

April 29, 2024

**VIA EFILING ONLY**

Kathy T. Johnson  
Minnesota Board of Dentistry  
335 Randolph Ave Suite 250  
Saint Paul, MN 55102  
[Kathy.t.johnson@state.mn.us](mailto:Kathy.t.johnson@state.mn.us)

**Re: In the Matter of the Proposed Amendments to Permanent Rules of the Minnesota Board of Dentistry Relating to Licensing and Administration of Sedation and Anesthesia  
OAH 22-9033-39759; Revisor R-4813**

Dear Ms Johnson:

Enclosed herewith and served upon you is the **ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.26** in the above-entitled matter. The Administrative Law Judge has determined there are no negative findings in these rules.

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

The Board of Dentistry's next step is to arrange for publication of the Notice of Adoption in the State Register. Two copies of the Notice of Adoption provided by the Revisor's office should be submitted to the State Register for publication. A permanent rule without a hearing does not become effective until five working days after a Notice of Adoption is published in the State Register in accordance with Minn. Stat. § 14.27.

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If you have any questions regarding this matter, please contact William Moore at (651) 361-7893, [william.t.moore@state.mn.us](mailto:william.t.moore@state.mn.us) or via facsimile at (651) 539-0310.

Sincerely,

  
SAMANTHA COSGRIFF  
Legal Assistant

Enclosure

cc: Legislative Coordinating Commission  
Revisor of Statutes

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed  
Amendments To Permanent Rules of the  
Minnesota Board Of Dentistry Relating to  
Licensing and Administration of Sedation  
and Anesthesia

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

The Minnesota Board of Dentistry (Board) seeks review and approval of the above-entitled rules, which it intends to adopt pursuant to Minn. Stat. § 14.26 (2022). On April 15, 2024, the Office of Administrative Hearings (OAH) received the documents that must be filed by the Board under Minn. Stat. § 14.26 and Minn. R. 1400.2310 (2023). The material was supplemented on April 29, 2024. Based upon a review of the written submissions and filings, Minnesota Statutes, Minnesota Rules, and for the reasons discussed in the attached memorandum,


**IT IS HEREBY DETERMINED:**

1. The Board has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14 (2022), and Minnesota Rules, Chapter 1400 (2023).
3. The record demonstrates the rules are needed and reasonable.

**IT IS HEREBY ORDERED THAT:**

The rules are **APPROVED**.

Dated: April 29, 2024



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Christa L. Moseng  
Administrative Law Judge

## MEMORANDUM

Minnesota Statutes § 14.131, item (6) (2022), requires that a proposed rule's Statement of Need and Reasonableness (SONAR) address "the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals." Of the statute's SONAR-content requirements, Item 6 should be one of the easier items for an agency to address: it effectively asks for reasons that support adopting the proposed rule.

In its Statement of Need and Reasonableness, the Board addressed Item 6. The Board wrote:

- The Board has not considered the costs/consequences of not adopting its proposed rules because the Board believes that it has a regulatory duty to pursue proposed rules that are less restrictive for all regulated dental professionals.
- The Board found that no other classes of government units, businesses, or individuals are affected by its proposed rules.

Taken alone and at face value, the statement in the first bulleted paragraph—that the Board "has not considered" what Item 6 required—would suggest a deficiency in the SONAR. However, the paragraph implicitly addresses the Item 6 requirement. The Board indirectly asserts that the proposed amendments are "less restrictive" than the unamended rules. Regulatory flexibility is an express statutory objective of the Administrative Procedures Act.<sup>1</sup> The first paragraph is reasonably understood to state that a consequence of not adopting the Board's proposed rule amendments would be a less flexible, more restrictive regulatory environment for regulated dental professionals.

Accordingly, the SONAR complied with Minn. Stat § 14.131 notwithstanding the Board's statement that it did not undertake the consideration required by Minn. Stat. §14.131, item (6). The Board has in all other ways satisfied the procedural requirements of Minnesota Statutes, Chapter 14 (2022), and Minnesota Rules, Chapter 1400 (2023). Accordingly, the rules must be **APPROVED**.

**C. L. M.**

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<sup>1</sup> Minn. Stat. § 14.002 (2022).