

**STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD**

---

**IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE**  
**PROCEEDINGS BEFORE THE : CR 23-066**  
**DENTISTRY EXAMINING BOARD :**

---

**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 this proposed rule is to revise DE 3 to allow licensed dental hygienists to apply topical anesthetics without the presence of a licensed dentist. This was achieved by creating DE 3.05 to include definitions for “topical anesthetics” and “subgingival anesthetics,” as well as outline the practice limitations associated with their application. The list of prohibited practices in DE 3.03 was also amended to specify that the administration of injectable local anesthesia is prohibited except as provided in ch. DE 7.

**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 3, 2024. The Board received the following verbal and written comment from Linda Jorgenson, RDH, representing WI-DHA:

WI-DHA is in support of this rules change so that dental hygienists will be permitted to administer topical anesthetics without the presence of a dentist as they practice dental hygiene. However, we would argue that the phrase "as a remediable procedure" should be eliminated from the rules regarding the use of topical anesthetics.

*“Remediable procedures” means patient procedures that create changes within the oral cavity or surrounding structures that are reversible and do not involve any increased health risks to the patient.*

Topical anesthetics cannot be considered a remediable procedure because there are numerous increased health risks associated with them. To refer to topical anesthetics as remediable would necessitate a redefinition of the term *remediable*. The proposed rules language contradicts the known facts about topical anesthetics. The current statutes and

rules allow dental hygienists to "practice dental hygiene or remediable procedures" without the presence of a dentist as long as certain conditions are met. The word or establishes that allowable patient procedures fall into two categories.

Practicing dental hygiene (in the scope of practice)  
*Or* Remediable procedures

We suggest that administration of topical anesthetics should fall under the first category and that it is inappropriate to refer to it as remediable. Thank you for receiving my testimony on behalf of the WI-DHA.

Response: The Board decided not to make any changes in response to this comment. As long as the administration of topical anesthetics meets the definition of a remediable procedure in s. 447.01 (12), Stats. then that is what is intended to be allowed by this rule. The administration of anesthesia outside the definition of a remediable procedure would not be allowed by this rule.

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

All Legislative Council recommendations have been incorporated into the proposed rules.

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

N/A

STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD

---

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DENTISTRY EXAMINING BOARD
DENTISTRY EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE CR 23-066)

---

PROPOSED ORDER

An order of the Dentistry Examining Board to amend DE 3.03 (6) and create DE 3.05, relating to topical application of anesthetics by a dental hygienist.

Analysis prepared by the Department of Safety and Professional Services.

---

ANALYSIS

**Statutes interpreted:** s. 447.06 (2) (c), Stats.

**Statutory authority:** s. 15.08 (5) (b), Stats.

**Explanation of agency authority:**

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.

**Related statute or rule:** None.

**Plain language analysis:**

The objective of this proposed rule is to revise DE 3 to allow licensed dental hygienists to apply topical anesthetics without the presence of a licensed dentist. This was achieved by creating DE 3.05 to include definitions for “topical anesthetics” and “subgingival anesthetics,” as well as outline the practice limitations associated with their application. The list of prohibited practices in DE 3.03 was also amended to specify that the administration of injectable local anesthesia is prohibited except as provided in ch. DE 7.

**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:** N/A

**Comparison with rules in adjacent states:**

**Illinois:** In Illinois, a dental hygienist may administer local anesthesia under the supervision of a dentist upon successful completion of a training program approved by the Illinois Department of Financial and Professional Regulation. [225 Illinois Compiled Statutes Section 18]. Additionally, the Illinois Administrative Code specifies that the dental hygienist must function under the supervision of a dentist who remains in the facility when administering local anesthesia [Illinois Administrative Code Title 68 Chapter VII Subchapter b Part 1220 Section 1220.240 (g)].

**Iowa:** In Iowa, administration of local anesthesia by a dental hygienist may only be performed under the direct supervision of a dentist [650 Iowa Administrative Code Chapter 10 Section 10.3 (4)].

**Michigan:** In Michigan, a dental hygienist may apply topical anesthetic agents by prescription of a dentist and subgingival medicaments under assignment from a dentist. Assignment means that the dentist has designated a patient and described the procedures to be performed but does not need to be physically present at the time of those procedures being performed. Michigan Administrative Rules R 338.11401 and 338.11411].

**Minnesota:** In Minnesota, a dental hygienist may administer local anesthesia and place subgingival medicaments under the general supervision of a dentist. Before a dental hygienist administers local anesthesia, they must successfully complete a didactic and clinical program accredited by the Commission on Dental Accreditation [Minnesota Administrative Rules 3100.8700 Subpart. 1].

**Summary of factual data and analytical methodologies:** The Board reviewed Wisconsin Administrative Code chapter DE 3 to determine where changes were needed to allow for the application of topical anesthesia by a dental hygienist without the presence of a dentist.

**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) 266-2112.

**Agency contact person:**

Jake Pelegrin, 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 608-267-0989; email at [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov).

---

TEXT OF RULE

SECTION 1. DE 3.03 (6) is amended to read:

**DE 3.03 (6)** Administer injectable local anesthesia, except as provided in ch. DE 7.

SECTION 2. DE 3.05 is created to read:

**DE 3.05 Topical anesthetics. (1)** In this section:

(a) “Subgingival anesthetics” means non-injectable topical anesthetics applied below the gum tissue as a remediable procedure.

(b) “Topical anesthetics” means anesthetics applied to a body surface such as the skin or mucous membrane as a remediable procedure.

(2) Pursuant to s. 447.06 (2) (c), Stats., a dental hygienist may apply topical and subgingival anesthetics to a patient without the presence of a dentist, if all of the following conditions are met:

(a) The remediable procedure is performed under a written or oral prescription.

(b) The dentist who made the written or oral prescription has seen the patient at least once during the 12-month period which immediately precedes all of the following:

1. The date on which the written or oral prescription was made.

2. The date on which the dental hygiene practice or remediable procedure is performed.

(c) The written or oral prescription specifies the practices and procedures that the dental hygienist may perform with the informed consent of the patient, or, if applicable, the patient’s parent or legal guardian.

SECTION 3. 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.

---

(END OF TEXT OF RULE)

---

This Proposed Order of the Dentistry Examining Board is approved for submission to the Governor and Legislature.

Dated 02/16/2024



---

Chair  
Dentistry Examining Board



## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date November 28 2023
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) DE 3 and 7	
4. Subject Topical Application of Anesthetics by a Dental Hygienist	
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	6. Chapter 20, Stats. Appropriations Affected s. 20.165 (1) (g)
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 checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
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>	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0	
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	
11. Policy Problem Addressed by the Rule The proposed rule will update the Dentistry Examining Board's part of the administrative code to allow Dental Hygienists to apply topical anesthetics without the presence of a supervising Dentist.	
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 was posted on the Department of Safety and Professional Service's (DSPS) website for 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.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. N/A	
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) DSPS estimates a total of \$2,100 in one-time costs for staffing and an indeterminate one-time IT impact to implement the rule. The estimated one-time staffing need attributed to the implementation of this rule accounts for staff and board training, website and forms updates, and additional workload associated with a temporary increase in inquiries and community outreach. The one-time estimated costs cannot be absorbed in the currently appropriated agency budget.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit of implementing the rule is expanded practice capabilities for Dental Hygienists.	
16. Long Range Implications of Implementing the Rule The long range implications of implementing the rule are expedited patient care through services provided by Dental Hygienists that do not need to wait for a Dentist to be present to complete .	
17. Compare With Approaches Being Used by Federal Government None.	

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

---

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

Illinois: In Illinois, a dental hygienist may administer local anesthesia under the supervision of a dentist upon successful completion of a training program approved by the Illinois Department of Financial and Professional Regulation. [225 Illinois Compiled Statutes Section 18]. Additionally, the Illinois Administrative Code specifies that the dental hygienist must function under the supervision of a dentist who remains in the facility when administering local anesthesia [Illinois Administrative Code Title 68 Chapter VII Subchapter b Part 1220 Section 1220.240 (g)].

Iowa: In Iowa, administration of local anesthesia by a dental hygienist may only be performed under the direct supervision of a dentist [650 Iowa Administrative Code Chapter 10 Section 10.3 (4)].

Michigan: In Michigan, a dental hygienist may apply topical anesthetic agents by prescription of a dentist and subgingival medicaments under assignment from a dentist. Assignment means that the dentist has designated a patient and described the procedures to be performed but does not need to be physically present at the time of those procedures being performed. Michigan Administrative Rules R 338.11401 and 338.11411].

Minnesota: In Minnesota, a dental hygienist may administer local anesthesia and place subgingival medicaments under the general supervision of a dentist. Before a dental hygienist administers local anesthesia, they must successfully complete a didactic and clinical program accredited by the Commission on Dental Accreditation [Minnesota Administrative Rules 3100.8700 Subpart. 1].

---

19. Contact Name

Nilajah Hardin, Administrative Rules Coordinator

20. Contact Phone Number

(608) 267-7139

---

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



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

**ATTACHMENT A**

---

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)

---

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

---

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:

---

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

---

5. Describe the Rule's Enforcement Provisions

---

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

- Yes    No
-