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**VIRTUAL/TELECONFERENCE  
DENTISTRY EXAMINING BOARD**  
**Virtual, 4822 Madison Yards Way, Madison**  
**Contact: Renee Parton, (608) 266-2112**  
**March 1, 2023**

*The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a record of the actions of the Board.*

**AGENDA**

**9:00 A.M.**

**OPEN SESSION – CALL TO ORDER – ROLL CALL**

**A. Pledge of Allegiance**

**B. Adoption of Agenda (1-4)**

**C. Approval of Minutes of January 4, 2023 (5-13)**

**D. Introductions, Announcements and Recognition**

**E. Reminders: Conflicts of Interest, Scheduling Concerns**

**F. Administrative Matters**

- 1) Department, Staff and Board Updates
- 2) Board Members – Term Expiration Dates
  - a. Alton, Troy – 7/1/2025
  - b. Bahr, Lisa – 7/1/2026
  - c. Bistan, Matthew – 7/1/2025
  - d. Fox, Joan – 7/1/2025
  - e. Govani, Shaheda – 7/1/2026
  - f. Kaske, Herbert – 7/1/2022
  - g. Kenyon, Chris – 7/1/2026
  - h. Kolste, Debra – 7/1/2024
  - i. Schrubbe, Katherine – 7/1/2026
  - j. Sheild, Peter – 7/1/2026
  - k. Whalen, Diana – 7/1/2024

**G. Legislative and Policy Matters – Discussion and Consideration**

**H. Administrative Rule Matters – Discussion and Consideration (14)**

- 1) Final Rule Draft: DE 11, Relating to Pre-Certification Sedation Education Requirements **(15-28)**

- 2) Scope Statement: DE 3 and 7, Relating to Topical Application of Anesthetics by a Dental Hygienist **(29-30)**
- 3) Pending or Possible Rulemaking Projects **(31)**

**I. Discussion and Consideration of Items Added After Preparation of Agenda:**

- 1) Introductions, Announcements and Recognition
- 2) Administrative Matters
- 3) Election of Officers
- 4) Appointment of Liaisons and Alternates
- 5) Delegation of Authorities
- 6) Education and Examination Matters
- 7) Credentialing Matters
- 8) Practice Matters
- 9) Legislative and Policy Matters
- 10) Public Health Emergencies
- 11) Administrative Rule Matters
- 12) Liaison Reports
- 13) Board Liaison Training and Appointment of Mentors
- 14) Informational Items
- 15) Division of Legal Services and Compliance (DLSC) Matters
- 16) Presentations of Petitions for Summary Suspension
- 17) Petitions for Designation of Hearing Examiner
- 18) Presentation of Stipulations, Final Decisions and Orders
- 19) Presentation of Proposed Final Decisions and Orders
- 20) Presentation of Interim Orders
- 21) Petitions for Re-Hearing
- 22) Petitions for Assessments
- 23) Petitions to Vacate Orders
- 24) Requests for Disciplinary Proceeding Presentations
- 25) Motions
- 26) Petitions
- 27) Appearances from Requests Received or Renewed
- 28) Speaking Engagements, Travel, or Public Relation Requests, and Reports

**J. Public Comments**

**CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85(1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85(1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.).**

**K. Division of Legal Services and Compliance (DLSC) Matters**

- 1) **Proposed Stipulations, Final Decisions and Orders**
  - a. 20 DEN 091, 20 DEN 097, 20 DEN 105, 21 DEN 003, 21 DEN 030, 21 DEN 083, 22 DEN 011, 22 DEN 012, 22 DEN 116 – Azim A. Presswala, DDS **(32-43)**
- 2) **Administrative Warnings**
  - a. 19 DEN 067, 19 DEN 068 – R.C.P. **(44-45)**
  - b. 19 DEN 067 – S.B.S. **(46-47)**

- 3) **Case Closing(s)**
  - a. 19 DEN 068 – S.B.S. **(48-60)**
  - b. 19 DEN 099 – R.C.P. **(61-73)**
  - c. 19 DEN 107 – M.C.W. **(74-93)**
  - d. 20 DEN 127 – P.M.M. **(94-100)**
  - e. 21 DEN 099 – A.P. **(101-109)**
  - f. 22 DEN 008 – L.J.M., R.A.M. **(110-119)**

L. Deliberation of Items Added After Preparation of the Agenda

- 1) Education and Examination Matters
- 2) Credentialing Matters
- 3) DLSC Matters
- 4) Monitoring Matters
- 5) Professional Assistance Procedure (PAP) Matters
- 6) Petitions for Summary Suspensions
- 7) Petitions for Designation of Hearing Examiner
- 8) Proposed Stipulations, Final Decisions and Order
- 9) Proposed Interim Orders
- 10) Administrative Warnings
- 11) Review of Administrative Warnings
- 12) Proposed Final Decisions and Orders
- 13) Matters Relating to Costs/Orders Fixing Costs
- 14) Case Closings
- 15) Board Liaison Training
- 16) Petitions for Assessments and Evaluations
- 17) Petitions to Vacate Orders
- 18) Remedial Education Cases
- 19) Motions
- 20) Petitions for Re-Hearing
- 21) Appearances from Requests Received or Renewed

M. Consulting with Legal Counsel

**RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION**

N. Vote on Items Considered or Deliberated Upon in Closed Session if Voting is Appropriate

O. Open Session Items Noticed Above Not Completed in the Initial Open Session

**ADJOURNMENT**

**NEXT MEETING: MAY 3, 2023**

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 MEETINGS AND HEARINGS ARE OPEN TO THE PUBLIC, AND MAY BE CANCELLED WITHOUT NOTICE.

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held virtually unless otherwise indicated. In-person meetings are typically conducted at 4822 Madison Yards Way, Madison, Wisconsin, unless an alternative location is listed on the meeting notice. In order to confirm a meeting or to request a complete copy of the board’s agenda, please visit the Department website at <https://dps.wi.gov>. The board may also consider materials or items filed after the transmission of this notice. Times listed for the commencement of disciplinary hearings may be changed by the examiner

for the convenience of the parties. Requests for interpreters for the hard of hearing, or other accommodations, are considered upon request by contacting the Affirmative Action Officer, or reach the Meeting Staff by calling 608-267-7213.

**HYBRID (IN-PERSON/VIRTUAL)  
DENTISTRY EXAMINING BOARD  
MEETING MINUTES  
JANUARY 4, 2023**

**PRESENT:** Troy Alton, DDS; Lisa Bahr, RDH; Matthew Bistan, DDS; Joan Fox (*via Zoom*); Shaheda Govani, DDS (*via Zoom*); Herbert Kaske, DDS (*via Zoom*); Debra Kolste; Katherine Schrubbe, RDH (*via Zoom*); Peter Sheild, DDS; Diana Whalen, RDH

**EXCUSED:** Christine Kenyon

**STAFF:** Adam Barr, Executive Director; Jameson Whitney, Legal Counsel; Nilajah Hardin, Administrative Rules Coordinator; Dialah Azam, Bureau Assistant; and other Department staff

**CALL TO ORDER**

Matthew Bistan, Chairperson, called the meeting to order at 9:06 a.m. A quorum was confirmed with ten (10) members present.

**ADOPTION OF AGENDA**

**MOTION:** Peter Sheild moved, seconded by Troy Alton, to adopt the Agenda as published. Motion carried unanimously.

**APPROVAL OF MINUTES OF NOVEMBER 2, 2022**

**MOTION:** Peter Sheild moved, seconded by Lisa Bahr, to approve the Minutes of November 2, 2022 as published. Motion carried unanimously.

**9:00 A.M. PUBLIC HEARING – EMERGENCY RULE 2216 AND CLEARINGHOUSE  
RULE 22-086 ON DE 11, RELATING TO PRE-CERTIFICATION SEDATION  
EDUCATION REQUIREMENTS**

**MOTION:** Matthew Bistan moved, seconded by Peter Sheild, to designate Shaheda Govani and Matthew Bistan to work with DSPS staff to draft the Final Rule and Legislative Report for Clearinghouse Rule 22-086 (DE 11), relating to Pre-Certification Sedation Education Requirements. Motion carried unanimously.

**9:00 A.M. PUBLIC HEARING – CLEARINGHOUSE RULE 22-087 ON DE 13,  
RELATING TO CONTROLLED SUBSTANCES PRESCRIBING CONTINUING  
EDUCATION REQUIREMENTS**

**MOTION:** Matthew Bistan moved, seconded by Peter Sheild, to accept all Clearinghouse comments for Clearinghouse Rule 22-087 (DE 13), relating to Controlled Substances Prescribing Continuing Education Requirements. Motion carried unanimously.

**MOTION:** Peter Sheild moved, seconded by Shaheda Govani, to authorize the Chairperson to approve the Legislative Report and Draft for Clearinghouse Rule 22-087 (DE 13), relating to Controlled Substances Prescribing Continuing Education Requirements, for submission to the Governor's Office and Legislature. Motion carried unanimously.

### **ADMINISTRATIVE MATTERS**

#### **2023 Meeting Dates**

**MOTION:** Troy Alton moved, seconded by Lisa Bahr, that the Dentistry Examining Board requests that the Department make arrangements for the Board's January and July meetings to be in person pursuant to the Department's policy. Motion carried. Peter Sheild - no; Herbert Kaske - no; Debra Kolste - no.

**MOTION:** Matthew Bistan moved, seconded by Peter Sheild, that the Dentistry Examining Board requests that the Department make arrangements for the Board's March, May, September, November meetings to be in-person. Motion carried unanimously.

#### **Election of Officers, Appointments of Liaisons and Alternates, Delegation of Authorities**

##### ***Chairperson***

**NOMINATION:** Shaheda Govani nominated Matthew Bistan for the Office of Chairperson. Matthew Bistan accepted the nomination.

Adam Barr, Executive Director, called for nominations three (3) times.

Matthew Bistan was elected as Chairperson by unanimous voice vote.

##### ***Vice Chairperson***

**NOMINATION:** Peter Sheild nominated Shaheda Govani for the Office of Vice Chairperson. Shaheda Govani accepted the nomination.

Adam Barr, Executive Director, called for nominations three (3) times.

Shaheda Govani was elected as Vice Chairperson by unanimous voice vote.

##### ***Secretary***

**NOMINATION:** Herbert Kaske nominated Troy Alton for the Office of Secretary. Troy Alton accepted the nomination.

Adam Barr, Executive Director, called for nominations three (3) times.

Troy Alton was elected as Secretary by unanimous voice vote.

<b>ELECTION RESULTS</b>	
<b>Chairperson</b>	Matthew Bistan
<b>Vice Chairperson</b>	Shaheda Govani
<b>Secretary</b>	Troy Alton

**Appointment of Liaisons and Alternates**

<b>LIAISON APPOINTMENTS</b>	
<b>Credentialing Liaisons</b>	Lisa Bahr ( <i>Dental Hygiene</i> ), Shaheda Govani ( <i>Dentistry</i> ) <i>Alternate:</i> Troy Alton
<b>Education and Examination Liaison</b>	Herbert Kaske, Katherine Schrubbe <i>Alternate:</i> Diana Whalen Peter Sheild
<b>Monitoring Liaison</b>	Peter Sheild <i>Alternate:</i> Debra Kolste
<b>Professional Assistance Procedure (PAP) Liaison</b>	Peter Sheild <i>Alternate:</i> Debra Kolste
<b>Legislative Liaison</b>	Matthew Bistan (Chairperson) <i>Alternate:</i> Shaheda Govani (Vice Chairperson)
<b>Travel Authorization Liaison</b>	Matthew Bistan <i>Alternate:</i> Katherine Schrubbe
<b>Website Liaison</b>	Matthew Bistan <i>Alternate:</i> Lisa Bahr
<b>PDMP Liaison/ Appointed to Controlled Substances Board as per Wis. Stats. §15.405(5g)</b>	Troy Alton <i>Alternate:</i> Matthew Bistan
<b>Screening Panel Members</b>	Peter Sheild, Debra Kolste, Katherine Schrubbe, Troy Alton <i>Alternate:</i> Diana Whalen
<b>Licensure Forms Committee</b>	Lisa Bahr, Shaheda Govani, Diana Whalen <i>Alternate:</i> Matthew Bistan

**Delegation of Authorities**

### ***Document Signature Delegations***

**MOTION:** Peter Sheild moved, seconded by Diana Whalen, to delegate authority to the Chairperson (or in absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession) to sign documents on behalf of the Board in order to carry out its duties. Motion carried unanimously.

**MOTION:** Lisa Bahr moved, seconded by Peter Sheild, in order to carry out duties of the Board, the Chairperson (or in absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession) has the ability to delegate signature authority for purposes of facilitating the completion of assignments during or between meetings. The members of the Board hereby delegate to the Executive Director or DPD Division Administrator, the authority to sign on behalf of a Board member as necessary. Motion carried unanimously.

### ***Delegated Authority for Urgent Matters***

**MOTION:** Matthew Bistan moved, seconded by Troy Alton, that in order to facilitate the completion of urgent matters between meetings, the Board delegates its authority to the Chairperson (or, in the absence of the Chairperson, the highest-ranking officer or longest serving Board member in that succession), to appoint liaisons to the Department to act in urgent matters. Motion carried unanimously.

### ***Delegation to Chief Legal Counsel Due to Loss of Quorum***

**MOTION:** Matthew Bistan moved, seconded by Debra Kolste, to delegate the review and authority to act on disciplinary cases to the Department's Chief Legal Counsel due to lack of/loss of quorum after two consecutive meetings. Motion carried unanimously.

### ***Delegation to Chief Legal Counsel for Stipulated Resolutions***

**MOTION:** Matthew Bistan moved, seconded by Peter Sheild, to delegate to DSPS Chief Legal Counsel the authority to act on behalf of the Board concerning stipulated resolutions providing for a surrender, suspension, or revocation of a credential, where the underlying merits involve serious and dangerous behavior, and where the signed stipulation is received between Board meetings. The Board further requests that CLC only act on such matters when the best interests of the Board, Department and the Public are best served by acting upon the stipulated resolution at the time the signed stipulation is received versus waiting for the next Board meeting. Motion carried unanimously.

### ***Monitoring Delegations***



### **Delegation of Authorities for Monitoring**

**MOTION:** Matthew Bistan moved, seconded by Troy Alton, to adopt the “Roles and Authorities Delegated for Monitoring” document as presented in the January 4, 2023 as additional materials, except that item 11 under Liaison Delegations shall not be removed. Motion carried unanimously.

### **Delegation of Authorities for Legal Counsel to Sign Monitoring Orders**

**MOTION:** Matthew Bistan moved, seconded by Diana Whalen, to delegate to Legal Counsel the authority to sign Monitoring orders that result from Board meetings on behalf of the Board Chairperson. Motion carried unanimously.

### ***Credentialing Authority Delegations***

#### **Delegation of Authority to Credentialing Liaison**

**MOTION:** Matthew Bistan moved, seconded by Lisa Bahr, to delegate authority to the Credentialing Liaison(s) to serve as a liaison between the Department and the Board and to act on behalf of the Board in regard to credentialing applications or questions presented to them, including the signing of documents related to applications. Motion carried unanimously.

#### **Delegation of Authority to Department When Credentialing Criteria is Met**

**MOTION:** Shaheda Govani moved, seconded by Matthew Bistan, to delegate credentialing authority to the Department to act upon applications that meet all credentialing statutory and regulatory requirements without Board or Board liaison review. Motion carried unanimously.

#### **Delegation of Authority for Predetermination Reviews**

**MOTION:** Matthew Bistan moved, seconded by Peter Sheild, to delegate authority to the Department Attorneys to make decisions regarding predetermination applications pursuant to Wis. Stat. § 111.335(4)(f). Motion carried unanimously.

#### **Delegation of Authority for Conviction Reviews**

**MOTION:** Matthew Bistan moved, seconded by Lisa Bahr, to delegate authority to the Department Attorneys to review and approve applications with convictions which are not substantially related to the practice of Dentistry. Motion carried unanimously.

### ***Delegated Authority for Application Denial Reviews***

**MOTION:** Matthew Bistan moved, seconded by Shaheda Govani, to delegate authority to the Department's Attorney Supervisors to serve as the Board's designee for purposes of reviewing and acting on requests for hearing as a result of a denial of a credential. Motion carried unanimously.

**Delegation of Authority for Military Reciprocity Reviews**

**MOTION:** Matthew Bistan moved, seconded by Debra Kolste, to delegate authority to the Department Attorneys to review and approve military reciprocity applications in which the individual meets the requirements of Wis. Stat. § 440.09. Motion carried unanimously.

**Delegation to Department When Applicant's Discipline History Has Been Previously Reviewed**

**MOTION:** Shaheda Govani moved, seconded by Matthew Bistan, to delegate authority to Department staff to approve applications where Applicant's prior discipline has been approved for a previous credential and there is no new discipline. Motion carried unanimously.

**Delegation to Department When Applicant's Conviction History Has Been Previously Reviewed**

**MOTION:** Matthew Bistan moved, seconded by Diana Whalen, to delegate authority to Department staff to approve applications where criminal background checks have been approved for a previous credential and there is no new conviction record. Motion carried unanimously.

***Voluntary Surrenders***

**MOTION:** Matthew Bistan moved, seconded by Troy Alton, to delegate authority to the assigned case advisor to accept or refuse a request for voluntary surrender pursuant to Wis. Stat. § 440.19 for a credential holder who has a pending complaint or disciplinary matter. Motion carried unanimously.

***Education and Examination Liaison(s) Delegation***

**MOTION:** Shaheda Govani moved, seconded by Matthew Bistan, to delegate authority to the Education and Examination Liaison(s) to address all issues related to education and examinations. Motion carried unanimously.

***Authorization for Department to Provide Board Member Contact Information to National Regulatory Related Bodies***

**MOTION:** Matthew Bistan moved, seconded by Diana Whalen, to authorize the Department staff to provide national regulatory related bodies with all board member contact information that the Department retains on file. Motion carried unanimously.

### ***Optional Renewal Notice Insert Delegation***

**MOTION:** Matthew Bistan moved, seconded by Peter Sheild, to designate the Chairperson (or, in the absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession) to provide a brief statement or link relating to board-related business within the license renewal notice at the Board's or Board designee's request. Motion carried unanimously.

### ***Legislative Liaison Delegation***

**MOTION:** Matthew Bistan moved, seconded by Peter Sheild, to delegate authority to the Legislative Liaisons to speak on behalf of the Board regarding legislative matters. Motion carried unanimously.

### ***Travel Authorization Liaison Delegation***

**MOTION:** Matthew Bistan moved, seconded by Troy Alton, to delegate authority to the Travel Authorization Liaison to approve any board member travel to and/or participation in events germane to the Board, and to designate representatives from the Board to speak and/or act on the Board's behalf at such events. Motion carried unanimously.

### ***Website Liaison(s) Delegation***

**MOTION:** Matthew Bistan moved, seconded by Lisa Bahr, to authorize to the Website Liaison(s) to act on behalf of the Board in working with Department staff to identify and execute website updates. Motion carried unanimously.

### ***Licensure Forms Committee Delegation***

**MOTION:** Lisa Bahr moved, seconded by Matthew Bistan, that in order to facilitate the completion of its duties between meetings, the Board delegates authority to the Chairperson to appoint members to the Licensure Forms Committee between meetings as necessary. Motion carried unanimously.

## **ADMINISTRATIVE RULE MATTERS**

### **Pending or Possible Rulemaking Projects**

**MOTION:** Matthew Bistan moved, seconded by Lisa Bahr, to request DSPS staff draft a scope statement relating to Topical Application of Anesthetics by a Dental Hygienist. Motion carried unanimously.

### **Drafting Proposals: DE 2 and 11, Relating to Certification in Advanced Cardiovascular Life Support or Pediatric Advanced Life Support**

**MOTION:** Peter Sheild moved, seconded by Troy Alton, to designate Matthew Bistan and Shaheda Govani to serve as liaisons to DSPP staff for drafting DE 2 and 11, relating to Certification in Advanced Cardiovascular Life Support or Pediatric Life Support. Motion carried unanimously.

### **Pending or Possible Rulemaking Projects**

**MOTION:** Peter Sheild moved, seconded by Herbert Kaske, to delegate the Board's authority to the Chairperson to take any appropriate action regarding Emergency Rule 2216. Motion carried unanimously.

### **CLOSED SESSION**

**MOTION:** Matthew Bistan moved, seconded by Peter Sheild, to convene to Closed Session to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85 (1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85(1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.). Matthew Bistan, Chairperson, read the language of the motion. The vote of each member was ascertained by voice vote. Roll Call Vote: Troy Alton-yes; Lisa Bahr-yes; Matthew Bistan-yes; Joan Fox-yes; Shaheda Govani-yes; Herbert Kaske-yes; Debra Kolste-yes; Katherine Schrubbe-yes; Peter Sheild-yes; and Diana Whalen-yes. Motion carried unanimously.

The Board convened into Closed Session at 12:19 p.m.

### **DIVISION OF LEGAL SERVICES AND COMPLIANCE (DLSC) MATTERS**

#### **Administrative Warnings**

#### ***21 DEN 102– M.P.***

**MOTION:** Troy Alton moved, seconded by Peter Sheild, to issue an Administrative Warning in the matter of M.P., DLSC Case Number 21 DEN 102. Motion carried unanimously.

#### **Proposed Stipulations, Final Decisions and Orders**

**MOTION:** Matthew Bistan moved, seconded by Herbert Kaske, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings of the following cases:

1. 21 DEN 028 – Antonio G. Cigno, DDS
2. 21 DEN 095 – Thomas J. McCarthy, DDS
3. 22 DEN 009 – Christopher J. Rauch, DDS
4. 22 DEN 010 – Carolyn Giannelli, DDS
5. 22 DEN 023 – Ejlal J. Alalawi, DMD

Motion carried unanimously.

## **DELIBERATION OF PROPOSED FINAL DECISIONS AND ORDERS**

**MOTION:** Matthew Bistan moved, seconded by Herbert Kaske, to adopt the Findings of Fact, Conclusions of Law, and Proposed Decision and Order, with Variance, in the matter of disciplinary proceedings against Elisabeth M. Baertlein, DMD, Respondent – DHA Case Number SPS-22-0005/DLSC Case Number 19 DEN 107. Motion carried unanimously.

*(Shaheda Govani recused herself and left the room for deliberation and voting in the matter concerning Elisabeth M. Baertlein, DMD, Respondent – DHA case number SPS-22-0005/DLSC Case Number 19 DEN 107.)*

*(Peter Sheild excused at 12:32 p.m.)*

### **RECONVENE TO OPEN SESSION**

**MOTION:** Matthew Bistan moved, seconded by Lisa Bahr, to reconvene into Open Session. Motion carried unanimously.

The Board reconvened into Open Session at 12:40 p.m.

### **ADJOURNMENT**

**MOTION:** Lisa Bahr, seconded by Herbert Kaske, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 12:41 p.m.

**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

<b>1) Name and title of person submitting the request:</b> Nilajah Hardin Administrative Rules Coordinator		<b>2) Date when request submitted:</b> 02/17/23 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
<b>3) Name of Board, Committee, Council, Sections:</b> Dentistry Examining Board			
<b>4) Meeting Date:</b> 03/01/23	<b>5) Attachments:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>6) How should the item be titled on the agenda page?</b> Administrative Rule Matters – Discussion and Consideration 1. Final Rule Draft: DE 11, Relating to Pre-Certification Sedation Education Requirements 2. Scope Statement: DE 3 and 7, Relating to Topical Application of Anesthetics by a Dental Hygienist 3. Pending or Possible Rulemaking Projects	
<b>7) Place Item in:</b> <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	<b>8) Is an appearance before the Board being scheduled?</b> <i>(If yes, please complete <a href="#">Appearance Request</a> for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b> N/A	
<b>10) Describe the issue and action that should be addressed:</b> Act on a Scope Statement and Drafting of Rules; Review Board’s Current Rule Projects Attachments: <ul style="list-style-type: none"> <li>Final Rule Draft, Legislative Report, and EIA – DE 11</li> <li>Clearinghouse Report – DE 11</li> <li>Scope Statement – DE 3 and 7</li> <li>Rule Projects Chart</li> </ul> Copies of current Board Rule Projects Can be Viewed Here: <a href="https://dsps.wi.gov/Pages/RulesStatutes/PendingRules.aspx">https://dsps.wi.gov/Pages/RulesStatutes/PendingRules.aspx</a>			
<b>11) Authorization</b>			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
<b>Directions for including supporting documents:</b> 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

**STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD**

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**IN THE MATTER OF RULEMAKING :  
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE  
DENTISTRY EXAMINING BOARD : CR 22-086**

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**I. THE PROPOSED RULE:**

The proposed rule, including the analysis and text, is attached.

**II. REFERENCE TO APPLICABLE FORMS: N/A**

**III. FISCAL ESTIMATE AND EIA:**

The Fiscal Estimate and EIA is attached.

**IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:**

The objective of the proposed rule was to update and add details to the requirements listed in DE 11.035. Therefore, the Board amended DE 11.035 (1) (q) and (2) (s) to add additional requirements for sedation permit education cases. The Board also updated DE 11.025 (3) to align it with the expectations of the Board that courses are certified by the American Heart Association. By providing these additional requirements, the Board will be able to issue sedation permits in an efficient and safe manner.

**V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:**

The Dentistry Examining Board held a public hearing on January 4, 2023. The following people either testified at the hearing, or submitted written comments:

- Attorney Kathleen Marcus, DOCS Education
- Michael Silverman, DMD, DOCS Education
- David Blanchard, DDS
- Brad Camp, DDS
- William Caputo, DDS
- Eric Carlson, DDS
- Nathan Knutsen, DDS
- Andrew Scott, DDS
- Jacob Sladky, DDS

The Dentistry Examining Board summarizes the comments received either by hearing testimony or by written submission as follows:

- Attorney Marcus and Dr. Silverman provided comments on behalf DOCS Education. Included in those comments were the following main points:
  - DOCS education trains the vast majority of sedation dentists in Wisconsin

- “This new requirement would effectively eliminate the enteral sedation permit in Wisconsin.”
- 20 patient cases would be approximately 60 hours of treatment time that dentists would need to attend
- DOCS has a live patient experience conducted via livestream that is available for Board members to review
- Interactive livestream meets requirements for the one live patient experience for the enteral permit in California
- There are no courses available that meet the 20 case enteral sedation requirements, which would essentially cause dentists to either forgo offering sedation or obtain IV sedation training instead
- The requirement for enteral sedation as written is twice the clinical hours required for the parenteral or IV permits
- Dr. Silverman also commented that Colorado, Kansas, Texas, Nebraska, Mississippi, Atlanta, Georgia, South Carolina, Tennessee, Massachusetts, Utah, Arizona, Oregon, Washington, and Idaho all do not have 20 live in person patient cases for enteral sedation permit education,
- Dr. David Blanchard expressed concerns about patients who need oral sedation and how essential the ability to provide this service for his patients is.
- Dr. Brad Camp also expressed concerns about patients who need oral sedation not being able to receive the care that they need, as well as the fact that essential care may be delayed due to fear of IV sedation or patient inability to access an oral surgeon near them.
- Dr. William Caputo stated that oral conscious sedation is very safe and patients are less likely to have an emergency situation under this type of sedation, than if they were not sedated.
- Dr. Eric Carlson opposed the rule, stating that it would result in patients going without necessary preventative care which would lead to more emergency room visits and tax an already overwhelmed medical system.
- Dr. Nathan Knutsen opposed the rule, expressing concerns about patients needing oral sedation, as well as that there is not a course offered that provides 20 in person cases.
- Dr. Andrew Scott opposed the rule, stating that it would likely take away necessary dental care for a large part of Wisconsin. They also recommended reverting the requirements back to previous years, such as 2018.
- Dr. Jacob Sladky opposed the rule, stating it would limit the ability of dentists to treat anxious patients.

The Dentistry Examining Board explains modifications to its rule-making proposal prompted by public comments as follows:

- The Board asked and received additional information from DOCS education about the other states that Dr. Silverman mentioned in his comment about enteral sedation permits. The Department also provided the Board with additional information on other states not included in the adjacent state analysis or the list from DOCS education. Based on public comment and this additional information, the Board made the following changes:
  - DE 11.035 (1) (q) 1. to 5. was changed to 1. to 6.



- DE 11. 035 (1) (q) 1. to 6. was updated to read:
  - “DE 11.035 (1) (q) 1. At least 3 cases must occur in person as live clinical dental experiences. These cases may occur at any time or location permitted by the education program. The remaining cases may include simulations or video presentations.
  - 2. One case with experience in returning a patient from deep to moderate sedation, which may be done by simulation or video presentation.
  - 3. Include full review of patient medical history, including pertinent lab values.
  - 4. Applicant shall be in the room for the duration of the case, including recovery and discharge of the patient.
  - 5. Applicant shall observe the administration of medicines.
  - 6. Patient and any anesthesia monitors shall be in full view of the applicant.”

**VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

All of the recommendations suggested in the Clearinghouse Report have been accepted in whole.

**VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS: N/A**

STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD

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IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DENTISTRY EXAMINING BOARD
DENTISTRY EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 22-086)

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PROPOSED ORDER

An order of the Dentistry Examining Board to amend DE 11.025 (3) (e); create DE 11.035 (1) (q) 1. to 6. and 11.035 (2) (s) 1. to 6.; and renumber and amend DE 11.035 (1) (q) as (1) (q) (intro.) and 11.035 (2) (s) as 11.035 (2) (s) (intro.), relating to precertification sedation education requirements.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** s. 447.02 (2) (b), Stats.

**Statutory authority:** ss. 15.08 (5) (b) and 447.02 (2) (b), Stats.

**Explanation of agency authority:**

Section 15.08 (5) (b), Stats., provides that an examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 447.02 (2) (b), Stats, provides that the examining board shall promulgate rules specifying “the standards, conditions and any educational requirements that are in addition to the requirements specified in s. 447.04 (1) that must be met by a dentist to be permitted to induce general anesthesia or conscious sedation in connection with the practice of dentistry.”

**Related statute or rule:** s. 447.04 (1), Stats.

**Plain language analysis:**

The objective of the proposed rule was to update and add details to the requirements listed in DE 11.035. Therefore, the Board amended DE 11.035 (1) (q) and (2) (s) to add additional requirements for sedation permit education cases. The Board also updated DE 11.025 (3) to align it with the expectations of the Board that courses are certified by the American Heart Association.

**Summary of, and comparison with, existing or proposed federal regulation:** None.

**Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:** No comments were received.

**Comparison with rules in adjacent states:**

**Illinois:** The Illinois Department of Financial and Professional Regulation is responsible for the licensure and regulation of Dentists in Illinois, with input from the Illinois Board of Dentistry. The Illinois Board is also responsible for the promulgation of rules to implement certain sections of the Illinois Dental Practice Act. This Act contains requirements for dental practice, including dentistry done under anesthesia or sedation [225 Illinois Compiled Statutes ch. 25]. The rules in the Illinois Administrative Code require a Dentist applying for a moderate sedation permit to complete 75 hours of didactic and clinical study and supervised experience in providing moderate sedation to 20 or more patients [Illinois Administrative Code s. 1220.510].

**Iowa:** The Iowa Dentistry Board is responsible for the licensure and regulation of Dentists in Iowa. Listed in the Iowa Administrative Code are the requirements for dental practice, including dentistry done under anesthesia or sedation. Iowa requires a Dentist applying for a moderate sedation permit to complete a training program that includes a minimum of 60 hours of instruction and management of at least 20 patients or an accredited residency program that includes clinical experience in moderate sedation [650 Iowa Administrative Code ch. 29].

**Michigan:** The Michigan Board of Dentistry is responsible for the licensure and regulation of Dentists in Michigan. Act 368 Article 15 of the Michigan Compiled Laws includes the regulations for dentistry in Michigan, among several other occupations. [Michigan Compiled Laws s. 333.166] The Michigan Department of Licensing and Regulatory Affairs has administrative rules that include requirements for anesthesia and sedation dentistry. These rules require a Dentist who administers intravenous conscious sedation to have completed at least 60 hours of training in intravenous conscious sedation including a minimum of 40 hours of supervised clinical instruction where they have sedated not less than 20 cases [Michigan Administrative Rules R 338.11602].

**Minnesota:** The Minnesota Board of Dentistry is responsible for the licensure and regulation of Dentists in Minnesota. Part 3100 of the Minnesota Administrative Code includes the regulations for dentistry in Minnesota, including the requirements for anesthesia and sedation dentistry. Minnesota requires a Dentist applying for initial certification for moderate sedation to have completed at least 60 hours of didactic education in enteral and parenteral sedation including at least 10 individual supervised cases of parenteral moderate sedation. No more than 5 of those cases may be performed on a patient simulation manikin. [Minnesota Administrative Rules part 3100.3600]

**Summary of factual data and analytical methodologies:**

The Board reviewed Wisconsin Administrative Code DE 11 to determine which case requirements are necessary for safe training of Dentists for anesthesia permits.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:** The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

**Fiscal Estimate and Economic Impact Analysis:**

The Fiscal Estimate and Economic Impact Analysis is attached.

**Effect on small business:**

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-6795.

**Agency contact person:**

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-26-7139; email at DSPSAdminRules@wisconsin.gov.

**Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing on January 4, 2023, to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. DE 11.025 (3) (e) is amended to read:

DE 11.025 (3) (e). Evidence of certification in Advanced Cardiovascular Life Support or Pediatric Advanced Life Support through a course that ~~follows~~ is certified by the American Heart Association ~~guidelines~~. Pediatric Advanced Life Support is required if treating pediatric patients.

SECTION 2. DE 11.035 (1) (q) is renumbered as DE 11.035 (1) (q) (intro.) and amended to read:

DE 11.035 (1) (q) (intro.) 20 cases, which may include group observation cases, that each meet all of the following requirements:

SECTION 3. DE 11.035 (1) (q) 1. to 6. is created to read:

- DE 11.035 (1) (q) 1. At least 3 cases must occur in person as live clinical dental experiences. These cases may occur at any time or location permitted by the education program. The remaining cases may include simulations or video presentations.
2. One case with experience in returning a patient from deep to moderate sedation, which may be done by simulation or video presentation.
  3. Include full review of patient medical history, including pertinent lab values.
  4. Applicant shall be in the room for the duration of the case, including recovery and discharge of the patient.
  5. Applicant shall observe the administration of medicines.
  6. Patient and any anesthesia monitors shall be in full view of the applicant.

SECTION 4. DE 11.035 (2) (s) is renumbered as DE 11.035 (2) (s) (intro.) and amended to read:

DE 11.035 (2) (s) (intro.) 20 individually managed cases-, that each meet the all of following requirements:

SECTION 5. DE 11.035 (2) (s) 1. to 6. is created to read:

- DE 11.035 (2) (s) 1. Must occur in person;
2. Include full review of patient medical history, including pertinent lab values;
  3. Applicant shall be in the room for the duration of the case;
  4. Applicant shall supervise recovery and discharge of the patient;
  5. Applicant shall have full view of the patient and access to the patient's airway;
  6. Anesthesia monitors shall be in full view of the applicant.

SECTION 6. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

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 (END OF TEXT OF RULE)  
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This Proposed Order of the Dentistry Examining Board is approved for submission to the Governor and Legislature.

Dated \_\_\_\_\_

Agency \_\_\_\_\_

Chairperson  
 Dentistry Examining Board

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original   <input type="checkbox"/> Updated   <input type="checkbox"/> Corrected</p>	<p>2. Date December 6, 2022</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) DE 11 - Permanent Rule</p>	
<p>4. Subject Pre-Certification Sedation Education</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR   <input type="checkbox"/> FED   <input checked="" type="checkbox"/> PRO   <input type="checkbox"/> PRS   <input type="checkbox"/> SEG   <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected s. 20.165 (1) (g)</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect   <input type="checkbox"/> Increase Existing Revenues   <input checked="" type="checkbox"/> Increase Costs   <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate   <input type="checkbox"/> Decrease Existing Revenues   <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy   <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units   <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b></p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule The objective of the proposed rule is to update and add details to the requirements listed in DE 11.035. The Board will also review and update DE 11.025 (3) to align it with the expectations of the Board for courses certified by the American Heart Association.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The rule will be posted for 14 days on the Department of Safety and Professional Services' website to solicit comments on the potential economic impact.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The rule will not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole. The Department estimates a total of \$1,000 in annual ongoing costs and \$2,650 in one-time administrative costs, which may be absorbed in the agency budget.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefits of implementing this rule are clear criteria for conscious sedation pre-certification education dentistry permits.</p>	
<p>16. Long Range Implications of Implementing the Rule The long range implications of implementing this rule are improved oversight and streamlined approval for conscious sedation pre-certification education in Wisconsin. .</p>	
<p>17. Compare With Approaches Being Used by Federal Government None</p>	

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: The Illinois Department of Financial and Professional Regulation is responsible for the licensure and regulation of Dentists in Illinois, with input from the Illinois Board of Dentistry. The Illinois Board is also responsible for the promulgation of rules to implement certain sections of the Illinois Dental Practice Act. This Act contains requirements for dental practice, including dentistry done under anesthesia or sedation [225 Illinois Compiled Statutes ch. 25]. The rules in the Illinois Administrative Code require a Dentist applying for a moderate sedation permit to complete 75 hours of didactic and clinical study and supervised experience in providing moderate sedation to 20 or more patients [Illinois Administrative Code s. 1220.510].

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Minnesota: The Minnesota Board of Dentistry is responsible for the licensure and regulation of Dentists in Minnesota. Part 3100 of the Minnesota Administrative Code includes the regulations for dentistry in Minnesota, including the requirements for anesthesia and sedation dentistry. Minnesota requires a Dentist applying for initial certification for moderate sedation to have completed at least 60 hours of didactic education in enteral and parenteral sedation including at least 10 individual supervised cases of parenteral moderate sedation. No more than 5 of those cases may be performed on a patient simulation manikin. [Minnesota Administrative Rules part 3100.3600]

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19. Contact Name	20. Contact Phone Number
Nilajah Hardin, Administrative Rules Coordinator	608-267-7139

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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes     No
-





# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

**Scott Grosz**  
Clearinghouse Director

**Anne Sappenfield**  
Legislative Council Director

**Margit Kelley**  
Clearinghouse Assistant Director

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE **22-086**

AN ORDER to amend DE 11.025 (3) (e) and 11.035 (1) (q) and (2) (s); and to create DE 11.035 (1) (q) 1. to 5. and (2) (s) 1. to 6., relating to precertification sedation education requirements.

Submitted by **DENTISTRY EXAMINING BOARD**

12-06-2022 RECEIVED BY LEGISLATIVE COUNCIL.

12-21-2022 REPORT SENT TO AGENCY.

MSK:KAM

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]  
Comment Attached            YES             NO
  
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]  
Comment Attached            YES             NO
  
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]  
Comment Attached            YES             NO
  
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]  
Comment Attached            YES             NO
  
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]  
Comment Attached            YES             NO
  
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]  
Comment Attached            YES             NO
  
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]  
Comment Attached            YES             NO



# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

**Scott Grosz**  
Clearinghouse Director

**Margit Kelley**  
Clearinghouse Assistant Director

**Anne Sappenfield**  
Legislative Council Director

### CLEARINGHOUSE RULE 22-086

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]**

#### 2. Form, Style and Placement in Administrative Code

a. The treatment SECTIONS in the proposed rule should be revised to use separate SECTIONS in the following sequence:

- (1) Amend s. DE 11.025 (3) (e).
- (2) Renumber and amend s. DE 11.035 (1) (q) as (1) (q) (intro.).
- (3) Create s. DE 11.035 (1) (q) 1. to 5.
- (4) Renumber and amend s. DE 11.035 (2) (s) as (2) (s) (intro.).
- (5) Create s. DE 11.035 (2) (s) 1. to 6.

b. The caption for the proposed rule should be updated to reflect the treatment of each provision in the previous comment.

c. The following comments apply to the revision of s. DE 11.035 (1) (q):

- (1) Insert the phrase “all of” before the phrase “the following”, or some other indicator as to whether all or any number of the subunit requirements must be met. [s. 1.11 (2), Manual.]
- (2) Revise the format of the amended text to accurately reflect the changes made to the existing text of the provision, and to show the stricken material before the new underscored material. [s. 1.04 (4) (a), Manual.] In particular, a period should be shown following the word “cases”, and the period should be shown with a strike-through. The comma following the word “cases” should be shown following the stricken period, and should be shown with underscoring that is contiguous with the underscoring for the rest of the inserted material.

d. Similarly, the following comments apply to the revision of s. DE 11.035 (2) (s):

- (1) Insert the phrase “all of” before the phrase “the following”, or some other indicator as to whether all or any number of the subunit requirements must be met. [s. 1.11 (2), Manual.]
  - (2) Revise the format of the amended text to accurately reflect the changes made to the existing text of the provision, and to show the stricken material before the new underscored material. [s. 1.04 (4) (a), Manual.] In particular, a period should be shown following the word “cases”, and the period should be shown with a strike-through. The comma following the word “cases” should be shown following the stricken period, and should be shown with underscoring that is contiguous with the underscoring for the rest of the inserted material.
- e. The following comments apply to the creation of both s. DE 11.035 (1) (q) 1. to 5. and (2) (s) 1. to 6.:
- (1) The agency should be consistent with phrasing so as to maintain parallel structure within each list. In particular, subunits in each list should consistently begin with either a noun or a verb. Also, each subunit should complete the idea and result in a complete sentence when read with the introductory statement that precedes each list of requirements. [ss. 1.05 (1) (e) and 1.11 (2), Manual.]
  - (2) Each subunit in both lists of requirements should end in a period, rather than a semicolon. [s. 1.11 (3), Manual.]

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

The rule summary’s plain language analysis for the proposed rule should be revised to provide a narrative summary of the actual changes made in the proposed rule. [s. 1.01 (2) (b), Manual.]

# STATEMENT OF SCOPE

## DENTISTRY EXAMINING BOARD

**Rule No.:** DE 3 and 7

**Relating to:** Topical Application of Anesthetics by a Dental Hygienist

**Rule Type:** Permanent

**1. Finding/nature of emergency (Emergency Rule only):** N/A

**2. Detailed description of the objective of the proposed rule:**

The objective of the proposed rule is to review and potentially revise the requirements in DE 3 to allow for licensed dental hygienists to be able to apply topical anesthetics to patients without the presence of a licensed dentist. Chapter DE 7 will also be reviewed and possibly revised to determine if the requirements for certification of dental hygienist to administer local anesthesia will need to be adjusted based on the revisions to DE 3.

**3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

Wisconsin Administrative Code chapter DE 3 currently allows licensed dental hygienists to administer oral systemic pre-medications and subgingival sustained release chemotherapeutic agents if performed pursuant to a treatment plan approved by a dentist and if that dentist remains on the premises and available to the patient for the duration of the administration. The rules do not specify whether topical application of anesthetic can also be delegated to a licensed dental hygienist by a licensed dentist and under what circumstances. The alternative to making changes to the rule is that the Administrative Code will remain unclear on the topic of application of topical anesthetic by licensed dental hygienists.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

15.08(5)(b) Each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

447.02 (2) (e) The examining board shall promulgate rules specifying the educational requirements for administration of local anesthesia by a dental hygienist licensed under this chapter under s. 447.06 (2) (e) 2.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

60 hours

**6. List with description of all entities that may be affected by the proposed rule:**

Dentists, Dental Hygienists

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

None

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

None to minimal. It is not likely to have a significant impact on small businesses.

**Contact Person:** Nilajah Hardin, Administrative Rules Coordinator, (608) 267-7139.

Approved for publication:

Approved for implementation:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date Submitted

\_\_\_\_\_  
Date Submitted

**Dentistry Examining Board  
Rule Projects (updated 02/17/23)**

<b>Clearinghouse Rule Number</b>	<b>Scope #</b>	<b>Scope Implementation</b>	<b>Scope Expiration</b>	<b>Code Chapter Affected</b>	<b>Relating clause</b>	<b>Current Stage</b>	<b>Next Step</b>
Not Assigned Yet	065-22	08/15/2022	02/01/2025	DE 1, 5, 6, 13, and 16	Certification of Expanded Function Dental Auxiliaries	Emergency Rule Published in the Wisconsin State Journal and Effective on 03/01/2023	Emergency Rule Public Hearing; Permanent Rule Drafting
Not Assigned Yet	086-22	11/21/2022	05/07/2025	DE 2 and 11	Certification in Advanced Cardiovascular Life Support or Pediatric Advanced Life Support	Drafting	Board Approval of Preliminary Rule Draft
21-086	036-21	04/21/2021	10/05/2023	DE 11	Permits to Administer Anesthesia	Legislative Review	Adoption Order Anticipated for Board Review at a Future Meeting
22-055	109-21	01/14/2022	06/13/2024	DE 11	Definitions	Legislative Review	Adoption Order Anticipated for Board Review at a Future Meeting
22-086	023-22	04/13/2022	09/28/2024	DE 11	Pre-Certification Sedation Education	Emergency Rule Effective 11/28/2022-04/26/2023; Final Rule Draft and Legislative Report Reviewed at 03/01/2023 Meeting	Legislative Review
22-087	031-22	06/03/2022	10/11/2024	DE 13	Controlled Substances Prescribing Continuing Education Requirements	Drafting Final Rule and Legislative Report	Legislative Review