



**Scott Walker, Governor**  
**Laura Gutiérrez, Secretary**

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**DENTISTRY EXAMINING BOARD**  
**Room 121A, 1400 E. Washington Avenue, Madison**  
**Contact: Erin Karow (608) 266-2112**  
**January 3, 2018**

*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 description of the actions of the Board.*

**AGENDA**

**9:00 A.M.**

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

**A. Pledge of Allegiance**

**B. Adoption of Agenda (1-3)**

**C. Approval of Minutes – November 1, 2017 (4-6)**

**D. Administrative Updates (7-10)**

- 1) Election of Officers
- 2) Appointment of Liaisons and Alternates
- 3) Delegation of Authorities
- 4) Board Member Introduction
  - a) New Public Member: Christopher Callen
- 5) Department Updates
- 6) 2018 Board Meeting Schedule
- 7) Update Regarding Credentialing Application Forms

**E. Legislation and Rule Matters – Discussion and Consideration (11-17)**

- 1) Adopt CR 17-044 Relating to Designating Continuing Education on the Topic of Prescribing Controlled Substances
- 2) Adopt CR 17-045 Relating to Unprofessional Conduct
- 3) Update on Pending and Possible Rulemaking Projects

**F. Education and Examination Matters**

**G. Items Added After Preparation of Agenda**

- 1) Introductions, Announcements and Recognition
- 2) Election of Board Officers
- 3) Appointment of Board Liaison(s)

- 4) Administrative Updates
- 5) Education and Examination Matters
- 6) Credentialing Matters
- 7) Practice Matters
- 8) Legislative/Administrative Rule Matters
- 9) Liaison Report(s)
- 10) Informational Item(s)
- 11) Disciplinary Matters
- 12) Presentations of Petition(s) for Summary Suspension
- 13) Petitions for Designation of Hearing Examiner
- 14) Presentation of Proposed Stipulation(s), Final Decision(s) and Order(s)
- 15) Presentation of Proposed Final Decision(s) and Order(s)
- 16) Presentation of Interim Orders
- 17) Petitions for Re-Hearing
- 18) Petitions for Assessments
- 19) Petitions to Vacate Orders
- 20) Requests for Disciplinary Proceeding Presentations
- 21) Motions
- 22) Petitions
- 23) Appearances from Requests Received or Renewed
- 24) Speaking Engagement(s), Travel, or Public Relation Request(s)

#### **H. Public Comments**

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

#### **I. Deliberation on Division of Legal Services and Compliance (DLSC) Matters (17-23)**

- 1) **Proposed Stipulations, Final Decisions and Orders**
  - a) 17 DEN 009 – Peter C. Labudde, D.D.S.

#### **J. Consulting with Legal Counsel**

#### **K. Deliberation of Items Received After Preparation of the Agenda**

- 1) Education and Examination Matters
- 2) Credentialing Matters
- 3) Disciplinary Matters
- 4) Monitoring Matters
- 5) Professional Assistance Procedure (PAP)
- 6) Petition(s) for Summary Suspensions
- 7) Petitions for Designation of Hearing Examiner
- 8) Proposed Stipulations, Final Decisions and Orders
- 9) Administrative Warnings

- 10) Review of Administrative Warning
- 11) Proposed Final Decisions and Orders
- 12) Matters Relating to Costs/Orders Fixing Costs
- 13) Case Closings
- 14) Proposed Interim Orders
- 15) Petitions for Assessments and Evaluations
- 16) Petitions to Vacate Orders
- 17) Remedial Education Cases
- 18) Motions
- 19) Petitions for Re-Hearing
- 20) Appearances from Requests Received or Renewed

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

**L.** Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

**M.** Open Session Items Noticed Above not Completed in the Initial Open Session

**ADJOURNMENT**

**NEXT MEETING DATE: MARCH 7, 2018**

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

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held at 1400 East Washington Avenue, Madison, Wisconsin, unless otherwise noted. In order to confirm a meeting or to request a complete copy of the board's agenda, please call the listed contact person. 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. Interpreters for the hearing impaired provided upon request by contacting the Affirmative Action Officer, 608-266-2112.

**DENTISTRY EXAMINING BOARD  
MEETING MINUTES  
November 1, 2017**

**PRESENT:** Debra Beres, RDH; Matthew Bistan, DDS; Mark Braden, DDS; Eileen Donohoo, RDH; Leonardo Huck, DDS; Lyndsay Knoell, DDS; Dennis Myers, Wendy Pietz, DDS; Carrie Stempski, RDH; Beth Welter, DDS

**STAFF:** Erin Karow, Executive Director; Sharon Henes, Administrative Rules Coordinator; Kimberly Wood, Program Assistant Supervisor-Adv.; and other Department staff

**CALL TO ORDER**

Mark Braden, Chair, called the meeting to order at 9:00 a.m. A quorum of ten (10) members was confirmed.

**ADOPTION OF AGENDA**

**MOTION:** Debra Beres moved, seconded by Dennis Myers, to adopt the agenda as published. Motion carried unanimously.

**APPROVAL OF MINUTES**

**MOTION:** Debra Beres moved, seconded by Eileen Donohoo, to approve the minutes of September 6, 2017 as published. Motion carried unanimously.

**ADMINISTRATIVE UPDATES**

**Credentialing Liaison Appointments**

**MOTION:** Eileen Donohoo moved, seconded by Dennis Myers, to acknowledge the appointment of Matthew Bistan as a secondary Credentialing Liaison. Motion carried unanimously.

**PUBLIC HEARING: DE 2 AND DE 3, RELATING TO DENTAL LICENSURE AND  
THE PRACTICE OF DENTAL HYGIENE**

**Review and Respond to Public Comments and Clearinghouse Report**

**MOTION:** Lyndsay Knoell moved, seconded by Eileen Donohoo, to reject clearinghouse comment number 2b, and to accept all remaining clearinghouse comments for clearinghouse rule 17-068, relating to dental licensure and the practice of dental hygiene. Motion carried unanimously.

**MOTION:** Lyndsay Knoell moved, seconded by Matthew Bistan, to authorize Mark Braden to approve the Legislative Report and Draft for Clearinghouse Rule 17-068, relating to dental licensure and the practice of dental hygiene, for submission to the Governor's Office and Legislature. Roll Call Vote: Debra Beres-no; Matthew Bistan-yes; Mark Braden-yes; Eileen Donohoo-no; Leonardo Huck-yes; Lyndsay Knoell-yes; Dennis Myers-yes; Wendy Pietz-no; Carrie Stempski-no; Beth Welter-no. Motion failed.

## LEGISLATIVE/ADMINISTRATIVE RULE MATTERS

### DE 9, 11, Relating to Laboratory & Work Authorization and Anesthesia

**MOTION:** Leonardo Huck moved, seconded by Beth Welter, to form the Ad Hoc Committee on DE11-Anesthesia and to designate Wendy Pietz as Chair with Debra Beres and Matthew Bistan as members. Motion carried unanimously.

### CLOSED SESSION

**MOTION:** Lyndsay Knoell moved, seconded by Debra Beres, 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.). Mark Braden, Chair, read the language of the motion. The vote of each member was ascertained by voice vote. Roll Call Vote: Debra Beres-yes; Matthew Bistan-yes; Mark Braden-yes; Eileen Donohoo-yes; Leonardo Huck-yes; Lyndsay Knoell-yes; Dennis Myers-yes; Wendy Pietz-yes; Carrie Stempski-yes; Beth Welter-yes. Motion carried unanimously.

The Board convened into Closed Session at 12:25 p.m.

### RECONVENE TO OPEN SESSION

**MOTION:** Dennis Myers moved, seconded by Carrie Stempski, to reconvene to Open Session. Motion carried unanimously.

The Board reconvened into Open Session at 12:43 p.m.

### VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

**MOTION:** Dennis Myers moved, seconded by Eileen Donohoo, 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.)*

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

### Stipulations, Final Decisions and Orders

#### *15 DEN 099 – David J. Brown, DDS*

**MOTION:** Lyndsay Knoell moved, seconded by Leonardo Huck, to adopt the Finding of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against David J. Brown, DDS, DLSC Case No. 15 DEN 099. Motion carried unanimously.

#### *16 DEN 009 – Elisabeth M. Baertlein, DDS*

**MOTION:** Debra Beres moved, seconded by Beth Welter, to adopt the Finding of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Elisabeth M. Baertlein, DDS, DLSC Case No. 16 DEN 009. Motion carried unanimously.

*16 DEN 094 – Cameron J. Ochsner, DDS*

**MOTION:** Debra Beres moved, seconded by Eileen, to adopt the Finding of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Cameron J. Ochsner, DDS, DLSC Case No. 16 DEN 094. Motion carried unanimously.

**Case Closures**

*16 DEN 112*

**MOTION:** Debra Beres moved, seconded by Eileen Donohoo, to close DLSC Case No. 16 DEN 112 against C.B.J. for No Violation. Motion carried unanimously.

*17 DEN 006*

**MOTION:** Beth Welter moved, seconded by Debra Beres, to close DLSC Case No. 17 DEN 006 against K.L.H. for Prosecutorial Discretion (P7). Motion carried unanimously.

*17 DEN 042*

**MOTION:** Lyndsay Knoell moved, seconded by Debra Beres, to close DLSC Case No. 17 DEN 042 against D.E.N. for No Violation. Motion carried unanimously.

**ADJOURNMENT**

**MOTION:** Debra Beres moved, seconded by Lyndsay Knoell, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 12:48 p.m.

## AGENDA REQUEST FORM

<b>1) Name and Title of Person Submitting the Request:</b>  Laura Smith, Bureau Assistant, on behalf of Erin Karow, Executive Director		<b>2) Date When Request Submitted:</b>  11/24/17  Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
<b>3) Name of Board, Committee, Council, Sections:</b>  Dentistry Examining Board			
<b>4) Meeting Date:</b>  1/3/2018	<b>5) Attachments:</b>  <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>6) How should the item be titled on the agenda page?</b>  Administrative Matters/Updates 1) Election of Officers 2) Appointment of Liaisons and Alternates 3) Delegation of Authorities	
<b>7) Place Item in:</b>  <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	<b>8) Is an appearance before the Board being scheduled?</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b>  N/A	
<b>10) Describe the issue and action that should be addressed:</b>  1) The Board should conduct Election of its Officers for 2018 2) The new Chairperson should review and appoint/reappoint Liaisons and Alternates as appropriate 3) The Board should review and then consider continuation or modification of previously delegated authorities			
<b>11) Authorization</b>			
<i>Laura Smith</i>		11/24/2017	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)    Date			
<b>Directions for including supporting documents:</b> 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

# Dentistry Examining Board

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January 4, 2017

<b>2017 ELECTION RESULTS</b>	
<b>Board Chair</b>	Mark Braden
<b>Vice Chair</b>	Debra Beres
<b>Secretary</b>	Wendy Pietz
<b>2017 LIAISON APPOINTMENTS</b>	
<b>Practice Questions Liaisons</b>	Board Officers
<b>Screening Panel Members</b>	Lyndsay Knoell, Debra Beres
<b>DLSC Liaison</b>	Mark Braden
<b>Monitoring and Professional Assistance Procedure (PAP) Liaison</b>	Mark Braden
<b>Credentialing Liaisons</b>	Debra Beres, Wendy Pietz
<b>Office of Education and Exams Liaison</b>	Eileen Donohoo
<b>Legislative Liaison</b>	Mark Braden
<b>Travel Liaison</b>	Mark Braden
<b>PDMP Liaison/ Appointed to Controlled Substances Board as per Wis. Stats. §15.405(5g)</b>	Wendy Pietz

**MOTION:** Eileen Donohoo moved, seconded by Timothy McConville, to affirm the Chair's appointment of liaisons for 2017. Motion carried unanimously.

## DELEGATION MOTIONS

### *Delegated Authority for Urgent Matters*

**MOTION:** Debra Beres moved, seconded by Lyndsay Knoell, that, in order to facilitate the completion of assignments between meetings, the Board delegates its authority by order of succession to the Chair, highest ranking officer, or longest serving member of the Board, to appoint liaisons to the Department to act in urgent matters, make appointments to vacant liaison, panel and committee positions, and to act when knowledge or experience in the profession is required to carry out the duties of the Board in accordance with the law. Motion carried unanimously.

### *Delegated Authority for Application Denial Reviews*

**MOTION:** Debra Beres moved, seconded by Leonardo Huck, that the Board counsel or another department attorney is formally authorized to serve as the Board's designee for purposes of Wis. Admin Code § SPS 1.08(1). Motion carried unanimously.

### *Document Signature Delegation*

**MOTION:** Eileen Donohoo moved, seconded by Debra Beres, to delegate authority to the Chair or chief presiding officer, or longest serving member of the Board, by order of succession, to sign documents on behalf of the Board. In order to carry out duties of the Board, the Chair, chief presiding officer, or longest serving member of the Board, has the ability to delegate this signature authority for purposes of facilitating the completion of assignments during or between meetings. The Chair, chief presiding officer, or longest serving member of the Board delegates the authority to Executive Director or designee to sign the name of any Board member on documents as necessary and appropriate. Motion carried unanimously.

### *Credentialing Authority Delegations*

**MOTION:** Lyndsay Knoell moved, seconded by Leonardo Huck, to delegate authority to the Credentialing Liaisons to make all credentialing decisions. Motion carried unanimously.

**MOTION:** Leonardo Huck moved, seconded by Eileen Donohoo, to delegate credentialing authority to DSPS for those submitted applications that meet the criteria of Rule and Statute and thereby would not need further Board or Board liaison review. Motion carried unanimously.

**MOTION:** Timothy McConville moved, seconded by Leonardo Huck, to delegate authority to DSPS staff to review and approve applicants with one OWI or underage drinking violation. Motion carried unanimously.

**MOTION:** Eileen Donohoo moved, seconded by Leonardo Huck, to delegate all faculty license credentialing decisions to the Board's credentialing liaisons. Motion carried unanimously.

*Travel Delegation*

**MOTION:** Eileen Donohoo moved, seconded by Debra Beres, to delegate authority to approve any Board Member travel to the Travel Liaison. Motion carried unanimously.

*Legislative Liaison Delegation*

**MOTION:** Eileen Donohoo moved, seconded by Debra Beres, to authorize the Legislative Liaison to speak to members of the Legislature on behalf of the Board. Motion carried unanimously.

## AGENDA REQUEST FORM

<b>1) Name and Title of Person Submitting the Request:</b>  Sharon Henes Administrative Rules Coordinator		<b>2) Date When Request Submitted:</b>  20 December 2017  Items will be considered late if submitted after 12:00 p.m. on the deadline date: ▪ 8 business days before the meeting	
<b>3) Name of Board, Committee, Council, Sections:</b>  Dentistry Examining Board			
<b>4) Meeting Date:</b>  3 January 2018	<b>5) Attachments:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>6) How should the item be titled on the agenda page?</b> Legislation and Rule Matters – Discussion and Consideration 1. Adopt CR 17-044 Relating to Designating Continuing Education on the Topic of Prescribing Controlled Substances 2. Adopt CR 17-045 Relating to Unprofessional Conduct 3. Update on Legislation and Pending and Possible Rulemaking Projects	
<b>7) Place Item in:</b> <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	<b>8) Is an appearance before the Board being scheduled?</b>  <input type="checkbox"/> Yes ( <a href="#">Fill out Board Appearance Request</a> ) <input type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b>	
<b>10) Describe the issue and action that should be addressed:</b>          			
<b>11) Authorization</b>			
<span style="font-size: 1.5em; font-family: cursive;"><i>Sharon Henes</i></span>			
Signature of person making this request			Date
Supervisor (if required)			Date
Executive Director signature (indicates approval to add post agenda deadline item to agenda)    Date			
<b>Directions for including supporting documents:</b> 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD

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IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	DENTISTRY EXAMINING BOARD
DENTISTRY EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 17-044)

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ORDER

An order of the Dentistry Examining Board to create DE 13.03 (1m) relating to designating continuing education on the topic of prescribing controlled substances.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** s. 447.056, Stats.

**Statutory authority:** ss. 15.08 (5) (b) and 447.02 (1) (f), 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 (1) (f) The examining board may promulgate rules governing compliance with continuing education requirements under s. 447.056.

**Related statute or rule:** ch. DE 13, Wis. Admin. Code

**Plain language analysis:**

Dentists are required to complete 30 credit hours of continuing education every biennium. This rule will require 2 credit hours, of the 30 credit hours, to be in the topic of responsible prescribing of controlled substances for the treatment of acute dental pain. This requirement will be in place for the next two bienniums.

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

### **Comparison with rules in adjacent states:**

**Illinois:** Illinois does not require continuing education in the topic of responsible prescribing of controlled substances for the treatment of acute dental pain or in a topic which is substantially equivalent.

**Iowa:** Iowa does not require continuing education in the topic of responsible prescribing of controlled substances for the treatment of acute dental pain or in a topic which is substantially equivalent.

**Michigan:** Michigan requires 3 continuing education credits, in each 3 year renewal period, in pain and symptom management, which may include courses in behavior management, psychology of pain, pharmacology, behavior medication, stress management, clinical applications and drug interactions.

**Minnesota:** Minnesota does not require continuing education in the topic of responsible prescribing of controlled substances for the treatment of acute dental pain or in a topic which is substantially equivalent.

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

The Dentistry Examining Board is responding to the current opioid epidemic. The Dentistry Examining Board considered the approaches of the Medical Examining Board and the Board of Nursing relating to specific required continuing education addressing the prescribing of controlled substances. In addition, the Dentistry Examining Board evaluated how to best achieve the goal of continuing education on this topic without creating a burden on the dentist.

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

The rule was posted for economic comments and none were received. The rule does not change the number of continuing education credits required, therefore, it has a neutral fiscal impact on licensees.

### **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 [Kirsten.Reader@wisconsin.gov](mailto:Kirsten.Reader@wisconsin.gov), or by calling (608) 267-2435.

**Agency contact person:**

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at DSPSAdminRules@wisconsin.gov.

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TEXT OF RULE

SECTION 1. DE 13.03 (1m) is created to read:

DE 13.03 (1m) RESPONSIBLE 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 the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

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(END OF TEXT OF RULE)

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Dated \_\_\_\_\_

Agency \_\_\_\_\_

Chairperson  
Dentistry Examining Board

STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD

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IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	DENTISTRY EXAMINING BOARD
DENTISTRY EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 17-045)

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ORDER

An order of the Dentistry Examining Board to repeal DE 5.02 (12) and 5.03; to amend DE 5.02 (13); and to create DE 5.02 (14m) and (27) relating to unprofessional conduct.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** s. 447.07, Stats.

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

**Explanation of agency authority:**

Each Examining Board shall promulgate rules for the guidance of the profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the profession.

**Related statute or rule:** ch. DE 5

**Plain language analysis:**

This rule updates the unprofessional conduct provisions.

Section 1 repeals the provision relating to false, deceptive or misleading advertising due to it being redundant in that ch. DE 6 governs advertising and it is unprofessional conduct to violate any valid rule of the board.

Section 2 updates the provision relating to refusing to render services based upon discriminatory basis by removing the words “color and sex” and adding the word “gender”.

Section 3 clarifies it is unprofessional conduct if the person surrenders a credential issued by another state while under investigation by that other jurisdiction.

Sections 4 and 5 create a provision under unprofessional conduct relating to engaging in irregularities in billing a 3<sup>rd</sup> party for services provided to a patient and then eliminates the

prohibited practice section as being duplicative. The Board determined the prohibited practice section is not required and the new unprofessional conduct provision adequately protects the public.

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

**Comparison with rules in adjacent states:**

**Illinois:** Illinois' unprofessional conduct provisions include irregularities in billing for services rendered to a patient. It does not include surrendering a license while under investigation. It also does not address failure to treat a person due to color, sex or gender.

**Iowa:** Iowa's unprofessional conduct provisions include: various billing violations; and refusing to accept patients or deny dental service to patients because of the patient's race, creed, sex or national origin. It does not mention a person surrendering a license while under investigation.

**Michigan:** The provisions addressed in this proposed rule are not included in Michigan's unprofessional conduct provisions.

**Minnesota:** The provisions addressed in this proposed rule are not included in Minnesota's unprofessional conduct provisions.

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

The Dentistry Examining Board did a comprehensive review of chapter DE 5 to create clarity and remove obsolete provisions.

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

This rule was posted for economic comments and none were received. The rule relates to unprofessional conduct and does not have a fiscal or economic impact.

**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 [Kirsten.Reader@wisconsin.gov](mailto:Kirsten.Reader@wisconsin.gov), or by calling (608) 267-2435.

**Agency contact person:**

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at DSPSAdminRules@wisconsin.gov.

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TEXT OF RULE

SECTION 1. DE 5.02 (12) is repealed.

SECTION 2. DE 5.02 (13) is amended to read:

DE 5.02 (13) Refusing to render services to a person because of race, ~~color, sex~~ gender, or religion.

SECTION 3. DE 5.02 (14m) is created to read:

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.

SECTION 4. DE 5.02 (27) is created to read:

DE 5.02 (27) Engaging in irregularities in billing a 3<sup>rd</sup> party for services rendered to a patient.

SECTION 5. DE 5.03 is repealed.

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

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(END OF TEXT OF RULE)

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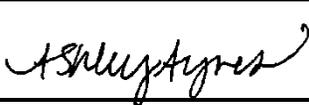
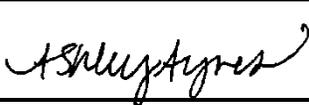
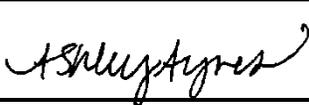
Dated \_\_\_\_\_

Agency \_\_\_\_\_

Chairperson  
Dentistry Examining Board

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

**AGENDA REQUEST FORM**

1) Name and Title of Person Submitting the Request:  <b>Ashley Ayres</b>  Monitoring and Intake Supervisor Division of Legal Services and Compliance		2) Date When Request Submitted:  December 18, 2017								
		Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> <li>▪ 10 work days before the meeting for Medical Board</li> <li>▪ 14 work days before the meeting for all others</li> </ul>								
3) Name of Board, Committee, Council, Sections: <b>Dentistry Examining Board</b>										
4) Meeting Date:  January 3, 2018	5) Attachments:  <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page?  Appointment of Monitoring Liaison and Delegated Authority Motion								
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 ( <a href="#">Fill out Board Appearance Request</a> ) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:								
10) Describe the issue and action that should be addressed:  Adopt or reject the Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor document as presented in today's agenda packet.										
11) <table style="width: 100%; border: none;"> <tr> <td style="width: 60%; border: none;"> <div style="text-align: center;">             Signature of person making this request         </div> </td> <td style="width: 40%; border: none; text-align: center;">           Authorization             December 18, 2017            Date         </td> </tr> <tr> <td style="border: none;">           Supervisor (if required)         </td> <td style="border: none; text-align: center;">           Date         </td> </tr> <tr> <td colspan="2" style="border: none;">           Executive Director signature (indicates approval to add post agenda deadline item to agenda)         </td> <td style="border: none; text-align: center;">           Date         </td> </tr> </table>				<div style="text-align: center;">             Signature of person making this request         </div>	Authorization  December 18, 2017 Date	Supervisor (if required)	Date	Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date
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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.										

## **Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor**

The Monitoring Liaison (“Liaison”) is a Board/Section designee who works with department monitors to enforce Board/Section orders as explained below.

### **Current Authorities Delegated to the Monitoring Liaison**

The Liaison may take the following actions on behalf of the Board/Section:

1. Grant a temporary reduction in random drug screen frequency upon Respondent’s request if he/she is unemployed and is otherwise compliant with Board/Section order. The temporary reduction will be in effect until Respondent secures employment in the profession. The Department Monitor (“Monitor”) will draft an order and sign on behalf of the Liaison.
2. Grant a stay of suspension if Respondent is eligible per the Board/Section order. The Monitor will draft an order and sign on behalf of the Liaison.
3. Remove the stay of suspension if there are repeated violations or a substantial violation of the Board/Section order. In conjunction with removal of any stay of suspension, the Liaison may prohibit Respondent from seeking reinstatement of the stay for a specified period of time. The Monitor will draft an order and sign on behalf of the Liaison.
4. Grant or deny approval when Respondent proposes continuing/remedial education courses, treatment providers, mentors, supervisors, change of employment, etc. unless the order specifically requires full-Board/Section approval.
5. Grant a maximum of one 90-day extension, if warranted and requested in writing by Respondent, to complete Board/Section-ordered continuing education.
6. Grant a maximum of one extension or payment plan for proceeding costs and/or forfeitures if warranted and requested in writing by Respondent.
7. Grant full reinstatement of licensure if Respondent has fully complied with all terms of the order without deviation. The Monitor will draft an order and obtain the signature or written authorization from the Liaison.
8. Grant or deny a request to appear before the Board/Section in closed session.
9. (*Except Pharmacy*) Accept Respondent’s written request to surrender credential. If accepted by the Liaison, Monitor will consult with Board Counsel to determine if a stipulation is necessary. If a stipulation is not necessary, Monitor will draft an order and sign on behalf of the Liaison. If denied by the Liaison, the request to surrender credential will go to the full Board for review.
10. (*Except Pharmacy*) Grant Respondent’s petition for a reduction in drug screens per the standard schedule, below. If approved, Monitor will draft an order and sign on behalf of the Liaison.
  - a. Year 1: 49 screens (including 1 hair test, if required by original order)
  - b. Year 2: 36 screens (plus 1 hair test, if required by original order)
  - c. Year 3: 28 screens plus 1 hair test
  - d. Year 4: 28 screens plus 1 hair test
  - e. Year 5: 14 screens plus 1 hair test
11. (*Dentistry only*) – Ability to approve or deny all requests from a respondent.

### **Current Authorities Delegated to the Department Monitor**

The Monitor may take the following actions on behalf of the Board/Section, draft an order and sign:

1. Grant full reinstatement of licensure if CE is the sole condition of the limitation and Respondent has submitted the required proof of completion for approved courses.
  2. Suspend the license if Respondent has not completed Board/Section-ordered CE and/or paid costs and forfeitures within the time specified by the Board/Section order. The Monitor may remove the suspension and issue an order when proof completion and/or payment have been received.
  3. Suspend the license (or remove stay of suspension) if Respondent fails to enroll and participate in an Approved Program for drug and alcohol testing within 30 days of the order, or if Respondent ceases participation in the Approved Program without Board approval. This delegated authority only pertains to respondents who must comply with drug and/or alcohol testing requirements.
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### **Proposed (New) Delegations to the Monitoring Liaison**

The Monitoring Unit is proposing the following additions to the Monitoring Liaison's authority:

1. Board Monitoring Liaison may determine whether Respondent's petition is eligible for consideration by the full Board/Section.
2. Board Monitoring Liaison may approve or deny Respondent's request to be excused from drug and alcohol testing for work, travel, etc.