

**TESTIMONY BEFORE ADMINISTRATIVE RULES COMMITTEE
OF THE LEGISLATIVE COUNCIL**

September 13, 2007

My name is Jerry Kettleson of Pearce & Durick, Attorneys, Bismarck, North Dakota. I am Special Assistant Attorney General representing the North Dakota Board of Dental Examiners. The Dental Examiners have adopted changes and additions to administrative rules in Title 20 which will appear in the October 2007 Supplement to the North Dakota Administrative Code. I have been asked to appear here today to provide this committee with information concerning the adoption of the rules by the North Dakota Board of Dental Examiners.

The Board of Dental Examiners, in Sections 20-01-02-01 5, 20-01-02-01 26 and 20-01-02-01 27, delineates more specifically the difference between "certified", "qualified" and "registered" dental assistants. The requirements in each of the three categories are modified and changed.

The Board proposed and adopted changes to Temporary License to Practice Dentistry, §20-02-01-04, NDAC. The changes to this section give the Board of Dental Examiners more flexibility in issuing temporary licenses while providing them with adequate safeguards concerning the dentist's abilities.

The Dental Examiners also proposed and repealed §20-02-01-04.1. The repealed section was adopted initially in 1993 and addressed issues in the Fargo-Moorhead community at that time. The circumstances have changed and the rule is no longer relevant.

The Board of Dental Examiners, in §20-02-01-05, Permit for Anesthesia Use, updated the section to reflect current standards to permit for anesthesia use and to make more clear inspections procedures and requirements.

The remainder of the changes address changes in fees charged by the Board for dental licenses, hygiene licenses, and dental assistant licenses. The increases are in varying amounts.

The rule changes are not as a result of statutory changes made by the Legislative Assembly, nor are they related to any federal statute or program or federal regulation.

The Dental Examiners gave notice of the intent to amend the administrative rules by notice dated April 24, 2007. The notice was published in all newspapers of general circulation as required by the statute. An administrative hearing was held on June 1, 2007 at 1:15 p.m., at the Holiday Inn, 3803 - 13th Avenue S, Fargo, North Dakota. The public hearing on the proposed changes was conducted by Dr. Anthony Malaktaris, of Mandan, North Dakota, acting on behalf of the President of the Board of Dental Examiners, Linda Neppl, of Fargo, North Dakota. The proceeding was reported and transcribed by a certified court reporter. The only member of the public present at the public hearing were Carla Schneider on behalf of the North Dakota Dental Assistants Association. Following the June 1, 2007 public hearing, the record was held open for comment until June 15, 2007. The Board

indicated it would receive data, views and arguments concerning the changes in the Administrative Rules during that time period. No new material was submitted to the Dental Examiners during the comment period following the public hearing.

The changes were finally approved by the Attorney General in an opinion from that office thereafter. The Attorney General approved the Administrative Rules as being in legal compliance with Section 28-32-02, NDCC. The rules were finally adopted when no further materials concerning changes to the North Dakota Administrative Code had been filed with the Executive Director or any members of the Board during the comment period.

There has been no written request for regulatory analysis by the Governor or an agency; the rule change is not expected to have an impact on the regulatory community in excess of \$50,000; and a regulatory analysis was not issued.

The cost of publication of the public notices in this matter was \$1,400. The additional costs, not including staff time, of developing and adopting the rules was approximately \$3,000.

The administrative rules adopted by the North Dakota Board of Dental Examiners had no impact on Section 28-32-09, NDCC, as there was no constitutional taking. There was no requirement that a regulatory analysis or economic impact statement be prepared. These rules were not adopted as emergency rules under Section 28-32-03, NDCC.