additional-diagnostic procedures-and-their-fees:~~, and the development of a treatment plan. If the examination does not include radiographs or the provision to the patient of a written opinion of the items found in the examination (i.e., diagnosis) or of a written itemized treatment recommendation and itemized fee (i.e., treatment plan), such facts shall be disclosed in the advertisement.

~~(1)~~ B. Radiographs (X rays): adequate X rays of the oral structures ~~to-be-used-for-purposes-of-diagnosis-and-which include-either-a-panograph-and-four-bitewings,-or-intraoral-full mouth-review-utilizing-a-minimum-of-14-periapical-and-four bitewing-films.--Any-films-must-be-adequate~~ to provide a ~~complete~~ necessary 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.~~ C. Denture: either a ~~full-upper~~ complete maxillary or ~~full-lower~~ complete mandibular replacement of the natural dentition with artificial teeth. If the service

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advertised is for a denture which is partially prefabricated ~~or is~~, intended for a partial replacement of the natural dentition, intended to be used as an emergency or temporary denture, or if any advertised fee does not include a reasonable number of readjustments, such ~~fact~~ facts shall be ~~fully-set forth~~ disclosed in the ~~text-of-the~~ advertisement. ~~The-fee-shall include-a-reasonable-period-for-readjustment.~~

~~C.~~ D. Prophylaxis (cleaning): the removal of calculus (tartar) and stains from the clinically exposed and unexposed surfaces of the teeth ~~by-scaling-and-polishing~~.

~~D.~~ E. Extractions: ~~this-service-is-for~~ the removal of nonimpacted teeth ~~and-includes~~, including necessary X rays, anesthesia, preoperative, and postoperative care.

Subp. 2. [See Repealer.]

Subp. 2a. Set fees. Set fees may be advertised for any service where the dentist intends to charge a standard price for the service.

Subp. 3. Identification of related services and additional fees. 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.

Subp. 4. Range of fees. ~~Advertising~~ When a range of fees ~~for-a-given-service-is-prohibited~~ is advertised, the advertisement must disclose the basic factors on which the actual fees will be determined.

Subp. 5. [Unchanged.]

3100.7100 PROHIBITED ADVERTISEMENTS.

Advertisements shall not:

~~A. 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";~~

~~B.--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;~~

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~~C.--include-the-use-of-celebrities;~~

~~D.--use-dramatization-or-graphic-illustrations-to imply-patient-satisfaction;~~

~~E.~~ reveal a patient's identity or personally identifiable facts, data, or information obtained in a professional capacity without having first obtained a written waiver of patient confidentiality; or

~~F.~~ B. after one year, include the name of any dentists formerly practicing at or associated with any advertised location;~~-or~~

~~G.--indicate-or-imply-affiliation-with-any organization-other-than-the-dental-practice-being-advertised.~~

REPEALER. Minnesota Rules, part 3100.6600, subpart 2, is repealed.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD740

Agency: Board of Dentistry

Division:

Agency Contact: Dale Forseth

Minnesota Rules: Parts 3100.6400; 3100.6500; 3100.6600; and 3100.7100

Title: Proposed Rules Relating to Names and Advertising

Type of Rules: Permanent

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

Linda S. Jessen
Assistant Deputy Revisor
Phone: 297-2953
Date: March 6, 1985

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

In the Matter of Proposed
Amendments to Dentistry Rules
Relating to Dental Practice Names
and Advertising, Minn. Rules
parts 3100.6400, 3100.6500,
3100.6600, 3100.7100; and
repeal of Minn. Rules
part 3100.6600, subpart 2

AFFIDAVIT OF
DISCRETIONARY MAILING

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

That on the 21st day of August, 1985, at the City of Minneapolis, County of Hennepin, State of Minnesota he served the attached rulemaking notices by depositing in the State of Minnesota Central Mail System for United States mailing at the Minnesota Department of Health Building in the said City of Minneapolis one copy each thereof, properly enveloped, with postage prepaid, to all persons and associations whose name and addresses appear on the attached list. These persons and associations have not requested that their names be placed on file with the Minnesota Board of Dentistry pursuant to Minn. Stat. §§ 14.14, subd. 16 and 14.22 (1984), for the purpose of receiving notice of the proposed adoption of rules by the Board. The Board, however, is sending them the attached notices because they may have an interest in the proposed amendments.

DALE J. FORSETH
Executive Secretary

Subscribed and sworn to before me
this 21st day of August, 1985.

ARLAYNE J. NELSON
NOTARY PUBLIC
HENNEPIN COUNTY, MN
MY COMMISSION EXPIRES
APRIL 14, 1987

Dental Assisting Schools
Discretionary

(1)

Judith R. Damp, Director
BEMIDJI AREA VO-TECH INST.
Dental Assisting Programs
Roosevelt Rd. & Grant Ave.
Bemidji, MN 56601

LeAnn Lundberg, Director
BRAINERD AREA VO-TECH INST.
Dental Assisting Program
300 Quince
Brainerd, MN 56401

Dr. Roger Ostroot, Director
SOUTHWEST VO-TECH INSTITUTE
CANBY CAMPUS
1011 - 1st Street W.
Canby, MN 56220

Ethel Meyer, Director
HIBBING AREA VO-TECH INST.
Dental Assisting Program
1900 Beltline
Hibbing, MN 55746

Rita Anderson, Director
LAKELAND ACADEMY OF MEDICAL &
DENTAL ASSISTING
1402 W. Lake Street
Minneapolis, MN 55408

Karron Metz, Instructor
MANKATO STATE UNIVERSITY
Dental Assisting Program
P.O. Box 81
Mankato, MN 56001

Diane Maculus, Director
MEDICAL INSTITUTE OF MINNESOTA
2309 Nicollet Avenue
Minneapolis, MN 55404

Kathy Lapham, Director
MINNEAPOLIS TECHNICAL INST.
Dental Assisting Program
1415 Hennepin Avenue
Minneapolis, MN 55403

Shirly Hild, Director D.A.
MINNESOTA INSTITUTE OF MED.
AND DENTAL CAREERS, INC.
2915 Wayzata Blvd.
Minneapolis, MN 55405

Cher Lundeen, Director
HENNEPIN TECHNICAL CENTER
Dental Assisting Program
9000 No. 77th Avenue
Brooklyn Park, MN 55445

MOORHEAD AREA VO-TECH INSTITUTE
Dental Assisting Program
1900 - 28th Avenue So.
Moorhead, MN 56560

Doreen Bruns, Director
916 AREA VO-TECH INSITUTE
Dental Assisting Program
3300 Century Avenue
White Bear Lake, MN 55110

Ruth Martinson, Coordinator
NORMANDALE COMMUNITY COLLEGE
Dental Assisting Program
9700 France Avenue So.
Bloomington, MN 55431

LaVonne Aadland, RDA
Dental Assisting Supervisor
Dental Auxiliaries
NO DAKOTA STATE SCHOOL SCIENCE
Wahpeton, ND 58075

Nancy Post, Director
ROCHESTER AREA VO-TECH INST.
Dental Assisting Program
1926 Second Street S.E.
Rochester, MN 55901

Kathy Brown, Director
ST. CLOUD AREA VO-TECH INST.
Dental Assisting Department
1540 Northway Drive
St. Cloud, MN 56301

Helen Tuchner, RDA
UNIVERSITY OF MINNESOTA
School of Dentistry
Moos Tower, Room 5-164
Minneapolis, MN 55455

Harold Roelike, D.D.S.
704 Third Avenue S.E.
Minneapolis, MN 55414

Rodney J. Casad, D.D.S.
Director, Dental Auxiliaries
NO DAKOTA STATE SCHOOL SCIENCE
Wahpeton, ND 58075

Dr. Robert Fonda, Director
MANKATO STATE UNIVERSITY
Dental Assisting Program
P.O. Box 81
Mankato, MN 56001

Dr. Eugene Ley
Dental Hygiene Program
UNIVERSITY OF MINN.-DULUTH
Duluth, MN 55812

Dental Auxiliaries
UNIVERSITY OF MINN.-DULUTH
Room 73 - MWAH
Duluth, MN 55812

Dr. James McCrane
NORMANDALE COMMUNITY COLLEGE
Dental Department
9700 France Avenue So.
Bloomington, MN 55431

MINNESOTA DENTAL ASSOCIATION
Discretionary

Dr. George Winn, President
MINNESOTA DENTAL ASSOCIATION
301 E. Main Street
P.O. Box 187
New Prague, MN 56071

Dr. Wesley J. Streed
Consultant to the Board
MINNESOTA DENTAL ASSOCIATION
1011 - 2nd Street No.
St. Cloud, MN 56301

District Dental Societies
Discretionary

MINNEAPOLIS DISTRICT DENTAL
SOCIETY
220 So. 2nd Street #300
Minneapolis, MN 55401

ST. PAUL DISTRICT DENTAL SOCIET
649 Lowry Medical Building
St. Paul, MN 55102

Dale I. Erickson, D.D.S.
Secretary-Treasurer
MPLS DISTRICT DENTAL SOCIETY
5601 Nicollet Avenue So.
Minneapolis, MN 55419

Scot A. Kron, D.D.S.
Secretary-Treasurer
ST. PAUL DISTRICT DENTAL SOCIET
4706 Banning Avenue
White Bear Lake, MN 55110

Rolf I. Lindquist, D.D.S.
Secretary-Treasurer
West Central District Den. Soc.
Box 107
Parker's Prairie, MN 56361

(2.)

Personnel - Discretionary

Eugene T. Altiere, D.D.S.
Secretary-Treasurer
NE District Dental Society
712 Medical Arts Building
Duluth, MN 55802

David J. Fihn, D.D.S.
Secretary-Treasurer
NW District Dental Society
1131 Jackson Avenue
Detroit Lakes, MN 56501

Spencer W. Burrington, D.D.S.
Secretary-Treasurer
SE District Dental Society
823 - 4th Street S.W.
Rochester, MN 55901

Ronald L. Albright, D.D.S.
Secretary-Treasurer
So. District Dental Society
Box 426
New Ulm, MN 56073

Dental Hygiene Officers
Discretionary

Merry Jo Thoele, D.H.
President, MINNESOTA DENTAL
HYGIENISTS' ASSOCIATION
16540 Quartz Street NW
Anoka, MN 55303

Leslee Schmidt, D.H.
Past-President, MINNESOTA
DENTAL HYGIENISTS' ASSOCIATION
4419 Drew Avenue No.
Minneapolis, MN 55422

Carrie Meixner, D.H.
Consultant to Board, MINNESOTA
DENTAL HYGIENISTS' ASSOCIATION
1825 Case
St. Paul, MN 55119

MN DENTAL ASSISTANTS' ASSOC.
Discretionary

Phyllis Gilbert, RDA
President, MINNESOTA DENTAL
ASSISTANTS' ASSOCIATION
3309 W. 55th Street
Edina, MN 55410

Mr. Mike Johnson
UNIVERSITY OF MINNESOTA
Dept. of Health Ecology
Moos Tower 8-536 - Hygiene
Minneapolis, MN 55455

Dean Richard Oliver
UNIVERSITY OF MINNESOTA
School of Dentistry
Moos Tower - Room 15-208
Minneapolis, MN 55455

Dr. James R. Jensen
UNIVERSITY OF MINNESOTA
School of Dentistry
Moos Tower, Room 15-234
Minneapolis, MN 55455

Dr. Robert Bender
BRAINERD VO-TECH INSTITUTE
Dental Assisting Program
300 Quince
Brainerd, MN 56401

Kathy Newall, D.H., Acting
Director, D.H. Department
U of M School of Dentistry
Moos Tower, Room 5-164
Minneapolis, MN 55455

Ms. Joan Farkas
NORMANDLAE COMMUNITY COLLEGE
Dental Hygiene Department
9700 France Avenue So.
Bloomington, MN 55431

Associations
Discretionary

Dr. Daniel Iverson
Academy of General Dentistry
130 - 6th Street
Two Harbors, MN 55616

Dr. Gary Erickson, AMERICAN
ASS'N ORAL/MAXIOLLOFACIAL SURG.
18150 No. Diamond Lake Road
Anoka, MN 55303

AMERICAN DENTAL SOCIETY OF
ANESTHESIA
11441 Osage Street N.W.
Coon Rapids, MN 55433

c/o MAYO CLINIC
200 First Street S.W.
Rochester, MN 55901

MINN ASS'N OF PERIODONTISTS
508 Southdale Medical Bldg.
Minneapolis, MN 55435

MINN ASS'N OF PROSTHODONTICS
1312 - 2nd Street N.E.
Minneapolis, MN 55413
c/o Dr. W. S. Warpeha

MINN D.H. EDUCATION ASS'N
U OF M School of Dentistry
Moos Tower, Room 5-164
Minneapolis, MN 55455

MINN SOCIETY OF ORTHODONTISTS
3359 W. Broadway
Minneapolis, MN 55422

Dr. Walter Parsons
MINN ORTHODONTIC SOCIETY
2233 Hamline Avenue No. #411
Roseville, MN 55113

Dr. Richard Blevins
250 No. Central Avenue #6
Wayzata, MN 55391

Dr. William K. Berger
Professional Building
Onamia, MN 56349

Dr. Frank Blanchard
121 - 7th Avenue E.
Alexandria, MN 56308

Drs. R. D. Baumgartner &
F. C. Eichmiller
Lincoln Arcade Building
Olivia, MN 56277

Dr. L. C. Boehland
3480 Bunker Lake Blvd. N.W.
Anoka, MN 55303

Discretionary (3)

130 Hickory Street
Mahtomedi, MN 55115

2480 White Bear Avenue
Maplewood, MN 55109

Dr. James F. Bussen
7104 Chicago Avenue So.
Minneapolis, MN 55408

Dr. Walter G. Iverson
5538 Chicago Avenue So.
Minneapolis, MN 55417

Randolph W. Morris
Messerli, Roe, Balogh & Kramer
6550 York Avenue So. #300
Minneapolis, MN 55435

Dr. Dennis Brandstetter
1919 Excelsior Avenue W.
Hopkins, MN 55343

Brad Hoffman
City of Brooklyn Park
6301 Shingle Creek Parkway
Brooklyn Center, MN 55432

Dr. Daryl J. Marcus
525 W. 3rd Street
Willmar, MN 56201

Denise Brown, RDA
7225 Valley Place #3
Crystal, MN 55427

Ms. Millie Jackson
MCH - Dept. of Health
Dental Health
Minneapolis, MN 55440

Dr. & Mrs. Anthony Michelich
3802 - 3rd Place N.W.
Rochester, MN 55901

Dr. Peter Cameron
1025 Evergreen Lane
Minneapolis, MN 55441

Dr. Dennis A. Johnson
621 Winnetka Avenue No.
Golden Valley, MN 55422

Dr. Gregory C. Pappenfus
No. Port Professional Center
1520 Northway Drive #116
St. Cloud, MN 56301

Dr. William G. Dols

Goodhue, MN 55027

Dr. Ronald L. King
1201 Lagoon Avenue
Minneapolis, MN 55408

Harriet Pexsa, RDA
P.O. Box 374
Alexandria, MN 56308

Dr. & Mrs. Clark Eid
P.O. Box 596
Fertile, MN 56540

William Laney, D.D.S., Chair.
Department of Dentistry
MAYO CLINIC
Rochester, MN 55901

Dr. R. E. Nordby
3943 W. Broadway
Minneapolis, MN 55422

Conrad M. Fredin, Attorney at Law, Johnson, Et. Al.
811 First National Bank Bldg.
Duluth, MN 55802

Dr. Clark F. LaChapelle &
Robert E. Derr
201 W. Burnsville Parkway #138
Burnsville, MN 55437

Phillips Legislative Service, Inc.
459 Rice Street
St. Paul, MN 55103

Barbara Fossum, D.H.
4230 Juneau Lane
Plymouth, MN 55446

Ellen Lyons, D.H.
10020 Windsor Lake Lane
Minnetonka, MN 55343

Thomas M. Polt
Attorney at Law
McCarthy Building
Eyota, MN 55934

Dr. D. Lawrence Harris
3021 Lyndale Avenue So.
Minneapolis, MN 55408

Long Prairie Dental Clinic
917 - 1st Avenue S.E.
Long Prairie, MN 56347

Bruce T. Rowe, Administrator
Community Health Services Boar
325 Lake Avenue So. #604
Duluth, MN 55802

A. J. Hill, D.D.S.
May Clinic
Rochester, MN 55901

Susan J. Ladwig
Chestnut & Brooks, P.A.
Midland Bank Building #900
Minneapolis, MN 55401

Beverley J. Rohda, RDA
1694 E. Cottage Avenue
St. Paul, MN 55106

Interested Persons
Discretionary

BEMIDJI PROFESSIONAL BUILDING
2600 Bemidji Avenue
Bemidji, MN 56601

Holly Rossman
604 Hassan Street
Hutchinson, MN 55350

Dr. Thomas J. Zehren
200 Tini Square Building
Virginia, MN 55792

Dr. Gregory Sheehan
1215 Rice Street
St. Paul, MN 55117

Dr. Kenneth Zimmerman
Box 37
Byron, MN 55920

Karlene Strelow, RDA
c/o Dr. C. M. Ingham
130 Hickory Street
Mahtomedi, MN 55115

Nathan P. Owen
Chicago Regional Office
Federal Trade Commission
55 E. Monroe Street #1437
Chicago, IL 60603

Dr. Eugene T. Altiere
712 Medical Arts Building
Duluth, MN 55802

Dr. Robert W. Tjossem
111 No. Broadway
Crookston, MN 56716

Dr. John D. Sawyer
104 W. 7th Street
Blue Earth, MN 56013

Dr. G. R. Williams
9420 Lyndale Avenue So.
Bloomington, MN 55420

Drs. Blair D. Woolsey,
James F. Meyer & Ron Fletcher
4100 Bellaire Avenue
White Bear Lake, MN 55110

Jean Werner, D.H.
c/o Dr. C. M. Ingham
130 Hickory Street
Mahtomedi, MN 55115

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of Proposed
Amendments to Dentistry Rules
Relating to Dental Practice Names
and Advertising, Minn. Rules
parts 3100.6400, 3100.6500,
3100.6600, 3100.7100; and
repeal of Minn. Rules
part 3100.6600, subpart 2

CERTIFICATE OF AGENCY'S
MAILING LIST

I, Arlayne Nelson of the Minnesota Board of Dentistry, hereby certify that I am responsible for maintaining the list of all persons who register with the Minnesota Board of Dentistry for the purpose of receiving notices of rulemaking, pursuant to Minn. Stat. §§ 14.14, subd. 1b, and 14.22 (1984), and further certify that the list attached hereto and made a part hereof constitutes the complete lists of the persons, associations, and other interested groups who, as of 11A M this 15th day of August, 1985, have so registered with the Minnesota Board of Dentistry.

STATE OF MINNESOTA

BOARD OF DENTISTRY

Arlayne Nelson

ARLAYNE NELSON

REGISTERED

MINNESOTA GOVERNMENT REPOR
B-12, Press Room, CAPITOL
St. Paul, MN 55155

Zumbro Valley Dental Society
17 Frontage Road N.W.
Box 367
Byron, MN 55920

Dr. Robert A. Harder
MINNESOTA DENTAL ASSOCIATION
2236 Marshall Avenue
St. Paul, MN 55104

Patrick E. Flahaven
SECRETARY OF THE SENATE
231 Capitol Building
St. Paul, MN 55155

Bruce T. Rowe, Administrator
Community Health Services Boar
325 Lake Avenue So. #604
Duluth, MN 55801

Mr. Arthur Gillen
402 Drover's Bank Building
633 So. Concord Street
So. St. Paul, MN 55075

MINN BOARD OF PEACE OFFICE
STANDARDS AND TRAINING
500 Metro Square Building
St. Paul, MN 55101

Mr. Don J. Ryan, President
JONATHAN HEALTH SERVICES
Shelard Plaza No. #560
300 So. County Road 18
Minneapolis, MN 55421

Mr. Paul Brakke
MINNESOTA DENTAL ASSOCIATION
2236 Marshall Avenue
St. Paul, MN 55104

Edward A. Burdick, Chief Clerk
House of Representatives
211 Capitol Building
St. Paul, MN 55155

Judith G. Schotzko
Frundt, Frundt & Johnson
117 W. 5th Street
Blue Earth, MN 56013

Eugene T. Altiere, D.D.S.
712 Medical Arts Building
Duluth, MN 55802

MINN BOARD OF CHIROPRACTIC
EXAMINERS
717 S.E. Delaware Street
Minneapolis, MN 55414

MINN DENTAL LAB ASSOCIATION
P.O. Box 151
Lakeland, MN 55043

MINN. BOARD OF NURSING
717 S.E. Delaware Street
Minneapolis, MN 55414

MINN. MEDICAL ASSOCIATION
American National Bank Bldg.
101 E. 5th Street
St. Paul, MN 55101

MINN BOARD OF OPTOMETRY
717 S.E. Delaware Street
Minneapolis, MN 55414

County of Anoka, Community
Health & Social Services
Department
Courthouse, 4th Floor
Anoka, MN 55303

MINN BOARD OF PHARMACY
717 S.E. Delaware Street
Minneapolis, MN 55440

MINN ATTORNEY GENERAL
Anti-Trust Division
2nd Floor, Ford Bldg.
117 University
St. Paul, MN 55155

MINN BOARD OF PSYCHOLOGY
717 S.E. Delaware Street
Minneapolis, MN 55440

Sam Ruhle
OFFICE OF ADMIN. HEARINGS
400 Summit Bank Bldg.
310 So. 4th Avenue
Minneapolis, MN 55415

M.S. Schumacher
MPLS STAR & TRIBUNE
425 Portland Avenue
Minneapolis, MN 55488

LEGISLATIVE REFERENCE LIBRARY
111 Capitol Building
St. Paul, MN 55155

Mr. Robert Proebstle
Accelerated Practice Concepts
7 Robb Farm Road
No. Oaks, MN 55110

that the annual report ~~conforms~~ does not conform to the requirements of the Minnesota Professional Corporations Act and the rules promulgated thereunder, it shall ~~issue a certificate of registration to~~ inform the applicant of the necessary requirements for conformity.

The board may delegate the review and investigation of annual reports ~~and the issuance of certificates of registration~~ to the ~~secretary treasurer~~ executive secretary so that annual reports will be acted upon in a timely manner in the intervals between meetings of the ~~full~~ board. Any annual reports which are not approved by the ~~secretary treasurer shall~~ executive secretary must be considered by the full board at its ~~first~~ next meeting ~~following such disapproval~~.

3100.9300 REVOCATION OF ~~CERTIFICATE~~ REGISTRATION.

The board shall revoke or, if appropriate, refuse to renew the ~~certificate of~~ registration of any corporation which no longer meets all the requirements of the Minnesota Professional Corporations Act. The corporation's eligibility to ~~receive~~ be registered or to continue ~~to hold a certificate of~~ registration ~~shall~~ must be adjudicated under the applicable provisions of the Administrative Procedure Act, Minnesota Statutes, chapter 14, and the rules of the Office of Administrative Hearings, parts 1400.5100 to 1400.8500.

3100.9500 CORPORATE NAMES.

~~After July 1, 1985,~~ The names of professional corporations ~~shall be~~ are governed by Minnesota Statutes, section 319A.07 and part 3100.6400.

REPEALER. Minnesota Rules, part 3100.0100, subparts 12 and 19, are repealed.

Board of Dentistry

Proposed Rules Relating to Names and Advertising

ALTERNATIVE NOTICES: Notice of Intent to Amend Rules without a Public Hearing, Notice of Intent to Amend Rules with a Public Hearing if 25 or More Persons Request a Hearing, and Notice of Intent to Cancel Hearing if Fewer than 25 Persons Request a Hearing

I.

EXPLANATION OF ALTERNATIVE NOTICES

The Minnesota Board of Dentistry is hereby giving notice of its intent to amend rules without a public hearing under the noncontroversial rulemaking procedure of Minn. Stat. §§ 14.22 to 14.28 (1984). However, in case 25 or more persons request a hearing, thus necessitating that one be held pursuant to Minn. Stat. § 14.25 (1984), and in order to expedite the rulemaking process should that occur, the Board is at the same time hereby giving notice of the hearing on the proposed rule amendments pursuant to Minn. Stat. §§ 14.131 to 14.20 (1984). The hearing will, of course, be cancelled if 25 or more people do not request that one be held. With the comment period closing on September 25, 1985, there will be 13 days before the scheduled hearing date. This 13-day period will give interested persons ample time to contact the Board to find out whether the hearing will be cancelled and to plan accordingly.

II.

NOTICE OF INTENT TO AMEND RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Minnesota Board of Dentistry proposes to adopt the above captioned rule changes without a public hearing unless 25 or more persons submit written requests for a public hearing. The Board has determined that the proposed changes will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.22 to 14.28 (1984).

Interested persons shall have 30 days from the date this notice is published in the *State Register* to submit comments in support of or in opposition to the proposed rule amendments. The 30 days will expire on September 25, 1985. Comment is encouraged. Each comment should identify the portion of the proposed amendment being addressed, the reason for the comment, and any change proposed to the amendment by the comment. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Board and do not result in a substantial change in the proposed language.

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

In addition to submitting comments, interested persons may request in writing during the 30-day comment period that a hearing be held on the proposed rule amendments. Any person requesting a hearing should state his or her name, address, and telephone number, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any changes they want made to the proposed amendments.

If a person desires that a hearing be held on only a portion of the proposed amendments, it is requested that the Board be informed of the specific amendments on which a hearing is being requested at the time that the hearing request is made. This will enable the Board to limit the hearing, if one is held, to the specific issues of concern. A public hearing will be held only if 25 or more persons submit in writing requests for a hearing on the proposed amendments or a portion thereof by September 25, 1985. If a hearing is required, it will be held in accordance with the provisions of Minn. Stat. §§ 14.131 to 14.20 (1984) and the hearing notice provided below.

Comments or written requests for a public hearing should be submitted to:

Dale J. Forseth
Executive Secretary
Minnesota Board of Dentistry
717 Delaware Street Southeast
Minneapolis, Minnesota 55414
Telephone: (612) 623-5313

The statutory authority of the Board of Dentistry to make the proposed rule changes is contained in Minn. Stat. §§ 150A.04, subd. 5; 150A.11, subd. 2; and 214.15 (1984).

If adopted, the proposed amendments would:

(1) delete the prohibition of using the name of a state, city, or other political subdivision in whole or in part in the name of a dental practice; (2) delete from the definition of false, fraudulent, misleading, or deceptive advertising any statement or claim which is self-laudatory or which implies unusual or superior dental ability and adds to the definition that individual's anxiety, claims a superiority which cannot be substantiated, or misrepresents a dentist's credentialing, training, experience, or ability; (3) require that any routine dental service, as listed in the rule, which is advertised must include the components specified in the rule or disclose those components excluded; (4) redefine routine dental services, i.e., examination, radiographs, denture, prophylaxis, and extractions by focusing on the results they should provide a patient as opposed to the methods of performing them;

(5) allow dentists to advertise set fees where the dentist intends to charge a standard price for the service; (6) require the disclosure of the basic factors to be considered when a range of fees is advertised; (7) delete from the list of prohibited advertisements descriptive words or phrases which are qualitative representations or comparative claims, testimonials and endorsements, use of celebrities, items which imply patient satisfaction, statements of affiliation with any organization other than the dental practice being advertised; (8) change the prohibition against the release of patient information to permit it if a written waiver of patient confidentiality is first obtained; and (9) make certain editorial changes. The proposed changes would amend Minn. Rules pts. 3100.6400, 3100.6500, 3100.6600, and 3100.7100; and would repeal Minn. Rules pt. 3100.6600, subp. 2.

The proposed rule amendments will be published in the *State Register* issue of August 26, 1985, and a free copy of them may be obtained from the Board by writing or telephoning Dale Forseth at the address or telephone number listed above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed changes and identifies the data and information relied upon to support the proposed changes has been prepared and may be obtained from the Board by writing or telephoning Dale Forseth at the address or telephone number listed above.

Promulgation of the proposed rule changes will not result in the expenditure of public monies by local public bodies nor have an impact on agricultural land; therefore no further information need be provided under Minn. Stat. § 14.11 (1984).

It is the position of the Board that it is not subject to Minn. Stat. § 14.115 (1984) regarding small business considerations in rulemaking. The basis for this position, and the Board's evaluation of the applicability of the methods contained in Minn. Stat. § 14.115, subd. 2 (1984), for reducing the impact of the proposed amendments, should it be determined that the Board is governed by section 14.115, are addressed in the Statement of Need and Reasonableness.

Upon adoption of the proposed amendments without a public hearing, the amendments as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, the amendments as adopted, and a statement explaining any differences between the amendments as proposed and as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the amendments as adopted, should submit a written request to Dale J. Forseth at the address listed above.

III.

NOTICE OF INTENT TO AMEND RULES WITH A PUBLIC HEARING IF 25 OR MORE PERSONS REQUEST A HEARING

PLEASE NOTE THAT IF 25 OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITH RESPECT TO THE ABOVE CAPTIONED RULE AMENDMENTS WITHIN THE 30-DAY COMMENT PERIOD PURSUANT TO THE NOTICE GIVEN IN PART II ABOVE, A HEARING WILL BE HELD ON OCTOBER 8, 1985, IN ACCORDANCE WITH THE FOLLOWING NOTICE OF PUBLIC HEARING.

NOTICE IS HEREBY GIVEN that a public hearing in the above captioned matter will be held pursuant to Minn. Stat. §§ 14.131 to 14.20 (1984), in Room 118B of the Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, on October 8, 1985, commencing at 9:30 a.m.

All interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of hearing which is to be included in the hearing record may be mailed to Peter C. Erickson, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, telephone (612) 341-7606.

Unless a longer period not to exceed 20 calendar days is ordered by the Administrative Law Judge at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. Written material received during this period will be available for review at the Office of Administrative Hearings. The Board and interested persons may respond in writing within three business days after the submission period ends to any new information submitted. No additional evidence may be submitted during the three-day period.

This rule hearing procedure is governed by Minn. Stat. §§ 14.131 to 14.20 (1984) and by Minn. Rules pts. 1400.0200 to 1400.1200 (1984), as amended in 9 S.R. 2276 (April 8, 1985), promulgated by the Office of Administrative Hearings. Questions about procedure may be directed to the Administrative Law Judge.

If adopted, the proposed amendments would:

(1) delete the prohibition of using the name of a state, city, or other political subdivision in whole or in part in the name of a dental practice; (2) delete from the definition of false, fraudulent, misleading, or deceptive advertising any statement or claim which is self-laudatory or which implies unusual or superior dental ability and adds to the definition that individual's anxiety, claims a superiority which cannot be substantiated, or misrepresents a dentist's credentialing, training, experience, or ability; (3) require that any routine dental service, as listed in the rule, which is advertised must include the components specified in the rule or disclose those components excluded; (4) redefine routine dental services, i.e., examination, radiographs, denture, prophylaxis, and extractions by focusing on the results they should provide a patient as opposed to the methods of performing them;

(5) allow dentists to advertise set fees where the dentist intends to charge a standard price for the service; (6) require the disclosure of the basic factors to be considered when a range of fees is advertised; (7) delete from the list of prohibited advertisements descriptive words or phrases which are qualitative representations or comparative claims, testimonials and endorsements, use of celebrities, items which imply patient satisfaction, statements of affiliation with any organization other than the dental practice being advertised; (8) change the prohibition against the release of patient information to permit it if a written waiver of patient confidentiality is first obtained; and (9) make certain editorial changes. The proposed changes would amend Minn. Rules pts. 3100.6400, 3100.6500, 3100.6600, and 3100.7100; and would repeal Minn. Rules pt. 3100.6600, subp. 2.

The proposed rule amendments will be published in the *State Register* issue of August 26, 1985, and a free copy of them may be obtained from the Board by writing or telephoning Dale Forseth at the address or telephone number listed above in Part II of this notice.

The statutory authority of the Board of Dentistry to make the proposed rule changes is contained in Minn. Stat. §§ 150A.04, subd. 5; 150A.11, subd. 2; and 214.15 (1984).

The proposed rule changes may be modified as a result of the rule hearing process. Those who are potentially affected in any manner by the substance of the proposed changes are therefore advised to participate in the process.

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Please be aware that the Board of Dentistry is giving simultaneous notice of its intent to adopt five separate sets of amendments to its rules, the above captioned amendments being one of them. The hearing on each set has been scheduled for the same date, time, and place. Consequently, it is possible that rule amendments other than those covered by this notice will also be heard at the same time. It is suggested that any one interested in the rule amendments, covered by this notice should not only ask the Board about whether the hearing on these amendments will be held but, if it will be held, also ask whether any other rules will be heard at the same time. If 25 or more people request a hearing on more than one of the sets of rule amendments being proposed by the Board, an order in which they will be heard will be established and interested persons informed upon request.

Minnesota Statutes 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 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: (612) 296-5615.

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Board's offices and at the Office of Administrative Hearings. This Statement of Need and Reasonableness contains the verbatim evidence and argument which the Board will present at the hearing justifying both the need for and the reasonableness of the proposed rule amendments. Copies of the Statement of Need and Reasonableness may be reviewed at the Board's offices or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Please note that any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the Board may not take any final action on the rule amendments for a period of five working days. 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 Administrative Law Judge. Any person may request notification of the date on which the rule amendments were adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rule amendments are filed. If you want to be so notified, you may so indicate at the hearing or send a request in writing to the Board at any time prior to the filing of the rule amendments with the Secretary of State.

Promulgation of these proposed rule changes will not result in the expenditure of public monies by local public bodies nor have any impact on agricultural land; therefore, no further information need be provided under Minn. Stat. § 14.11 (1984).

It is the position of the Board that it is not subject to Minn. Stat. § 14.115 (1984) regarding small business considerations in rulemaking. The basis for this position, and the Board's evaluation of the applicability of the methods contained in Minn. Stat. § 14.115, subd. 2 (1984), for reducing the impact of the proposed amendments, should it be determined that the Board is governed by section 14.115, are addressed in the Statement of Need and Reasonableness.

IV.

NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN 25 PERSONS REQUEST A HEARING

PLEASE NOTE THAT THE HEARING, NOTICE OF WHICH IS GIVEN IN PART III ABOVE, WILL BE CANCELLED IF FEWER THAN 25 PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE GIVEN IN PART II ABOVE.

To be informed whether the hearing noticed in Part III above will be held, please call the Board before September 26, 1985, and leave your name, address and telephone number. You will be notified after September 26, 1985, if the hearing has been cancelled. You may also call the Board after September 26, 1985, for oral confirmation regarding the scheduled hearing.

August 8, 1985

Dale J. Forseth
Executive Secretary
Board of Dentistry

Rules as Proposed

3100.6400 IMPROPER AND UNJUSTIFIED NAMES.

Any name ~~which incorporates the use of the name of a state, city, or other political subdivision in whole or in part or~~ used for a dental practice 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 Minnesota Statutes, sections 150A.11, subdivision 1 and 319A.07.

3100.6500 COMMUNICATING DECEPTIVE STATEMENT OR CLAIM.

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.

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~~ appeals to an individual's anxiety in an excessive or unfair way;

E. contains material claims of superiority that cannot be substantiated;

F. misrepresents a dentist's credentials, training, experience, or ability; or

~~E.~~ G. contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived.

3100.6600 ADVERTISING DENTAL FEES AND SERVICES.

Subpart 1. Routine services. ~~Fees may be advertised for routine services only. 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~~ either the advertised service must ~~adhere to these minimum standards, which are examples of the comprehensiveness required to satisfy this definition:~~ include the listed components or the advertisement must disclose the components which are not included.

A. Examination: a study by the dentist of all the structures of the oral cavity, including the appropriate recording or charting 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 caries and oral abnormalities. ~~If an examination fee is advertised, the same advertisement must include the following additional diagnostic procedures and their fees:~~, and the development of a treatment plan. If the examination does not include radiographs or the provision to the patient of a written opinion of the items found in the examination (i.e., diagnosis) or of a written itemized treatment recommendation and itemized fee (i.e., treatment plan), such facts shall be disclosed in the advertisement.

~~(1)~~ B. Radiographs (X rays): adequate X rays of the oral structures ~~to be used for purposes of diagnosis and which include either a panograph and four bitewings, or intraoral full mouth review utilizing a minimum of 14 periapical and four bitewing films. Any films must be adequate~~ to provide a ~~complete~~ necessary 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.~~ C. Denture: either a ~~full upper~~ complete maxillary or ~~full lower~~ complete mandibular replacement of the natural dentition with artificial teeth. If the service advertised is for a denture which is partially prefabricated ~~or is,~~ intended for a partial replacement of the natural dentition, intended to be used as an emergency or temporary denture, or if any advertised fee does not include a reasonable number of readjustments, such ~~fact~~ facts shall be ~~fully set forth~~ disclosed in the ~~text of the~~ advertisement. ~~The fee shall include a reasonable period for readjustment.~~

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

~~C.~~ D. Prophylaxis (cleaning): the removal of calculus (tartar) and stains from the clinically exposed ~~and unexposed~~ surfaces of the teeth ~~by scaling and polishing~~.

~~D.~~ E. Extractions: ~~this service is for~~ the removal of nonimpacted teeth ~~and includes~~, including necessary X rays, anesthesia, preoperative, and postoperative care.

Subp. 2. [See Repealer.]

Subp. 2a. Set fees. Set fees may be advertised for any service where the dentist intends to charge a standard price for the service.

Subp. 3. Identification of related services and additional fees. 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.

Subp. 4. Range of fees. ~~Advertising~~ When a range of fees ~~for a given service is prohibited~~ is advertised, the advertisement must disclose the basic factors on which the actual fees will be determined.

Subp. 5. [Unchanged.]

3100.7100 PROHIBITED ADVERTISEMENTS.

Advertisement shall not:

A. ~~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";~~

~~B. 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;~~

~~C. include the use of celebrities;~~

~~D. use dramatization or graphic illustrations to imply patient satisfaction;~~

~~E.~~ reveal a patient's identity or personally identifiable facts, data, or information obtained in a professional capacity without having first obtained a written waiver of patient confidentiality; or

~~F.~~ B. after one year, include the name of any dentists formerly practicing at or associated with any advertised location; ~~or~~

~~G. indicate or imply affiliation with any organization other than the dental practice being advertised~~.

REPEALER. Minnesota Rules, part 3100.6600, subpart 2, is repealed.

Department of Energy & Economic Development

Proposed Emergency Rules Relating to Agricultural Resource Loan Guaranty Program

Notice of Intent to Adopt Emergency Rules

Notice is hereby given that the Minnesota Agricultural Resource Loan Guaranty Board proposes to adopt the above-entitled emergency rules following the procedures set forth in Minnesota Statutes, section 14.29 to 14.36. The specific statutory authority to adopt these rules is Minnesota Statutes, section 41A.04, subdivisions 3 and 4, as amended by Laws of Minnesota 1985, first special session, chapter 13, sections 135 and 136.

Persons interested in these emergency rules shall have 25 days from the date the rules are published in the *State Register* to submit written comments in support of or in opposition to the proposed rules. Each comment should identify the portion of the proposed rule addressed by the comment, the reason for the comment, and any change that is proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Board and do not result in a substantial change in the proposed language.

Persons who wish to submit written comments or receive a free copy of the proposed rules should submit their comments to:

Kathryn Hahne
Minnesota Department of Energy and Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: 612/297-1940

CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING RULES

I, Dale J. Forseth, do hereby certify that I am the Executive Director 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 of Dentistry, duly and properly called and held on the 16th day of November, 1985, that a quorum was present at the meeting, that a majority of those present voted for the resolution, and that the resolution is set forth in the minutes of the meeting and has not been rescinded or modified:

> RESOLVED, that the rule changes relating to names of dental practices, and advertising and repeal of Minn. Rules pt. 3100.6600, subp. 2 (1983) be and hereby are approved and adopted, pursuant to authority vested in us by Minn. Stat. § 150A.04, subd. 5; 150A.11, subds. 1 and 2; 214.15; 319A.07; and 319A.18 (1984); and that Dale J. Forseth, Executive Director of the Board of Dentistry, be and hereby is authorized to sign an order adopting these rule changes and any other required documents and is further authorized to perform the necessary acts to provide that these rule changes shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 9th day of ~~November,~~ December 1985.

STATE OF MINNESOTA

BOARD OF DENTISTRY

DALE J. FORSETH
Executive Director

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of Proposed
Amendments to Dentistry Rules
Relating to Dental Practice Names
and Advertising, Minn. Rules
parts 3100.6400, 3100.6500,
3100.6600, 3100.7100; and
repeal of Minn. Rules
pt. 3100.6600, subp. 2

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The Minnesota Board of Dentistry (hereinafter "Board"), pursuant to the rulemaking provisions of the Administrative Procedure Act, Minn. Stat. ch. 14 (1984), presents facts establishing the need for and reasonableness of proposed amendments to rules of the Board governing names of dental practices and advertising of dentists and dental services. Terms used in this Statement have the meaning given them in Minn. Rules, pt. 3100.0100 (1983).

In order to adopt the proposed amendments, the Board must demonstrate that it has complied with all the procedural and substantive requirements of rulemaking. Those requirements are that: 1) there is statutory authority to adopt the rule, 2) all necessary procedural steps have been taken, 3) any additional requirements imposed by law have been satisfied; 4) the rules are needed, and 5) the rules are reasonable. This statement demonstrates that the Board has met these requirements.

II. STATUTORY AUTHORITY

Pursuant to Minn. Stat. §§ 150A.04, subd. 5; 150A.11, subd. 2; and 214.15, the Board may adopt rules necessary to carry out the provisions and purposes of Minn. Stat. ch. 150A and rules relating to advertising.

The Board is authorized to promulgate rules governing the name under which a dentist may practice pursuant to Minn. Stat. §§ 150A.04, subd. 5; 150A.11, subd. 1; 319A.07; and 319A.18.

III. COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS

A. Requirements in General

The Board has determined that the amendment of the above captioned rules is noncontroversial and has elected to follow the procedures set forth in Minn. Stat. §§ 14.05 to 14.12 and 14.22 to 14.28 (1984), which provide for the adoption of noncontroversial rules without the holding of a public hearing. However, if during the 30-day comment period 25 or more people request a hearing, one must be held. In order to expedite the hearing should the requisite number of people request one, the hearing is being noticed at the same time and as part of the same notice by which the Board is announcing its intent to adopt the rules via the noncontroversial process. Therefore, the procedures for adopting rules after a hearing as specified in Minn. Stat. §§ 14.131 to 14.20 (1984) and in Minn. Rules pts. 1400.0200 to 1400.1200 (1983), as amended in 9 S.R. 2279 (April 8, 1985), will also be met. The hearing, of course, will be cancelled if the Board does not receive a request for one from 25 or more people.

Pursuant to Minn. Stat. §§ 14.131 and 14.23 (1984) and Minn. Rules pt. 1400.0500, the Board has prepared this Statement of Need and Reasonableness which is available to the public. It contains the verbatim affirmative presentation in support of the above-captioned rule amendments pursuant to Minn. Rules pt. 1400.0500, subp. 3 (1983) as amended in 9 S.R. 2279 (April 8, 1985). If a hearing is held, this Statement of Need and Reasonableness will be introduced into the record as an exhibit and copies will be available for review at the hearing. Because the Statement of Need and Reasonableness contains the Board's complete presentation, the Board will not call any

witnesses to testify on its behalf. Dr. Robert Hoover and Kathleen Lapham, RDA, the current and former chairpersons of the Board's rules committee, and Dale Forseth, the Board's Executive Secretary, will be present at the hearing to summarize all or portions of this Statement of Need and Reasonableness, if requested by the Administrative Law Judge, to answer questions, and to respond to concerns that may be raised. In addition, because of the Federal Trade Commission's (hereinafter "FTC") role in these amendments, as explained below, supra at 7, the Board will ask an FTC representative to appear at a hearing, if held, to discuss its view of the amendments and the need for them. As such, it the FTC does appear, it will not be as a Board witness but as an independent entity with an interest in the rules.

The Board will publish in the State Register the proposed amendments and notice of its intention to amend the rules without a public hearing in combination with its notice of intent to amend its rules with a public hearing if 25 or more persons request a hearing. The Board will also mail copies of the combined notices to persons registered with the Board pursuant to Minn. Stat. § 14.14 (1984), subd. 1a, as well as to others whom the Board believes will have an interest in the amendments.

These rules will become effective five work days after publication of a notice of adoption in the State Register pursuant to Minn. Stat. §§ 14.18 and 14.27 (1984).

B. Notice of Intent to Solicit Information From Non-Agency Sources

Minnesota Statute § 14.10 (1984) requires an agency, which seeks information or opinions from sources outside the agency in preparing to propose the amendment of rules, to publish a notice of its action in the State Register and afford all interested persons an opportunity to submit data or comments on the subject of concern in writing

or orally. In the State Register issue of Monday, December 31, 1984, at page 1516, the Board published a notice entitled "Outside Opinion Sought Concerning Proposed Amendments to Rules Governing Advertising of Dentists and Dental Services."

After publication of the Notice, the Board received two written comments which will become part of the record. In addition, the Board discussed the proposed amendments at its meeting of January 26, 1985, and received oral comment from interested parties.

IV. COMPLIANCE WITH OTHER RULEMAKING REQUIREMENTS

A. Miscellaneous Requirements

These rules do not incorporate by reference text from any other law, rule, or available text or book. See, Minn. Stat. § 14.07, subd. 4 (1984). These rules minimize the duplication of statutory language. See Minn. Stat. § 14.07, subd. 3(1) (1984). The adoption of these rules will not require the expenditure of public money by local public bodies of greater than $100,000 in either of the two years following promulgation, nor do the rules have any impact on agricultural land. See Minn. Stat. § 14.11 (1984). Finally, a fiscal note referenced in Minn. Laws 1985, Ex. Sess., ch. 10, §§ 34 to 36 and 38, is not required because these rules do not mandate that a local agency or school district take an action which would force them to incur costs.

No other statute sets forth requirements for the promulgation of rules; however, there is one other action which the Board has taken. Except for the amendments to part 3100.6400, the fact that the rules are being changed is the direct result of questions raised about their validity by the FTC. (Although the FTC also challenged part 3100.6400, the Board had already decided to propose amendment of it before the FTC inquiry was received.) In developing the amendments, the Board sought and obtained comments and advice from the FTC as well as from the Antitrust Division

of the Office of the Attorney General. Indeed, the proposals being set forth are consistent with the Board's understanding of the guidance received from those two offices. Because the rule changes were initiated as a result of the FTC involvement, the Board has asked the FTC to make a written submission during the comment period. It is the Board's understanding that the FTC will make such a submission. If a hearing must be held, the Board will request that a representative of the FTC appear and speak in favor of the amendments.

B. Small Business Considerations

It is the position of the Board that Minn. Stat. § 14.115 (1984), relating to small business considerations in rulemaking, does not apply to the rules it promulgates. Minn. Stat. § 14.115, subd. 7(b) (1984), states that section 14.115 does not apply to "agency rules that do not affect small businesses directly." The Board's authority relates only to dentists and not to the dental businesses they operate. While someone cannot operate a dental business without being licensed as a dentist by the Board, the license runs primarily to the technical ability to provide dental services and not to the business aspects. This is graphically illustrated in recent dealings with nondentists who are involved with dental franchise offices. The Board has not taken the position that nondentists can have no involvement in operating a dental business. Instead, its position is that nondentists may not interfere with or have any control over the dentist when it comes to any aspect of the practice which could affect the providing of professional services to a patient. Thus the Board regulates the provision of dental services and not the dental business per se. As such, it is exempt under Minn. Stat. § 14.115, subd. 7(b) (1984).

The Board is also exempt from the provisions of section 14.115, pursuant to its subdivision 7(c) which states that section 14.115 does not apply to "service businesses

regulated by government bodies, for standards and costs, such as . . . providers of medical care." Dentists provide medical care and are regulated for standards and costs. The Board regulates dentists for standards and the Minnesota Department of Human Services for costs.

The question might be raised as to whether the same government body has to regulate the service business for standards and costs in order for the exemption to apply. The Board's position is that the question should be answered in the negative. First, the provision specifically refers to regulation by "government bodies." Second, and most significantly, some of the examples of service businesses given in the subdivision where the rules governing them would be exempt from the conditions of section 14.115 actually would not qualify for the exemption if the same government body had to regulate for standards and costs. For example, nursing homes and hospitals are regulated by different government bodies for standards and costs. The Minnesota Department of Health regulates them for standards and the Minnesota Department of Human Services for costs. If the legislature had intended to exempt from the scope of section 14.115 only those rules addressing services businesses regulated by one government body for standards and costs, then it could not have included in its list of examples nursing homes and hospitals.

Based on the foregoing, it is clear that section 14.115 is not intended to apply to rules promulgated by the Board. However, because there is no determination addressing the issue from a court, the Attorney General's Office, or Office of Administrative Hearings, the Board will briefly address the five methods listed in Minn. Stat. § 14.115, subd. 2 (1984) for reducing the impact of rules on small businesses.

The suggested methods are largely inapplicable to advertising rules, which do not contain reporting requirements, compliance schedules or deadlines, or design or

operational deadlines. The two methods which might arguably be applicable, the establishment of less stringent compliance requirements and the exemption of small businesses from any or all requirements of the rules, cannot be incorporated into the proposed amendments. To do so would be contrary to the statutory objectives that are the basis of the proposed rulemaking.

V. NEED FOR AND REASONABLENESS OF THE PROPOSED AMENDMENTS

A. General Need For Proposed Amendments

By letter dated November 15, 1984, the FTC advised the Minnesota Board of Dentistry that it believes that under current antitrust standards certain of the Board's rules could have the effect of unreasonably restraining the advertising of dentists and dental services. As a result, the FTC's Chicago Regional Office was beginning a preliminary nonpublic investigation of the rules. The investigation was specifically focused on the following: first, that portion of part 3100.6400 which prohibits the use of any name which incorporates the use of the name of a state, city, or other political subdivision in whole or in part; second, on part 3100.6500 C and D which prohibits the use of public communications containing claims and statements which are self-laudatory, or which imply unusual or superior dental ability; third, on part 3100.6600 which defines routine services, restricts fee advertising to fees for routine services only, and prohibits advertising a range of fees for a given service; and fourth, on part 3100.7100 A, B, C, D, and G which prohibits the use of qualitative representations or comparative claims, testimonials and endorsements, the use of celebrities, dramatization, or graphic illustrations to imply patient satisfaction, and indicating affiliation with any organization other than the dental practice being advertised. The FTC feels that these provisions may unjustifiably prevent dentists from effectively communicating to the public truthful information about the services they offer and the fees for those services.

Such restraints, it is argued, can lessen competition among dentists and harm consumers without achieving countervailing benefits. Such conduct may violate section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

Upon review of the FTC's concerns, the Board noted that prior to receiving the letter from the FTC, it had initiated procedures to repeal the language at issue in part 3100.6400 which concerns incorporating the names of states, cities, or political subdivisions into the name of a dental practice. The Board further noted that for the past two years, the Board has ceased enforcement of the language at issue in part 3100.6400.

As stated above, the Board sought opinion from persons outside the Board concerning proposed amendents to the remaining rules at issue. After considering the comments and opinions received, and after consultation with the FTC and the Antitrust Division of the Office of the Attorney General, the Board concluded that the rules should be amended in order to remove any rules which might be construed as having an unlawful, anti-competitive affect. In doing so, the Board is not admitting or conceding that any of its rules violate the Federal Trade Commission's Act or of any other law. Instead, the Board is amending the rules to remove any questions that they may be too restrictive and in keeping with its goal of only prohibiting false, misleading, or deceptive advertising as is more fully explained below.

The need for each specific amendment is addressed in the rule-by-rule justification.

B. General Reasonableness of Proposed Amendments

In order to amend administrative rules, an agency must demonstrate that the proposed amendments are reasonable. The current rules were developed to promote the dissemination of truthful advertisements concerning dentists and dental services. Their

purpose was to prevent harm to consumers from deceptive and false advertisements as well as to provide a framework upon which consumers could utilize truthful and nonmisleading information in advertisements to choose between competing dentists and dental services.

The proposed amendments continue to enhance the consumer's ability to utilize dental advertising to make choices between competing dentists and dental services. The amendments, however, narrow the definitions of deceptive advertising to avoid inhibiting the dissemination of truthful and accurate information. The amendments have a rational basis in law and dentistry, and do not represent arbitrary or capricious policies.

C. Legal Background Justifying the Proposed Amendments

Traditionally, licensees in the health care and legal professions have been prohibited from directly advertising to the public, but have been allowed to solicit referrals in professional journals and other intra-professional advertising. In the 1930's, the United States Supreme Court, in Semler v. Oregon State Board of Dental Examiners, 294 U.S. 608 (1934), upheld what were then rather typical advertising restrictions of the Oregon State Board of Dental Examiners. The restrictions included bans on untruthful or misleading advertising, advertising professional superiority, price advertising, and advertising of free dental work. The Court held that such state-imposed restrictions did not violate the professional's rights under the due process or equal protection clauses of the Fourteenth Amendment, nor did they unconstitutionally impair contracts since the state regulation was a reasonable exercise of the state's police power. The court noted that the legislature was concerned not only with preventing deception and insuring competency of individual practitioners, but also with preventing practices which would tend to "demoralize the profession by forcing its members into an unseemly rivalry which

would enlarge the opportunities of the least scrupulous." Id. at 612. The Court stated that the truthfulness of the claim of "professional superiority" was no defense. Rather, the legislature was entitled to consider the general effects of the prohibited practices, and if these effects facilitated unwarranted or misleading claims, the legislature could enact a general rule of prohibition even though in particular instances there might be no actual deception or misstatement. Id. at 613.

Semler has never been specifically overruled or modified by the Supreme Court and still provides strong authority for the ability of a state to impose on its professions reasonable restrictions for the protection of the public. However, recent decisions in the area of advertising have questioned whether and to what extent advertising restrictions are reasonably necessary to protect the public or whether they are in fact injurious to the public. These cases have considered this issue in light of First Amendment freedom of speech guarantees and antitrust laws.

In Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975), the Court addressed the issue of whether the state bar's enforcement of a minimum fee schedule violated the antitrust provisions of section 1 of the Sherman Act. Section 1 of the Sherman Act prohibits conspiracies in restraint of trade or commerce. The Court held that the practice of law was not exempt from this provision and that anti-competitive activities by lawyers could and in this case did exert a restraint on commerce. Although the Court held that certain anti-competitive conduct by lawyers fell within the Sherman Act, the Court specifically noted that it intended no diminution of the state's authority to regulate its professions. Id. at 793.

The issue of whether commercial speech was protected by the First Amendment was addressed in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Counsel, 425 U.S. 748 (1976). The Court held that a statute which prohibited

drug price advertising and which was enforced by the Virginia State Board of Pharmacy was unconstitutional. The statute made a pharmacist guilty of unprofessional conduct if he published, advertised or promoted the amount, price, fee, premium, discount, rebate or credit term of any prescription drug. The Court held that the First Amendment protected this type of commercial speech and that the state's essential blanket prohibition on advertising of prices of prescription drugs was unconstitutional. The Court reasoned that the free flow of commercial information in a free enterprise system is indispensable to consumer decision making. The Court suggested, however, that false or misleading advertising of drugs by pharmacists could be regulated.

In Virginia Pharmacy Board, the Court stressed that it was considering only commercial advertising by pharmacists and not other professionals such as physicians or lawyers who may render a professional service rather than dispense a standardized product. It suggested that certain kinds of advertising of professional services might enhance the possibility of confusion and deception. Id. at 773 n. 25.

In Bates v. State Bar of Arizona, 433 U.S. 350 (1977), the Court considered the issue of whether the First Amendment protection of commercial speech which was announced in Virginia Pharmacy Board applied to the advertising of routine services by lawyers. Although the Court was faced with the argument that the advertising restrictions in the Arizona Supreme Court's disciplinary rules violated the Sherman Act, it determined that the state in this case was exempt from the Sherman Act under a doctrine known as the state action exemption. However, the Court found that lawyer advertising was a form of commercial speech protected by the First Amendment and that advertising by lawyers may not be subjected to blanket suppression. Specifically, the Court held that advertising prices for routine legal services deserved First Amendment protection. The Court emphasized, however, that false, deceptive, or

misleading advertising was subject to restraint. The Court also noted that although it was not addressing the issue of whether claims of quality of services could be restricted, such claims may not be susceptible to measurement or verification and may be so likely to mislead as to warrant restriction. Id. at 383-84.

The issue of in-person solicitation was addressed in Ohralik v. Ohio State Bar Association, 436 U.S. 447 (1978). The Court held that the state bar could discipline a lawyer for in-person solicitation for pecuniary gain under circumstances which were likely to pose a danger that the state had a right to prevent. In this case, protection of the public from solicitation that involved fraud, undue influence, intimidation, and overreaching were legitimate and important state interests. Thus, the state bar's application of its disciplinary rule in this case did not violate the First and Fourteenth Amendments.

In contrast, the Court in In re Primus, 436 U.S. 412 (1978) held that prohibitions against the offering of free legal services by mail by a civil rights attorney violated the First Amendment's protection of freedom of expression and association. In this case, the Court emphasized that there was no evidence that the solicitation was misleading, overbearing, or involved any feature of deception or improper influence.

In National Society of Professional Engineers v. U.S., 435 U.S. 679 (1978), the Court considered the issue of whether a professional society's cannon of ethics which prohibited competitive bidding by its members violated section 1 of the Sherman Act. Using antitrust analysis, the Court considered whether the prohibition on competitive bidding promoted or suppressed competition. The Court noted that the Sherman Act reflects a legislative determination that competition will produce not only lower prices but also better goods and services. In this case, the Court determined that the ban on

competitive bidding prevented customers from making price comparisons and thus constituted a restraint on trade. Although the Court noted that professional services may differ significantly from other business services, and thus the nature of the competition in the services may vary, ethical norms may serve to regulate and promote competition and thus fall within antitrust analysis. Id. at 695-696.

Another Supreme Court articulation of the permissible scope of professional advertising and solicitation is in In re R.M.J., 455 U.S. 191 (1982). In this case, an attorney had listed areas of practice that deviated from the language that was required by a bar advisory committee. The attorney's advertisements stated that he was licensed to practice in two states and was admitted to practice before the United States Supreme Court. The ads were distributed in the form of announcement cards in a general mailing. The Court held that the state bar's restrictions were unconstitutional since the advertisements were neither misleading nor outweighed by a substantial state interest. The Court applied a four-prong test that it had set forth in Central Hudson Gas and Electric Corporation v. Public Service Commission of New York, 447 U.S. 557 (1980), a public utility advertisement case.[1/] The Court noted that only truthful advertisements relating to lawful activity would be protected by the First Amendment while misleading advertisements could be prohibited entirely. However, the Court warned that states could not absolutely prohibit potentially misleading information if the information could be presented in a non-deceptive manner. Although the states retain the authority to regulate non-deceptive advertising, the Central Hudson test must be satisfied.

1/ "In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine [1] whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask [2] whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine [3] whether the regulation directly advances the governmental interest asserted, and [4] whether it is not more extensive than is necessary to serve that interest."

Id at 566.

The question of whether a professional association's ethical restrictions on advertising and solicitation violated section 5 of the Federal Trade Commission Act was at issue in American Medical Association v. FTC, 94 F.T.C. 701 (1979), aff'd 638 F.2d 443 (2d Cir. 1980), aff'd 455 U.S. 676 (1982). The FTC found that the American Medical Association (AMA) code of ethics which prohibited certain types of advertising had the effect and purpose of severely inhibiting competition among health care providers. Using a "rule of reason" analysis,2/ the FTC found that the advertising restrictions were by their very nature anti-competitive and had the effect and purpose of being anti-competitive. In balancing the pro-competitive virtues against the anti-competitive evils to determine whether the restrictions were reasonable or unreasonable, the FTC rejected the AMA's justification that the restrictions on advertising were a means of preventing fraud and deception. The FTC concluded that the restraints bore no reasonable relationship to legitimate, pro-competitive concern and, because they unreasonably impeded competition, the restrictions were an unfair method of competition in violation of section 5 of the Federal Trade Commission Act. The FTC did note, however, that advertising prohibitions which were narrowly directed toward false or deceptive advertising were permissible since such restrictions could enhance competition by ensuring the communication of accurate information. However, the FTC cautioned that prohibitions must be drawn with specificity and that a total ban on advertising is too broad.

2/ Under a rule of reason analysis, the court will examine whether the imposed restraint merely regulates and thereby promotes competition or whether it suppresses or destroys competition. The court will examine the nature and purpose of the restriction and the effect the restriction has on competition. The court will then balance the pro-competitive virtues of the restraint against the anti-competitive evils. In order to withstand scrutiny, the pro-competitive virtues will be considered a valid justification only if they are not overly broad and if they promote competition, rather than merely foster other social goals. The court will also consider whether there are less restrictive alternatives available that can be substituted for the imposed restraint. See FTC v. American Medical Association, 94 F.T.C. 701, 1004-1010 (1979), citing Chicago Board of Trade v. U.S., 246 U.S. 231 (1918) and National Society of Professional Engineers v. U.S., 435 U.S. 679 (1978).

In general, it is the Board's view that the foregoing cases indicate that any restrictions on professional advertising which are not facially false, misleading or related to an unlawful activity are suspect on both constitutional and antitrust grounds. Further, a substantial burden rests with the state to demonstrate that the restrictions are not overly broad or anti-competitive.

In light of the case law discussed above, it is evident that the amendments proposed by the Board are reasonable and legally supported. The following rule-by-rule justification will further demonstrate that the amendments are in keeping with these recent judicial pronouncements.

C. Rule-by-Rule Justification.

1. Part 3100.6400 Improper and Unjustified Names (formerly 7 MCAR § 3.044)

Under the existing rule, any name of a dental practice that includes the name of a state, city, or other political subdivision, in whole or in part, is deemed to be a violation of Minn. Stat. §§ 150A.11 and 319A.07 (1984). The Board proposed to amend this rule because it is doubtful that the use of the name of a political subdivision in the name of a dental practice would deceive the public or imply superiority. In fact, the medical profession has used the names of political subdivisions in their practice names for years, seemingly without harm to the public. As a result, many dental offices use the name of a political subdivision as part of the name of their practices. The Board has not, however, received any consumer complaints indicating that these names of dental offices have been misleading, deceptive, or otherwise troublesome. Given these two factors, it has become apparent to the Board that it is unrealistic to enforce the rule. To continue the restriction on the use of the name of political subdivisions would be unnecessary and unjustified. The rule needs to be brought into conformity with the Board's enforcement practices.

2. Part 3100.6500 Communicating Deceptive Statement or Claim (formerly 7 MCAR § 3.045A).

Current part 3100.6500 prohibits the use of any form of public communication containing a false, fraudulent, misleading, or deceptive statement or claim. Included within the definition of false, fraudulent, misleading, or deceptive statements or claims are statements which are self-laudatory or which imply unusual or superior dental ability. The prohibition against these types of statements may prohibit the dissemination of truthful information as well as untruthful information. Restraints on the dissemination of truthful information are not only objectionable under FTC standards but may also violate first amendment protections of commercial speech. See Bates v. State Bar of Arizona, 433 U.S. 350, 97 S.Ct. 2791 (1977).[3/] Therefore, the amendment to part 3100.6500, item C will delete the language "self-laudatory statements" and item D will be deleted entirely. The changes are being made because the Board believes that they may sweep too broadly in prohibiting all claims regarding a licensee's skills.

The foregoing deletions, however, should be read in view of other amendments to part 3100.6500. These amendments add three items which expand the definition of false, fraudulent, misleading, or deceptive statements or claims. These additions to the list of prohibitive types of advertising are: first, statements that appeal to an individual's anxiety in an excessive or unfair way; second, statements that contain material claims of

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3/ The United States Supreme Court has not directly addressed the issue of what restrictions may be placed on claims of professional superiority. In Bates v. State Bar of Arizona, supra, the Court specifically noted that it was not addressing the issue of claims of quality of services and whether such claims could be restricted. As has been discussed, however, it did note that claims of quality of services may not be susceptible to measurement or verification and may be so likely to mislead as to warrant restriction. Although this dicta suggests sympathy with a prohibition on such advertising, claims of quality may encompass a wide range of types of advertising. Thus, stating that a dentist is "the best in town" could probably be prohibited since such a claim is probably incapable of verification. However, factual information capable of being verified even if it implies quality would appear to be arguably permissible under the standards the Court has used to evaluate commercial speech.

superiority that cannot be substantiated; and third, statements that misrepresent a dentist's credentials, training, experience or ability. These provisions, which elaborate on the rules of general prohibition of false or deceptive communication, were approved in a recent advisory opinion by the FTC on behalf of the American Academy of Ophthalmology. 1983 Trade Reg. Rep. (CCH) paragraph 22, 037 (June 24, 1983). In the FTC's review of the Academy's proposed code of ethics, the FTC accepted the Academy's assurance that the prohibitions would be enforced reasonably and objectively to avoid discouraging the dissemination of valuable information to consumers. For example, the rule aimed at communications which appeal to an individual's anxiety was aimed at those communications that unfairly or oppressively cause anxiety. The ban on material claims of superiority that cannot be substantiated was not aimed at language that was merely self-laudatory or self-aggrandizing. Bans on communications that create unjustified expectations of results would prohibit only deceptive representations regarding the likely results of treatment. The Board, in proposing these three amendments, makes the same assurances.

Thus, the amendments to part 3100.6500 eliminate advertising restrictions which are overbroad in that they may prohibit truthful as well as deceptive advertising and add more narrowly drawn restrictions which prohibit only false advertising.

3. Part 3100.6600 Advertising Dental Fees (formerly 7 MCAR § 3.045 D, E, and F)

The amendments to part 3100.6600 are designed to eliminate from the rules as they now exist any possible anti-competitive and first amendment concerns. It is the Board's purpose, through the proposed changes, to continue to enhance consumers' opportunities to compare various dentists and dental services while at the same time still enable the Board to deal with false, fraudulent, misleading, and deceptive advertising.

a. Subpart 1. Current part 3100.6600, subpart 1, provides a general definition of "routine service," provides example definitions of common routine services, and restricts advertisements of fees to routine services only. The FTC felt that

subpart 1 may seriously limit price advertising and may go beyond what is reasonably necessary to prevent deception. For example, by permitting price advertising only for routine services, part 3100.6600 apparently proscribes price advertising for any service where the appropriate technique may vary from patient to patient, even if a dentist intends to charge a standard price for the service.

The primary remedy for this problem, as addressed within this subpart, is to eliminate the provision which allows advertising of routine services only. Amendments to other subparts of part 3100.6600, discussed below, are designed to permit advertising of nonroutine services in a way which will protect the consumer from fraud and deceipt.

The definition of routine services, and the example definitions of common routine services, also raise several concerns with the Board. The first concern is that the rules may inadvertently restrict practitioners in their use of innovative or cost-efficient treatments. The Board has responded to this concern by proposing definitions which are result oriented rather than methods oriented. The definition of a routine prophylaxis in part 3100.6600, subpart 1C, is an example. The current rule defines a prophylaxis as "removal of calculus, tarter, and stains from the exposed and unexposed surfaces of the teeth by scaling and polishing." The last phrase, "by scaling and polishing" is methods oriented and may prevent a practitioner from using innovative methods. A restriction on methods is unnecessary because it is the Board's intent to standardize the definition of prophylaxis as a service that results in the removal of calculus and strain from exposed and unexposed surfaces of the teeth and not to govern through its advertising rules how that service must be performed.

The Board is appropriately concerned with the methods practitioners use to achieve a given result, and recognizes that innovative methods may raise concerns about their merit and legitimacy in the community as well as with the Board. However, the Board has ample regulatory authority over the clinical practice of licensees in other portions of the rules. See, e.g., part 3100.6200 B and E. Both the FTC and the United States Supreme Court have indicated that suppressing commercial speech is not an

appropriate way for Boards to carry out their obligation to protect consumers from the risk of sham treatments propounded by practitioners as innovations. Indeed, the Court has pointed out that prohibiting advertisements has no effect on preventing shoddy work. See Bates, supra.

The Board's second concern with standardizing definitions is that practitioners may be inadvertently restricted from how they hold themselves out to the public in their business communications. For example, if an examination fee is advertised, part 3100.6600, subpart 1A(1) requires that the same advertisement include three additional diagnostic procedures and their fees, including one or two possible sets of X rays which must be offered. Thus, the rule requires dentists not only to hold themselves out as providing X rays as one of the diagnostic procedures in an examination, but to hold themselves out as providing a specific number and type of X rays (a panographic and four bitewings or 14 periapicals and 4 bitewings). The rule apparently would prohibit advertising any group or combination of X rays for examination or diagnostic purposes that would vary either in number or combination from those in the rule.

The Board has responded to this concern by recognizing that the primary purpose of the definitions is to standardize terms which are already familiar to the lay community. That is, consumers recognize and use words such as "examination," "diagnosis," and "denture." Creating a standardized definition of a term commonly used by consumers insures that the language a dentist uses in his advertisements conforms to the consumer's understanding.

Using X rays taken for diagnostic purposes as an example, if a dentist advertises "examinations" for a stated fee, and the same advertisement states that X rays are either "included" or "extra," the reasonable consumer assumes the number and type of X rays offered are those needed for an examination. The consumer relys on the dentist's expertise and judgment as to the number and type of X rays needed for a complete examination and, for the purposes of regulating advertising, so will the Board.

If a dentist takes less X rays than professional standards require for a complete examination and diagnosis in order to be able to advertise a price that is lower than the competition, that is a disciplinary matter under Minn. Stat. § 150A.08 (1984), and Minn. Rules, pt. 3100.6200 (1983).

Therefore, part 3100.6600, subpart 1, has been amended to reflect the Board's purpose in standardizing the definition of terms commonly used by consumers so that their use in advertisements comports with the consumer's understanding. The definitions are result oriented to avoid restricting a practitioner's use of innovative methods or the manner in which the practitioner holds himself out to the public. The amendments to the remaining subparts are intended to reflect the basic change in direction made by the modifications to subpart 1 and address related issues.

b. Subpart 2. This subpart is being repealed as now unnecessary. Subpart 2 placed the burden on dental service advertisers of proving that any advertised service was "routine." The rule was a logical extension to subpart 1 which only permitted advertising of fees for "routine dental services." Now that subpart 1 is being changed to remove that limitation, there is no need to place a special focus on routine services as subpart 2 did. It can thus be repealed.

c. Subpart 2a. Subpart 2a is being added. Its addition is a corollary to the removal of the subpart 1 prohibition against the advertising of fees except for routine services. Subpart 2a proposes to permit the advertising of a set fee for any dental service when the dentist intends to charge a standard price for the service. (This provision goes hand in hand with the amendments proposed for subpart 4, which are discussed below in paragraph 3e, infra at 21.)

Most fees for any given service will vary depending upon a number of factors, such as the severity of the problem and time it will take to complete treatment. Because of these various factors, which would be unknown to a consumer, the consumer patient would not have any way of determining what fee pertained to him/her. This is the reason that advertising fees for other than routine dental services was prohibited up

until now. But the Board has come to realized that there is a middle ground which would allow advertising of fees for non-routine services in a way that will gave the patient information s/he can understand. One way is to advertise one set fee for the service as proposed in subpart 2a. In other words, this will now allow a dentist to set one fee for a non-routine service that will not vary regardless of the individual patient differences and to advertise that fee for the dental service in question. (The other way of addressing the issue of varying fees for nonroutine dental services is covered in subpart 4.)

Given that the goal of the Board is to permit any truthful advertising, subpart 2a is a reasonable method of obtaining that goal and a necessary addition to the rules of the Board.

d. Subpart 3. The only change to this subpart is in the caption which is not really a part of the rule. The caption modification is designed merely to reflect the full scope of the already existing rule which is not being amended.

e. Subpart 4. Part 3100.6600, subpart 4 of the current rules prohibits advertising a range of fees for a given service. The FTC's problem with this prohibition is that it prevents a dentist from advertising a range of fees for a service even if the advertisement discloses the factors upon which the actual fee will be determined. Thus the restriction might prevent the dissemination of truthful information about fees and limit the effectiveness with which dentists can communicate fee information. Consumers may be deprived of useful information, and competition in the provision of dental services may be lessened unreasonably. Further, the restrictions on the advertisements of fees also implicate first amendment protections of commercial speech.

The remedy of this situation is simple. The Board is proposing to repeal the prohibition on the advertisment of a range of fees but add the requirement that a range of fees must be accompanied by a listing of the basic factors which the dentist will use to determine the actual fee.

The adjective "basic" is important in this context. It is intended to communicate that the type of factors which must be listed are those which are meaningful to a lay person so that the patient will not be led to conclude that s/he will always be eligible for the lowest fee. "Basic" factors also means that the dentist will not have to list a dental text Board description of every conceivable variant that might be encountered in performing a dental service which could in some way affect the fee charged. Such a listing would more than likely discourage advertising and not be meaningful to a patient. The key to the rule is the recognition that the advertisement is for the patient. The rule must thus be applied in the light of whether the advertisement gives the patient a realization that what s/he will be charged for the service may very well be something other than the lowest fee listed in the advertisement.

As noted in paragraph 3c above, supra at 20, this rule is the other side of the same coin to subpart 2a. Subpart 2a gives the dentist who wants to advertise fees for nonroutine dental services the option of setting a single fee for the service rather than to vary the fee based upon patient differences. Here, in subpart 4, the dentist may continue to charge a range of fees and advertise that range. It is a reasonable step to take to allow for all truthful advertising and yet the limitation of requiring a listing of the basic factors which will govern what the actual fees will be is a necessary provision to prevent patients from being misled.

4. Part 3100.7100 Prohibited Advertisements (formerly 7 MCAR § 3.045H)

Current rule 3100.7100 prohibits advertisements that include descriptive words or phrases which are qualitative representations or comparative claims, testimonials and endorsements, that use celebrities, dramatization or graphic illustrations to imply patient satisfaction, or that indicate or imply affiliation with any organization other than the dental practice being advertised. The FTC feels that these provisions may unjustifiably prevent dentists from effectively communicating truthful information to the public. In addition, the Board feels that these prohibitions rise out of notions that the use of testimonials, endorsements, celebrities, and so forth, are not

appropriate to the advertisement of professional services. However, the Board belives that protecting the status of a profession in the eyes of the consuming public is not a compelling enough reason to impose restrictions or prohibitions on commercial speech. See Bates, supra.

As a result, the amendments proposed by the Board would remove all the restrictions contained in part 3100.7100, items A, B, C, D, and G. In addition, current item E, which prohibits advertisements that reveal a patient's identity or personally identifiable facts, data, or information obtained in a professional capacity, will now include the following proviso: "without having first obtained a written waiver of patient confidentiality." Amended item E would thus allow the use of patient testimonials or endorsement after a waiver has been obtained by the dentist.

Thus, the amendments to part 3100.7100 remove those anti-competitive and first amendment concerns of the FTC and Board. The amendment to current item E is a reasonable restriction on the use of patients for testimonials and endorsements in that it is in keeping with current law on patient confidentiality and privacy rights.

Dated: August 6, 1985

STATE OF MINNESOTA

BOARD OF DENTISTRY

DALE J. FORSETH
Executive Secretary
Board of Dentistry

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of Proposed
Amendments to Dentistry Rules
Relating to Dental Practice Names
and Advertising, Minn. Rules
parts 3100.6400, 3100.6500,
3100.6600, 3100.7100; and
repeal of Minn. Rules
pt. 3100.6600, supb. 2

STATEMENT OF COMPLIANCE
WITH RULEMAKING PROCEDURES

I, Assistant Attorney General Richard A. Wexler, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, and the rules of the Attorney General have been followed without exception.

RICHARD A. WEXLER
Assistant Attorney General

Dated: Dec 13, 1985

SF-00006-04

DEPARTMENT : ATTORNEY GENERAL - Health

PHONE : 341-7272

STATE OF MINNESOTA

Office Memorandum

DATE : December 16, 1985

TO : Mike Miles
Assistant Attorney General
204 Administration Building

FROM : Richard A. Wexler
Assistant Attorney General

RECEIVED
DEC 16 1985
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SUBJECT : In the Matter of the Proposed Amendments to Dentistry Rules relating to Dental Practice Names and Advertising, Minn. Rules pts. 3100.6400, 3100.6500, 3100.6600, 3100.7100; and repeal of Minn. Rules pt. 3100.6600, subpart 2

The Minnesota Board of Dentistry has adopted the above subject rule amendments following the noncontroversial rule procedures of Minn. Stat. §§ 14.22-28. Pursuant to Minn. Rules pt. 2000.0400 (1985) I am submitting with this memorandum the following rulemaking documents. Based upon information received from your office, only one copy of each of the documents is enclosed except for the Rules as Adopted, in which case four copies are submitted.

1. Rule Amendments as Adopted (four copies with the Revisor of Statutes' stamp of approval).

2. Findings of Fact, Conclusions, and Order Adopting Rule Amendments Without a Public Hearing.

3. Certificate of Board's Resolution Adopting Rules.

4. Notice of Intent to Solicit Information or Opinions from Non-Agency Sources on Rule Revisions (copy from the State Register, 6 S.R. 1386, February 1, 1982), and Outside Opinion Sought Concerning Proposed Amendments to Rules Governing Advertising of Dentists and Dental Services (copy from the State Register, 9 S.R. 1516, December 31, 1984).

5. Data received by the Board as a result of the Notice referenced in item 4 above.

6. Order for Notice of Intent to Amend Rules Without a Public Hearing, Notice of Intent to Amend Rules With a Public Hearing if 25 or More Persons Request a Hearing, and Notice of Intent to Cancel Hearing if Fewer Than 25 Persons Request a Hearing.

7. Certificate of Board of Dentistry Authorizing Resolution.

8. Notice of Intent to Amend Rules Without a Public Hearing, Notice of Intent to Amend Rules With a Public Hearing if 25 or More Persons Request a Hearing, and Notice of Intent to Cancel Hearing if Fewer Than 25 Persons Request a Hearing.

9. Affidavit of Mailing (of notice referenced in item 8 above).

10. Certificate of Agency's Mailing List.

11. Affidavit of Discretionary Mailing (of notice referenced in item 8 above to those whom the Board believes might have an interest in the proposed rule amendments).

12. Rules as Proposed and Notice referenced in item 8 above (copy from the State Register, 10 S.R. 525, August 26, 1985).

13. Rule Amendments as Proposed (copy from the Revisor's office with approval as to form).

14. Statement of Need and Reasonableness.

15. Written comments received during the 30 day comment period.

16. Certificate of Compliance With Rulemaking Procedures.

Please be aware that the Board did not receive any requests for a hearing. In addition, no one requested to be notified of the date that the Board submitted the rules to the Attorney General's office. Accordingly, a Notice of Submission to the Attorney General and an accompanying affidavit of mailing are not included in the documents submitted to you because they are not necessary.

In addition, because the enclosed documents are the Board's original copies, I would appreciate it if you would return them to me after you have reviewed and acted upon the rules.

I trust that you will find everything in order. If you have any questions, please feel free to contact me.

RAW:dsc

Enclosures

cc: Dale Forseth