



March 5, 2021

Administrative Rules Committee
North Dakota State Capitol
600 E Boulevard Ave
Bismarck, ND 58505

Re: Request to Void North Dakota Board of Dental Examiners Proposed Rules

Dear Administrative Rules Committee Members:

On behalf of the North Dakota Dental Association(NDDA), North Dakota Dental Hygiene Association(NDDHA) and North Dakota Dental Assistants Association(NDDAA) we would like to thank you and your committee for our ability to provide comment today. We are the three dental professional associations representing the three dental providers, all clinical dental providers, within the state of North Dakota(The Oral Health Community). We are asking the North Dakota Administrative Rules Committee to void the "Proposed Rules" of the North Dakota Board of Dental Examiners(NDBODE) under NDCC § 28-32-18(1)(e. and f.) due to the current rules being "arbitrary and capricious," but further and more importantly for "failure to make a written record of its consideration of written and oral submissions respecting the rule under NDCC § 28-32-11."

The NDDA, NDDHA and NDDAA recognized in our review of the "Proposed Rules" and communicated, along with the input of many of our members prior to and at the October 30, 2020 special meeting for comment, several concerns with the "Proposed Rules." While there were many concerns with the substantive content of the rules, we would also like to address issues with the process, clarification/origination of the proposals and communication with the dental community at large. With regards to the substantive content of the "Proposed Rules," the document has many issues of concern. In some areas, there is a lack of clarity as well as some sections which seem to contradict each other. A number of grammatical errors were also noted.

For rules that will become part of the Dental Practice Act, by which we are regulated, we feel it would be extremely beneficial to address these issues and ensure absolute clarity. Specifically, for those rules resulting in significant changes to the delivery of dental care in our state, the NDDA, NDDHA and NDDAA feel it would be beneficial to have input from the dental professionals who would be most impacted by them.(See Attached Coalition Letter) An example would be regarding rules pertaining to sedation. This is an important issue to many general dentists, and of course to all of the oral surgeons who were not consulted nor allowed comment on this matter.(See Attached OMS Letter) The NDDA submitted, in timely fashion and prior to the meeting, four pages of substantive written content to NDBODE for their review and consideration at their October 30, 2020 special meeting for comment. This submission of a "Compilation of Comments and Complaints from Dental Practitioners, Dental Assistants and Dental Hygienists from across the State regarding proposed regulation changes to the Dental Practice Act"(See Attached Comment Letter) was not reviewed nor discussed at the meeting nor provided written record of in violation of NDCC § 28-32-18(1)(f) "failure to make a written record of its consideration of written and oral submissions respecting the rule under NDCC § 28-32-11."

Further, as part of the rule making process, it would also be helpful (and probably required) to know how these proposed rules came about and what authorities were consulted about them as required under NDCC § 28-32-18(1)(e) requiring the rules to not be “arbitrary and capricious.” The NDDA along with other dental professionals submitted multiple requests (See Attached Coalition Letter and others submitted by NDDA Members) surrounding the origination and intent of the proposed rules changes with no response from NDBODE. Last, since the Dental Practice Act regulates dentists, dental hygienists and dental assistants, we feel it is very important that we know in a timely manner when changes are being considered. Throughout the rule making process there have been multiple issues with meeting notification, publication and timely communication from NDBODE. (See Attached Coalition Letter)

These comments are not intended in any way to be a criticism of the NDBODE, but given the immense importance of the proposed rules, the current lack of clarity, and the fact that this will become a permanent part of the laws governing the practice of dentistry, the NDDA, NDDHA and NDDAA are asking the North Dakota Administrative Rules Committee to void the “Proposed Rules” of the North Dakota Board of Dental Examiners (NDBODE) under NDCC § 28-32-18(1)(e. and f.) due to the current rules being “arbitrary and capricious,” but further and more importantly for “failure to make a written record of its consideration of written and oral submissions respecting the rule under NDCC § 28-32-11.” Due to these statutory violations, these rules should be voided.

Throughout this rule making process the NDDA, NDDHA and NDDAA have recommended and requested that the current amendments be tabled and that a task force be created to draft each of the sections. (See Attached Coalition Letter) Several states, outside entities and the ADA have addressed many of these issues and likely have language that could be shared which would provide the desired clarity. These suggestions and model rules/drafts could be modified to address any specific differences pertaining to practice in North Dakota and reviewed by the legal counsel of the NDBODE. These requests and suggestions were appropriately raised with NDBODE prior, during and throughout the rulemaking public comment period and were unfortunately ignored. (See Attached Coalition Letter)

For these reasons, the NDDA, NDDHA and NDDAA respectfully request the North Dakota Administrative Rules Committee void the “Proposed Rules” and direct NDBODE to compose a task force of qualified, affected and specialized professionals to draft new “Proposed Rules” for a new Administrative Hearing, for approval and adoption by the North Dakota Administrative Rules Committee into North Dakota Administrative Code. Thank you for this opportunity to comment on the proposed rule changes.

Respectfully,

The North Dakota Dental Association
The North Dakota Dental Hygienists’ Association
The North Dakota Dental Assistants Association