



**VIRTUAL/TELECONFERENCE
DENTISTRY EXAMINING BOARD**
Virtual, 4822 Madison Yards Way, Madison
Contact: Will Johnson, (608) 266-2112
September 6, 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. Be advised that board members may attend meetings designated as “Hybrid” in-person or virtually.

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 July 12, 2023 (5-8)**
- 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. 9:00 A.M. Public Hearing – Clearinghouse Rule 23-041 on DE 2 and 11, Relating to Certification in Advanced Cardiovascular Life Support or Pediatric Advanced Life Support (9-19)

- 1) Review Public Hearing Comments and Respond to Clearinghouse Report

I. Administrative Rule Matters – Discussion and Consideration (20-33)

- 1) Adoption Orders
 - a. DE 11, Relating to Pre-Certification Sedation Education Requirements (21-24)
 - b. DE 13, Relating to Controlled Substances Prescribing Continuing Education Requirements (25-27)
- 2) Update:
 - a. DE 3 and 7, Relating to Topical Application of Anesthetics by a Dental Hygienist (28-32)
- 3) Pending or Possible Rulemaking Projects (33)

J. Central Regional Dental Testing Service Steering Committee – Discussion and Consideration (34)

K. 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

L. 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.).

M. Credentialing Matters (35-42)

- 1) Proposed Final Decision and Order – Zahraa Alghabban, DHA Case Number SPS-22-0038

N. Division of Legal Services and Compliance (DLSC) Matters (43-57)

1) Proposed Stipulations, Final Decisions and Orders (43-49)

- a. 22 DEN 159 – Robert A. Magnin, D.D.S.

2) Administrative Warnings (50-51)

- a. 22 DEN 021, J.A.L.

3) Case Closings (52-57)

- a. 22 DEN 054 – J.A.S.

O. Deliberation on Review of Administrative Warnings (58-129)

- 1) **10:30 A.M. APPEARANCE:** Lesley McKinney, DLSC Attorney; Erik Monson, Attorney for Respondent; R.C.P., Respondent: WARN00001572 – DLSC Case Numbers 19 DEN 067 & 19 DEN 068 – R.C.P.

P. 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

Q. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

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

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

ADJOURNMENT

NEXT MEETING: NOVEMBER 1, 2023

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://dsps.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
JULY 12, 2023**

PRESENT: Troy Alton, DDS; Lisa Bahr, RDH; Matthew Bistan, DDS; Joan Fox; Shaheda Govani, DDS; David Gundersen, DDS, Herbert Kaske, DDS; Debra Kolste; Katherine Schrubbe, RDH; Peter Sheild, DDS; Diana Whalen, RDH

EXCUSED: Christine Kenyon, DDS

STAFF: Will Johnson, Executive Director; Jameson Whitney, Legal Counsel; Nilajah Hardin, Administrative Rules Coordinator; Brenda Taylor, Board Services Supervisor; and other Department staff

CALL TO ORDER

Matthew Bistan, Chairperson, called the meeting to order at 9:02 a.m. A quorum was confirmed with eleven (11) members present.

ADOPTION OF AGENDA

MOTION: Shaheda Govani moved, seconded by Troy Alton, to adopt the Agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES OF May 3, 2023

MOTION: Peter Shield moved, seconded by Shaheda Govani, to approve the Minutes of May 3, 2023, as published. Motion carried unanimously.

ADMINISTRATIVE RULE MATTERS

Preliminary Rule Draft a. DE 1, 5, 6, 13 and 16, Relating to Certification of Expanded Function Dental Auxiliaries

MOTION: Matthew Bistan moved, seconded by Joan Fox, to authorize Lisa Bahr to approve the preliminary rule draft of DE 1, 5, 6, 13 and 16, relating to Certification of Expanded Function Dental Auxiliaries, for posting of economic impact comments and submission to the Clearinghouse. Motion carried unanimously.

Drafting Proposals a. DE 3 and 7, Relating to Topical Application of Anesthetics by a Dental Hygienist

MOTION: Shaheda Govani moved, seconded by Joan Fox, to designate Lisa Bahr and Diana Whalen to serve as liaisons to DSPS staff for drafting DE 3 and 7, relating to Topical Application of Anesthetics by a Dental Hygienist. Motion carried unanimously.

**OPIOID ABUSE GOAL SETTING AND REPORT PURSUANT TO WIS. STAT. 440.035
(2M)(C) – DISCUSSION AND CONSIDERATION**

MOTION: Matthew Bistan moved, seconded by Shaheda Govani, to designate Troy Alton to serve as liaison to DSPS staff relating to opioid abuse goal setting and reporting pursuant to Wis. Stat. 440.035 (2m)(c). Motion carried unanimously.

**EDUCATION AND EXAMINATION MATTERS – DENTAL TESTING SERVICES
UNDER WIS. STAT. § 447.04(1)(A)4. AND WIS. ADMIN. CODE § DE 2.005 FOR
MARQUETTE UNIVERSITY – DISCUSSION AND CONSIDERATION.**

MOTION: Matthew Bistan moved, seconded by Joan Fox, to approve Marquette University School of Dentistry as a dental testing service under Wis. Stat. s. 447.04(1)(a)4 as they satisfy the requirements set forth in Wis. Admin. Code s. DE 2.005(1) and (2). This approval will continue until July 12, 2028 unless revoked or renewed by the board. Motion carried unanimously.

CLOSED SESSION

MOTION: Lisa Bahr moved, seconded by Peter Shield, 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 10:29 a.m.

DIVISION OF LEGAL SERVICES AND COMPLIANCE (DLSC) MATTERS

Credentialing Matters

Sharon Young – Crime Information Bureau Review – Expanded Dental Auxiliary

MOTION: Shaheda Govani moved, seconded by Peter Sheild, to deny an Expanded Dental Auxiliary credential for applicant Sharon Young. Motion carried.

Proposed Stipulations, Final Decisions and Orders

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

1. 21 DEN 119 – Eric D. Carlson, D.D.S.
2. 22 DEN 042 – Mary C. Prailes, R.D.H.

3. 22 DEN 045 & 22 DEN 129 – Nikhilesh Choudhary, D.M.D.
 4. 22 DEN 093 – Gonzalo E. Hernandez, D.D.S.
 5. 22 DEN 128 – Curtis M. Spaulding, R.D.H.
 6. 22 DEN 141 – John A. Petty, D.D.S.
 7. 22 DEN 145 – Robert J. Goeckermann, D.D.S.
 8. 22 DEN 146 – James R. Coakley, D.D.S.
 9. 22 DEN 147 – Jason J. Pohl, D.D.S.
 10. 22 DEN 148 – William G. Aiello, D.D.S.
 11. 22 DEN 149 – Michelle N. DaCosta, D.D.S.
 12. 22 DEN 150 – Ronald L. Dudley, D.D.S.
 13. 22 DEN 154 – Maxwell B. Meinerz, D.D.S.
 14. 22 DEN 156 – Hyun S. Oh, D.D.S.
- Motion carried unanimously.

Administrative Warnings

MOTION: Joan Fox moved, seconded by Troy Alton, to issue an Administrative Warning in the following DLSC Cases:

1. 20 DEN 028, P.K.S.
2. 21 DEN 017, E.C.I.
3. 22 DEN 153, S.E.M.
4. 22 DEN 155, I.K.M.
5. 22 DEN 161, R.A.W.

Motion carried unanimously.

Case Closings

MOTION: Matthew Bistan moved, seconded by Peter Sheild, to close the following DLSC Cases for the reasons outlined below:

1. 21 DEN 017 – N.A.M. – No Violation
2. 22 DEN 119 – Z.R. – Insufficient Evidence
3. 22 DEN 173 – S.S.R. – No Violation
4. 22 DEN 179 – Unknown – No Violation
5. 22 DEN 180 – P.L. – No Violation
6. 22 DEN 191 – A.L.C. – No Violation
7. 23 DEN 020 – S.B.K. – Insufficient Evidence

Motion carried unanimously.

DELIBERATION ON MATTERS RELATING TO ORDERS FIXING COSTS

MOTION: Matthew Bistan moved, seconded by Peter Sheild, to adopt the Order Fixing Costs in the matter of disciplinary proceedings against Elisabeth M. Baertlein, D.M.D. – SPS-22-0005, 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, D.M.D., Respondent – DHA Case Number SPS- SPS-22-0005/ 19 DEN 107.)

RECONVENE TO OPEN SESSION

MOTION: Lisa Bahr moved, seconded by Troy Alton, to reconvene into Open Session. Motion carried unanimously.

The Board reconvened into Open Session at 11.32 a.m.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MOTION: Lisa Bahr moved, seconded by Troy Alton, to affirm all motions made and votes taken in Closed Session. Motion carried unanimously.

ADJOURNMENT


MOTION: Peter Sheild, seconded by Diana Whalen, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 11:34 a.m.

DRAFT

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

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Nilajah Hardin Administrative Rules Coordinator		2) Date when request submitted: 08/25/23 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Dentistry Examining Board			
4) Meeting Date: 09/06/23	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? 9:00 A.M. Public Hearing – Clearinghouse Rule 23-041 on DE 2 and 11, Relating to Certification in Advanced Cardiovascular Life Support or Pediatric Advanced Life Support 1. Review Public Hearing Comments and Respond to Clearinghouse Report	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: The Board will hold a Public Hearing on this rule as required by the rulemaking process.			
11) Authorization			
 Signature of person making this request		08/25/23 Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 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

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

PROPOSED ORDER

An order of the Dentistry Examining Board to amend DE 2.01 (1) (h) (Note), 2.015 (4) (Note), and 11.025 (3) (e), and to create DE 2.03 (1) (e), (5) (a) 5., and (5) (b) 4, relating to certification in advanced cardiovascular life support or pediatric advanced life support.

Analysis prepared by the Department of Safety and Professional Services.

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:

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) (b) 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: None.

Plain language analysis:

The objective of the proposed rule is to revise the requirements in DE 11 relating to Advanced Cardiovascular Life Support (ACLS) or Pediatric Advanced Life Support (PALS) certification to reflect that it should be an ongoing or maintained certification for each dentist who performs anesthesia services. This update includes amendments to DE 2.03 (1) and (5), as well as DE 11.025 (3) (e). This rule also includes updates to DE 2.01 (1) (h) (Note) and 2.015 (4) (Note) to reflect current application submission requirements to the Department.

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: Illinois requires Dentists who practice moderate or deep sedation to have a permit. These permits require that the Dentists complete and maintain current certification in ACLS or PALS. All persons assisting the Dentist shall complete and maintain basic life support certification (225 ILCS 25/8.1).

Iowa: Iowa requires Dentists who practice moderate sedation, deep sedation, or general anesthesia to have a permit. Current certification in ACLS or current certification in PALS for those administering sedation to pediatric patients, is required for all sedation permits (IAC 650-29.5).

Michigan: Michigan requires Dentists who practice general anesthesia and intravenous conscious sedation to maintain current certification in both basic and advanced cardiovascular life support (Michigan Administrative Rules R 338.11601 and 338.11602).

Minnesota: Minnesota requires Dentists who practice moderate sedation, deep sedation, or general anesthesia to maintain current certification in ACLS or PALS, as well as in cardiopulmonary resuscitation. (Minnesota Administrative Rules 3100.3600)

Summary of factual data and analytical methodologies:

The Board reviewed Wisconsin Administrative Code Chapters DE 2 and 11 to determine what changes were needed to make ACLS or PALS certification a current and ongoing requirement for licensees who perform sedation.

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 608-267-7139; 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, held on September 6, 2023, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. DE 2.01 (1) (h) (Note) and 2.015 (4) (Note) are amended to read:

DE 2.01 (1) (h) (Note) ~~Application forms~~ Instructions for applications are available upon request to the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53080 on the department of safety and professional services' website at <http://dsps.wi.gov>.

2.015 (4) (Note) ~~Application forms~~ Instructions for applications are available upon request to the ~~Dentistry Examining Board, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53080~~ on the department of safety and professional services' website at <http://dsps.wi.gov>.

SECTION 2. DE 2.03 (1) (e), (5) (a) 5., and (5) (b) 4. are created to read:

DE 2.03 (1) (e) For licensees who hold any sedation permit under ch. DE 11, evidence satisfactory to the board of current certification in Advanced Cardiovascular Life Support or Pediatric Advanced Life Support. Pediatric Advanced Life Support is required if treating pediatric patients.

2.03 (5) (a) 5. For licensees who hold any sedation permit under ch. DE 11, evidence satisfactory to the board of current certification in Advanced Cardiovascular Life Support or Pediatric Advanced Life Support. Pediatric Advanced Life Support is required if treating pediatric patients.

2.03 (5) (b) 4. For licensees who hold any sedation permit under ch. DE 11, evidence satisfactory to the board of current certification in Advanced Cardiovascular Life Support or Pediatric Advanced Life Support. Pediatric Advanced Life Support is required if treating pediatric patients.

SECTION 2. DE 11.025 (3) (e), as affected by Clearinghouse Rule 22-086, is amended to read:

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

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)

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 July 24, 2023
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) DE 2 and 11	
4. Subject Certification in Advanced Cardiovascular Life Support (ACLS) or Pediatric Advanced Life Support (PALS)	
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 checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
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 require ongoing certification in either ACLS or PALS for those licensees who perform anesthesia procedures are part of their practice.	
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 \$1,300 in one-time costs for staffing and an indeterminate one-time IT impact to implement the rule. The estimated one-time cost is for staff and board training, website and forms updates, and additional workload associated with a temporary increase in inquiries. 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 protection of patient safety during anesthesia procedures performed by licensees who have their ACLS or PALS certification renewed on a regular basis. The alternative to implementing the rule is that licensees who perform anesthesia will only have to be certified in ACLS or PALS at the time of their application for an anesthesia permit.	
16. Long Range Implications of Implementing the Rule The long range implications of implementing the rule is safer anesthesia procedures performed by licensees.	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

17. Compare With Approaches Being Used by Federal Government
None.

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

Illinois: Illinois requires Dentists who practice moderate or deep sedation to have a permit. These permits require that the Dentists complete and maintain current certification in ACLS or PALS. All persons assisting the Dentist shall complete and maintain basic life support certification (225 ILCS 25/8.1).

Iowa: Iowa requires Dentists who practice moderate sedation, deep sedation, or general anesthesia to have a permit. Current certification in ACLS or current certification in PALS for those administering sedation to pediatric patients, is required for all sedation permits (IAC 650-29.5).

Michigan: Michigan requires Dentists who practice general anesthesia and intravenous conscious sedation to maintain current certification in both basic and advanced cardiovascular life support (Michigan Administrative Rules R 338.11601 and 338.11602).

Minnesota: Minnesota requires Dentists who practice moderate sedation, deep sedation, or general anesthesia to maintain current certification in ACLS or PALS, as well as in cardiopulmonary resuscitation. (Minnesota Administrative Rules 3100.3600)

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



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 **23-041**

AN ORDER to amend DE 2.01 (1) (h) (Note), 2.015 (4) (Note), and 11.025 (3) (e); and to create DE 2.03 (1) (e) and (5) (a) 5., and (b) 4., relating to certification in advanced cardiovascular life support or pediatric advanced life support.

Submitted by **DENTISTRY EXAMINING BOARD**

07-24-2023 RECEIVED BY LEGISLATIVE COUNCIL.

08-10-2023 REPORT SENT TO AGENCY.

SG: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

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 23-041

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

In the proposed rule, two separate sections are identified as SECTION 2. Renumber the SECTIONS so that each is distinct.

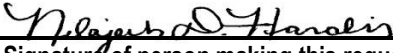
5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In SECTION 1 of the proposed rule, consider indicating other ways to access the instructions for applications, including an address that a person may write to or a telephone number that a person may call. [s. 1.12 (3), Manual.]

b. In SECTION 2 of the proposed rule, s. DE 2.03 (1) (e) and (5) (a) 5. and (b) 4. require current certification in Advanced Cardiovascular Life Support or Pediatric Advanced Life Support. The proposed rule also requires Pediatric Advanced Life Support if treating pediatric patients. If a licensee holds a sedation permit and sedates both adult and pediatric patients, would Pediatric Advanced Life Support alone suffice? If the proposed rule intends to require Advanced Cardiovascular Life Support for a licensee who treats both populations, then consider clarifying that requirement in the proposed rules and throughout the current administrative rules.

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

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Nilajah Hardin Administrative Rules Coordinator		2) Date when request submitted: 08/25/23 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Dentistry Examining Board			
4) Meeting Date: 09/06/23	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Administrative Rule Matters – Discussion and Consideration <ol style="list-style-type: none"> 1. Adoption Order <ol style="list-style-type: none"> a. DE 11, Relating to Pre-Certification Sedation Education Requirements b. DE 13, Relating to Controlled Substances Prescribing Continuing Education Requirements 2. Update <ol style="list-style-type: none"> a. DE 3 and 7, Relating to Topical Application of Anesthetics by a Dental Hygienist 3. Pending or Possible Rulemaking Projects 	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: Act on a Preliminary Rule Draft and Drafting of a New Rule; Review Board’s Current Rule Projects Attachments: <ul style="list-style-type: none"> • Adoption Orders (DE 11 and 13) • Implemented Scope Statement (DE 3 and 7) • Wisc. Admin Code Chs. 3 and 7 • Rule Projects Chart Copies of current Board Rule Projects Can be Viewed Here: https://dsps.wi.gov/Pages/RulesStatutes/PendingRules.aspx			
11) Authorization			
 Signature of person making this request		08/25/23 Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: <ol style="list-style-type: none"> 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

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

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.

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 report:

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.

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 present and participate for the duration of live clinical dental experience cases up through recovery and discharge of the patient and shall participate in any remaining cases via simulation or video presentation to completion.
 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.

(END OF TEXT OF RULE)

Dated _____ Agency _____
Chairperson
Dentistry Examining Board

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 RULE 22-087)

ORDER

An order of the Dentistry Examining Board to amend DE 13.03 (1m), relating to controlled substances prescribing continuing education requirements.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 440.035 (2) and 447.056, Stats.

Statutory authority: ss. 15.08 (5) (b) and 447.02 (1) (f), 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 (1) (f), Stats., provides “[the examining board may promulgate rules] governing compliance with continuing education requirements under s. 447.056.”

Related statute or rule: None

Plain language analysis:

The objective of this proposed rule is to extend the 2 hour-controlled substances prescribing continuing education requirement outlined in DE 13.03 (1m) that was previously only in effect for the 2019 and 2021 license renewal periods. The Board also removed the word “responsible” from the requirement, as all controlled substances prescribing should be done responsibly, so there is no need to specify. In addition, the Board removed the word “acute” from the requirement, because patients may also receive care for chronic pain as well as care for acute pain.

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: 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 continuing education. Illinois does not require specific continuing education coursework on the topic of prescribing controlled substances for the treatment of dental pain or an equivalent topic [225 Illinois Compiled Statutes ch. 25; Illinois Administrative Code Title 68, Chapter 8, Subchapter b, Part 1220, Section 1220.440].

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 continuing education. Iowa requires each licensed dentist who has prescribed opioids during a renewal period to complete at least 1 hour of continuing education on the topic of opioids, which can count toward the 30 required hours for that renewal period. This 1 hour of continuing education content needs to include “guidelines for prescribing opioids, including recommendations on limitations of dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacological therapy options.” [650 Iowa Administrative Code ch. 25].

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. These regulations include requirements for continuing education. Michigan does not require specific continuing education coursework on the topic of prescribing controlled substances for the treatment of dental pain or an equivalent topic [Michigan Compiled Laws s. 333.166].

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 continuing education. Minnesota does not require specific continuing education coursework on the topic of prescribing controlled substances for the treatment of dental pain or an equivalent topic [Minnesota Administrative Rules part 3100.5100].

Summary of factual data and analytical methodologies:

The Board reviewed Wisconsin Administrative Code chapter DE 13 to determine what changes were needed to update the controlled substances prescribing continuing education requirement.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The proposed rule was 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 608-267-7139; email at DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1 DE 13.03 (1m) is amended to read:

DE 13.03 (1m) ~~RESPONSIBLE PRESCRIBING~~ PRESCRIBING CONTROLLED SUBSTANCES CONTINUING EDUCATION. The 30 credit hours of continuing education shall include 2 hours in the topic of responsible prescribing of controlled substances for the treatment of acute dental pain. ~~This subsection applies to the bienniums ending in 2019 and 2021.~~

SECTION 2 EFFECTIVE DATE. The rules adopted in this order shall take effect on October 1, 2023.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Chairperson
Dentistry Examining Board

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:



Authorized Signature

3/27/2023

Date Submitted

Approved for implementation:



Authorized Signature

6/30/2023

Date Submitted

Chapter DE 3

PRACTICE OF DENTAL HYGIENE

DE 3.01 Supervision.
DE 3.02 Practice of dental hygiene.
DE 3.03 Prohibited practices.

DE 3.04 Oral systemic premedications and subgingival sustained release chemotherapeutic agents.

Note: Chapter DE 3 as it existed on February 28, 1982 was repealed and a new chapter DE 3 was created effective March 1, 1982.

DE 3.01 Supervision. A dental hygienist shall practice under the supervision of a licensed dentist in a dental facility or a facility specified in s. 447.06 (2), Stats., if applicable.

History: Cr. Register, February, 1982, No. 314, eff. 3-1-82; correction made under s. 13.93 (2m) (b) 7., Stats., Register August 2006 No. 608.

DE 3.02 Practice of dental hygiene. (1) (a) This subsection applies to a dental hygienist who is practicing dental hygiene or performing remediable procedures as an employee or as an independent contractor in a dental office.

(b) A dental hygienist may practice dental hygiene or perform remediable procedures only as authorized by a licensed dentist who is present in the facility in which those practices or procedures are performed, except as provided in par. (c).

(c) A dental hygienist may practice dental hygiene or perform remediable procedures if a licensed dentist is not present in the facility in which those practices or procedures are performed only if all of the following conditions are met:

1. The dental hygiene practices or remediable procedures are performed under a written or oral prescription.

2. The dentist who made the written or oral prescription has examined the patient at least once during the 12-month period immediately preceding all of the following:

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

b. The date on which the dental hygiene practices or remediable procedures are performed.

3. 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.

(2) (a) This subsection applies to a dental hygienist who is practicing dental hygiene or performing remediable procedures as an employee or as an independent contractor as follows:

1. For a school board, a governing body of a private school, as defined in s. 115.001 (3d), Stats., or a governing body of a tribal school, as defined in s. 115.001 (15m), Stats.

2. For a school for the education of dentists or dental hygienists.

3. For a state or federal prison, county jail or other federal, state, county or municipal correctional or detention facility, or a facility established to provide care for terminally ill patients.

4. For a local health department, as defined in s. 250.01(4), Stats.

5. For a charitable institution open to the general public or to members of a religious sect or order.

6. For a nonprofit home health care agency.

7. For a nonprofit dental care program serving primarily indigent, economically disadvantaged or migrant worker populations.

8. At a facility, as defined in s. 50.01 (1m), Stats., an adult family home certified under s. 50.032, Stats. or licensed under s. 50.033, Stats., an adult day care center, as defined in s. 49.45 (47) (a), Stats., a community rehabilitation program, a hospital, as defined in s. 50.33 (2), Stats., or a facility that is primarily operated to provide outpatient medical services.

(b) A dental hygienist may only practice dental hygiene, as defined in s. 447.01 (3), Stats., or perform remediable procedures, as defined in s. 447.01 (12), Stats.

History: CR 17-068: r. and recr. Register August 2019 No. 764, eff. 9-1-19; correction in (2) (b) made under s. 35.17, Stats., Register August 2019 No. 764.

DE 3.03 Prohibited practices. A dental hygienist may not do any of the following:

(1) Diagnose a dental disease or ailment.

(2) Determine any treatment or any regimen of any treatment outside of the scope of dental hygiene.

(3) Prescribe or order medication or radiographs.

(4) Perform any procedure that involves the intentional cutting of soft or hard tissue of the mouth by any means.

(5) Administer nitrous oxide inhalation, except as provided in ch. DE 15.

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

History: CR 17-068: r. and recr., Register August 2019 No. 764, eff. 9-1-19; correction in (3) made under s. 35.17, Stats., Register August 2019 No. 764.

DE 3.04 Oral systemic premedications and subgingival sustained release chemotherapeutic agents.

(1) "Oral systemic premedications" means antibiotics that are administered orally to patients prior to providing dental or dental hygiene services in order to mitigate against the risk of patients developing a bacterial infection.

(2) "Subgingival sustained release chemotherapeutic agents" means antibiotics that are applied in periodontal pockets to treat periodontal disease.

(3) A dentist may delegate to a dental hygienist the administration of oral systemic premedications and subgingival sustained release chemotherapeutic agents to patients only if all of the following conditions are met:

(a) The administration is performed pursuant to a treatment plan for the patient approved by a dentist.

(b) A dentist remains on the premises in which the administration is performed and is available to the patient throughout the completion of the appointment.

History: Cr. Register, September, 2000, No. 537, eff. 10-1-00; CR 17-068: am. (2) Register August 2019 No. 764, eff. 9-1-19.

Chapter DE 7

CERTIFICATION OF DENTAL HYGIENISTS TO ADMINISTER LOCAL ANESTHESIA

<p>DE 7.01 Authority. DE 7.02 Definitions. DE 7.03 Qualifications for certification of licensed dental hygienists to administer local anesthesia.</p>	<p>DE 7.04 Application procedure. DE 7.05 Educational requirements. DE 7.06 Dentist responsibility for the administration of local anesthetic.</p>
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DE 7.01 Authority. The rules in this chapter are adopted pursuant to ss. 15.08 (5) (b), 227.11 (2) and 447.02 (2) (e), Stats.
History: Cr. Register, October, 1999, No. 526, eff. 11-1-99.

DE 7.02 Definitions. As used in this chapter “accredited” has the meaning under s. 447.01 (1), Stats.
History: Cr. Register, October, 1999, No. 526, eff. 11-1-99.

DE 7.03 Qualifications for certification of licensed dental hygienists to administer local anesthesia. An applicant for certification to administer local anesthesia shall be granted a certificate by the board if the applicant complies with all of the following:

- (1) Has a current license to practice as a dental hygienist in this state.
- (2) Provide evidence of current qualification in cardiopulmonary resuscitation from a course provider approved by the Wisconsin department of health services.
- (3) Has completed the educational requirements of s. DE 7.05.
- (4) Has submitted the information required in the application under s. DE 7.04.

History: Cr. Register, October, 1999, No. 526, eff. 11-1-99; CR 11-035: am. (2) Register July 2012 No. 679, eff. 8-1-12.

DE 7.04 Application procedure. An applicant for a certificate to administer local anesthesia shall file a completed application on a form provided by the board. The application shall include all of the following:

- (1) The dental hygienist license number in this state and the signature of the applicant.
- (2) Evidence of current qualification in cardiopulmonary resuscitation from either the American heart association or the American red cross.
- (3) Evidence of successful completion of a didactic and clinical program sponsored by an accredited dental or dental hygiene program, resulting in the dental hygienist becoming competent to administer local anesthesia under the delegation and supervision of a dentist, the curriculum of which meets or exceeds the basic course requirements set forth in s. DE 7.05. For those dental hygienists who are employed and taking a local anesthesia program as continuing education outside of the initial accredited dental hygiene program, the administration of local anesthesia on a non-classmate may be performed at the place where the dental hygienist is employed. In those instances the application:

(a) Shall contain a statement from the employing dentist that he or she supervised and verifies the successful completion of an inferior alveolar injection on a patient who was informed of the situation and granted his or her consent to the dentist, and that the dentist assumed liability for the injection performed on the patient.

(b) Shall indicate that the inferior alveolar injection was completed within 6 weeks from the time that the licensed dental hygienist completed the coursework; or, if licensed by endorsement of a dental hygienist license from another state, within 6 weeks of becoming licensed as a dental hygienist in this state.

Note: Applications are available upon request to the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, October, 1999, No. 526, eff. 11-1-99.

DE 7.05 Educational requirements. The following educational requirements are necessary for the board to approve and grant certification to a licensed dental hygienist in the administration of local anesthesia:

(1) The course in the administration of local anesthesia shall be provided by an accredited dental or dental hygiene school.

(2) To participate in a course in the administration of local anesthesia, a person shall do all of the following:

(a) Show evidence of current qualification in cardiopulmonary resuscitation from a course provider approved by the Wisconsin department of health services.

(b) Provide proof of possessing a license to practice as a dental hygienist in this state, or having graduated from an accredited dental hygiene program, or of being enrolled in an accredited dental hygiene program.

(3) The local anesthesia course shall have the following components and provide a minimum of 21 hours of instruction:

(a) Didactic instruction. Minimum of 10 hours, including but not limited to the following topics:

1. Provide proof of possessing a license to practice as a dental hygienist in this state, or having graduated from an accredited dental hygiene program, or of being enrolled in an accredited dental hygiene program.
2. Basic pharmacology and drug interactions.
3. Chemistry, pharmacology and clinical properties of local anesthesia, vasoconstrictors, and topical anesthesia.
4. Anatomical considerations for the administration of anesthesia.
5. Patient assessment for the administration of anesthesia.
6. Selection and preparation of armamentarium.
7. Recognition, management and emergency response to local complications.
8. Recognition, management and emergency response to systemic complications.
9. Ethical and legal considerations.
10. Techniques for regional anesthesia.

(b) Experience in the clinical administration of local anesthesia. Minimum of 11 hours in the following techniques:

1. Maxillary.
 - a. Posterior superior alveolar.
 - b. Middle superior alveolar.
 - c. Anterior superior alveolar.
 - d. Greater/lesser palatine.
 - e. Nasopalatine.
 - f. Supraperiosteal (infiltration) injection.
2. Mandibular.
 - a. Inferior alveolar/lingual.
 - b. Mental/incisive nerve block.
 - c. Buccal nerve.

- d. Periodontal ligament injection.
- e. Intraseptal injection.

(c) Students performing injections as part of the clinical coursework shall successfully perform all local anesthesia injections on their classmates as well as perform at least one successful inferior alveolar injection on a non-classmate patient. For those licensed dental hygienists who are completing this course in the continuing education environment, the injection on a non-classmate patient may be performed in the office where the dental hygienist is employed, as long as the employer-dentist agrees to supervise and submit verification of the successful completion of

the injection.

(d) A dentist licensed under ch. 447, Stats., shall be present in the facility and available to both the patients and to the students of the class.

History: Cr. Register, October, 1999, No. 526, eff. 11-1-99; CR 11-035: am. (2) (a) Register July 2012 No. 679, eff. 8-1-12.

DE 7.06 Dentist responsibility for the administration of local anesthetic. The dentist is ultimately responsible for all decisions regarding the administration of local anesthetic, particularly in determining the pharmacological and physiological considerations of each individual treatment plan.

History: Cr. Register, October, 1999, No. 526, eff. 11-1-99.

**Dentistry Examining Board
Rule Projects (updated 08/25/23)**

Clearinghouse Rule Number	Scope #	Scope Implementation	Scope Expiration	Code Chapter Affected	Relating clause	Current Stage	Next Step
Not Assigned Yet (EmR 2304)	065-22	08/15/2022	02/01/2025	DE 1, 5, 6, 13, and 16	Certification of Expanded Function Dental Auxiliaries	Finalize Fiscal Estimate and EIA (Emergency Rule Effective 03/01/23-03/01/24)	Submission to Clearinghouse for Review; Anticipated Public Hearing at 11/01/23 Meeting
23-041	086-22	11/21/2022	05/07/2025	DE 2 and 11	Certification in Advanced Cardiovascular Life Support or Pediatric Advanced Life Support	Public Hearing Held at 09/06/23 Meeting	Draft Final Rule and Legislative Report
Not Assigned Yet	039-23	06/30/2023	12/12/2025	DE 3 and 7	Topical Application of Anesthetics by a Dental Hygienist	Drafting	Board Approval of Preliminary Rule Draft
22-086	023-22	04/13/2022	09/28/2024	DE 11	Pre-Certification Sedation Education	Adoption Order Reviewed at 09/06/23 Meeting	Submission for Publication; Anticipated 11/01/23 Effective Date
22-087	031-22	06/03/2022	10/11/2024	DE 13	Controlled Substances Prescribing Continuing Education Requirements	Adoption Order Reviewed at 09/06/23 Meeting	Submission for Publication; Anticipated 11/01/23 Effective Date

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

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Will Johnson on behalf of Lisa Bahr		2) Date When Request Submitted: 8/30/23 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Dentistry Examining Board			
4) Meeting Date: 9/6/2023	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? Central Regional Dental Testing Service Steering Committee Discussion and Consideration	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: Discussion about having a WI DEB member join the steering committee for CRDTS			
11) Authorization			
Will Johnson		08/30/2023	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Will Johnson		08/30/2023	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: <ol style="list-style-type: none"> 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. 			