

Notice of Hearing

The Dentistry Examining Board announces that it will hold a public hearing on an emergency rule amending DE 1, 5, 6, 13, and 16 relating to Certification of Expanded Function Dental Auxiliaries at the time and place shown below.

Hearing Information

Date: May 3, 2023

Time: 9:00 A.M.

Location: Information concerning the location of the hearing will be available at:

<https://dsps.wi.gov/Pages/BoardsCouncils/Dentistry/Meetings.aspx>

Appearances at the Hearing and Submittal of Written Comments

The rule may be reviewed and comments submitted at:

<http://docs.legis.wisconsin.gov/code/chr/hearings>.

Comments may also be submitted to Nilajah Hardin, 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 included in the record of rulemaking proceedings.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

Agency Small Business Regulatory Coordinator

The Department's Regulatory Review Coordinator may be contacted by email at Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-6795.

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF RULEMAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : DENTISTRY EXAMINING BOARD
DENTISTRY EXAMINING BOARD : ADOPTING EMERGENCY RULES

The statement of scope for this rule, SS 065-22, was approved by the Governor on July 21, 2022, published in Register 800A1 on August 1, 2022, and approved by the Dentistry Examining Board on August 15, 2022. This emergency rule was approved by the Governor on December 22, 2022.

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.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature by section 17 (1) in 2021 Wisconsin Act 254 provides an exemption from a finding of emergency for the adoption of the rule.

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.”

2021 Wisconsin Act 254, Section 17 provides that “(1) EMERGENCY RULES. Using the procedure under s. 227.24, the dentistry examining board shall promulgate the rules for the certification and practice of expanded function dental auxiliaries required under s. 447.035 (3).”

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.

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

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.

Fiscal Estimate: The Fiscal Estimate 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 608-26-7139; 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 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 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 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), 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 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 and verify that the procedure has been performed correctly.

SECTION 6 Pursuant to 2021 Wisconsin Act 254 section 17 (1), this emergency rule shall take effect upon publication in the official state newspaper and remain in effect for one year or until permanent rules are promulgated, whichever is sooner.

(END OF TEXT OF RULE)

Dated 11/21/2022

Agency *MADRBA*
Chairperson
Dentistry Examining Board