

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Thursday, October 18, and Thursday, October 25, 2007
Prairie Room, State Capitol
Bismarck, North Dakota

Senator Tom Fischer, Chairman, called the meeting to order at 2:00 p.m. on October 18, 2007. The meeting was held through a teleconference connection.

Members present: Senators Tom Fischer, John M. Andrist, Jerry Klein, Tracy Potter; Representatives Randy Boehning, Chuck Damschen, Mary Ekstrom, Chris Griffin, Kim Koppelman, Jon Nelson, Louise Potter, Blair Thoreson, and Dwight Wrangham

Members absent: Senator Layton W. Freborg; Representatives Duane L. DeKrey, David Drovdal, Rodney J. Froelich

Others present: Rita M. Sommers, State Board of Dental Examiners, Minot

Nancy Kopp, North Dakota Optometric Association, Bismarck

Chairman Fischer said this meeting was called to consider the rules approved by the State Board of Dental Examiners and carried over for consideration from the September 13 committee meeting relating to increases in license fees collected by the State Board of Dental Examiners. He said copies of a September 20, 2007, letter to committee members from Ms. Rita M. Sommers, Executive Director, State Board of Dental Examiners, was distributed to committee members. A copy of the letter is attached as [Appendix A](#).

Senator Fischer asked whether the State Board of Dental Examiners provided notice of these rules changes to members of the North Dakota Dental Association. Ms. Sommers said notice of rulemaking was provided through newspaper publication and filing of notice with the Legislative Council office as required by law and to the Dental Association, which included the information in its newsletter. She said the notice described the rules changes under consideration and provided the time and place scheduled for the rules hearing. She said no comments regarding the proposed rules were received at the hearing or during the comment period following the hearing.

Representative Boehning said he is concerned with the amount of the fee increases and the resulting size of reserve funds. He said the information provided by Ms. Sommers indicates a projected reserve fund balance of more than \$145,000 with the fee increases. He asked why such a substantial reserve fund is necessary. Ms. Sommers said dental licensing fees have remained unchanged for over a decade. She said one of the ways the board was able

to maintain the level of fees was by drawing down its financial reserves. She said the other significant factors making fee increases necessary include a growing list of responsibilities that must be performed by the board and an increase in the board's legal fees of 575 percent from 1999-2001 to 2006-07. She said the amount of the projected reserve is necessary to assure that the board will not become insolvent and will continue to be able to perform its functions, particularly in matters requiring legal action by the board.

Representative Boehning asked whether the amount of the fee increase could be smaller and allow reserve funds to grow at a slower pace. Ms. Sommers said the fee increases as adopted were intended to provide a reserve fund of sufficient size to protect against the board going into the red. She said the board has avoided fee increases and financial problems because reserve funds were adequate insurance that the board could continue to function. She said drain on reserve funds has diminished reserves to the point that the board believes it does not have adequate insurance against ending up in a deficit situation.

Senator Klein asked whether the State Board of Dental Examiners received any complaints from dentists, dental hygienists, or dental assistants about the size of the fee increases. Ms. Sommers said no complaints were received by the board. She said she believes the profession is well aware of recent increases in board expenditures for disciplinary actions and would support the need for the fee increases.

Representative Koppelman asked Ms. Sommers to elaborate on some of the issues involved in disciplinary actions. Ms. Sommers reviewed some instances in which the board has become involved in legal action for disciplinary reasons. She said the Legislative Assembly has given the board the function of enforcing standards put in place for the public good in regulating dental professionals.

Senator Potter said the board was aware it had ongoing and increasing costs and could have presented a request for fee increases to the 2007 Legislative Assembly. He asked why the board did not seek legislative approval of the increases. Ms. Sommers said the board felt it was being fiscally responsible holding fees down while reserve funds were adequate insurance against cost increases. She said the Legislative Assembly has given the board the

authority and responsibility to make rules to determine the fees for dental professionals.

The conference call connection was lost at 2:30 p.m.

The committee meeting was reconvened by teleconference connection at 1:30 p.m. on October 25.

Senator Fischer said he contacted Dr. Lana Schlecht, President, North Dakota Dental Association, with regard to the fee increases adopted by the board. He said Dr. Schlecht initially examined license fees in neighboring states and was concerned that the North Dakota fee increase would put North Dakota licensing fees at higher levels than neighboring states. He said Dr. Schlecht discussed the topic with Ms. Sommers and now understands that the State Board of Dental Examiners in North Dakota performs substantially more administrative and enforcement functions than boards in some other states. He said Dr. Schlecht supports approval of the fee changes. Senator Fischer read an e-mail message from Dr. Schlecht, a copy of which is attached as [Appendix B](#).

Senator Klein asked Ms. Sommers to explain differences in functions of dental licensing boards in other states. Ms. Sommers said some boards are autonomous and perform all licensing and enforcement functions. She said some would be categorized as semiautonomous and a state agency performs some of the licensing or enforcement functions. She said some boards serve in basically an advisory capacity and do not perform administrative or enforcement functions. She said the State Board of Dental Examiners is an autonomous board that is financially independent and performs all administrative and enforcement functions for dental professionals.

Senator Andrist said if the committee had the information that has now been provided, there probably would have been a different result at the meeting when the rules were initially considered. He said his biggest concern with the fee changes is the \$1,200 fee for licensing by credential for out-of-state practitioners wishing to become licensed in North Dakota. He said small towns have enough trouble attracting dental professionals and this fee increase could discourage individuals from moving to smaller towns in North Dakota. Ms. Sommers said applications for licensing by credential are much more complex than for new graduates. She said one recent applicant was licensed in 14 states and license status in each of those states had to be checked by the board. She said these reviews are very expensive and it is important that the reviews be done to protect the public. She said the board will also begin doing criminal background checks on license applicants after getting that authority from 2007 legislation.

Representative Nelson asked whether an applicant would be required to pay the costs of a criminal background check. Ms. Sommers said the board has not used that law and has not addressed the issue on how the costs will be paid.

Committee counsel said the license fees and the budget of the board appear to be for a two-year period. He said it should be made clear if that is correct. Ms. Sommers said the license fee amounts in the proposed rule are for a two-year license and the budget provided by the board is a budget for a two-year period.

Senator Potter asked how the dental licensing fees would compare with fees for the State Board of Medical Examiners. Ms. Sommers said she believes the license for doctors from the State Board of Medical Examiners is subject to a fee of \$200 per year. Senator Potter asked when the State Board of Dental Examiners will implement criminal background checks. Ms. Sommers said staff time is a concern and the board needs to discuss the issue and make decisions on implementation of criminal background checks.

In response to a question from Representative Koppelman, Ms. Sommers said her understanding is that the Bureau of Criminal Investigation does state criminal background checks and national criminal background checks must be done by federal authorities.

Representative Nelson said in rural areas it is hard to attract dentists and dental hygienists to the area. He asked whether that was considered in license fee decisions. Ms. Sommers said dental license renewals have remained steady and have increased over the past five years. She said 22 new dentists were licensed in June and probably half of them will be practicing in smaller communities. Representative Nelson asked whether the fee changes will affect attracting new dentists for rural areas. Ms. Sommers said she does not think it will be a deciding factor.

Representative Boehning said he is concerned about the ending reserve balance with the fee increases. He asked what level reserve balance would be adequate. Ms. Sommers said updated information indicates that without the fee increases, the ending reserve for 2007-09 would be a negative \$20,000. She said with the increases, that ending balance would be approximately \$96,000. Representative Boehning asked at what reserve fund balance could the board reduce licensing fees. Ms. Sommers said it is not anticipated that the reserve fund balance will be excessive. She said a letter was sent to the committee by Mr. Jason Schuh, Certified Public Accountant and Auditor for the State Board of Dental Examiners, regarding the fee increase. She said Mr. Schuh urged the committee to approve the fee increases because he believes it is in the board's best financial interest to create a reserve for future legal expenditures. A copy of the letter is attached as [Appendix C](#).

Senator Klein said he has discussed the fee increase issue with dentists and he has not found any dentist with concerns about the fee increases. He asked whether Ms. Sommers is aware of any dentist who expressed concern. Ms. Sommers said no concerns were expressed by licensees regarding the

fee increases. She said she believes licensees were aware of increased expenditures faced by the board and she believes they expected a fee increase.

Representative Nelson asked whether the board considered a more modest fee increase. Ms. Sommers said she does not remember any discussion of that.

Senator Andrist said he still has a problem with the licensing fee for dentists coming from other states. Ms. Sommers said the fee for licensing by credential only applies to individuals who have been in practice five years or more. She said screening applicants is very important to protect the public. She said the board has denied licenses to applicants from other states on several applications for reasons involving public protection.

It was moved by Senator Klein and seconded by Representative Potter that the committee withdraw its motion carrying over consideration of the fee increase rule adopted by the State Board of Dental Examiners.

Senator Potter said he believes the board should have brought the fee increase issue to the Legislative Assembly for consideration.

Representative Nelson said he has some doubts about the amount of the fee increases. He said local dentists to whom he has spoken were not aware of the fee increases. He said the other side of the issue is that he does not want to see the board go into the red.

Representative Boehning said he would oppose the motion because he thinks the reserve fund amount is too high.

Senator Klein said he thinks Ms. Sommers explained very well the need for an adequate reserve fund. He said board members face the same kind of issues as legislators in determining the state ending

general fund balance. He said he also thinks the public would not want dentists moving into rural areas who have not been screened for background problems.

Ms. Sommers said the board is required by statute to set fees for dental professionals by rule. She said the Legislative Assembly decided that issue several years ago and she does not believe it would be appropriate for the board to bring fee increase issues to the Legislative Assembly for consideration. She said it is important to remember that the budget of the board is on a two-year cycle and the reserve amount is needed to cover contingencies for two years.

Senator Fischer said he will support the motion based on his conversations with Dr. Schlecht of the North Dakota Dental Association. He said it appears the association supports the board in the fee increases and he will support that decision.

The question was called and **the motion carried**. Voting in favor of the motion were Senators Fischer and Klein and Representatives Damschen, Ekstrom, Nelson, and Potter. Voting in opposition to the motion were Senators Andrist and Potter and Representatives Boehning, Thoreson, and Wrangham.

It was moved by Representative Nelson, seconded by Representative Potter, and carried on a voice vote that the meeting be adjourned subject to the call of the chairman. Chairman Fischer adjourned the meeting at 2:35 p.m.

John Walstad
Code Revisor

ATTACH:3