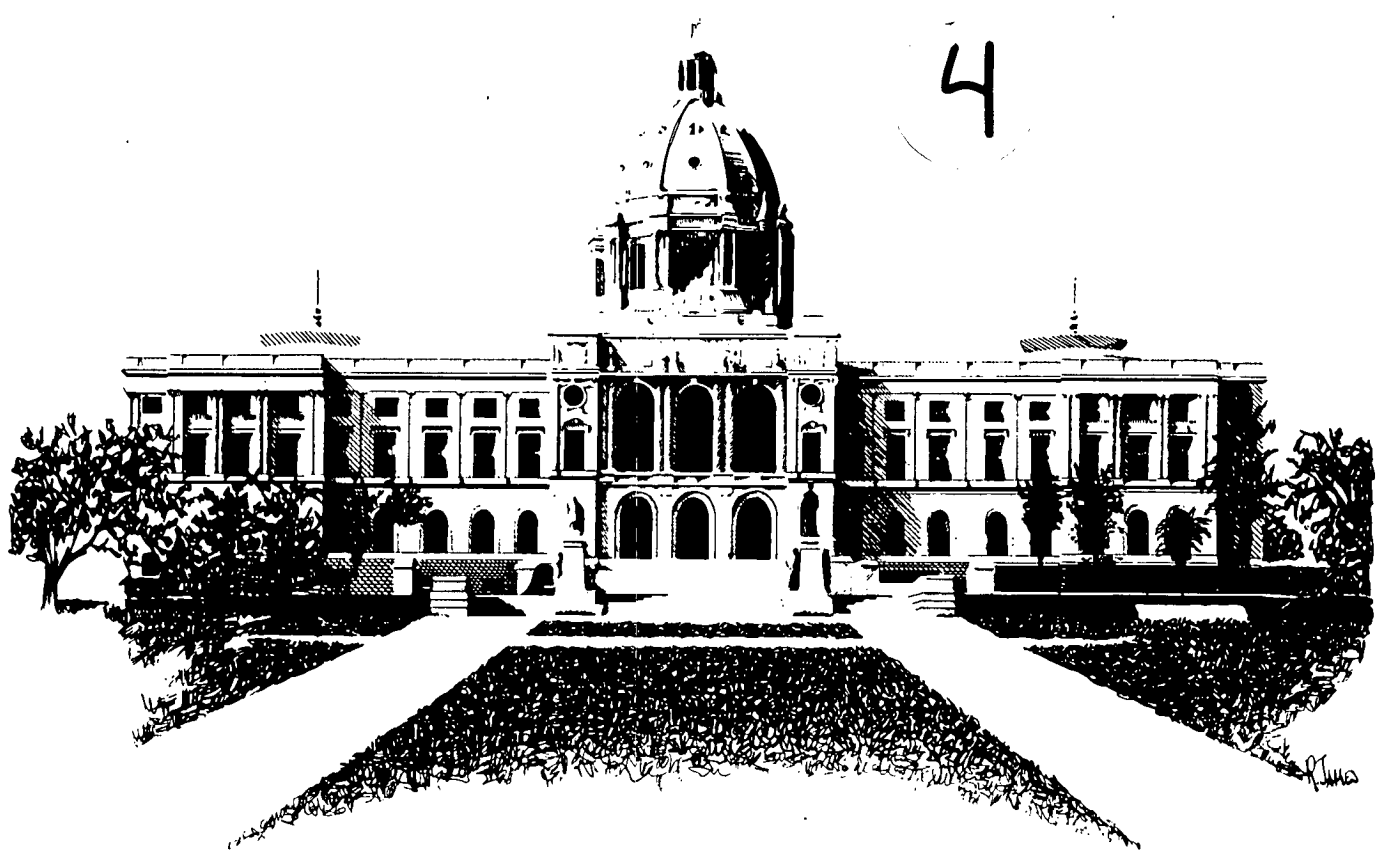


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# STATE REGISTER

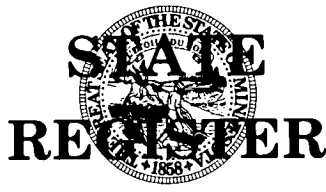
STATE OF MINNESOTA



VOLUME 10, NUMBER 9

August 26, 1985

Pages 497-560



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### Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 10			
10	Monday August 19	Monday August 26	Monday September 2
11	Monday August 26	Friday August 30	Monday September 9
12	Friday August 30	Monday September 9	Monday September 16
13	Monday September 9	Monday September 16	Monday September 23

\*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

\*\*Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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How to Follow State Agency Rulemaking Action in the State Register

State agencies must publish notice of their rulemaking action in the State Register. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION also.

The PROPOSED RULES section contains:

- Calendar of public hearings on proposed rules.
• Proposed new rules (including notice of hearing and/or notice of intent to adopt rules without a hearing).
• Proposed amendments to rules already in existence in the Minnesota Rules.
• Proposed emergency rules.
• Withdrawal of proposed rules (option; not required).

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the State Register unless an agency requests this.)
• Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
• Notice of adoption of emergency rules.
• Adopted amendments to emergency rules (changes made since the proposed version was published).
• Extensions of emergency rules beyond their original effective date.

The OFFICIAL NOTICES section includes (but is not limited to):

- Notice of intent to solicit outside opinion before promulgating rules.
• Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register and filed with the Secretary of State before July 31, 1983 are published in the Minnesota Rules 1983. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after July 31, 1983 will be included in a supplement scheduled for publication in mid-1984. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the State Register but are generally not published in the Minnesota Rules 1983 due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

The State Register publishes partial and cumulative listings of rule in the MINNESOTA RULES AMENDMENTS AND ADDITIONS list on the following schedule:

Table with 2 columns: Issue/Range and Cumulative/Range. Includes: Issues 1-13, inclusive; Issues 14-25, inclusive; Issue 26, cumulative for 1-26; Issues 27-38, inclusive; Issue 39, cumulative for 1-39; Issues 40-51, inclusive; Issue 52, cumulative for 1-52.

The listings are arranged in the same order as the table of contents of the Minnesota Rules 1983.

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## PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

## Crime Victims Reparations Board

### Proposed Rules Governing Crime Victims Reparations Board Hearing Procedures

#### Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Crime Victims Reparations Board proposed to adopt the above-entitled rules without a public hearing. The Board has elected to follow the procedures set forth in Minn. Stat. §§ 14.22 to 14.28, and Laws 1984, ch. 640, §§ 12 to 15.

Persons interested in these rules have 30 days to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held. If a public hearing is required, the Board will proceed according to the provisions of Minn. Stat. §§ 14.14 to 14.18, and Laws 1984, ch. 640, §§ 7, 8, 9, 10 and 11. The proposed rule 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.

A person who wishes to submit comments or a written request for a public hearing should submit such comments or request to:

Duane E. Woodsworth  
Executive Director  
Crime Victims Reparations Board  
702 American Center  
160 E. Kellogg Blvd.  
St. Paul, MN 55101  
(612) 296-7080

A person who wishes to submit comments or request a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

If a hearing is not required, notice of the date of submission of the proposed rule to the Attorney General for review will be mailed to any person requesting to receive the notice.

Authority for the adoption of these rules is contained in Minn. Stat. § 299B.06, subd. 1(c). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data

and information relied upon to support the proposed rules has been prepared and is available upon request from Duane Woodworth, Executive Director, Crime Reparations Board (296-7080).

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules 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 final rules as proposed for adoption, should submit a written statement of such request to:

Duane Woodworth  
Executive Director  
Crime Victims Reparations Board  
702 American Center  
160 E. Kellogg Blvd.  
St. Paul, MN 55101  
(612) 296-7080

The adoption of these rules will not require the expenditure of any money by local government bodies.

These rules will not have a direct impact on small businesses, but will limit the amount of money a funeral service provider or other claimant can recover from the Board for funeral services.

A copy of the proposed rules is attached to this notice.

Copies of this notice and the proposed rules are available and may be obtained from the person named in this notice.

By Order of the Board,  
Duane E. Woodworth  
Executive Director

## Rules as Proposed

### 7505.0100 DEFINITIONS

Subpart 1. to 4. [Unchanged.]

**Subp. 5. Reasonable funeral expenses.** “Reasonable funeral expense” means expenses actually incurred up to a maximum of \$2,250.

### 7505.0900 DECISION.

Within 20 days after receipt of the report of the investigation, the member of the board to whom the claim has been assigned shall, after examining the report and the forms submitted by the claimant, either decide the claim ~~in favor of the claimant in the amount claimed~~ or order a hearing of the claim.

### 7505.1200 HEARING BEFORE ~~THE~~ FULL BOARD.

If a claimant, within 30 days after receipt of the decision of the board member to whom ~~his~~ the claim was assigned, or a member of the board, within 30 days after the filing of the report of the decision, applies in writing to the board for consideration of the decision by the full board, a hearing before the full board shall be conducted according to law and the procedures ~~set forth~~ in parts ~~7505.1300 1400.5100 to 1400.8100 and 7505.1900~~ to 7505.2400. Any proceeding pursuant to such a request shall be treated as a contested case within the meaning of Minnesota Statutes, chapter 14.

### 7505.1900 DISQUALIFICATION BY PREJUDICE.

A ~~hearing officer or any~~ board member shall withdraw from participation in a contested case at any time prior to the final determination if he or she deems himself or herself disqualified for any reason. Upon the filing in good faith of a timely and sufficient petition of prejudice the hearing officer shall determine the matter as a part of the record and decision in the case.

**REPEALER.** Minnesota Rules, parts 7505.1300; 7505.1400; 7505.1500; 7505.1600; 7505.1700; 7505.1800; 7505.2000; 7505.2100; and 7505.2200 are repealed.

**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.

# PROPOSED RULES

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## Board of Dentistry

### Proposed Rules Governing License Applications and Examinations of the Board of Dentistry

#### 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-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.08, subd. 3; 150A.09, subd. 1; and 214.06, subd. 2 (1984).

If adopted, the proposed amendments would:

(1) require dentist, dental hygienist, and registered dental assistant applicants to submit evidence of satisfactorily passing a board approved examination designed to determine their level of clinical skills; (2) with respect to dentist and dental hygienist



applicants for licensure by credentials, (a) clarify the amount of time they would have to have been in an active practice prior to submitting an application to the board; (b) provide that the references be from practicing dentists; (c) require applicants to submit evidence of having passed a clinical examination for licensure in another state or Canadian province whose licensure requirements are substantially equivalent to Minnesota's; and (d) provide that statements be submitted from a physician attesting to the applicant's physical and mental condition and from a licensed ophthalmologist or optometrist attesting to visual acuity;

(3) clarify the terms of the renewed license or registration; (4) define what the Board considers a timely application; (5) set forth procedures for the expiration of the license or registration of anyone who has failed to submit the annual renewal application and/or evidence of compliance with continuing dental education requirements;

(6) set forth the procedure for reinstatement of the license or registration of anyone whose license or registration has expired, was voluntarily terminated, or was suspended or revoked; and (7) make certain editorial changes. The proposed changes would amend Minn. Rules pts. 3100.1100, 3100.1200, 3100.1300, 3100.1400, 3100.1700, 3100.3300, and 3100.3400; would add Minn. Rules pt. 3100.1850; and would repeal Minn. Rules pts. 3100.1800, 3100.1900, and 3100.4700.

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

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## PROPOSED RULES

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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) require dentist, dental hygienist, and registered dental assistant applicants to submit evidence of satisfactorily passing a board approved examination designed to determine their level of clinical skills; (2) with respect to dentist and dental hygienist applicants for licensure by credentials, (a) clarify the amount of time they would have to have been in an active practice prior to submitting an application to the board; (b) provide that the references be from practicing dentists; (c) require applicants to submit evidence of having passed a clinical examination for licensure in another state or Canadian province whose licensure requirements are substantially equivalent to Minnesota's; and (d) provide that statements be submitted from a physician attesting to the applicant's physical and mental condition and from a licensed ophthalmologist or optometrist attesting to visual acuity;

(3) clarify the terms of the renewed license or registration; (4) define what the Board considers a timely application; (5) set forth procedures for the expiration of the license or registration of anyone who has failed to submit the annual renewal application and/or evidence of compliance with continuing dental education requirements;

(6) set forth the procedure for reinstatement of the license or registration of anyone whose license or registration has expired, was voluntarily terminated, or was suspended or revoked; and (7) make certain editorial changes. The proposed changes would amend Minn. Rules pts. 3100.1100, 3100.1200, 3100.1300, 3100.1400, 3100.1700, 3100.3300, and 3100.3400; would add Minn. Rules pt. 3100.1850; and would repeal Minn. Rules pts. 3100.1800, 3100.1900, and 3100.4700.

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.08, subd. 3; 150A.09, subd. 1; and 214.06, subd. 2 (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 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 avail-

able, 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

##### 3100.1100 APPLICATIONS FOR LICENSE TO PRACTICE DENTISTRY.

Subpart 1. [Unchanged.]

Subp. 2. **Clinical skills examination.** ~~The board may accept the results of the examination given by the Central Regional Dental Testing Service to determine clinical skills for licensure in Minnesota~~ The applicant shall submit evidence of satisfactorily passing a board approved examination designed to determine the applicant's level of clinical skills.

Subp. 3. to 5. [Unchanged.]

##### 3100.1200 APPLICATION FOR LICENSE TO PRACTICE DENTAL HYGIENE.

Any person desiring licensure to practice dental hygiene must present an application and credentials as prescribed by the act and shall conform to the following rules of the board:

A. and B. [Unchanged.]

C. ~~The board may accept the results of the examination given by the Central Regional Dental Testing Service to determine clinical skills for licensure in Minnesota~~ The applicant shall submit evidence of satisfactorily passing a board approved examination designed to determine the applicant's level of clinical skills.

D. to F. [Unchanged.]

##### 3100.1300 APPLICATION FOR REGISTRATION AS A REGISTERED DENTAL ASSISTANT.

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

A. An application on a form furnished by the board shall be completely filled out ~~in order to be considered.~~

B. [Unchanged.]

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## PROPOSED RULES

C. Submission of evidence of satisfactorily passing the ~~Minnesota~~ a board-approved registration examination ~~approved by the board~~ designed to determine the applicant's knowledge of the clinical duties specified in part 3100.8500, subpart 1.

D. and E. [Unchanged.]

### 3100.1400 APPLICATION FOR LICENSURE BY CREDENTIALS.

Any person who is already a licensed dentist or dental hygienist in another state or Canadian province desiring to be licensed to practice dentistry or dental hygiene in Minnesota ~~must shall~~ present to the board an application and credentials as prescribed by the act. The applicant shall conform to the following rules of the board:

A. The applicant shall complete an application ~~and credential verification questionnaire~~ on forms furnished by the board.

B. [Unchanged.]

C. An applicant for licensure as a dentist must have been in active practice in another state or Canadian province for at least three ~~of the four years immediately preceding prior to the receipt of a completed~~ application by the board (United States governmental service may be included) and must submit at least three references from other practicing dentists. ~~The application must include a physician's statement attesting to the applicant's physical and mental condition.~~

D. An applicant for licensure as a dental hygienist must have been in active practice in another state or Canadian province for at least one ~~year immediately preceding of the two years prior to receipt of a completed~~ application by the board and must submit at least two character references from dentists and two references from practicing dental hygienists.

E. An applicant must provide evidence of having passed a clinical examination for licensure in another state or Canadian province, where the licensure requirements are substantially equivalent to that of Minnesota.

F. An applicant shall include a physician's statement attesting to the applicant's physical and mental condition and a statement from a licensed ophthalmologist or optometrist attesting to the applicant's visual acuity.

E. to H. [Reletter as G. to J.]

### 3100.1700 TERMS AND RENEWAL OF LICENSE AND REGISTRATION.

Subpart 1. Terms. Each initial license or registration issued by the board is valid from the date issued until renewed or terminated in accordance with the procedures specified in this part. Each annually renewed license or registration issued by the board is valid from January 1 of the year for which it was issued until renewed or terminated in accordance with the procedures specified in this part.

Subp. 2. Renewal applications including information regarding CDE and fees. Each dentist, ~~and~~ dental hygienist and ~~each~~ registered dental assistant, shall submit an application for renewal of his license or registration together with the necessary fee no later than December 31 of the year preceding that for which the license or registration renewal is requested. Applications for renewal will be considered timely if received by the board no later than December 31 or postmarked on December 31. If the postmark is illegible, the application will be considered timely if received in the board office via United States first class mail on the first workday after December 31. The application form ~~shall~~ must provide a place for the renewal applicant's signature and ~~shall~~ must solicit information to include but not be limited to the applicant's office address or addresses, the number of his license or registration certificate, whether ~~such~~ the licensee or registrant has been engaged during the year preceding the year for which renewal is sought in the active practice of dentistry or dental hygiene or has worked as a registered dental assistant, and if so, whether within or without the state, and such other information which may be reasonably requested by the board.

For those licensees or registrants whose five-year CDE cycle expired the previous June 30 and who have not submitted evidence of compliance with the five-year CDE requirement set forth in part 3100.4100, the board will include in its written notice relating to annual renewal, that the licensee or registrant shall submit verified evidence of having taken the requisite number of CDE credit hours or of having passed the applicable examinations listed in part 3100.1850, subpart 4, in order to have his or her license or registration renewed.

Subp. 3. Failure to submit renewal application. The following procedure will be followed by the board for all licensees and registrants who have failed to submit the annual renewal application in accordance with subpart 2 including, if applicable, required information about CDE, and applicable fees, except as provided in subpart 5.

A. Any time after January 1, the board will send, to the last address on file with the board, a notice to all licensees or registrants who have not made application for the renewal of their license or registration. The notice will state that licensee or registrant has failed to make application for renewal; the amount of the renewal and late fees and/or the information required about CDE as specified in subpart 2 which must be submitted in order for the license or registration to be renewed; that licensee or registrant may voluntarily terminate the license or registration by notifying the board; and that failure to respond to the notice by the date specified, which date must be at least 33 days after the notice is sent out by the board, either by submitting the renewal application and applicable fees, and/or the information required about CDE, or by notifying the board that licensee or registrant has

voluntarily terminated his or her license or registration will result in the expiration of the license or registration and termination of the right to practice.

B. If the application for renewal, including required information about CDE and the applicable annual and late fees or notice of voluntary termination is not received by the board by the date specified in the notice, the license or registration will expire and the licensee's or registrant's right to practice will terminate as of the date specified in the notice. The expiration and termination will not be considered a disciplinary action against the licensee or registrant.

Subp. 4. Reinstatement. A license or registration which has expired pursuant to this part may be reinstated pursuant to part 3100.1850.

Subp. 5. Contested case proceedings. The board, in lieu of the process set out in subpart 3, may initiate a contested case hearing to revoke or suspend a license or registration for failure to submit the fees and CDE information requested on the renewal application, at the same time that it initiates disciplinary proceedings against the licensee or registrant for other grounds specified in Minnesota Statutes, section 150A.08, subdivision 1, and parts 3100.6100 to 3100.7200 and 3100.8100.

### **3100.1850 REINSTATEMENT OF LICENSURE OR REGISTRATION.**

Subpart 1. Requirements. Upon complying with the requirements specified in this part, the applicant's license or registration shall be reinstated. Any person desiring the reinstatement of a license or registration shall:

A. submit to the board a completed application on a form provided by the board;

B. submit with the application the fee specified in part 3100.2000 subpart 6;

C. include with the application a letter stating the reasons for applying for reinstatement; and

D. comply with the applicable provisions of subparts 2 to 5. Upon reinstatement, the person shall be assigned to the CDE cycle to which the licensee or registrant was assigned prior to termination of the license or registration.

Subp. 2. Expiration or voluntary termination of less than five years. Applicants whose license or registration has expired pursuant to part 3100.1700, subpart 3, or who voluntarily terminated their license or registration less than five years previous to the application for reinstatement must:

A. Submit evidence of having completed the CDE requirements that would have applied to them had their licenses or registration not expired. If the license or registration had expired because of failure to meet CDE requirements or if the applicant's CDE cycle concluded during the time that the license or registration was in expired status and the requirements had not been complied with, the applicant must first successfully complete part II of the national board examination or the clinical examination specified in part 3100.1100, subpart 2, for dentists; the national board examination or the clinical examination specified in part 3100.1200, item C, for dental hygienists; and the examination for initial registration for registered dental assistants.

B. Pay the annual renewal fees and applicable penalty fees for the years between expiration or termination of licensure or registration and filing a reinstatement application.

Subp. 3. Expiration or voluntary termination of more than five years. Applicants whose license or registration has expired pursuant to part 3100.1700, subpart 3, or who voluntarily terminated their license or registration more than five years previous to the application for reinstatement must:

A. Submit evidence of having successfully completed part II of the national board examination and the clinical examination specified in part 3100.1100, subpart 2, for dentists; the national board examination and the clinical examination specified in part 3100.1200, item C, for dental hygienists; and the registration examination specified in part 3100.1300, item C, for registered dental assistants.

B. Pay the annual renewal fees and applicable penalty fees for the five years immediately preceding application for reinstatement.

Subp. 4. Revoked or suspended licenses. No license or registration which has been suspended or revoked by the board may be reinstated unless the applicant for reinstatement provides evidence of full rehabilitation from the offense for which the license or registration was suspended or revoked and complies with all other reasonable conditions imposed by the board for the purpose of establishing the extent of rehabilitation. In addition, if the disciplinary action were based in part on failure to meet CDE require-

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# PROPOSED RULES

ments, the license or registration may not be reinstated until the applicant has successfully completed the applicable examination specified in part 3100.1850, subparts 2 and 3.

Subp. 5. Scope. Nothing in this part prohibits a dentist or dental hygienist from applying for licensure pursuant to part 3100.1400.

## **3100.3300 EXAMINATION OF DENTISTS.**

**Subpart 1.** [Unchanged.]

**Subp. 2. National board examination.** Each applicant must pass a national board examination. At the discretion of the board, any dentist who has lawfully practiced dentistry in another state for five years may be exempted from taking ~~the~~ a national board examination.

**Subp. 3. to 5.** [Unchanged.]

## **3100.3400 EXAMINATION OF DENTAL HYGIENISTS.**

**Subpart 1.** [Unchanged.]

**Subp. 2. National board examination.** Each applicant must pass ~~the~~ a national board examination. At the discretion of the board, any dental hygienist duly licensed to practice as such in another state which has and maintains laws regulating the practice of dental hygiene by dental hygienists, equivalent to this state's, who is of good professional character and is desirous of licensure in this state and presents a certificate from the examining board of the state in which the applicant is licensed so certifying, may be exempted from taking a national board examination provided the applicant has been licensed for five or more years.

**Subp. 3 and 4.** [Unchanged.]

**REPEALER.** Minnesota Rules, parts 3100.1800, 3100.1900, and 3100.4700 are repealed.

**EFFECTIVE DATE.** Minnesota Rules, part 3100.1700, is effective January 1, 1986.

## **Board of Dentistry**

### **Proposed Rules Relating to Continuing Dental Education**

**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-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.09, subd. 6; 214.06, subd. 1; and 214.12 (1984).

If adopted, the proposed amendments would:

(1) limit CDE hours taken for nonclinical subjects and defines nonclinical subjects; (2) set forth the conditions under which a licensee or registrant may be exempt from the continuing dental education requirements and for resuming practice once a licensee or registrant has claimed an exemption; (3) clarify the application procedure and standards for initial and renewal continuing dental education sponsor approval and the standards which will be followed for course approval; (4) reduce the number of hours which may be applied toward the continuing dental education requirements for multiday convention type meetings; and (5) make certain editorial changes. The proposed changes would amend Minn. Rules pts. 3100.4100, 3100.4200, 3100.4300, 3100.4400, and 3100.4600; and would repeal Minn. Rules pt. 3100.4200, subd. 3.

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.

**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.

## PROPOSED RULES

### 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) limit CDE hours taken for nonclinical subjects and defines nonclinical subjects; (2) set forth the conditions under which a licensee or registrant may be exempt from the continuing dental education requirements and for resuming practice once a licensee or registrant has claimed an exemption; (3) clarify the application procedure and standards for initial and renewal continuing dental education sponsor approval and the standards which will be followed for course approval; (4) reduce the number of hours which may be applied toward the continuing dental education requirements for multiday convention type meetings; and (5) make certain editorial changes. The proposed changes would amend Minn. Rules pts. 3100.4100, 3100.4200, 3100.4300, 3100.4400, and 3100.4600; and would repeal Minn. Rules pt. 3100.4200, subp. 3.

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.09, subd. 6; 214.06, subd. 1; and 214.12 (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 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

#### 3100.4100 CONTINUING DENTAL EDUCATION.

**Subpart 1. Evidence of attendance.** Each licensee and registrant shall ~~each year~~ provide the board evidence, on forms provided supplied by ~~the board~~, that ~~such~~ the person has attended or participated in CDE as required by parts 3100.4100 to ~~3100.4700~~ 3100.4600.

~~At the present time the board cooperates with and is part of the registry which provides a centralized record-keeping system using computer facilities. Thus, the forms provided by the board for reporting participation in CDE courses are computer cards sent to each licensee and registrant by the board through the registry. See parts 3100.4200, subpart 2 and 3100.4600 for rule provisions relating to reporting.~~

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.

## PROPOSED RULES

**Subp. 2. Minimum hours.** The minimum number of hours of approved CDE for each five years shall be: for dentists, 75 hours; for dental hygienists, 40 hours; and for registered dental assistants, 25 hours. Of these hours, dentists may earn no more than 15 hours, dental hygienists no more than eight hours, and registered dental assistants no more than five hours on nonclinical subjects relating to the dental profession.

Nonclinical subjects relating to the dental profession are those which cover skills related to dental services in general which are not directly related to, but are nevertheless supportive of, the provision of clinical services. Examples of nonclinical subjects relating to the dental profession are patient management, the legal and ethical responsibilities of the dental profession, and stress management.

Examples of subjects that are not considered to be related to the dental profession are estate planning, financial planning, marketing, investments, and personal health.

**Subp. 3.** [Unchanged.]

**Subp. 4. Exemptions.** A licensee or registrant who pays an annual license or registration renewal fee and meets any of the following conditions is exempt from complying with the CDE requirements if he or she files with the board an affidavit specifying the condition within which he or she falls:

- A. resides permanently outside the state and does not practice within the state; or
- B. is retired from practice and does not perform any dental services on a volunteer or free basis; or
- C. is permanently disabled and unable to practice dentistry.

**Subp. 5. Expiration of exemption.** A licensee or registrant claiming exemption under subpart 4 who subsequently decides to resume practice shall submit to the board, before resuming practice, a written notice of the intended change and evidence of having completed CDE requirements equivalent to what the requirements would have been without the exemption for the five years immediately preceding the date of receipt of the notice of the intent to resume practice. If the licensee or registrant has not complied with the CDE requirements, the licensee or registrant must comply with part 3100.1850, subpart 2, if the licensee or registrant had been exempt from complying with CDE requirements for less than five years and with part 3100.1850, subpart 3, if exempt more than five years. The licensee or registrant may not resume practice until notified by the board that the evidence submitted is acceptable. The licensee or registrant will be placed into the CDE cycle that he or she would have been in if the exemption was not claimed.

### 3100.4200 CDE SPONSORS.

**Subpart 1.** [Unchanged.]

**Subp. 2. Application procedure.** The procedure for applying for approval as a sponsor of CDE courses shall be as follows. Persons or organizations intending to offer courses for CDE credit shall apply to the board in advance for approval and shall supply all information specified in subpart 5 as well as any other information which the board may reasonably require consistent with the purposes of parts 3100.4100 to 3100.4700 present a completed application on a form provided by the board. The form will request the submission of information which will enable the board to determine whether the applicant meets the standards for sponsor approval as specified in subpart 5. The board may require the submission of any other information it deems necessary to determine whether the applicant meets those standards. Each application for sponsor approval submitted to the board must include the application fee established in part 3100.2000 before the application will be considered. The board may use as consultants a consultant a committee appointed for such evaluation, which may include nonboard members, to evaluate sponsor applications.

**Subp. 3** [See repealer.]

**Subp. 4. Annual report Sponsor renewal.** Sponsors shall submit the information required by subpart 3 annually. When the board approves a sponsor, the approval will remain in effect for four years. In order to remain an approved sponsor, the sponsor must again submit an application and fee as provided for in subpart 2 and be approved before the expiration of the four-year period.

**Subp. 5. Approval standards.** The board shall will approve as a sponsor those applicants which meet the following standards:

- A. The applicant is formally organized as a corporation (for profit or not for profit), partnership, accredited educational institution, or other formal association and has as one of its principal purposes the sponsoring of CDE courses.
- B. The proposed types of courses to be sponsored shall proposed by a sponsor must have significant intellectual or practical content which deals primarily with matters directly related to the practice deal in the clinical and scientific aspect of dentistry and patient communication or auxiliary functions or with the professional responsibility or ethical obligations of licensees or registrants in nonclinical subjects relating to the dental profession as specified in part 3100.4100, subpart 2.

C. [Unchanged.]

**Subp. 6. Proof of participation.** Each sponsor, at least once during each CDE course sponsored by it, shall announce to all participants that in order to receive CDE credit that they submit to the sponsor a computer card supplied by the board through the

registry within two weeks of completion of the course. The sponsor shall submit all ~~computer~~ cards to the registry board within three weeks after completion of the course.

**Subp. 7.** [Unchanged.]

### **3100.4300 APPROVAL OF COURSES ATTENDED.**

**Subpart 1. and 2.** [Unchanged.]

**Subp. 3. Course approval standards.** The board shall grant CDE credit for any course which meets the following standards. The course shall have significant intellectual or practical content dealing ~~primarily with matter directly related to~~ in the practice clinical and scientific aspect of dentistry or auxiliary functions or to the professional responsibility or ethical obligations of the participants and patient communication, or in nonclinical subjects related to the dental profession as specified in part 3100.4100, subpart 2.

**Subp. 4. to 6.** [Unchanged.]

### **3100.4400 ESTABLISHING CREDIT HOURS FOR COURSES.**

~~The board, For courses presented by sponsors approved pursuant to part 3100.4300~~ 3100.4200, after evaluating the information submitted, and sponsor and for courses approved pursuant to part 3100.4300, the board shall fix the number of hours of CDE credit for each course based upon the following criteria:

A. Multiday convention-type meetings such as state or national dental conventions or their equivalent ~~shall~~ will be given ~~five~~ three clock hours credit ~~only~~.

B. Scientific or educational meetings or courses or similar offerings ~~shall~~ will be credited on an hour-for-hour basis.

C. Home study with a ~~testing mechanism shall~~ an accompanying examination will be awarded hourly credit if the examination is successfully completed based upon a determination by the board or sponsor of the reasonable amount of time necessary to cover the material and take the examination and not on the basis of the individual time taken to study or review the material.

D. Presentation of a course made on behalf of a ~~an~~ approved sponsor ~~shall~~ will be credited on an hour-for-hour basis.

### **3100.4600 TIME LIMITS FOR NOTICE OF ATTENDANCE.**

Within two weeks after completing a course given by a sponsor approved pursuant to part 3100.4200, the licensee or registrant shall fill out the form supplied by the board for reporting participation in CDE courses and submit it to the sponsor. If a course is taken from a sponsor not approved by the board under part 3100.4200, CDE credit for that course will not be granted unless the licensee or registrant applies for course approval under part 3100.4300 within two weeks after completion of the course. ~~If course approval is granted, the board shall send to the registry the completed form for reporting participation in CDE courses submitted by the licensee or registrant with his application for course approval (see part 3100.4300, subpart 2). The board, for failure or~~ If a licensee or registrant fails to comply with the time limits specified in this section, the board may refuse to grant CDE credit for the applicable course.

**REPEALER.** Minnesota Rules, part 3100.4200, subpart 3, is repealed.

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# PROPOSED RULES

## Board of Dentistry

### Proposed Rules Relating to Dental Hygienists

#### **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-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.10, subds. 1 and 2 (1984).

If adopted, the proposed amendments would: (1) clarify the permissible duties of registered dental assistants; (2) provide for the limited registration of persons in allied health professions with qualification regarding the taking of X rays to be authorized to take dental radiographs upon successful completion of a specified course and examination; (3) adds to the specific services a dental hygienist can perform. The removal of marginal overhangs under the indirect supervision of a dentist; (4) prohibits hygienists from performing any other dental treatments or procedures not authorized by these rules; and (5) make certain editorial changes. The

proposed changes would amend Minn. Rules pts. 3100.8400, 3100.8500, and 3100.8700; and would repeal Minn. Rules pt. 3100.8400, subd. 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) clarify the permissible duties of registered dental assistants; (2) provide for the limited registration of persons in allied health professions with qualification regarding the taking of X rays to be authorized to take dental radiographs upon successful completion

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## PROPOSED RULES

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of a specified course and examination; (3) adds to the specific services a dental hygienist can perform. The removal of marginal overhangs under the indirect supervision of a dentist; (4) prohibits hygienists from performing any other dental treatments or procedures not authorized by these rules; and (5) make certain editorial changes. The proposed changes would amend Minn. Rules pts. 3100.8400, 3100.8500, and 3100.8700; and would repeal Minn. Rules pt. 3100.8400, 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.10, subs. 1 and 2 (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.

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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.

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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

### 3100.8400 ASSISTANTS.

**Subpart 1. Permissible duties.** Assistants may: perform all those duties not directly related with performing dental treatment or services on patients; retract a patient's cheek, tongue, or other parts of tissue during a dental operation; assist with the placement or removal of a rubber dam and accessories used for its placement and retention, as directed by an operating dentist during the course of a dental operation; remove such debris as is normally created or accumulated during the course of treatment being rendered by a licensed dentist during or after operative procedures by the dentist by the use of vacuum devices, compressed air, mouthwash, and water; ~~and~~ provide any assistance, including the placement of articles and topical medication in a patient's oral cavity, in response to a specific direction to do so by a licensed dentist who is then and there actually engaged in performing a dental operation as defined in the act and who is then actually in a position to give personal supervision to the rendition of ~~such~~ this assistance-

~~In addition, assistants may;~~ and aid dental hygienists and registered dental assistants in the performance of their duties as defined in subpart 2 and parts 3100.8600 and 3100.8700.

**Subp. 2.** [See repealer.]

**Subp. 3.** [Unchanged.]

### 3100.8500 REGISTERED DENTAL ASSISTANTS.

**Subpart 1. Permissible duties.** Registered dental assistants in addition to services performed by the assistant may perform the following services under the indirect supervision of a dentist:

A. to D. [Unchanged.]

E. remove excess cement from inlays, crowns, bridges, and orthodontic ~~bands~~ appliances with hand instruments only;

F. perform mechanical polishing to clinical crowns ~~only and not to include any including instrumentation; prior examination for.~~ Removal of calculus and by instrumentation must be done by the dentist or dental hygienist;

G. to K. [Unchanged.]

**Subp. 2.** [Unchanged.]

**Subp. 3. Limited registration.** A dental assistant, who by virtue of academic achievement which is equal to or greater than that of a registered dental assistant, and is currently qualified in Minnesota in an allied health profession may take dental radiographs under the indirect supervision of a dentist if the person complies with the requirements of this subpart. The person shall file with the board a completed application on a form furnished by the board and the fee prescribed in part 3100.2000, subpart 7. In addition, the person shall submit evidence of the successful completion of a course on dental radiographs and of passing an examination. The course must be board-approved. The course shall be equivalent to the dental radiograph courses offered by dental assisting courses approved by the board under part 3100.1300, item B. The examination must be the radiograph part of the examination which is required of registered dental assistant applicants.

### 3100.8700 DENTAL HYGIENISTS.

**Subpart 1. Permissible duties.** Dental hygienists may perform the following services under the general supervision of a dentist:

A. [Unchanged.]

B. complete prophylaxis to include scaling, root planing, soft tissue curettage, polishing of ~~fillings~~ restorations, and temporary replacement of restorations;

**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.

# PROPOSED RULES

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C. [Unchanged.]

D. dietary analysis, salivary analysis, and preparation of smears for dental health purposes; and

E. placement and changing of periodontal packs if the dentist is present; and

~~F.~~ application of pit and fissure sealants.

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

Subp. 2. Other duties. Dental hygienists, under the indirect supervision of a licensed dentist, may remove marginal overhangs.

Subp. 3. Other duties prohibited. No dental hygienist may perform any other dental treatment or procedure on patients not authorized by these parts.

REPEALER. Minnesota Rules, part 3100.8400, subpart 2, is repealed.

## Board of Dentistry

### Proposed Rules Relating to General Licensing Provisions of the Board of Dentistry

#### **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-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.08, subd. 1(b); and 319A.18 (1984).

If adopted, the proposed amendments:

(1) would allow the Board to refuse to accept a licensee's or registrant's voluntary termination of license or registration if the Board has reason to believe that the licensee or registrant has violated laws or rules enforced by the Board and has determined that the allegations are serious enough to warrant resolution by means other than voluntary termination; (2) would require licensees, registrants, or applicants who are the subject of an investigation or proceeding of the Board to cooperate with the Board, its agents, or those working on behalf of the Board and make failure to do so a separate grounds for disciplinary action;

(3) would require professional corporations to include in their annual reports to the Board the corporate title of each officer; (4) would eliminate the issuance of certificates of registration to professional corporations; and (5) would make certain editorial changes. The proposed changes would amend Minn. Rules pts. 3100.0100, 3100.3100, 3100.3200, 3100.6200, 3100.9100, 3100.9200, 3100.9300, and 3100.9500; would add new rules 3100.6325, and 3100.6350; and would repeal Minn. Rules pt. 3100.0100, subs. 12 and 19.

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

**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.

## PROPOSED RULES

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) would allow the Board to refuse to accept a licensee's or registrant's voluntary termination of license or registration if the Board has reason to believe that the licensee or registrant has violated laws or rules enforced by the Board and has determined that the allegations are serious enough to warrant resolution by means other than voluntary termination; (2) would require licensees, registrants, or applicants who are the subject of an investigation or proceeding of the Board to cooperate with the Board, its agents, or those working on behalf of the Board; and make failure to do so a separate grounds for disciplinary action;

(3) would require professional corporations to include in their annual reports to the Board the corporate title of each officer; (4) would eliminate the issuance of certificates of registration to professional corporations; and (5) would make certain editorial changes. The proposed changes would amend Minn. Rules pts. 3100.0100, 3100.3100, 3100.3200, 3100.6200, 3100.9100, 3100.9200, 3100.9300, and 3100.9500; would add new rules 3100.6325, and 3100.6350; and would repeal Minn. Rules pt. 3100.0100, subs. 12 and 19.

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.08, subd. 1(b); and 319A.18 (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 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

#### 3100.0100 DEFINITIONS.

**Subpart 1. Scope.** For the purpose of these rules and unless the context otherwise requires, the terms in subparts 2 to 21 have the meanings given them.

**Subp. 2. to 9.** [Unchanged.]

**Subp. 9a. Dental hygienist.** "Dental hygienist" means a person holding a license as a dental hygienist issued by the board pursuant to the act.

**Subp. 10. and 11.** [Unchanged.]

**Subp. 12.** [See repealer.]

**Subp. 13. to 18.** [Unchanged.]

**Subp. 19.** [See repealer.]

**Subp. 20. and 21.** [Unchanged.]

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.

## PROPOSED RULES

### 3100.3100 CONDUCT OF EXAMINATIONS.

The following rules govern the conduct of examinations given to those applicants for licensure as a dentist or dental hygienist or for registration as a registered dental assistant and must be strictly adhered to throughout the entire examination. An examinee who violates any of the rules or instructions applicable may be declared by the board to have failed the examination.

A. to M. [Unchanged.]

### 3100.3200 CLINICAL EXAMINATIONS.

Every dentist and dental hygienist applicant shall give a demonstration of skill in those operations appropriate for his level of licensure or registration prescribed by the board. Registered dental assistant applicants may also be so examined. All operations shall be performed in the presence of a board member qualified for the particular examination being given or consultant appointed by the board for that purpose.

### 3100.6200 CONDUCT UNBECOMING A LICENSEE OR REGISTRANT.

“Conduct unbecoming a person licensed to practice dentistry or dental hygiene or registered as a dental assistant or conduct contrary to the best interests of the public,” as used in Minnesota Statutes, section 150A.08, subdivision 1, clause ~~(5)~~ of the act (6), shall include ~~the indiscriminate and repeated prescribing or dispensing of any drug which under the circumstances has no therapeutic value; the failure to maintain adequate safety and sanitary conditions for a dental office; and~~ the act of a dentist, dental hygienist, or registered dental assistant, or applicant in:

A. to G. [Unchanged.]

H. falsifying records relating to payment for services rendered, participation in a CDE course; or other records with respect to licensure, registration, CDE, and the practice of dentistry; ~~and~~

I. perpetrating fraud upon patients, third party payers, or others relating to the practice of dentistry;

J. failing to cooperate with the board, its agents, or those working on behalf of the board as required by part 3100.6300; and

K. failing to maintain adequate safety and sanitary conditions for a dental office as specified in part 3100.6300.

### 3100.6325 VOLUNTARY TERMINATION OF LICENSURE OR REGISTRATION.

The board may refuse to accept a licensee's or registrant's voluntary termination of license or registration if the board has reason to believe that the licensee or registrant has violated any of the provisions of Minnesota Statutes, chapter 150A or board rules, and has determined that allegations are serious enough to warrant resolution other than by voluntary termination.

### 3100.6350 REQUIRED COOPERATION.

Any licensee, registrant, or applicant who is the subject of an investigation or proceeding under these parts or under Minnesota Statutes, sections 150A.08 and 214.10 shall cooperate with the board, its agents, or those working on behalf of the board by complying with any reasonable request including requests to:

A. furnish designated papers, documents, or tangible objects;

B. furnish in writing a full and complete explanation covering the matter under consideration;

C. appear for conferences and hearings at the time and places designated.

Violation of this part is conduct unbecoming a licensee or registrant or conduct contrary to the best interests of the public. Good faith challenges to requests of the board will not be deemed a failure to cooperate. These challenges shall be brought before the appropriate agency or court.

### 3100.9100 ANNUAL REPORTS.

Annual reports of professional corporations organized under ~~the provisions~~ of Minnesota Statutes, sections 319A.01 to 319A.22, inclusive, ~~shall must~~ be submitted upon forms furnished by the board and ~~shall must~~ require submission of the following information under oath:

A. and B. [Unchanged.]

C. name and address of each director, officer, and shareholder, and the corporate title of each officer; and

D. a certification as to the licensure status of each shareholder, director, officer, employee, and agent as required by Minnesota Statutes, section 319A.21, paragraph (b); ~~and~~

~~E. A filing fee of \$100 for the first such annual report and a filing fee of \$25 for each such annual report thereafter.~~

### 3100.9200 ~~CERTIFICATE OF REGISTRATION~~ REVIEW OF ANNUAL REPORT.

The board ~~shall will~~ review its licensure records and conduct such further investigation as it may deem necessary and, if it finds

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.

## PROPOSED RULES

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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.

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## PROPOSED RULES

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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 earies;~~ 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.~~

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## PROPOSED RULES

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

These rules specify procedures and criteria for eligible financial assistance from the Minnesota Agricultural Resource Loan Guaranty Board for the development of agricultural processing facilities.

Upon adoption of the emergency rules, the proposed rules, this notice, all written comments received, and the emergency rules as adopted, will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change.

These emergency rules will take effect 5 working days after approval by the Attorney General, and will be effective for 180 days. The rules will be continued in effect if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

Persons who want to receive a free copy of the proposed emergency rules or want to be advised of the date of submission of the rules to the Attorney General or want to receive a copy of the final rules as proposed for adoption must submit a written request to Kathryn Hahne at the above address.

August 5, 1985

Jay Kiedrowski, Chairman  
Agricultural Resource Loan  
Guaranty Board

### **Emergency Rules as Proposed (all new material)**

#### **1580.0100 [Emergency] PURPOSE AND AUTHORITY.**

Parts 1580.0100 to 1580.1000 [Emergency] are authorized by Minnesota Statutes, section 41A.04, subdivision 4, as amended by Laws of Minnesota 1985, first special session, chapter 13, section 156, to effectuate the purposes of Minnesota Statutes, chapter 41A, as amended by Laws of Minnesota 1985, first special session, chapter 13, and to establish a process for application and approval of eligible financial assistance for agricultural resource projects.

#### **1580.0200 [Emergency] DEFINITIONS.**

**Subpart 1. Scope.** For purposes of parts 1580.0100 to 1580.1000 [Emergency], the terms defined in Minnesota Statutes, section 41A.02, as amended by Laws of Minnesota 1985, first special session, chapter 13, sections 146 to 150, and in this part have the meanings given to them.

**Subp. 2. Administrator.** "Administrator" means the commissioner of the Department of Energy and Economic Development acting as the chief administrative officer of the Agricultural Resource Loan Guaranty Board, or the commissioner's designee.

**Subp. 3. Chair.** "Chair" means the commissioner of the Department of Finance acting as chair of the Agricultural Resource Loan Guaranty Board.

**Subp. 4. County authority.** "County authority" means a rural development finance authority, or any county exercising the power of a rural development finance authority, pursuant to Minnesota Statutes, chapter 362A.

#### **1580.0300 [Emergency] AVAILABILITY OF ELIGIBLE FINANCIAL ASSISTANCE.**

**Subpart 1. Purpose.** Loan guarantees or bond proceeds are available from the board to further the development of the state's agricultural resources, and to improve the market for its agricultural products.

**Subp. 2. Extent of loan guarantee or bond issue.** The total principal amount of any guaranteed loan or bond issue must not exceed 80 percent of the total eligible costs of the project as estimated by the board at the time the commitment to guarantee a loan or issue bonds is made. A loan guarantee must not exceed 90 percent, exclusive of accrued interest, of a loan for the cost of a project or the refunding or refinancing of a loan.

In determining the percentage of a loan guarantee or the amount of a bond issue for the project, the board shall consider the following factors:

- A. the amount of state financial assistance necessary to assure the feasibility of the project;
- B. the amount of state financial assistance necessary to assure the lender's financial participation in the project;
- C. the impact the project will have on the state and its agricultural resources; and
- D. the availability of funds for state financial assistance.

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## PROPOSED RULES

**Subp. 3. Eligible project costs.** Project costs eligible for a guaranteed loan or bond proceeds are defined in Minnesota Statutes, section 41A.02, subdivision 10, and include the following:

- A. land and building acquisition costs;
- B. site preparation;
- C. construction costs;
- D. engineering costs;
- E. equipment and machinery;
- F. bond issuance costs;
- G. underwriting or placement fees;
- H. permit and application fees, guarantee fees, insurance, letters of credit, and surety bonds;
- I. fees of the board for application and guarantee;
- J. certain contingency costs;
- K. interest costs during construction;
- L. legal fees;
- M. costs of environmental review; or
- N. any other expenses incurred by the borrower which are reasonably required for the construction and completion of the project.

Working capital is not considered a cost of construction and completion of the project and is not an eligible project cost for a guaranteed loan or bond proceeds. Working capital may be financed through equity or by debt which is neither secured by the state's guarantee nor by a senior or priority pledge or mortgage of any security given for the guaranteed loan or bonds.

**Subp. 4. Security for a guaranteed loan or bond proceeds.** The guaranteed loan or bond proceeds must be secured by the best available collateral, which must include at a minimum, a mortgage on, and security interest in, all real and personal property comprising the project.

**Subp. 5. Increase in project costs.** If the actual cost of a project exceeds the cost estimate, the board may consent to an increase in the amount of the guaranteed loan or bond issue pursuant to Minnesota Statutes, section 41A.03, subdivision 2, as amended by Laws of Minnesota 1985, first special session, chapter 13, sections 146 to 150, and Minnesota Statutes, chapter 474, if it determines that the increased costs will not jeopardize the state's interest and are necessary for the successful completion or operation of the project. The increase in the principal amount of the guaranteed loan or bond issue must not exceed 80 percent of the increased costs. The board may guarantee up to 90 percent of the increase in the principal amount of the guaranteed loan and interest on that amount.

### 1580.0400 [Emergency] REQUEST FOR COMMENTS.

**Subpart 1. Request by applicant.** An applicant may seek comments from the administrator with respect to a proposed project and its potential eligibility for a loan guarantee or bonds prior to submitting a complete application.

A request for comments must be made in writing to the administrator and include:

- A. the borrower's name, form of business organization, address, contact person, and telephone number;
- B. the nature and amount of eligible financial assistance requested and the anticipated terms of any loan, including a description of the collateral and other security;
- C. if a loan guarantee is requested, the name of the proposed lender, address, contact person, and telephone number;
- D. a brief description of the project and the technology involved, the agricultural resources used or processed, including their source state, and the products and by-products it will provide;
- E. the amount of the borrower's equity and a description of other sources of financing available or considered for the project;
- F. the availability of raw materials and supplies;
- G. if the borrower is a corporation, the names and addresses of its parent, affiliates, and subsidiary firms; and
- H. a description of any Minnesota products, processors, or producers which may compete with the project or its products.

**Subp. 2. Reply by administrator.** Any comments by the administrator are intended to assist the applicant and the board in evaluating the project and arranging the total financing package. The comments do not obligate the board to grant a loan guarantee or to issue bonds, and they may be amended or reconsidered by the administrator at any time prior to a formal resolution of the board authorizing a loan guarantee or bond issue.

**1580.0500 [Emergency] CONTENTS OF APPLICATION.**

**Subpart 1. Application forms.** The administrator shall prepare application forms for use by applicants. Unless waived by the board pursuant to subpart 2, the application must provide the following information:

- A. a description of the scope, nature, extent, and location of the project, including a preliminary or conceptual design of the project and a description of the technology to be applied;
- B. the identity of the borrower and the prior experience of the borrower as it relates to the project;
- C. a detailed, itemized estimate of the total cost of the project, including escalation and contingencies, with an explanation of the assumptions underlying the estimates;
- D. a general description of the financial plan of the project, including the sources and uses of funds, the types and priorities of all security interests to be granted as security for the guaranteed loan or bonds and the project, and all other project related debt;
- E. an environmental report analyzing potential environmental effects of the project, any necessary or proposed mitigation measures, and other available data which is relevant to an environmental assessment;
- F. a description of applications to be filed and an estimated timetable of approvals or permits required by federal, state, and local government agencies as conditions for construction and commencement of operation of the project;
- G. an estimated construction schedule;
- H. an analysis of the estimated cost and volume of production and market demand for the product, including economic factors justifying the analysis, and proposed and actual contracts or letters of intent relating to the supply of feedstock and raw materials and marketing or purchase of the production;
- I. pro forma cash flow statements for the first five years of project operation, including income statements and balance sheets;
- J. a description of the borrower's organization and, where applicable, a copy of its articles of incorporation or partnership agreement and bylaws;
- K. the estimated amount of the loan or bonds and the percentage of the loan guarantee requested, the proposed repayment schedule, a description of all security and collateral, and other terms and conditions of the loan;
- L. an estimate of the amounts and times of receipt of guarantee and bond fees, sales and use taxes, property tax increments, and any other governmental charges which may be available for the support of the state guarantee fund as a result of the construction of the project, with an analysis of the assumptions on which the estimate is based;
- M. a copy of any lending commitment or letter of intent issued by a lender to the borrower;
- N. if a loan guarantee is requested, a statement from the lender, if identified, as to its general experience in financing and servicing debt incurred for projects of the size and general type of the project, and its proposed servicing and monitoring plan;
- O. a description of any legal actions pending or to be commenced against the borrower, including an explanation of each of these actions and borrower's defenses, if any;
- P. a description of all potentially competitive products which are produced or processed in Minnesota and an analysis of the competitive impact of the project on such competing products and producers;
- Q. if the application is made by an applicant other than the county authority and if tax increment financing is to be used for the project pursuant to Minnesota Statutes, section 41A.06, subdivision 5, as amended by Laws of Minnesota 1985, first special session, chapter 13, section 162, a copy of a resolution adopted by the county authority where the project is located authorizing the use of tax increment financing;
- R. a statement of informed consent by the applicant regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d). If the applicant is a corporation, then an authorized representative of the applicant shall provide a statement of informed consent in a form similar to that provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d); and
- S. any additional information reasonably related to the criteria in part 1580.0700 [Emergency] and reasonably required for the board's consideration of project eligibility and conformity to generally accepted commercial lending practices as required by

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## PROPOSED RULES

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banks or other financial institutions considering such a project for debt financing and to the purposes of Minnesota Statutes, section 41A.01, as amended by Laws of Minnesota 1985, first special session, chapter 13, section 145.

**Subp. 2. Waiver of application requirements.** An applicant may request the board to waive any of the requirements of subpart 1, items A to O. The request must be made in writing to the administrator. The board may waive a requirement if it determines that the requirement is not necessary to evaluate the eligibility or feasibility of the project. A request for waiver must state the reasons why, in the applicant's judgment, the information is not necessary.

**Subp. 3. Feasibility study.** The board must require a feasibility study for the project, if the board determines that such a study is necessary for its consideration of the project's eligibility for a loan guarantee or bond proceeds. The feasibility study must address those factors which the board determines are necessary in light of generally accepted commercial lending practices and the requirements of Minnesota Statutes, chapter 41A, as amended by Laws of Minnesota 1985, first special session, chapter 13.

### 1580.0600 [Emergency] APPLICATION PROCEDURE.

**Subpart 1. Application forms.** The administrator must provide application forms for use by an applicant seeking a loan guaranty or bonds upon the request of the applicant.

**Subp. 2. Submission of application.** An applicant for eligible financial assistance must make written application to the board. This written application must include the information described in part 1580.0500 [Emergency], subpart 1. The applicant shall submit the completed application along with all necessary exhibits and attachments to the administrator. The administrator may require the borrower or lender to provide additional information which is necessary for the review of the application. The administrator shall notify the applicant of receipt of the application.

**Subp. 3. Review by administrator.** The administrator shall review the application according to generally accepted commercial lending practices in order to determine whether or not to submit it to the board for final action.

In order to be submitted to the board for final action, the administrator shall find the following conclusions:

A. that the project appears to be eligible for a loan guarantee or bond proceeds, and conforms to the purpose and requirements of Minnesota Statutes, chapter 41A, as amended by Laws of Minnesota 1985, first special session, chapter 13, and part 1580.0700 [Emergency];

B. that the application is complete or would be complete except for the applicant's request for a waiver pursuant to part 1580.0500 [Emergency], subpart 2;

C. that the project is both economically and technically feasible, and can reasonably be expected to maintain a sound financial condition and to retire the principal and pay interest on the guaranteed loan or bonds in accordance with the terms of the loan agreement;

D. that the project and its development are economically advantageous to the state; and

E. that money is available to fund the loan guaranties or bonds.

The administrator shall notify the applicant of the decision to approve or reject the application. Upon approval, the administrator shall submit copies of the application to each of the board members for final action.

**Subp. 4. Appeal of administrator's determination.** If the administrator decides not to submit the application to the board for approval, the applicant may request the board to review the administrator's decision. The request must be made in writing and submitted to the chair. Upon request the board shall conduct a de novo review of the application pursuant to subpart 5.

**Subp. 5. Board review of application.** The board shall review the completed application pursuant to part 1580.0700 [Emergency], and may seek assistance from the administrator and its advisory committee, if one exists. The board may hire consultants or professionals who are reasonably required for an evaluation of the eligibility and feasibility of the project.

**Subp. 6. Approval and conditional commitment.** If the board approves an application, it may adopt a resolution that conditionally commits the state to guarantee the portion of the proposed loan or to issue bonds, not exceeding the limit in part 1580.0300 [Emergency], subpart 2. The commitment is not binding upon the state unless the board has executed on behalf of the state a final loan guarantee agreement or has issued bonds in conformity with parts 1580.0800 [Emergency] and 1580.1000 [Emergency].

**Subp. 7. Denial of application.** If the application is not approved by the board, the administrator shall notify the applicant promptly in writing of the denial.

**Subp. 8. Application fee.** At the time the application is filed, the applicant shall pay a fee equal to 0.25 percent of the amount of the loan guarantee or bonds requested. The fee must be paid to the commissioner of the Department of Finance. The board shall charge against the fee its costs of processing, reviewing, and evaluating the application. The costs charged against the fee may include, as applicable, the direct and indirect cost of work performed by state employees, the expenses of the advisory committee, and the fees, charges, and expenses paid to consultants or professionals the board considers necessary and reasonably required for its determination of project viability and eligibility for a loan guarantee or bond proceeds.

If the board denies an application, the remaining fee balance must be refunded to the applicant. If the board issues a commitment for the project, the remaining fee balance must be transferred from the general fund to the guaranty fund and credited against the amount of commitment fee required in part 1580.0800 [Emergency].

**Subp. 9. Misrepresentation in application.** The board may reject any application, may revoke any notice of approval, and may refuse to close any loan or issue bonds in the event that any information provided in the application contains a material misrepresentation or omission. The applicant and borrower shall immediately update and correct all information provided to the board or to the lender.

**1580.0700 [Emergency] CRITERIA FOR APPROVAL OF ELIGIBLE FINANCIAL ASSISTANCE.**

In determining whether to approve or deny an application for a loan guarantee or bond proceeds, the board shall consider the following criteria:

- A. the extent to which the project will further the development of the state's agricultural resources and improve the market for its agricultural products;
- B. the extent to which the public financial assistance sought by the applicant under the program would provide the project with an unfair advantage in competing with other products produced or processed in Minnesota;
- C. the viability of the project, including economic and commercial feasibility, technical feasibility, financial projections, and managerial capability;
- D. conformity of the project to environmental standards;
- E. the qualifications and credit history of the owners, operators, and lenders;
- F. the nature and extent of the security;
- G. the degree of financial participation by private persons not supported by the loan guarantee or bonds;
- H. the availability of the board's bonding authority, proceeds, and money from other sources to support the guarantee; and
- I. the market conditions and terms required for the sale of any bonds or loan guarantee.

**1580.0800 [Emergency] GENERAL TERMS AND CONDITIONS OF LOAN GUARANTEES.**

The loan guarantee agreement between the state and the lender, and the loan agreement between the lender and the borrower must contain the following provisions, unless the board determines that the applicant has shown in writing that a required term or condition is not necessary to ensure the lender and the state of repayment according to the terms of the loan agreement in light of generally accepted commercial lending practices:

A. Payments of principal and interest made by the borrower under the loan must be applied by the lender to reduce the guaranteed and nonguaranteed portion of the loan on a proportionate basis, and the nonguaranteed portion may not in any event receive preferential treatment over the guaranteed portion.

B. A period of grace must be allowed of not less than 60 days from the date a principal or interest payment is due, prior to the making of demand for payment pursuant to the loan guarantee, to permit adequate time for a decision by the board regarding principal and interest assistance in accordance with part 1580.0900 [Emergency]. Payment as required by the loan guarantee must be made within 60 days of receipt by the board of a written demand complying with the terms and conditions of the guarantee.

C. The lender shall not accelerate a payment of the loan or exercise other remedies available to the lender if the borrower defaults, unless:

- (1) the borrower fails to pay a required payment of principal or interest;
- (2) the board consents in writing; or
- (3) it is otherwise permitted in the loan guarantee.

In the event of a default, the lender may not make demand for payment pursuant to the guarantee unless the board agrees in writing that the default has materially affected the rights or security of the parties, and the board finds that the lender should be entitled to receive payment pursuant to the loan guarantee.

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## PROPOSED RULES

D. If a payment of principal or interest is made by the board upon default of the borrower, the state is subrogated to the rights of the lender with respect to payment.

E. The borrower shall have promptly prepared and delivered to the board annual audited or reviewed financial statements of the project prepared by a certified public accountant according to generally accepted accounting principles.

F. A duly authorized representative of the board shall have access to the project site at reasonable times during construction and operation of the project.

G. The borrower shall maintain adequate records and documents concerning the construction and operation of the project in order that representatives of the board may determine its technical and financial conditions and its compliance with environmental requirements. The records must include the amounts of all sales and use taxes paid on personal property and services purchased for the construction and operation of the project, with tax receipts furnished by the sellers or other supporting documentation determined by the board to be satisfactory. The amounts of those taxes must be reported to the board in the manner and at the times required by the board.

H. The borrower shall protect and preserve at all times the project assets and other collateral securing the loan and shall assist in liquidation of collateral to minimize loss in the event of default.

I. Order liquidation of assets of the project must be provided for in the event of default, with an option on the part of the board to acquire from the lender the lender's interest in the assets pursuant to the nonguaranteed portion of the loan.

J. The state must be paid at or prior to the closing of the guaranteed loan a fee or fees for the loan guarantee or the commitment to guarantee the loan. The aggregate fee must be one percent of the total principal amount of the guaranteed portion of the loan.

K. The lender shall perfect and maintain the mortgage lien on the real estate and the security interest in all personal property and collateral granted as security for the loan, and shall cause all other loan servicing functions to be performed which are normally required or performed by a reasonable and prudent lender with respect to a loan without a guarantee.

L. The lender shall notify the board in writing without delay of:

- (1) the date and amount of and basis for each disbursement of loan proceeds;
- (2) any nonpayment of principal or interest due;
- (3) any failure to honor a commitment by any person of an intended source of capital for the project; and
- (4) any significant adverse changes from original cash flow projections as evidenced by reports from the borrower, or any other known evidence that the borrower might be unable to meet a future scheduled payment of principal or interest.

M. The board or the lender may determine that the loan is in default when:

- (1) scheduled payments are 60 days past due;
- (2) the borrower is or may become unable to meet in full the principal or interest payments, or both, which are due or to become due within a specified period; or
- (3) the board and the lender mutually determine and agree that the project is no longer viable and financially feasible.

N. The borrower shall be required to establish a reserve, from the proceeds of the loan or otherwise, to be maintained with the lender or with a trustee for the holders of the borrower's obligations, in cash or securities of a specified market value not less than one-half of the annual amount which would be required to amortize the entire amount of the loan over the term (or at the rate of yield resulting from the interest rates) provided in the loan agreement.

O. The lender shall service the loan and receive all payments of principal and interest. In the event of default, the lender must continue to service the loan if requested by the board to do so. Upon written approval of the administrator, the lender may sell or transfer the loan or loan servicing functions.

P. The agreement must contain other terms and conditions that the board determines necessary and appropriate to carry out the purpose of Minnesota Statutes, chapter 41A, as amended by Laws of Minnesota 1985, first special session, chapter 13.

### **1580.0900 [Emergency] PRINCIPAL AND INTEREST ASSISTANCE.**

**Subpart 1. Availability of assistance.** The board may at any time enter into a written contract with the borrower to pay the lender, an amount not greater than the amount of principal and interest to become due on one or more subsequent dates, without acceleration, if the board determines that:

- A. the borrower is not more than 60 days overdue in payments of principal or interest due;
- B. the borrower is or may become unable to meet in full principal or interest payments, or both, which are due or to become due within a specified period;



- C. it is in the public interest to permit the borrower to continue to pursue the purposes of the project;
- D. the probable net financial loss to the state will be less than that which would result in the event of a default;
- E. the borrower is obligated by the contract to reimburse the state for all principal or interest advanced thereunder, with interest on those amounts, upon terms and conditions satisfactory to the board in light of generally accepted commercial lending practices; and
- G. adequate funds are available to make the principal and interest payments pursuant to Minnesota Statutes, section 41A.03, subdivision 4, as amended by Laws of Minnesota 1985, first special session, chapter 13.

**Subp. 2. Terms of assistance.** All sums advanced for principal and interest assistance and interest on those amounts must be secured by the best available collateral and security interest granted by the loan agreement, but none of the advances may thereafter be repaid to the state until and unless all principal and interest currently due on the loan has been fully paid. In the event of subsequent default by the borrower, acceleration by the lender, and payment by the state of the full amount due under the loan guarantee or bonds, the state is subrogated to the rights of the lender with respect to the principal paid by it under the contract. Upon payment of the loan in full, with accrued interest, the remaining amount of the advances and interest on the advances may be paid to the state.

**1580.1000 [Emergency] ISSUANCE OF BONDS.**

**Subpart 1. Bond resolution.** If the board intends to fund the eligible financial assistance by issuing bonds for a project pursuant to Minnesota Statutes, section 41A.05, subdivision 2, as amended by Laws of Minnesota 1985, first special session, chapter 13, section 158, the board shall first pass a preliminary resolution. The preliminary resolution must not obligate the board to issue bonds or to fund eligible financial assistance, but must constitute an expression of current intention of the board to issue bonds or to fund eligible financial assistance. If the board subsequently determines that there are no adverse changes in the financial conditions or key personnel of the applicant or borrower, market conditions, availability of bond issuance authority, and other conditions that the board considers necessary, and the board decides in accordance with generally accepted commercial lending practices to make eligible financial assistance available, the board shall pass a final resolution that authorizes the issuance and sale of bonds to extend eligible financial assistance to the project. The final resolution must specify the terms and conditions under which bonds will be issued. The preliminary resolution may contain a time limit with respect to the issuance of bonds, may be revoked or amended by the board at any time prior to the final resolution of the board without liability to the board, and may impose any conditions or requirements that the board considers desirable. The administrator shall notify the applicant of the board's approval and provide the applicant with a copy of the resolution passed. Throughout this process, if the board does not extend financial assistance, the board has no liability to the applicant or borrower.

**Subp. 2. Bond reserve.** If the board determines, in light of market conditions, that a bond reserve fund is necessary to provide additional security for the bonds, then it must require the borrower to establish a reserve for the bonds. The reserve may come out of bond proceeds, in order to provide such additional security for the bonds as market conditions may require. The amount of the reserve must not be less than one-half of the annual amount which would be required to amortize the entire amount of the bonds over the term and at the interest rate provided in the bond resolution.

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## ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

## Department of Agriculture Planning Division

### Adopted Amendment to Rule Governing Charges Under the Minnesota Seed Law

The rule proposed and published at *State Register*, Volume 9, Number 51, pages 2697-2698, June 17, 1985 (9 S.R. 2697) is adopted as proposed.

## Department of Commerce

### Adopted Rules Relating to Insurance Continuing Education

The rules proposed and published at *State Register*, Volume 9, Number 28, pages 1537-1543, January 7, 1985 (9 S.R. 1537) are adopted with the following modifications:

#### Rules as Adopted

##### 2725.0110 GENERAL REQUIREMENTS.

**Subp. 2. Nonapproved courses.** The following are not approved courses:

G. ~~courses relating to the specific products of a specific company~~ courses which are primarily intended to impart knowledge of specific products of specific companies, if the use of the product or products relates to the sales promotion or marketing of one or more of the products discussed.

**Subp. 3. Automatic approval.** The commissioner shall grant automatic approval for insurance related courses approved by the Department of Commerce for real estate education, the Board of Continuing Legal Education for legal education, or similar regulatory offices within Minnesota.

The commissioner shall grant ~~automatic~~ approval for courses approved by the insurance regulatory agency in another state if the ~~course does~~ continuing education laws and rules governing course accreditation in that state do not conflict with parts 2725.0100 to 2725.0240.

**Subp. 4. Credit hours.** ~~Except as otherwise provided,~~ Courses must be attended in their entirety in order for a licensee to receive full credit. ~~No Proportional~~ credit will be given for partial attendance at a course.

**Subp. 7. Approval of course offerings.** Sponsors must submit their courses to the commissioner for approval at least 30 days prior to the date on which the course is to be held. Each application for approval of a course offering must be accompanied by the application for approval of the instructor unless the instructor has already been approved. Applications must be submitted on forms prescribed by the commissioner.

**Subp. 10. Approval of subsequent offerings.** If approval has been granted for the initial offering of a course, approval for subsequent offerings of ~~identical~~ courses shall be granted without requiring a new application if a "Notice of Subsequent Offering" is filed with the commissioner at least 30 days in advance of the date the course is to be held. ~~Identical courses are those covering substantially the same material.~~

**Subp. 12. Fees.** Fees for courses shall be reasonable and clearly identified to students.

Reasonable discounts of tuition ~~shall~~ may be offered.

If a course is canceled for any reason, all fees shall be returned promptly. In all instances, the fees must be refunded within 30 days of cancellation.

In the event that a course is postponed for any reason, students shall be given the choice of attending the course at a later date or having their tuition refunded in full. ~~In all instances,~~ The fees must be refunded within 30 days of postponement unless the student has notified the sponsor that he or she has chosen to attend the postponed course.

A sponsor ~~shall~~ may have a refund policy addressing student's cancellation or failure to complete a course, as long as that policy is clear to potential students.

**Subp. 13. Adequate facility to be used.** Each course of study shall be conducted in a classroom or other facility which is adequate to comfortably accommodate the faculty and the number of students enrolled. The sponsor may limit the number of students enrolled in a course.

**Subp. 14. National examinations.** A licensee shall receive 20 hours of continuing education credit for passing a recognized national examination.

Credit shall not be received for both attending courses leading to the national examination and passing the national examination. Courses leading to a recognized national examination shall be assigned credit hours in the same manner as other courses. A licensee who passes a national examination shall receive 20 hours of continuing education credit, even though the licensee has not attended 20 or more hours of courses leading to the examination.

**Subp. 15. ~~Company-sponsored courses.~~** Licensees may not receive more than half of their continuing education requirement for a particular reporting period in courses sponsored by an insurance company.

~~Insurance companies sponsoring insurance continuing education courses shall not require their agents to attend their courses.~~

**Subp. 16. Correspondence courses.** The amount of credit received by an agent for a correspondence course shall be based on successful completion of the course and subject to the number of hours assigned by the commissioner.

Any offeror of correspondence courses shall clearly disclose to any agent wishing to receive credit in Minnesota the number of hours for which that particular course has been approved by the commissioner.

~~Licensees may not receive more than half of their continuing education requirement for a particular reporting period in correspondence courses.~~

#### **2725.0160 COURSE COORDINATOR.**

**Subp. 2. Qualifications.** Course coordinators shall possess the following qualifications:

- A. a minimum of five years (during the immediately preceding five-year period) as an active licensed insurance agent; or

**Subp. 4. Responsibilities.** The coordinator must:

- H. ~~Attend workshops or instructional programs as reasonably required by the commissioner.~~

I. Provide students with course completion certificates, on a form prescribed by the commissioner, within 30 days of completion of the course. Notwithstanding the preceding sentence, a coordinator may require payment of the course tuition as a condition for receiving the course completion certificate.

#### **2725.0170 INSTRUCTORS.**

**Subpart 1. General requirement.** Failure to have only approved instructors teach at an approved continuing education offering will result in loss of course approval.

If, after approval of a course, the instructor named in the application for course approval is unable to teach the course and there is insufficient time to obtain approval of a substitute instructor, proportional credit will be given for those parts of the course taught by approved instructors.

Credit for the parts of a course taught by an unapproved instructor may be obtained if the following requirements are satisfied:

A. Within 15 business days after the course is taught by an unapproved instructor, a request for approval of the instructor is filed with the department. The request must be made on forms prescribed by the commissioner.

B. Notice of the use of an unapproved instructor must be given to all enrollees as soon as that fact is known and again prior to the commencement of the course. The notice must state:

- (1) that fewer credit hours may be earned for the course than the course was originally approved for;

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## ADOPTED RULES

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(2) that a full refund will be given if the enrollee decides not to attend the course;

(3) that if the enrollee does attend the course and does not earn the number of credit hours for which the course was originally approved, a refund will be automatically made in proportion to the reduction in credit hours earned. The refund will be made when the department's determination is made as to the approval of the substitute instructor.

**Subp. 2. Qualifications.** Instructors shall possess the following qualifications:

- A. three years of recent experience in the subject area being taught; or
- B. a degree ~~in~~ related to the subject area being taught; or

**Subp. 3. Responsibilities.** Approved instructors must:

- C. maintain an atmosphere conducive to learning in a classroom; and
- D. provide assistance to the students and respond to questions relating to course material; and
- E. ~~attend such workshops or instructional programs as are reasonably required by the commissioner.~~

### 2725.0190 PROHIBITED PRACTICES.

The following practices of sponsors, coordinators, and instructors are prohibited:

- A. misrepresenting any material submitted to the commissioner; and
- B. promoting any particular insurance agency or company or their products; and
- C. ~~requiring students to participate in other programs or services offered by the sponsor, coordinator, or instructor.~~

## Department of Human Services

### Adopted Temporary Rules Relating to Intermediate Care Facilities for the Mentally Retarded

The temporary rules proposed and published at *State Register*, Volume 9, Number 39, pages 2104-2105, March 25, 1985 (9 S.R. 2104) are adopted as proposed.

## Waste Management Board

### Adopted Rules Relating to Development Grants for Waste Processing and Collection Facilities

The rules proposed and published at *State Register*, Volume 9, Number 41, pages 2271-2276, April 8, 1985 (9 S.R. 2271) are adopted with the following modifications:

#### Rules as Adopted

##### 9200.6001 DEFINITIONS.

**Subp. 4. Capital costs.** "Capital costs" means expenditures that meet the requirements of federal industrial development bond law, including:

- A. acquisition costs of buildings, equipment, machinery, or any combination of them;
- B. site preparation;
- C. construction costs;
- D. engineering costs;
- E. bond issuance costs;
- F. underwriting or placement fees;
- G. trustee's fees;
- H. fee of guarantor, insurer, or financial institution, other than the authority, who provides letters of credit, surety bonds, or equivalent security;
- I. authority fees, including application and guaranty fees of the authority and administrative costs and expenses;

J. certain contingency costs;

K. interest costs during construction;

L. legal fees, including those of the authority's bond counsel; and

M. debt service reserve fund.

**Subp. 5. Chairperson.** "Chairperson" means the chairperson of the board.

**Subp. 6. Collection.** "Collection" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 5.

**Subp. 7. Commercial.** "Commercial" means that the facility or service referred to is established and permitted to sell waste collection or processing services to generators other than the owner and operator of the facility or services.

**Subp. 8. Commissioner.** "Commissioner" means the commissioner of energy and economic development.

**Subp. 9. Generator.** "Generator" means a person who produces a hazardous waste.

**Subp. 10. Hazardous waste.** "Hazardous waste" means those wastes identified and listed in parts 7045.0100 to 7045.0141.

**Subp. 11. Loan.** "Loan" means a hazardous waste processing facility loan as defined in Minnesota Statutes, section 116M.03, subdivision 15.

**Subp. 12. Person.** "Person" means a natural person or a corporation, association, operation, firm, partnership, trust, or other form of organization.

**Subp. 13. Processing.** "Processing" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25.

**Subp. 14. Proposal.** "Proposal" means the work that is intended to be conducted with the grant funds.

**Subp. 15. Service.** "Service" means work done or duty performed for others.

#### 9200.6008 GRANT AGREEMENT.

**Subp. 5. Return of unspent funds.** Upon completion of the proposal, cancellation of the grant, or termination of the work under a grant agreement the grant recipient shall return the state's share of the unspent funds. The procedure for determining the amount of funds to be returned shall be specified in the grant agreement.

#### 9200.6009 INITIAL APPLICATION REVIEW.

**Subp. 2. ~~Eligibility and Documentation~~ review.** The chairperson or a designee shall review each application to determine the adequacy of the supporting documentation. Documentation is considered adequate if it enables the board to make the determination required for certification and if it provides sufficient information to address the certification factors.

**Subp. 3. Notification of eligibility adequacy.** Within 14 days after receiving a copy of the application, the chairperson or designee shall notify the commissioner of the determination of eligibility and adequacy of documentation. The notice shall state the additional information needed by the board to determine whether the application will be certified.

#### 9200.6010 EVALUATION OF LOAN APPLICATIONS.

**Subp. 2. Certification factors.** In addition to determining whether the requirements of part 9200.6011, subpart 2, have been satisfied, the board shall consider the following factors in evaluating whether a loan application will be certified and in determining the share of capital costs that must be provided by the applicant:

- I. the availability of funds from the authority or other funding sources.

#### 9200.6011 CERTIFICATION.

**Subp. 2. ~~Matching funds~~.** As a condition of its certification and based on its consideration of the certification factors, the board ~~may require an applicant to agree to provide funds in excess of 25 percent of the capital cost of the facility excluding land acquisition cost.~~

**~~Subp. 3. Notification to commissioner.~~** The chairperson shall notify the applicant and the commissioner in writing of the board's decision regarding certification of the loan application; ~~and the percentage of matching funds required if more than 25 percent.~~ The board in its notice shall state the basis for its decision including any reason for the decision which is based on a certification factor under part 9200.6010, subpart 2.

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# OFFICIAL NOTICES

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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.

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## Ethical Practices Board

### Advisory Opinion #92; RE: Campaign Contributions

Approved by the Ethical Practices Board on August 9, 1985

Issued to:

Hon. Richard J. Cohen, Attorney at Law  
200 City Place, 730 Hennepin Avenue  
Minneapolis, MN 55403

#### SUMMARY

92. Principal campaign committees established by a candidate seeking more than one office must abide by applicable contribution limits, even in the repayment of a loan to one of the committees. One of the principal campaign committees should be allowed to return a contribution to a contributor to that committee more than 60 days after receipt and furnish disclosure of the transaction.

The full text of the opinion is available upon request from the office of the Ethical Practices Board, 41 State Office building, St. Paul, MN 55155, (612) 296-5148.

## Department of Finance

### Maximum Interest Rate for Municipal Obligations, September, 1985

Pursuant to Minnesota Statutes, Section 475.55, Subdivision 4, Commissioner of Finance, Jay Kiedrowski, announced today that the maximum interest rate for municipal obligations in the month of September will be eleven (11) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by general obligations of the municipality may bear an interest rate of up to twelve (12) percent per annum.

For further information, contact:

Peter Sausen, Assistant Commissioner  
Cash and Debt Management  
State of Minnesota  
Department of Finance  
(612) 296-8372.

## Department of Human Services

### Notice of Hospital Cost Index

Pursuant to Minnesota Rules, Part 9500.1120 hospitals participating in the Medical Assistance and General Assistance Medical Care programs are subjected to a Health Cost Index (HCI) that is used in the determination of prospective inpatient hospital rates. Each hospital whose fiscal year starts during a given calendar quarter shall be notified of the HCI to be used 30 days prior to the start of that quarter. It has been determined that the HCI is 4.2 percent according to an independent source, Data Resources, Inc. for Health Care Costs for hospitals whose fiscal years begin during the calendar quarter beginning October 1, 1985.

Leonard W. Levine  
Department of Human Services

## **Department of Labor and Industry**

### **Correction to Prevailing Wage Rates**

The prevailing wage rates certified on August 1, 1985 for all classes of labor in Itasca County for Commercial construction projects was certified in error.

Also certified in error was the prevailing wage rate for Electricians in Ramsey County for Highway and Heavy construction projects.

The correct rates may be obtained by contacting the State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155.

Steve Keefe, Commissioner  
Department of Labor and Industry

## **Metropolitan Council**

### **Review Schedule: Adoption of the Recreation Open Space Development Guide/Policy Plan**

The Minnesota legislature has charged the Metropolitan Council with two distinct responsibilities for parks and recreation in the Twin Cities Metropolitan Area. The first charge is to "prepare and adopt . . . a comprehensive development guide for the Metropolitan Area" that "shall recognize and encompass physical, social or economic needs . . . including . . . land use, parks and open space land needs" (Minn. Stat., Ch. 473.145, 1978). The second charge, in the Metropolitan Parks Act (Minn. Stat., Ch. 473.147, 1978), contains a specific mandate to plan and administer a program of grants to implementing agencies for the acquisition and development of a system of regional recreation open space.

The Recreation Open Space Development Guide/Policy Plan responds to both legislative directives. It updates and replaces the Recreation Open Space chapter of the Metropolitan Development Guide adopted by the Council in November 1980. The Council and the Metropolitan Parks and Open Space Commission will use this policy plan as a basis for awarding acquisition and development grants for regional park funds; as a set of policies, standards and criteria to review state and federal park grants and other matters referred to the Council for review; and as a set of procedures for the activities and responsibilities of the Council, commission and implementing agencies that carry out the acquisition, development, operation and maintenance of the regional system.

The following is a tentative schedule for review of the Recreation Open Space Development Guide/Policy Plan.

- Aug. 12, 1985 Metropolitan Systems Committee approves draft plan for public hearing.
- Aug. 22, 1985 Metropolitan Council approves draft plan for public hearing and sets public hearing date.
- Sept. 30, 1985 Public hearing.
- Oct. 14, 1985 Hearing record closes.
- Oct. 28, 1985 Metropolitan Parks and Open Space Commission reviews hearing report and recommends adoption of revised Recreation Open Space Development Guide/Policy Plan.
- Nov. 4, 1985 Metropolitan Systems Committee recommends adoption of plan.
- Nov. 21, 1985 Metropolitan Council adopts plan.

The schedule is tentative and subject to change. A subsequent notice of public hearing will be published. If you have questions regarding the schedule or policy plan revision, call Jack Mauritz of the Council's Parks and Environmental Planning staff at 291-6602.

August 9, 1985

## **Department of Natural Resources**

### **Notice of Sale of State Copper, Nickel, and Associated Minerals Leases**

Notice is hereby given that a sale of leases to prospect for, mine and remove copper, nickel, and associated minerals in trust fund lands, lands and minerals forfeited for nonpayment of taxes, lands and minerals otherwise acquired, and other state-owned land under the jurisdiction of the Commissioner of Natural Resources, and located in portions of Aitkin, Carlton, Itasca, Koochiching,

## OFFICIAL NOTICES

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Lake, Pine and St. Louis Counties, will be held before the State Executive Council at their regularly scheduled meeting at 8:30 o'clock a.m. on October 2, 1985. At the time of the issuance of this notice, the meeting is scheduled to be held in the State Capitol, St. Paul, Minnesota. No land or water areas within the Boundary Waters Canoe Area Wilderness or Voyageurs National Park are included in this lease sale.

Prior to the time of sale, the Commissioner of Natural Resources, Box 45, 500 Lafayette Road, St. Paul, Minnesota 55146, will receive sealed bids and applications for leases covering minerals in state lands, in accordance with Minnesota Rules, parts 6125.0100 through 6125.0700, the copper, nickel, and associated minerals rules, issued under the authority of Minnesota Statutes Sections 93.08-93.12 and 93.25.

Each application and bid, together with a certified check, cashier's check, or bank money order, payable to the State Treasurer in the sum of \$50.00, must be submitted in a bid envelope obtained from the Commissioner.

At the time specified, the Commissioner, together with the State Executive Council, will publicly open the bids and announce the amount of each bid separately. Leases will be awarded by the Commissioner, with the approval of the State Executive Council, to the highest bidder for the respective mining units, but no bids will be accepted that do not equal or exceed the base royalty rates set forth in the rules or that do not comply with all provisions of the rules. The right is reserved to the State, through the Executive Council, to reject any or all bids.

The purpose of Minnesota's copper, nickel, and associated minerals rules is to promote and regulate the prospecting for, mining and removal of copper, nickel, and associated minerals on state-owned and state-administered lands. These rules, and the leases issued under the rules, authorize exploration and development of these minerals and impose certain requirements on the lessee. The requirements include: the payment of minimum rentals which increase with the passage of time, the payment of royalty for all ore mined and removed, the submission of data and other reports, and the addressing of certain environmental considerations. In addition, the state lessee must comply with all applicable regulatory laws.

In the absence of satisfactorily demonstrated past technical and financial competence to perform under similar circumstances, a bidder may be required to provide evidence of technical and financial competence to perform under the state's lease to prospect for, mine and remove copper, nickel, and associated minerals. The information requested by the Commissioner must be submitted within 30 days of the date of the request. The State, through the Executive Council, may refuse to award a lease to any bidder not supplying satisfactory evidence of technical and financial competence to perform under the state lease.

Upon the award of a lease, the check submitted with the bid will be deposited with the State Treasurer as a fee for the lease. All bids not accepted will become void, and the checks accompanying such bids will be returned to the respective bidders.

Application and bid forms, bid envelopes, instructions on how bids are to be submitted, copies of the rules (Minnesota Rules, parts 6125.0100-6125.0700) and copies of the Copper, Nickel, and Associated Minerals Unit Book, listing the land areas designated by the Commissioner as mining units, may be obtained from Elwood F. Rafn, Director, Division of Minerals, Box 45, DNR Building, 500 Lafayette Road, St. Paul, Minnesota 55146.

Application for each copy of the Copper, Nickel, and Associated Minerals Unit Book must be accompanied by a certified check, cashier's check, or bank money order, payable to the State Treasurer in the sum of \$25.00, as a fee for such Mining Unit Book, plus \$1.50 State of Minnesota Sales Tax. Unit Books will also be available for inspection at the Hibbing and St. Paul Offices of the Division of Minerals.

August 19, 1985

Joseph N. Alexander, Commissioner  
Department of Natural Resources

## Water Resources Board

### Outside Opinion Sought Regarding Rules on Local Water Plans

Notice is hereby given that the Water Resources Board is seeking information and opinions from sources outside the agency to assist it in preparing rules on county water plan content, and plan review and contested case procedure. Adoption of these rules is authorized by Minnesota Laws 1985, Special Session, chapter 2, section 5 (to be codified as Minnesota Statutes, section 110B.10, subdivision 2 (1985)), which requires the agency to adopt rules to implement the Comprehensive Local Water Management Act.

The Board also intends to prepare rules on the content and review of watershed district overall plans and watershed management organization plans, which require Board review and approval under Minnesota Statutes, sections 112.46 and 473.878 (1984), respectively. Adoption of rules on Board review of watershed plans is authorized by Minnesota Statutes, section 105.71, subdivision 1 (1984).



The Water Resources Board requests information and comments concerning the subject matter of these rules. Information and comments may be submitted in writing or orally during regular business hours to: Dan Steward, Water Resources Board, 500 Lafayette Road, First Floor, St. Paul, Minnesota 55146, (612) 296-2840.

Information and comments must be received by November 14, 1985. All written materials received by the Water Resources Board will become part of the rulemaking record.

Mel Sinn  
Executive Director

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**STATE CONTRACTS**

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-6152. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

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**Department of Administration  
General Services Bureau****Request for Proposals for a Food Service Management Contract**

The Department of Administration is requesting proposals for a five-year food service contract for the five office building cafeterias located in the Capitol Complex in Saint Paul. The contract shall have a five year term and be in effect from November 1, 1985 to October 31, 1990. This contract has an estimated value of \$1,300,000.00.

Responders are to project the total costs of their food services, and to detail the quality and quantity of items in their menu cycles.

A Request for Proposals is to be obtained by calling or writing:

James L. Ware  
Department of Administration  
50 Sherburne Avenue, Room G-25  
Saint Paul, Minnesota 55155  
Telephone: (612) 296-9901

Proposal responses must be submitted no later than 4:30 p.m. on September 24, 1985.

**Department of Administration  
Procurement Division****Commodities Contracts and Requisitions Currently Open for Bidding**

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
Contract Rebid 12-700-86682 26-071-15816	Seed—Lawn Grass Telephone System Liquid Chromatography System	Various State Agencies Health Mankato State University	Various Rochester Mankato	\$9,000-10,000 Contact buyer Contact buyer

# STATE CONTRACTS

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
26-071-15804	Fermentor Assembly	Mankato State University	Mankato	Contact buyer
01-000-04444	Sinks and Counter Food Service	Military Affairs	Camp Ripley, Little Falls	Contact buyer
07-700-34821	Automatic Record Retrieval System	Public Safety	St. Paul	Contact buyer
32-300-13639	Package & Disposal of Hazardous Waste	Pollution Control Agency	St. Paul	\$30,000-40,000
Contract	Rubbish Disposal	St. Cloud State University	St. Cloud	\$30,000-40,000
27-144-48002	Van	Itaska Community College	Grand Rapids	Contact buyer
79-300-00626	Perforated Tile	Transportation	St. Cloud	Contact buyer
55-520-03484	Supply & Install Pump	Human Services—Oak Terrace Nursing Home	Minnetonka	Contact buyer
26-073-18049	Electronic Supplies	St. Cloud State University	St. Cloud	Contact buyer
26-071-15529	Installation & Start Up Service on Boiler	Mankato State University	Mankato	Contact buyer
79-000-49189	Conversion Aerial Lift	Transportation	Various	Contact buyer
26-071-15499	Student Console Pianos	Mankato State University	Mankato	Contact buyer
27-138-47792	Liability Insurance for MN Community Colleges	MN Community College System	St. Paul	Contact buyer
29-007-40907	Green Hardwood Chips	Natural Resources—North. Service Center	Grand Rapids	Contact buyer
26-072-09529	Reupholstering of Auditorium Seating	Moorhead State University	Moorhead	Contact buyer
79-500-02841	Janitorial Contract	Transportation	Eden Prairie	Contact buyer
Contract	Laundry Service	MN Correctional Facility	Lino Lakes	\$9,000-10,000
26-072-09520-1882	Brochure	Moorhead State University	Moorhead	Contact buyer
29-000-38378-2020	Watercraft Decals Expires Dec. 31, 1987	Natural Resources	St. Paul	Contact buyer
22-400-00932-1629	Explore Minnesota Skiing	Energy & Economic Development	St. Paul	Contact buyer
79-000-49214-1640	Traffic Control for Short Term Street or Highway Zones	Transportation	St. Paul	Contact buyer
Contract	Folding Steel Chairs & Caddies and Folding Tables	Various	Various	\$20,000-30,000
39-000-03868	Phone System	Governor's Office	St. Paul	Contact buyer
29-000-40576	Maintain IBM Displaywriter Systems	Natural Resources	St. Paul	Contact buyer
55-000-92432	Braille Printer & Display Processors	Human Services—Service for the Blind	St. Paul	Contact buyer
26-071-15875	Video Cassette System	Mankato State University	Mankato	Contact buyer
26-071-15823, etc.	Video Equipment	Mankato State University	Mankato	Contact buyer
Rebid	Purchase of Printer	Administration—Printing & Mailing	St. Paul	Contact buyer
02-520-46104	Rental of Engineering Capeer	Transportation	St. Paul	Contact buyer
79-000-49206	Purchase of Microfilm Camera & Filler	Health	Minneapolis	Contact buyer
12-900-79961				

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
78-830-07738	Sheeter—Cutter & Containers	MN Correctional Facility	St. Cloud	Contact buyer
27-148-46641	Typewriters	Rochester Community College	Rochester	Contact buyer
26-071-15794	Scientific Equipment	Mankato State University	Mankato	Contact buyer
26-071-15887 & 15834	Scientific Equipment	Mankato State University	Mankato	Contact buyer
29-000-40584	Scientific Equipment	Natural Resources—Waters	St. Paul	Contact buyer
26-071-15801	Scientific Equipment	Mankato State University	Mankato	Contact buyer

Contact 296-6152 for referral to specific buyers.

## Department of Corrections Community Services Division

### Request for Proposals for Planning and Implementing a Crime Victim Crisis Center

In order to comply with state law, the Minnesota Department of Corrections, Community Services Division, hereby publishes its intention to fund a public or private organization/agency to assist in planning and implementing a crime victim crisis center. The centers shall:

- (a) Provide direct crisis intervention to crime victims;
- (b) Provide transportation for crime victims to assist them in obtaining necessary emergency services;
- (c) Investigate the availability of insurance or other financial resources available to the crime victims;
- (d) Refer crime victims to public or private agencies providing existing needed services;
- (e) Encourage the development of services which are not already being provided by existing agencies;
- (f) Coordinate the services which are already being provided by various agencies;
- (g) Facilitate the general education of crime victims about the criminal justice process;
- (h) Educate the public as to program availability;
- (i) Encourage educational programs which will serve to reduce victimization and which will diminish the extent of trauma where victimization occurs;
- (j) Other appropriate services.

The purpose of this request is to provide public or private organizations an opportunity to apply for funds which may support their plans to provide services to victims of crime. Applicants are encouraged to examine current needs of crime victims in their area and propose creative methods to meet those needs.

These crisis centers will be financed out of funds made available by the Minnesota Legislature. There are three areas which will be served and each is eligible to receive funds up to a maximum of:

Minneapolis/St. Paul metro area	\$161,300.00
Mower County	\$ 79,450.00
Freeborn County	\$ 15,000.00

The funding period is from January 1, 1986 to June 30, 1987 for the Minneapolis/St. Paul metro area and Mower County. Funds are available for Freeborn County from July 1, 1986 through June 30, 1987.

Proposals must be directed to Thomas Lawson, Community Services Division, Department of Corrections, 300 Bigelow Building, 450 North Syndicate Street, St. Paul, Minnesota 55104, on or before October 1, 1985.

## STATE CONTRACTS

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### Department of Energy and Economic Development Division of Science & Technology Office of Software Technology Development

#### Request for Proposals for Education and Training/Industry/Software Development Consultant

Notice is hereby given that the Office of Software Technology Development, Minnesota Department of Energy and Economic Development (DEED) requires the services of a qualified, part-time consultant knowledgeable about education and training programs as they relate to the computer software development industry in Minnesota. This position is available September 23, 1985 through June 30, 1986.

Responsibilities of the consultant will include providing leadership in developing the concept of an Institute for Learning Technologies. This activity will include developing a process for research and evaluation to transform the potential of new technologies to education and training uses. The activity will also include designing a system to critique the products of software developers, as requested, to assure quality before they reach the market as well as to provide instruction and inservice to educators and to prepare highly trained specialists in software development. Business/education advisory committees will need to be established to create an active partnership to recommend future delivery of essential services required by producers and consumers of computer software.

This activity will be conducted in the most effective and efficient manner possible and within the confines of state and federal rules and regulations. Therefore, due to the education and training focus of this project, it is recommended that the applicant have a thorough background in the field of curriculum and school administration at the post-secondary (or beyond) level.

The estimated fee range for this project is \$20,000 to \$28,000. Individuals desiring consideration should request a copy of the Request for Proposals (RFP) Statement of Work or direct inquiries to:

Dr. Rosemary T. Fruehling, Director  
Office of Software Technology Development  
Minnesota Department of Energy and Economic Development  
900 American Center Building  
150 East Kellogg Boulevard  
St. Paul, MN 55101

The deadline for submission of consultant proposals will be the close of the working day September 16, 1985.

August 26, 1985

Rosemary T. Fruehling

### Higher Education Coordinating Board

#### Request for Proposals for Market Research or Social Science Research Services

The Higher Education Coordinating Board is requesting proposals from qualified market research or social science research organizations for assistance in conducting telephone interviews and surveys in Fiscal Year 1986. The estimated amount of the contract will be up to \$15,000. Proposals must be submitted no later than 4:30 p.m., September 30, 1985.

Proposals and requests for copies of the Request for Proposal should be directed to:

Higher Education Coordinating Board  
Administrative Services  
400 Capitol Square Building  
550 Cedar Street  
St. Paul, MN 55101  
612/296-9696

## **Department of Jobs and Training State Job Training Office**

### **Request for Proposals for Operation of Job Training Programs for Older Individuals**

The Minnesota Department of Jobs and Training, State Job Training Office, is requesting proposals from appropriate organizations and units of government to provide employment and training services to older individuals. The program, authorized by Section 124 of the Job Training Partnership Act, is designed to provide for the training and placement of low income persons 55 years of age and older in employment opportunities with private business concerns.

A total of \$776,256 is available to fund programs to operate between January 1, 1986 and December 31, 1986. Proposals must be received by 4:30 p.m. October 4, 1985.

Request for Proposal application materials are available upon request. Inquiries and requests should be directed to:

Jim Korkki  
State Job Training Office  
690 American Center Building  
150 East Kellogg Blvd.  
St. Paul, Minnesota 55101  
(612) 296-6061

## **Minnesota Historical Society**

### **Contract Available for Services for Historic Preservation Survey and National Register Nomination**

It is anticipated that the Minnesota Historical Society will require the services of a qualified contractor(s)/consultant(s) to complete two cultural resources projects.

1. Cultural resource survey (standing structures only) of Beltrami, Clearwater, and Hubbard Counties; time period approximately 1/1/86-7/30/86; project estimate \$14,000.00.

2. National Register nomination for commercial district in Albert Lea; time period approximately 10/1/85-1/31/86; project estimate \$3,000.

The qualified contractor will be responsible for all aspects of the survey and/or nomination work including enlisting and documenting the assistance of identified local organizations.

#### **REQUIREMENTS:**

1. A graduate degree in history, architectural history, art history, historic preservation, or closely related field; or a bachelor's degree in history, architectural history, art history, historic preservation or closely related field plus one of the following:

a) At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or

b) Substantial contribution through research and publication to the body of scholarly knowledge in the field of history or American architectural history.

2. A valid Minnesota driver's license.

3. Demonstrated experience in conducting cultural resource (standing structures) identification, evaluation, and registration activities in conformance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation. Preference will be given to those qualified contractors who have more extensive experience with comprehensive county survey work in a) rural areas, and/or b) Minnesota.

4. Must have successfully prepared a National Register form for property that has been placed on the Register within the last five years.

5. Demonstrated experience in working with volunteer organizations is required.

6. These requirements in addition to the economy of the bid (proposal) will be considered.

Qualified contractors/consultants should send proposal (proposal should include a dollar bid and a proposed project schedule, and limited to two pages), resume, and completed National Register Form to Gloria A. Thompson, Contract Officer, Minnesota

# STATE CONTRACTS

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Historical Society, 1500 Mississippi Street, St. Paul, MN 55101, no later than 2:00 p.m., September 6, 1985. Proposals received after that time will be returned unopened.

Award of any contract is contingent upon the availability of federal funds. The Minnesota Historical Society reserves the right to accept or reject any or all bids and to waive any irregularities therein. Contractors who have their nominations forms on file with the Minnesota Historical Society are not required to submit another.

## Department of Natural Resources Request for Proposals for Nursery Systems

### I. Purpose

The purpose of this project is to complete the design of the Management Information System for the State of Minnesota, Department of Natural Resources, Forestry Division's two tree nurseries. The nurseries are a complete business operation. They have the raw materials, work in process, customers, inventory, assets, and staff that must be organized and monitored to produce a viable product. The nurseries must be self supporting. This direction comes from the Forest Management Act of 1982, Laws of Minnesota, Chapter 511.

The nurseries are located at Willow River and near Badoura, Minnesota. Overall receipts from tree sales (including sales to the state) are 2.2 million dollars/year. There are 4 to 5,000 private customers. The nurseries operation is run by 20 full time staff, which during the shipping season will be assisted by temporary staff of about 200 laborers. The nursery, to be cost effective, must keep its administrative costs as low as possible while maintaining an efficient operation. A management information system will assist in maintaining an effective level of operations while keeping costs at a minimum.

### II. Project Overview

The needs analysis and general systems design (attachment) has been completed and approved by the Division of Forestry. In general, the system has 8 major modules. The modules are: (1) the inventory module which maintains control of the seedlings in the nursery, (2) the seedbed work order system which manages the cultural practices of the treatment to the seedlings, (3) a property module that maintains information on property and equipment, (4) a seed production module that records costs of the nursery system, (5) the seed lot tracing module which tracks the seeds from their source through to the planting location, (6) a personnel module which processes staff costs and reporting, (7) an order entry module will process the orders of seedlings, and (8) a labor distribution system which summarizes the labor costs to seedbeds. Together these modules will make up the nursery information system.

### III. Environment

The system will be operated from the nurseries. The equipment at the nurseries will be IBM PC-XT's and the necessary peripherals. The data will, for the most part, be transmitted to a TI-990 that is located in the DNR headquarters at St. Paul. The majority of the reports will be generated in St. Paul and transmitted to the nursery. The majority of the development will be done in St. Paul. However, the bidders should be aware that travel to the nurseries will be required.

### IV. Project Tasks

A. Detailed system design and specifications will be developed from the needs analysis and general systems design document and from interviews with nursery staff. The detail design will include all file layouts and descriptions, data elements and descriptions, and program descriptions. Program descriptions will include any nursery local backup that is necessary.

B. Detail program specifications and programming. The specifications and programs will be developed under a structure system development methodology.

C. Testing, installation, documentation and training will be the third major deliverable. The software necessary for complete operation will be installed at the two nursery computers and the St. Paul computer. The test data will be demonstrated to the appropriate Nursery and Systems staff. The test data will be run through a complete year processing cycle. The documentation will include a detail user manual, the program specifications and a liberal program documentation. The training of the Nursery staff will include instructions and hands on training.

### V. Contents of Proposals

- A. A restatement of the overall project objectives to demonstrate the respondent's grasp of the nature of the project.
- B. Cost and time estimates of project. The estimates should be broken down by major project tasks. NOTE: BID MUST BE OF THE FORM TIME AND MATERIALS NOT TO EXCEED X DOLLARS.
- C. Company and individual background with relation to previous systems experience on similar projects.

- D. Examples of relevant system development documents from past projects.
- E. User references to include name, address of individuals to contact for reference.

#### **VI. Project Reviews**

There will be 3 review points during the project. One at the end of the detail system design and specifications process. The second review will be after the programming is complete. And the last will be at the end of the project.

As a result of any review, if the product or parts of the product are found to be unacceptable by the review committee, these parts will be redone at no additional cost.

#### **VII. Bid Submission Procedures**

All proposals must be typed and seven copies submitted. All proposals must be sealed in mailing envelopes or packages with respondent's name and address clearly written on the outside. Each copy must be signed, in ink, by an authorized member of the firm. Prices and terms of the contract as stated must be valid for the length of the project.

All proposals must be sent to and received by:

DNR Forestry Systems  
Attn: Mike Hagberg  
500 Lafayette Road, Box 44  
St. Paul, MN 55146

All proposals must be submitted to reach this office no later than September 6, 1985. Any proposal received after that will not be considered.

Prospective responders who have questions regarding this request may call or write:

DNR Forestry Systems  
ATTN: Mike Hagberg  
500 Lafayette Road, Box 44  
St. Paul, MN 55146  
Phone: (612) 297-3516

All proposals received by the deadline will be evaluated by representatives of the Department of Natural Resources. In some instances, an interview may be part of the evaluation process. Factors upon which proposals will be judged include, but are not limited to the following:

1. Expressed understanding of project objectives.
2. Qualifications of both company and personnel. Experience of project personnel will be given greater weight than that of the firm. We will take proposals from any interested party, but we are specifically looking for personnel with experience in forest nursery operations and system design.
3. Project work plan.
4. Project cost detail.

Evaluation and selection will be completed by October 7, 1985. Results will be sent immediately by mail to all responders.

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## **SUPREME COURT DECISIONS**

### **Decisions Filed Friday, August 16, 1985**

**Compiled by Wayne O. Tschimperle, Clerk**

**C0-84-265, C8-84-482 Brian Milbradt, et al., and Mutual Service Insurance, Appellant, v. American Legion Post of Mora, City of Mora, and City of Ogilvie. Court of Appeals.**

Under Minn. Stat. § 65B.53, subd. 3 (1984), a reparation obligor is subrogated to claims of the insured based upon an intentional tort, strict or statutory liability, or negligence other than negligence in the maintenance, use, or operation of a motor vehicle only when the insured receives a double recovery; this right of recovery may be asserted only against the insured.

The No-Fault Act is the sole source of subrogation rights for a reparation obligor that has paid or is liable to pay basic economic loss benefits.

Affirmed. Amdahl, C. J.

## SUPREME COURT DECISIONS

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**C8-85-461 Roy Leonard Schroeder, dec'd, by Annette Schroeder, v. Murphy Motor Freight Lines, Inc., Relator. Workers' Compensation Court of Appeals.**

The finding of the compensation judge that prior to his death employee had made a transfer to Tennessee which is normally considered to be permanent has substantial support in view of the entire record and requires the determination that Minn. Stat. § 176.041 (1984) does not extend the jurisdiction of the Minnesota Workers' Compensation Act to respondent's claim for dependency benefits.

Reversed and remanded. Amdahl, C. J.

**C3-84-342 Paul J. Hruska, v. Chandler Associates, Inc., v. Scott Bagne and Pendle-Hansen-Bagne, Inc. Court of Appeals.**

In this case, the employment agreement's stated consideration cannot be varied by parol evidence under the exception for "deception of a third party" where the claimed "deception" is actually a common tax avoidance measure—of which the federal Internal Revenue Service is aware—of structuring an agreement to minimize the tax consequences of the sale of a business; the covenant not to compete is not discharged by the actions of these employers; and new business commissions are payable for each year of employment. In addition, the employer's late payment of salary and commissions entitles employee to a statutory penalty pursuant to Minn. Stat. § 181.12 (1982).

Affirmed in part, reversed in part, and remanded to the court of appeals for remand to the district court with directions for amended judgment in accordance with this opinion. Peterson, J.

**C2-84-235 Dean A. and Barbara A. Rostad, v. On-Deck, Inc., Petitioner, Appellant, Gary Guy Willey and Sportcraft Company. Court of Appeals.**

A manufacturer who places a product in the stream of commerce with the expectation that the product will be used in another state is subject to the jurisdiction of that state's courts, Yetka, J.

Took no part, Coyne, J.

**C5-84-49 Tonka Tours, Inc. v. Jay Chadima, Petitioner, Appellant, and Jack Harris, et al. Court of Appeals.**

The court of appeals went beyond the proper standard of review in substituting its judgment in finding that acceptance of a boat under Minn. Stat. § 336.2-606(1) (1984) took place at a date different than that found by the trial court.

The court of appeals also exceeded its scope of review in finding that no oral modification took place, where the purchase price was paid, an amount of money was escrowed for repairs on the boat and the appellant was able to select his own mechanic.

Reversed. Scott, J.

**C4-85-84 James Mayer, Relator v. Erickson Decorators and Bituminous Insurance Cos. Workers' Compensation Court of Appeals.**

Proof that an injured employee has suffered a reduction in earning capacity is not alone enough to entitle the employee to receive temporary disability benefits under Minn. Stat. § 176.101, subd. 2 (1982). An employee who is capable of working subject to the limitations of his physical impairment is required to cooperate with rehabilitation efforts and, when those efforts are aimed at finding such work, to make a reasonable diligent effort to obtain employment.

Affirmed. Scott, J.

**C7-84-344 State of Minnesota v. Arthur William Lucas, Appellant. Winona County.**

Defendant received a fair trial and was properly convicted of both first-degree murder and conspiracy to commit first-degree murder.

Affirmed. Coyne, J.



State of Minnesota  
State Register and Public Documents Division  
117 University Avenue  
St. Paul, Minnesota 55155

(612) 297-3000  
(toll-free # for MN:  
1-800-652-9747)

## ORDER FORM

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**Briefly/Preview**—Senate news and committee calendar; published weekly during legislative sessions.

**Perspectives**—Publication about the Senate.

Contact: Senate Public Information Office  
B29 State Capitol, St. Paul, MN 55155  
(612) 296-0504

### HOUSE

**Session Weekly**—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

**This Week**—weekly interim bulletin of the House.

Contact: House Information Office  
Room 8 State Capitol, St. Paul, MN 55155  
(612) 296-2146

Legislative Reference Library  
Room 111 Capitol

Interoffice

