

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING	:	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 repeal DE 12.04 and to amend DE 12.01 (3), and 12.02, relating to delegation of functions to unlicensed persons.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 447.065, Stats.

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

Explanation of agency authority:

s. 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.

s. 447.02 (2) (a) The Examining Board shall promulgate rules specifying the conditions for supervision and the degree of supervision required under ss. 447.03 (3) (a), (b) and (d) 2. and 447.065.

Related statute or rule: N/A

Plain language analysis:

Section 1 clarifies the nondelegated functions to include functions which are intended, interpreted or represented to be preliminary assessments, dental hygiene treatment planning, oral screenings and calculus removal (both above and below the gumline).

Section 2 updates the provision to allow a dentist to verify the competency of the person who is performing the remediable dental procedure or function instead of providing training to a person who is already trained on the procedure or function.

Section 3 repeals the provision allowing the removal of plaque and material alba with a mechanical device only if the delegation of the function complies with ss. DE 12.01 and 12.02. This provision is unnecessary as any function that complies with ss. DE 12.01 and 12.02 is allowed.

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

Comparison with rules in adjacent states:

Illinois: Illinois does not allow for the delegation to unlicensed persons.

Iowa: Iowa does not allow for the delegation to unlicensed persons.

Michigan: Michigan does not allow for the delegation to unlicensed persons.

Minnesota: Minnesota allows assistants without a license or permit to do the following:

- Perform all those duties not directly related with performing dental treatment or services on patients.
- Retract a patient's cheek, tongue, or other parts of tissue during a dental operation.
- Assist with the placement or removal of a rubber dam and accessories used for its placement and retention, as directed by an operating dentist during the course of a dental operation.
- Remove debris by the use of vacuum devices, compressed air, mouthwash, and water that is normally created or accumulated during the course of treatment rendered by a licensed dentist.
- Provide any assistance in response to a specific direction by a licensed dentist who is physically engaged in performing a dental operation and is physically in a position to give personal supervision to the assistant.
- Aid dental hygienists and licensed dental assistants in the performance of their duties.
- Apply fluoride varnish in a community setting under the authorization and direction of a licensed practitioner with prescribing authority such as a dentist or physician, as long as the licensed practitioner authorizing the service or the facility at which the fluoride varnish is administered maintains appropriate patient records of the treatment.

An unlicensed assistant may not perform any dental treatment or procedure on patients not otherwise authorized above.

Summary of factual data and analytical methodologies:

The Dentistry Examining Board reviewed the chapter to ensure it was statutorily compliant and current with professional standards and practices.

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.

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, or by calling (608) 267-2435.

Agency contact person:

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

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

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held on September 5, 2018 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. DE 12.01 (3) is amended to read:

DE 12.01 (3) Intended, interpreted, or represented to be preliminary assessments, dental hygiene treatment planning, oral screenings, ~~oral prophylaxes, sealing or root planning, or dental sealants, or any portion of an oral prophylaxis other than supragingival rubber cup and air polishing after or subgingival calculus is removed if necessary~~ removal.

SECTION 2. DE 12.02 is amended to read:

DE 12.02 Training. A dentist who delegates any remediable dental procedure or function to an unlicensed person shall first provide training to or verify competency of the person in the performance of the procedure or function.

SECTION 3. DE 12.04 is repealed.

SECTION 4. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 6 August 2018
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) DE 12	
4. Subject Delegation of functions to unlicensed persons	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0.00	
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 type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The Board conducted a review of the chapter to ensure statutory compliance and that it is current with professional standards and practices.	
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. This rule was posted for economic comments and none were received.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. None	
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) This rule will not have an economic or fiscal impact.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit of implementing the rule is to create clarity regarding the delegation of functions to unlicensed persons.	
16. Long Range Implications of Implementing the Rule The long range implication is to have rules which reflect the standards of the profession..	
17. Compare With Approaches Being Used by Federal Government None	
18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota) Illinois, Iowa and Michigan do not allow for the delegation of unlicensed persons. Minnesota allows assistants without a license or permit to do the following: <ul style="list-style-type: none">o Perform all those duties not directly related with performing dental treatment or services on patients.o Retract a patient's cheek, tongue, or other parts of tissue during a dental operation.	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

- o Assist with the placement or removal of a rubber dam and accessories used for its placement and retention, as directed by an operating dentist during the course of a dental operation.
 - o Remove debris by the use of vacuum devices, compressed air, mouthwash, and water that is normally created or accumulated during the course of treatment rendered by a licensed dentist.
 - o Provide any assistance in response to a specific direction by a licensed dentist who is physically engaged in performing a dental operation and is physically in a position to give personal supervision to the assistant.
 - o Aid dental hygienists and licensed dental assistants in the performance of their duties.
 - o Apply fluoride varnish in a community setting under the authorization and direction of a licensed practitioner with prescribing authority such as a dentist or physician, as long as the licensed practitioner authorizing the service or the facility at which the fluoride varnish is administered maintains appropriate patient records of the treatment.
- An unlicensed assistant may not perform any dental treatment or procedure on patients not otherwise authorized above.

19. Contact Name	20. Contact Phone Number
Sharon Henes	608-261-2377

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:
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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
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