



**VIRTUAL/TELECONFERENCE
DENTISTRY EXAMINING BOARD
Virtual, 4822 Madison Yards Way, Madison
Contact: Will Johnson, (608) 266-2112
November 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. 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 September 6, 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 23-051 on DE 1, 5, 6, 13, and 16, Relating to Certification of Expanded Function Dental Auxiliaries (9-24)**
 - 1) Review Public Hearing Comments and Respond to Clearinghouse Report

I. Administrative Rule Matters – Discussion and Consideration (25-29)

- 1) Preliminary Rule Draft: DE 3 and 7, Relating to Topical Application of Anesthetics by a Dental Hygienist **(26-28)**
- 2) Pending or Possible Rulemaking Projects **(29)**

J. 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

K. 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.).

L. Division of Legal Services and Compliance (DLSC) Matters

- 1) **Proposed Stipulations, Final Decisions and Orders**
 - a. 21 DEN 106 – J. Charles Mesec, D.D.S. **(30-36)**
 - b. 22 DEN 047 – Brian J. Blocher, D.D.S. **(37-43)**
 - c. 22 DEN 157 – Andrew S. Onela, D.D.S. **(44-51)**
 - d. 22 DEN 158 – Jolanta M. Pajek, D.D.S. **(52-58)**
 - e. 22 DEN 171 – Edward W. Hoffmann, D.D.S. **(59-66)**
- 2) **Case Closings**
 - a. 23 DEN 042 – J.P.W. **(67-71)**

b. 23 DEN 082 – R.E.A. (72-76)

M. 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

N. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

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

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

ADJOURNMENT

**VIRTUAL/TELECONFERENCE
DENTISTRY EXAMINING BOARD
Virtual, 4822 Madison Yards Way, Madison
Contact: Will Johnson, (608) 266-2112
November 1, 2023**

Dentistry Examining Board

2023 WISCONSIN ETHICS AND PUBLIC RECORDS LAW FACILITATED TRAINING

9:30 A.M. OR IMMEDIATELY FOLLOWING THE FULL BOARD MEETING

A quorum of the Dentistry Examining Board may be present; however, no Board business will be conducted.

NEXT MEETING: 2024 TO BE DETERMINED

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.

**VIRTUAL/TELECONFERENCE
DENTISTRY EXAMINING BOARD
MEETING MINUTES
SEPTEMBER 6, 2023**

PRESENT: Troy Alton, DDS; Lisa Bahr, RDH; Shaheda Govani, DDS; Herbert Kaske, DDS; Christine Kenyon; Debra Kolste; Katherine Schrubbe, RDH; Peter Sheild, DDS; Diana Whalen, RDH

EXCUSED: Matthew Bistan, DDS; Joan Fox

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

CALL TO ORDER

Shaheda Govani, Vice Chairperson, called the meeting to order at 9:02 a.m. A quorum was confirmed with nine (9) members present.

ADOPTION OF AGENDA

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

APPROVAL OF MINUTES OF JULY 12, 2023

MOTION: Herbert Kaske moved, seconded by Katherine Schrubbe, to approve the Minutes of July 12, 2023, as published. Motion carried unanimously.

**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**

Review Public Hearing Comments and Respond to Clearinghouse Report

MOTION: Herbert Kaske moved, seconded by Shaheda Govani, to accept all Clearinghouse comments for Clearinghouse Rule 23-041 (DE 2 and 11), relating to Certification in Advanced Cardiovascular Life Support or Pediatric Advanced Life Support. Motion carried unanimously.

MOTION: Shaheda Govani moved, seconded by Herbert Kaske, to authorize Troy Alton to approve the Legislative Report and Draft for Clearinghouse Rule 23-041 (DE 2 and 11), relating to Certification in Advanced Cardiovascular Life Support or Pediatric Advanced Life Support, for submission to the Governor's Office and Legislature. Motion carried unanimously.

ADMINISTRATIVE RULE MATTERS

Adoption Order: DE 11, Relating to Pre-Certification Sedation Education Requirements

MOTION: Troy Alton moved, seconded by Katherine Schrubbe, to approve the Adoption Order for Clearinghouse Rule 22-086 (DE 11), relating to Precertification Sedation Education Requirements. Motion carried unanimously.

Adoption Order: DE 13, Relating to Controlled Substances Prescribing Continuing Education Requirements

MOTION: Shaheda Govani moved, seconded by Troy Alton, to approve the Adoption Order for Clearinghouse Rule 22-087 (DE 13), relating to Controlled Substances Prescribing Continuing Education Requirements. Motion carried unanimously.

CLOSED SESSION

MOTION: Lisa Bahr moved, seconded by Troy Alton, 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.). Shaheda Govani, Vice 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; Shaheda Govani-yes; Herbert Kaske-yes; Christine Kenyon-yes; Katherine Schrubbe-yes; Peter Sheild-yes; and Diana Whalen-yes. Motion carried unanimously.

The Board convened into Closed Session at 9:39 a.m.

CREDENTIALING MATTERS

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

MOTION: Herbert Kaske moved, seconded by Lisa Bahr, to adopt the Findings of Fact, Conclusions of Law, and Proposed Decision and Order in the matter of the application for a license to practice Dentistry of Zahraa Alghabban, Applicant – DHA Case Number SPS-22-0038/Application No. 788707. Motion carried unanimously.

(Jameson Whitney and Shaheda Govani recused themselves and left the room for deliberation and voting in the matter concerning Zahraa Alghabban, DHA Case Number SPS-22-0038.)

DIVISION OF LEGAL SERVICES AND COMPLIANCE (DLSC) MATTERS

Proposed Stipulations, Final Decisions and Orders

22 DEN 159 – Robert A. Magnin, D.D.S.

MOTION: Peter Sheild moved, seconded by Troy Alton, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Robert A. Magnin, D.D.S., DLSC Case Number 22 DEN 159. Motion carried unanimously.

Administrative Warnings

22 DEN 021 – J.A.L.

MOTION: Lisa Bahr moved, seconded by Katherine Schrubbe, to issue an Administrative Warning in the matter of J.A.L., DLSC Case Number 22 DEN 021. Motion carried unanimously.

Case Closings

22 DEN 054 – J.A.S.

MOTION: Herbert Kaske moved, seconded by Christine Kenyon, to close DLSC Case Number 22 DEN 054 against J.A.S., for No Violation. Motion carried unanimously.

DELIBERATION ON REVIEW OF ADMINISTRATIVE WARNINGS

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.

MOTION: Shaheda Govani moved, seconded by Peter Sheild, to adjourn the hearing of the review of the administrative warning in the matter of R.C.P., DLSC Case Numbers 19 DEN 067 & 19 DEN 068, until a later board meeting. Motion carried unanimously.

RECONVENE TO OPEN SESSION

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

The Board reconvened into Open Session at 10:06 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.

(Be advised that any recusals or abstentions reflected in the Closed Session motions stand for the purposes of the affirmation vote.)

ADJOURNMENT

MOTION: Herbert Kaske, seconded by Peter Sheild, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 10:08 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: 10/18/23 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: 11/01/23	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 23-051 on DE 1, 5, 6, 13, and 16, Relating to Certification of Expanded Function Dental Auxiliaries 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		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 1.01, 5.02 (intro.), (5), (9), (14m), (18), (20), (24), and (25); and create DE 5.02 (22m), 13.045, 13.05 (3), and chapter DE 16, relating to Certification of Expanded Function Dental Auxiliaries.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 447.04 (3), Stats.

Statutory authority: ss. 15.08 (5) (b) and 447.035 (3) (a), 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 447.035 (3) (a), Stats. provides that “the examining board shall, subject to pars. (b) and (c), promulgate rules for the certification and practice of dental auxiliaries.”

Related statute or rule: 2021 Wisconsin Act 254

Plain language analysis: The objective of the proposed rule is to implement the statutory changes from 2021 Wisconsin Act 254. This was achieved through updates made several sections in DE 1 and 5, as well as the creation of new requirements in DE 5, 13, and the new chapter DE 16.

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 the practice of Dentistry 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 Expanded Function Dental Assistants. These requirements include supervised practice, and performance of specific functions. In Illinois, Expanded Function Dental Assistants are allowed to perform digital scans for impressions, pulp vitality tests, placing and carving of amalgam restorations, placing and finishing of composite restorations, and coronal polishing, among other functions. The supervising dentist is required to remain onsite and is responsible for all functions performed by the dental assistant. Education and training for Expanded Function Dental Assistants must be completed through either an approved continuing education sponsor or a dental assistant training program approved by the Commission on Dental Accreditation of the American Dental Association. [225 Illinois Compiled Statutes ch. 25 s. 17.1].

Iowa: The Iowa Dentistry Board is responsible for the licensure and regulation of the practice of dentistry in Iowa. Listed in the Iowa Administrative Code are the requirements for dental practice, including practice for Expanded Function Dental Assistants and Hygienists. Iowa has two levels of expanded function procedures that Dental Hygienists and Assistants can operate under. Level 1 expanded functions for Dental Assistants include taking occlusal registrations, placement of gingival retraction material, fabrication and removal of provisional restorations, applying cavity lines and bonding systems, placement of orthodontic brackets, adjustment of nitrous oxide inhalation analgesia, and taking impressions. Level 2 expanded functions for Dental Assistants or Hygienists includes placing and shaping of amalgam and restorative materials, polishing of adhesive restorative materials, and placement of intracoronal temporary fillings, among other procedures. In order to qualify for Level 1, each Dental Assistant or Hygienist must have either an active dental assistant registration or dental hygiene license, be certified by the Dental Assistant National Board, or at least one year of clinical practice as a registered dental assistant. Each Dental Assistant or Hygienist must also complete an approved expanded function training program approved by the Iowa Board. [650 Iowa Administrative Code ch. 23].

Michigan: The Michigan Board of Dentistry is responsible for the licensure and regulation of the practice of dentistry in Michigan. Act 368 Article 15 of the Michigan Compiled Laws includes the regulations for the practice dentistry in Michigan, among several other occupations. In Michigan, Dental Assistants may perform expanded functions under either direct or general supervision of a Dentist upon completion of a course in that area of practice that is offered by a program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Michigan Department of Licensing and Regulatory Affairs. Expanded functions that require direct supervision include placing and condensing amalgam restorations and taking final impressions for indirect restorations. Expanded functions that require general supervision include pulp vitality testing, placing matrices and wedges, applying cavity liners, placing non-epinephrine retraction cords, applying desensitizing agents and taking

impressions for orthodontic appliances, among other functions. [Michigan Compiled Laws Act 368, Article 15, Part 166, Section 333.16611 (11) to (13)].

Minnesota: The Minnesota Board of Dentistry is responsible for the licensure and regulation of dentistry in Minnesota. Part 3100 of the Minnesota Administrative Code includes the regulations for dentistry in Minnesota, including the requirements for licensed Dental Assistants. Minnesota requires more coursework or in-office training for any procedure delegated that indicates the need for more coursework. Procedures that Dental Assistants can perform under general supervision of a Dentist include working on orthodontic appliances, placing temporary fillings, taking radiographs and impressions. Procedures that Dental Assistants can perform under indirect supervision, or while the supervising Dentist remains on-site, include applying topical medications, placing devices for isolation purposes, performing mechanical polishing of crowns, placing periodontal dressings, and removing sutures, among other procedures. Procedures that Dental Assistants can perform under direct supervision include removing bond material from teeth with rotary instruments after removal of orthodontic appliances, etching enamel surfaces before bonding, fabrication and placement of temporary crowns and restorations, placing matrix systems and wedges, and administration of nitrous oxide inhalation analgesia, among other procedures. [Minnesota Administrative Rules s. 3100.8500]

Summary of factual data and analytical methodologies: The Board reviewed Wisconsin Administrative Code DE 1, 5, 6, and 13 to determine what changes need to be made due to 2021 Wisconsin Act 254. Additionally, the Board decided to create chapter DE 16 to outline practice requirements for Expanded Function Dental Auxiliaries.

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 November 1, 2023, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. DE 1.01 is amended to read:

DE 1.01 Authority. The provisions in chs. DE 1 to ~~4216~~ are adopted pursuant to authority in ss. 15.08 (5) and 227.11 (2) (a), Stats., and ch. 447, Stats.

SECTION 2. DE 5.02 (intro.), (5), (9), (14m), (18), (20), (24), and (25) are amended to read:

DE 5.02 (intro.) Unprofessional conduct by a dentist, ~~or dental hygienist,~~ or expanded function dental auxiliary includes:

DE 5.02 (5) Practicing in a manner which substantially departs from the standard of care ordinarily exercised by a dentist, ~~or dental hygienist,~~ or expanded function dental auxiliary which harms or could have harmed a patient.

DE 5.02 (9) Impersonating another dentist, ~~or dental hygienist,~~ or expanded function dental auxiliary.

DE 5.02 (14m) Surrendering, while under investigation, a license, certificate, permit, or registration granted by another state to practice as a dentist, ~~or dental hygienist,~~ or expanded function dental auxiliary.

DE 5.02 (18) Failing to maintain records and inventories as required by the United States department of justice drug enforcement administration, and under ch. 961, Stats., and s. ~~Phar 8-02~~ 8.05, Wis. Adm. Code.

DE 5.02 (20) Violating, or aiding or abetting the violation of any law substantially related to the practice of dentistry, ~~or dental hygiene,~~ or the practice of an expanded function dental auxiliary.

DE 5.02 (24) Failing to hold a current certificate in cardiopulmonary resuscitation unless the licensee or certified individual has obtained a waiver from the board based on a medical evaluation documenting physical inability to comply. A waiver shall be issued by the board only if it is satisfied that another person with current certification in CPR is immediately available to the licensee when patients are present.

DE 5.02 (25) After a request by the board, failing to cooperate in a timely manner with the board's investigation of complaints filed against the applicant, certified individual, or licensee. There is a rebuttable presumption that a licensee, certified individual, or applicant who takes longer than 30 days to respond to a request of the board has not acted in a timely manner under this subsection.

SECTION 3. DE 5.02 (22m) is created to read:

DE 5.02 (22m) Aiding or abetting or permitting persons who are not certified in the practice of an expanded function dental auxiliary under s. 447.035, Stats.

SECTION 4. DE 13.045 and 13.05 (3) are created to read:

DE 13.045 Continuing education requirements for expanded function dental auxiliaries.

- (1) **COMPLETION OF CONTINUING EDUCATION CREDIT HOURS.** Except as provided in sub. (5), in each two-year period following certification, an expanded function dental auxiliary shall complete 12 credit hours of continuing education related to the clinical practice of expanded function dental auxiliaries or the practice of medicine. No more than 2 of the 12 credit hours may be satisfied by training related to basic life support or cardiopulmonary resuscitation. Not less than 2 of the 12 credit hours shall include training in infection control.
- (2) **CREDIT FOR TEACHING OR PREPARING A PROGRAM.** One hour of teaching or preparing a professional dental or medical program is equivalent to one credit hour of continuing education. A certified individual who teaches or prepares a professional dental or medical program may obtain credit for the program only once every two-year period.
- (3) **CREDIT FOR COLLEGE LEVEL COURSES.** One credit hour of a college level course is equivalent to 6 credit hours of continuing education. A certified individual may substitute credit hours of college level courses related to the practice of expanded function dental auxiliaries or the practice of medicine for the required continuing education credit hours.
- (4) **CREDIT FOR DISTANCE EDUCATION.** The credit hours required under sub. (1) may be satisfied by independent study, correspondence, or internet programs or courses.
- (5) **EXEMPTION FOR NEW CERTIFIED INDIVIDUALS.** Subsection (1) does not apply to an applicant who has had their certification for two years or less.
- (6) **CERTIFICATION STATEMENT.** Every two years, each certified individual shall sign a statement certifying that within the two years immediately preceding that time, they have completed the continuing education credit hours required under sub. (1).
- (7) **FAILURE TO COMPLETE CONTINUING EDUCATION HOURS.** A certified individual who fails to meet the continuing education requirements every two years may be subject to discipline for unprofessional conduct under s. DE 5.02 (16).
- (8) **TIME LIMITS ON OBTAINING CREDITS.** Credit hours completed outside of each two-year time period may not count towards the requirements in sub. (1).
- (9) **RECORDKEEPING.** Every certified individual shall maintain a written record of the continuing education hours required under sub. (1) for not less than 6 years after completion of each credit.

- (10) WAIVER OF CONTINUING EDUCATION HOURS.** The board may waive the continuing education requirements under sub. (1) if it finds that exceptional circumstances such as prolonged illness, disability, or other similar circumstances have prevented a certified individual from meeting the requirements.

DE 13.05 (3) EXPANDED FUNCTION DENTAL AUXILIARIES. The board accepts continuing education programs for expanded function dental auxiliaries that satisfy the following criteria:

- (a) The subject matter of the continuing education program relates to the clinical practice of an expanded function dental auxiliary or the practice of medicine.
- (b) The continuing education program is one of the following:
 - 1. Sponsored or recognized by a local, state, regional, national, or international dental, dental hygiene, dental assisting, or medical related professional organization.
 - 2. A study group as specified in s. DE 13.02 (4).

SECTION 5. Chapter DE 16 is created to read:

Chapter DE 16

CERTIFICATION OF EXPANDED FUNCTION DENTAL AUXILIARIES

DE 16.01 Authority. The rules in this chapter are adopted pursuant to authority in s. 447.035 (3) (a), Stats.

DE 16.02 Definitions. In this chapter:

- (1) “Auxiliary” means an expanded function dental auxiliary certified under s. 447.04 (3), Stats.

DE 16.03 Certification. (1) Each applicant for an expanded function dental auxiliary certification shall complete the following:

- (a) Submit a completed application form as specified by the Department.
Note: Instructions for applications are available on the department of safety and professional services’ website at <http://dsps.wi.gov>.
- (b) Pay the fee as required by s. 440.05 (1), Stats.
- (c) Submit proof of completion of an accredited educational program specified under s. 447.035 (3) (b) 2., Stats.
- (d) Evidence satisfactory to the board the applicant has current proficiency in cardiopulmonary resuscitation, including the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved by the Wisconsin department of health services.

(2) Pursuant to s. 447.05 (1) (b), Stats., once granted, a certification to practice as an expanded function dental auxiliary is permanent unless revoked and is not subject to periodic renewal.

DE 16.04 Education Requirements. In order to enroll in an educational program specified under s. 447.035 (3) (b) 2., Stats., each applicant shall complete one of the following:

- (1) Has completed at least 1,000 hours of practice as a dental assistant and holds a certified dental assistant credential from the Dental Assisting National Board, Inc. or a successor organization approved by the Dentistry Examining Board.
- (2) Has completed at least 2,000 hours of practice as a dental assistant, verified by a supervising licensed dentist.

DE 16.05 Supervised Practice. (1) An auxiliary certified under s. 447.04 (3), Stats. may perform any of the functions listed in s. 447.035 (2), Stats. under the supervision of a Wisconsin licensed dentist.

(2) The supervising licensed dentist who has delegated a procedure to an auxiliary certified under s. 447.04 (3), Stats. shall remain on site for the duration of the delegated procedure and verify that the procedure has been performed correctly.

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)

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 September 5, 2023</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) DE 1, 5, 6, 13 and 16 - Permanent Rule</p>	
<p>4. Subject Certification of Expanded Function Dental Auxiliaries</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 checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input 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 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)</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 implement the statutory changes from 2021 Wisconsin Act 254. This was achieved through updates made several sections in DE 1 and 5, as well as the creation of new requirements in DE 5, 13, and the new chapter DE 16.</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 on the Department's website for 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals.</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) DSPA estimates a total of \$6,400 in one-time costs for staffing and an indeterminate one-time IT impact to implement the rule. The estimated one-time staffing need for .1 limited term employees (LTEs) is for staff to undertake such tasks as sites and forms updates, training on new requirements and processes, and responding to any questions due to changes. The one-time estimated costs cannot be absorbed in the currently appropriated agency budget.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefits of implementing this rule are that the Dentistry Examining Board's sections of the Administrative Code will be aligned with Wisconsin State Statutes.</p>	
<p>16. Long Range Implications of Implementing the Rule The long range implications of implementing this rule are practice requirements for Expanded Function Dental Auxiliaries in Wisconsin.</p>	
<p>17. Compare With Approaches Being Used by Federal Government</p>	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

None.

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 the practice of Dentistry 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 Expanded Function Dental Assistants. These requirements include supervised practice, and performance of specific functions. In Illinois, Expanded Function Dental Assistants are allowed to perform digital scans for impressions, pulp vitality tests, placing and carving of amalgam restorations, placing and finishing of composite restorations, and coronal polishing, among other functions. The supervising dentist is required to remain onsite and is responsible for all functions performed by the dental assistant. Education and training for Expanded Function Dental Assistants must be completed through either an approved continuing education sponsor or a dental assistant training program approved by the Commission on Dental Accreditation of the American Dental Association. [225 Illinois Compiled Statutes ch. 25 s. 17.1].

Iowa: The Iowa Dentistry Board is responsible for the licensure and regulation of the practice of dentistry in Iowa. Listed in the Iowa Administrative Code are the requirements for dental practice, including practice for Expanded Function Dental Assistants and Hygienists. Iowa has two levels of expanded function procedures that Dental Hygienists and Assistants can operate under. Level 1 expanded functions for Dental Assistants include taking occlusal registrations, placement of gingival retraction material, fabrication and removal of provisional restorations, applying cavity lines and bonding systems, placement of orthodontic brackets, adjustment of nitrous oxide inhalation analgesia, and taking impressions. Level 2 expanded functions for Dental Assistants or Hygienists includes placing and shaping of amalgam and restorative materials, polishing of adhesive restorative materials, and placement of intracoronal temporary fillings, among other procedures. In order to qualify for Level 1, each Dental Assistant or Hygienist must have either an active dental assistant registration or dental hygiene license, be certified by the Dental Assistant National Board, or at least one year of clinical practice as a registered dental assistant. Each Dental Assistant or Hygienist must also complete an approved expanded function training program approved by the Iowa Board. [650 Iowa Administrative Code ch. 23].

Michigan: The Michigan Board of Dentistry is responsible for the licensure and regulation of the practice of dentistry in Michigan. Act 368 Article 15 of the Michigan Compiled Laws includes the regulations for the practice dentistry in Michigan, among several other occupations. In Michigan, Dental Assistants may perform expanded functions under either direct or general supervision of a Dentist upon completion of a course in that area of practice that is offered by a program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Michigan Department of Licensing and Regulatory Affairs. Expanded functions that require direct supervision include placing and condensing amalgam restorations and taking final impressions for indirect restorations. Expanded functions that require general supervision include pulp vitality testing, placing matrices and wedges, applying cavity liners, placing non-epinephrine retraction cords, applying desensitizing agents and taking impressions for orthodontic appliances, among other functions. [Michigan Compiled Laws Act 368, Article 15, Part 166, Section 333.16611 (11) to (13)].

Minnesota: The Minnesota Board of Dentistry is responsible for the licensure and regulation of dentistry in Minnesota. Part 3100 of the Minnesota Administrative Code includes the regulations for dentistry in Minnesota, including the requirements for licensed Dental Assistants. Minnesota requires more coursework or in-office training for any procedure delegated that indicates the need for more coursework. Procedures that Dental Assistants can perform under general supervision of a Dentist include working on orthodontic appliances, placing temporary fillings, taking radiographs and impressions. Procedures that Dental Assistants can perform under indirect supervision, or while the supervising Dentist remains on-site, include applying topical medications, placing devices for isolation purposes, performing mechanical polishing of crowns, placing periodontal dressings, and removing sutures, among other procedures. Procedures that

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

Dental Assistants can perform under direct supervision include removing bond material from teeth with rotary instruments after removal of orthodontic appliances, etching enamel surfaces before bonding, fabrication and placement of temporary crowns and restorations, placing matrix systems and wedges, and administration of nitrous oxide inhalation analgesia, among other procedures. [Minnesota Administrative Rules s. 3100.8500]

19. Contact Name Nilajah Hardin, Administrative Rules Coordinator	20. Contact Phone Number (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

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 **23-051**

AN ORDER to amend DE 1.01 and 5.02 (intro.), (5), (9), (14m), (18), (20), (24), and (25); and to create DE 5.02 (22m), 13.045, and 13.05 (3), and chapter DE 16, relating to certification of expanded function dental auxiliaries.

Submitted by **DENTISTRY EXAMINING BOARD**

09-05-2023 RECEIVED BY LEGISLATIVE COUNCIL.

10-03-2023 REPORT SENT TO AGENCY.

SG:SM

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

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CLEARINGHOUSE RULE 23-051

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. Section 447.035 (3) (c), Stats., as enacted by 2021 Wisconsin Act 254, provides that these rules may not permit an auxiliary to perform cutting of hard or soft tissue, diagnosis, or treatment planning. Though the rules do not explicitly permit these activities, they do not mention them either. Consider including language clarifying that these activities may not be performed by an auxiliary.

b. Section DE 13.045 (6) directs a certified individual to sign a statement attesting to compliance with the continuing education requirements. Does the agency intend that a certified individual will submit this statement to the agency? Will the agency produce a form on which the statement may be made?

c. Section DE 13.045 (10) prescribes a hardship waiver from continuing education requirements. Can the agency elaborate on how a certified individual may apply for such waiver?

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

a. Section DE 16.04 (1) and (2) should be revised for clarity and verb tense agreement, so that each subdivision more properly follows the introductory material. For example, would deletion of the phrase “has completed” from subs. (1) and (2) improve the readability of each provision? The agency should review the use of the phrase “and holds” in sub. (1) for the same concern.

b. Section 447.035 (3) (b) 3., Stats., as enacted by 2021 Wisconsin Act 254, requires the board to promulgate a rule that requires a dentist who delegates a procedure to an auxiliary “to remain on the premises where the auxiliary is performing the procedure until the procedure is complete and the dentist has verified that the procedure has been performed successfully”.

Section DE 16.05 (2), however, provides that the supervising licensed dentist who has delegated a procedure to an auxiliary “shall remain on site for the duration of the delegated procedure and verify that the procedure has been performed correctly”. The difference in the meanings of the

words “site/premises” and “successfully/correctly” could cause confusion. Consider modifying the rule to align with the statutory language.

**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: 10/18/23 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: 11/01/23	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 1. Preliminary Rule Draft: DE 3 and 7, Relating to Topical Application of Anesthetics by a Dental Hygienist 2. 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"> • Prelim Rule Draft (DE 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		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 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: ss. 15.08 (5) (b) and 447.02 (2) (e), 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) (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.

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 will be 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.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis will be attached upon completion.

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 a date to be determined, to be included in the record of rule-making proceedings.

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

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

(3) 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 immediately preceding:

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

**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