

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 031-24, was approved by the Governor on March 14, 2024, published in Register 819A3 on March 18, 2024, and approved by the Dentistry Examining Board on March 29, 2024. This emergency rule was approved by the Governor on July 11, 2024.

ORDER

An order of the Dentistry Examining Board to **amend** DE 1.01, DE 2.005 (intro.), DE 2.013, DE 2.03 (3), 2.03 (4), DE 2.03 (5) (a), DE 2.03 (5) (b), DE 2.03 (5) (b) 3. b., DE 2.03 (6), DE 2.035 (2) and (2) (e), DE 3.01, DE 3.02 (1) (b), DE 3.02 (1) (c), DE 3.02 (1) (c) 2., DE 3.02 (2) (a) 2., DE 5.02 (intro.), (5), (9), (14), (14m), (15), (20), and (24), DE 6.02 (4) (b), DE 7.04 (3) (b) (Note), DE 8.02 (1), DE 8.035, DE 10.01 (1), DE 10.02 (1) (b), 1., b., and 2., DE 10.02 (2) (c), DE 10.02 (3) (c), DE 10.045, DE 11.10 (3m) (g) (Note), DE 12.01 (intro.), DE 12.02, DE 12.03, DE 13.01, DE 13.02 (3) and (4), DE 14.01 (2), DE 14.02, DE 14.03, DE 14.04, and DE 15.06 (intro.); and to **create** DE 1.02 (4g) and (4r), DE 2.01 (3), DE 2.02 (2m), DE 2.03 (2m), DE 2.04 (3), DE 3.02 (1), (am), (d), and (e), DE 3.04 (2m), (4), (5), and (6), DE 5.02 (21m), DE 6.03, DE 7.06 (1), (2), (3), and (4), DE 12.04, DE 13.035, DE 13.05 (1m), DE 15.07, and chapter DE 17 relating to Licensure of Dental Therapists.

Analysis prepared by the Department of Safety and Professional Services.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature by section 65 (2) (a) in 2023 Wisconsin Act 87 provides an exemption from a finding of emergency for the adoption of the rule.

ANALYSIS

Statutes interpreted: Section 447.02 (1) (g), Stats.

Statutory authority: Sections 15.08 (5) (b), 447.02 (1) (a), (1) (b), (1) (g), and 447.02 (2) (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 447.02 (1) (a), Stats., states that the examining board may promulgate rules “[g]overning the reexamination of an applicant who fails an examination specified in s. 447.04 (1) (a) 5., (1m) (e), or (2) (a) 5. The rules may specify additional education requirements for those applicants and may specify the number of times an applicant may be examined.”

Section 447.02 (1) (b), Stats., states that the examining board may promulgate rules “[g]overning the standards and conditions for the use of radiation and ionizing equipment in the practice of dentistry or dental therapy.”

Section 447.02 (1) (g), Stats., states that the examining board may promulgate rules “Specifying services, treatments, or procedures, in addition to those specified under s. 447.06 (3) (b) 1. to 27., that are included within the practice of dental therapy.”

Section 447.02 (2) (a), Stats., states that the examining board shall promulgate rules specifying “[t]he conditions for supervision and the degree of supervision required under ss. 447.03 (3) (a), (am), (b) and (d) 2. and 447.065.”

2023 Wisconsin Act 87, Section 65 (2) (a) provides that “The dentistry examining board shall promulgate emergency rules under s. 227.24 that are necessary to implement this act. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this paragraph remain in effect for 2 years, or until the date on which permanent rules take effect, whichever is sooner.”

Related statute or rule:

2023 Wisconsin Act 87.

Plain language analysis:

The objective of the proposed rule is to implement the statutory changes from 2023 Wisconsin Act 87, providing for the licensure and regulation of dental therapists in Wisconsin. The rule integrates dental therapists into the current code chapters DE 1 to 16 and creates chapter DE 17. The rule sets the licensure application requirements and continuing education requirements for dental therapists. It clarifies and specifies their scope of practice. It clarifies and specifies the regulations for supervision from a supervising dentist, and the ability of a dental therapist to supervise other staff.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois:

Illinois statutes and codes do not provide for licensure of dental therapists.

Iowa:

Iowa statutes and codes do not provide for licensure of dental therapists.

Michigan:

Michigan law provides for licensure and regulation of dental therapists [MCL 333.16651 to 16659]. Their scope of practice includes a list of 27 dental therapy services including identifying conditions, dispensing medications prescribed by a health care professional, teeth cleaning, and other basic dental procedures. Their dental therapists can practice only under the supervision of a supervising dentist. The supervising dentist and dental therapist must create a written agreement to agree to the services and procedures the dental therapist is allowed to do. This written practice agreement must be fairly detailed and is regulated by a variety of provisions in Michigan law. Essentially, the supervising dentist has a fair amount of authority over what they will allow the dental therapist to do.

Michigan rules further specify a dental therapist's scope of practice and conditions of supervision [Michigan Rules R 338.11415 to 11417]. For supervision, the supervisor does not always need to be physically present in the office, but must be continuously available by telephone or telecommunication. Also, a dental therapist may supervise dental assistants and dental hygienists (to the extent permitted in the written practice agreement).

Minnesota:

Minnesota law provides for licensure and regulation of dental therapists and advanced dental therapists [2023 Minnesota Statutes, parts 150A.105 to 106]. Their scope of practice is limited to a similar list of 30 dental therapy services and procedures. However, in Minnesota's list, 14 of the more intensive procedures are required to be done under a level of supervision where the supervising dentist is physically present in the office (but doesn't need to be in the room). The remaining 16 less-intensive procedures are allowed to be done if the supervising dentist is not present in the office. However, these are minimums and the supervision can be more direct, as agreed on in the collaborative management agreement between the dental therapist and the supervising dentist. Like Michigan, the requirements for their collaborative management agreements specifies a large level of detail to be agreed on in writing between the two parties. Dental therapists may supervise dental assistants, but not dental hygienists.

Advanced dental therapists have increased education requirements but have a slightly wider scope of practice. In addition to the scope of practice described above, they can also perform nonsurgical extractions of permanent teeth. Also, all their services and

procedures are allowed to be done under a level of supervision where the supervising dentist is not present in the office.

Minnesota administrative rules further specify licensure requirements for dental therapists but make minimal other additions to the regulations already in Minnesota statute [Minnesota Rules parts 3100.1170 to 1180].

Summary of factual data and analytical methodologies:

The department, in collaboration with the board, reviewed code chapters DE 1 to 16 to determine what changes need to be made due to 2023 Wisconsin Act 87. Additionally, the department and board decided to create chapter DE 17 to further specify practice requirements for dental therapists.

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 at Jennifer.Garrett@wisconsin.gov or (608) 266-2112.

Agency contact person:

Jake Pelegrin, 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 608-267-0989; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Jake Pelegrin, 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 ~~16~~¹⁷ are adopted pursuant to authority in ss. 15.08 (5) and 227.11 (2) (a), Stats., and ch. 447, Stats.

SECTION 2. DE 1.02 (4g) is created to read:

DE 1.02 (4g) “Dental therapist” means an individual who practices dental therapy.

SECTION 3. DE 1.02 (4r) is created to read:

DE 1.02 (4r) “Dental therapy” means the limited practice of dentistry, consisting of the services, treatments, and procedures specified in s. 447.06 (3) (b), Stats., and s. DE 17.02 (1).

SECTION 4. DE 2.005 (intro.) is amended to read:

DE 2.005 ~~Dental testing service and dental hygiene testing~~ Testing service requirements. A dental, dental therapy, testing service or dental hygiene testing service may be approved if all the testing service's exams meet all of the following requirements:

SECTION 5. DE 2.01 (3) is created to read:

DE 2.01 (3) An applicant for license as a dental therapist shall meet the requirements in sub. (1) (a) and (c) and shall also submit to the board:

(a) Evidence satisfactory to the board that the applicant has graduated from one of the following programs:

1. An accredited dental therapy education program.
2. A dental therapy education program that was not accredited at the time of graduation, but satisfies all of the following:
 - a. The program was approved by the Minnesota Department of Dentistry on or before February 2, 2024.
 - b. The program was accredited as of the date the individual applies for licensure under this subsection.
3. A dental therapy education program located in Wisconsin that at the time of graduation was not fully accredited but had received initial accreditation. This subdivision applies to a dental therapy education program only during the 4-year period beginning after the program's inception. After that 4-year period has elapsed, an individual may not qualify for a license under this subsection on the basis of graduation from that program unless the program has subsequently become accredited as described in subd. 1.

(b) Evidence satisfactory to the board that the applicant has passed a national board dental therapy examination and a dental therapy clinical examination administered by a regional testing service that has been approved by the board to administer clinical examinations for

dental professionals. If a national board examination or a regional testing service examination for dental therapy does not exist, the board shall accept evidence of passing an alternative examination administered by another entity or testing service that is approved by the board.

(c) Evidence of successful completion of an examination administered by the board on the statutes and rules relating to dental therapy.

(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 under s. 46.03 (38), Stats., to provide such instruction.

(e) If applicable, information relating to the applicant's licensure in other jurisdictions as required by the examining board.

SECTION 6. DE 2.013 is amended to read:

DE 2.013 Student supervision. A dental student under s. 447.03 (3) (a), Stats., a dental therapy student under s. 447.03 (3) (am), Stats., or a dental hygiene student under s. 447.03 (3) (b), Stats., is required to practice under the supervision of a dentist who is present in the facility in which the practice occurs.

SECTION 7. DE 2.02 (2m) is created to read:

DE 2.02 (2m) Every person granted a license as a dental therapist shall be deemed licensed for the current biennial license period.

SECTION 8. DE 2.03 (2m) is created to read:

DE 2.03 (2m) REQUIREMENTS FOR RENEWAL; DENTAL THERAPISTS. A dental therapist shall by October 1 of the odd-numbered year following initial licensure and every 2 years thereafter, meet the requirements for renewal specified in sub. (1) (a) to (d).

SECTION 9. DE 2.03 (3) is amended to read:

DE 2.03 (3) FAILURE TO MEET REQUIREMENTS. A dentist, dental therapist, or dental hygienist who fails to meet the requirements under subs. (1) (a) to (d), ~~and (2),~~ and (2m) by the renewal date shall cease and desist from dental, dental therapy, or dental hygiene practice.

SECTION 10. DE 2.03 (4) is amended to read:

DE 2.03 (4) NEW LICENSEES. Dentists, dental therapists, and dental hygienists are not required to satisfy the continuing education requirements under sub. (1) (d) for the first renewal period following the issuance of their initial licenses.

SECTION 11. DE 2.03 (5) (a) is amended to read:

DE 2.03 (5) (a) A dentist, dental therapist, or dental hygienist who files an application for renewal of a license within 5 years after the renewal date may renew his or her license by filing with the board all of the following:

SECTION 12. DE 2.03 (5) (b) is amended to read:

DE 2.03 (5) (b) This paragraph does not apply to dentists, dental therapists, or dental hygienists who have unmet disciplinary requirements. A dentist, dental therapist, or dental hygienist renewing the license after 5 years shall do all of the following:

SECTION 13. DE 2.03 (5) (b) 3. b. is amended to read:

DE 2.03 (5) (b) 3. b. If a dentist or dental therapist, successful completion of a board approved testing service examination within one year of renewal.

SECTION 14. DE 2.03 (6) is amended to read:

DE 2.03 (6) REINSTATEMENT. A dentist, dental therapist, or dental hygienist who has unmet disciplinary requirements and failed to renew the license within 5 years or whose license has been denied at renewal, surrendered or revoked may apply to have the license reinstated following submission of all of the following:

SECTION 15. DE 2.035 (2) and (2) (e) are amended to read:

DE 2.035 (2) Each applicant for reciprocal licensure as a dentist, dental therapist, or dental hygienist shall submit all of the following:

(e) Evidence that the applicant is in good standing with the governmental authorities in every jurisdiction outside this state that have granted the applicant a license, certification, registration, or permit that qualifies the individual to perform acts authorized under a dentist, dental therapist, or dental hygienist license granted by the board.

SECTION 16. DE 2.04 (3) is created to read:

DE 2.04 (3) The board may grant a license as a dental therapist to an applicant who holds a valid license in good standing issued by the proper authorities of any other jurisdiction of the United States or Canada upon payment of the fee as determined by the department under s. 440.03 (9) (a), Stats., and submission of evidence satisfactory to the board that all of the following conditions are met:

(a) The applicant has graduated from an accredited dental therapy education program.

(b) The applicant submits a certificate from each jurisdiction in which the applicant is or has ever been licensed stating that no disciplinary action is pending against the applicant or the license, and detailing all discipline, if any, which has ever been imposed against the applicant or the license.

(c) The applicant has successfully completed a licensing examination that, in the board's judgment, is substantially equivalent to an examination administered by a board approved testing service.

(d) The applicant has successfully completed a jurisprudence examination on the provisions of Wisconsin statutes and administrative rules relating to dental therapy.

(e) The applicant possesses a current certificate of proficiency in cardiopulmonary resuscitation from a course provider approved by the Wisconsin department of health services.

(f) The applicant has disclosed all discipline which has ever been taken against the applicant in any jurisdiction shown in reports from the national practitioner data bank and the American Association of Dental Boards.

(g) The applicant has presented satisfactory responses during any personal interview with the board which may be required to resolve conflicts between the licensing standards and the applicant's application.

SECTION 17. DE 3.01 is amended to read:

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

SECTION 18. DE 3.02 (1) (b) is amended to read:

DE 3.02 (1) (b) A dental hygienist may practice dental hygiene or perform remediable procedures only as authorized by a licensed dentist or dental therapist who is present in the facility in which those practices or procedures are performed, except as provided in par. (c).

SECTION 19. DE 3.02 (1) (c) is amended to read:

DE 3.02 (1) (c) A dental hygienist may practice dental hygiene or perform remediable procedures if a licensed dentist or dental therapist is not present in the facility in which those practices or procedures are performed only if all of the following conditions are met:

SECTION 20. DE 3.02 (1) (c) 2. is amended to read:

DE 3.02 (1) (c) 2. The dentist or dental therapist who made the written or oral prescription has examined the patient at least once during the 12-month period immediately preceding all of the following:

SECTION 21. DE 3.02 (1) (am), (d), and (e) are created to read:

DE 3.02 (1) (am) In this subsection:

1. “Direct Supervision” means that the supervising dentist or dental therapist is present in the dental office or other practice setting, personally diagnoses the condition to be treated, personally authorizes each procedure, and before dismissal of the patient, evaluates the performance of the supervised dental personnel.
2. “Supervising dentist” has the meaning given in s. DE 17.01 (6).

DE 3.02 (1) (d) Subject to the requirements under this subsection, a dental therapist may delegate to a dental hygienist the performance of remediable procedures only if all of the following conditions are met:

1. The supervising dentist has allowed the dental therapist to perform the specific remediable procedure within the dental therapist’s collaborative management agreement.
2. The supervising dentist has expressly allowed the dental therapist to delegate the specific remediable procedure within the dental therapist’s collaborative management agreement.
3. The dental therapist has the authority to perform the specific remediable procedure personally, pursuant to the requirements in s. 447.06 (3) (bm) 1. and 2., Stats.
4. The dental hygienist remains under the direct supervision of the dental therapist for the duration of the procedure.

(e) The dental therapist and the dental therapist’s supervising dentist shall be responsible for any services, treatments, or procedures delegated and performed under par. (d).

SECTION 22. DE 3.02 (2) (a) 2. is amended to read:

DE 3.02 (2) (a) 2. For a school for the education of dentists, dental therapists, or dental hygienists.

SECTION 23. DE 3.04 (2m), (4), (5), and (6) are created to read:

DE 3.04 (2m) In this section, “supervising dentist” has the meaning given in s. DE 17.01 (6).

DE 3.04 (4) Pursuant to the requirements under ss. 447.06 (2) (e) and 447.065 (2), Stats., a dental therapist may delegate to a dental hygienist the administration of oral systemic premedications and subgingival sustained release chemotherapeutic agents to patients only if all of the following conditions are met:

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

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

(c) The dental therapist has the authority to perform the activity personally, pursuant to the requirements under s. 447.06 (3) (bm) 1. and 2., Stats.

(d) The dental therapist remains under the supervision of the supervising dentist for the duration of the procedure.

(e) The supervising dentist has allowed the dental therapist to perform the administration personally within the dental therapist's collaborative management agreement.

(f) The supervising dentist has expressly allowed the dental therapist to delegate the administration within the dental therapist's collaborative management agreement.

(5) In sub. (4), the dentist who approves the treatment plan and remains available to the patient may be a different dentist than the supervising dentist for the dental therapist.

(6) The dental therapist and the dental therapist's supervising dentist shall be responsible for any services, treatments, or procedures delegated and performed under sub. (4).

SECTION 24. DE 5.02 (intro.), (5), (9), (14), (14m), (15), (20), and (24) are amended to read:

DE 5.02 Unprofessional conduct. Unprofessional conduct by a dentist, dental therapist, dental hygienist, or expanded function dental auxiliary includes:

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

(9) Impersonating another dentist, dental therapist, dental hygienist, or expanded function dental auxiliary.

(14) Having a license, certificate, permit, or registration granted by another state to practice as a dentist, dental therapist, or dental hygienist limited, suspended or revoked, or subject to any other disciplinary action.

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

(15) Violating any law or being convicted of a crime the circumstances of which substantially relate to the practice of a dentist, dental therapist, or dental hygienist.

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

(24) Failing to hold a current certificate in cardiopulmonary resuscitation unless the ~~licensee or certified individual~~ credential holder 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~~ credential holder when patients are present.

SECTION 25. DE 5.02 (21m) is created to read:

DE 5.02 (21m) Aiding or abetting or permitting unlicensed persons in the practice of dental therapy, as defined in s. 447.01 (6r), Stats.

SECTION 26. DE 6.02 (4) (b) is amended to read:

DE 6.02 (4) (b) A name of a dentist or dental therapist who has not been associated with the advertising dentist or dental therapist for the past year or longer,

SECTION 27. DE 6.03 is created to read:

DE 6.03 Advertising limitations for dental therapists. (1) A dental therapist may not advertise as a dentist or as providing services other than dental therapy.

(2) A dentist supervising a dental therapist under a collaborative management agreement retains full responsibility for advertising by the dental therapist.

SECTION 28. DE 7.04 (3) (b) (Note) is amended to read:

Note: ~~Applications are available upon request to the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708. Instructions for applications are available on the department of safety and professional services' website at <http://dsps.wi.gov> or by calling (608) 266-2112.~~

SECTION 29. DE 7.06 (1), (2), (3), and (4) are created to read:

DE 7.06 (1) In this section, "supervising dentist" has the meaning given in s. DE 17.01 (6).

(2) Pursuant to the requirements under ss. 447.06 (2) (e) and 447.065 (2), Stats., a dental therapist may delegate to a dental hygienist the administration of local anesthetic only if all of the following conditions are met:

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

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

(c) The dental therapist has the authority to perform the activity personally, pursuant to the requirements under s. 447.06 (3) (bm) 1. and 2., Stats.

(d) The dental therapist remains under the supervision of the supervising dentist for the duration of the procedure.

(e) The supervising dentist has allowed the dental therapist to administer local anesthetic within the dental therapist's collaborative management agreement.

(f) The supervising dentist has expressly allowed the dental therapist to delegate the administration of local anesthetic within the dental therapist's collaborative management agreement.

(3) In sub. (2), the dentist who approves the treatment plan and remains available to the patient may be a different dentist than the supervising dentist for the dental therapist.

(4) The dental therapist and the dental therapist's supervising dentist shall be responsible for any services, treatments, or procedures delegated and performed under sub. (2).

SECTION 30. DE 8.02 (1) is amended to read:

DE 8.02 (1) "Patient" means a person who receives dental services from a licensed dentist, dental therapist, or dental hygienist.

SECTION 31. DE 8.035 is amended to read:

DE 8.035 Preservation of patient health care records. A person who manages or controls a business that offers dental, dental therapy, or dental hygiene services, including management or control of a business through which the person allows another person to offer dental, dental therapy, or dental hygiene services, shall preserve patient health care records for at least 10 years from the date of the last entry.

SECTION 32. DE 10.01 (1) is amended to read:

DE 10.01 (1) “Mobile dentistry program” means a program providing dental hygiene as defined by s. 447.01 (3), Stats., dental therapy as defined by s. 447.01 (6r), Stats., or dentistry as defined by s. 447.01 (8), Stats., excluding a health practitioner practicing within the scope of a license not governed by ch. 447, Stats., in one of the following:

SECTION 33. DE 10.02 (1) (b), 1., b., and 2. are amended to read:

DE 10.02 (1) (b) A program providing dental, dental therapy, or dental hygiene care is not required to register if one of the following requirements is satisfied:

1. The dental, dental therapy, or dental hygiene care is provided within a 50 mile radius of their main or satellite facility and all of the following:

b. The dentist, dental therapist, or dental hygienist provides any necessary follow-up care to the patient.

2. The dental, dental therapy, or dental hygiene care is being provided to a new or established patient of record of the main or satellite dental facility and no more than 2 patients per day are being treated using portable equipment or a self-contained, intact facility that can be moved.

SECTION 34. DE 10.02 (2) (c) is amended to read:

DE 10.02 (2) (c) A list of all employees, contractors, or volunteers who are providing dental, dental therapy, or dental hygiene care in Wisconsin. The list shall include the Wisconsin license number for each person providing dental, dental therapy, or dental hygiene care.

SECTION 35. DE 10.02 (3) (c) is amended to read:

DE 10.02 (3) (c) A list of all employees, contractors or volunteers who are providing dental, dental therapy, or dental hygiene care in Wisconsin. The list shall include the Wisconsin license number for each person providing dental care.

SECTION 36. DE 10.045 is amended to read:

DE 10.045 Notification to department. The mobile dentistry program shall notify the department within 30 days of new employees, contractors or volunteers providing dental, dental therapy, or dental hygiene services in Wisconsin.

SECTION 37. DE 11.10 (3m) (g) (Note) is amended to read:

Note: Forms are available on the department of safety and professional services’ website at <http://dsps.wi.gov> or at the office of the ~~Dentistry Examining Board~~ located at 1400 East Washington Avenue ~~4822 Madison Yards Way, P.O. Box 8935, Madison, WI 537085.~~

SECTION 38. DE 12.01 (intro.) is amended to read:

DE 12.01 Nondelegated functions. A dentist or dental therapist may not delegate any dental procedure of any description to an unlicensed person if the procedure or function to be delegated is any of the following:

SECTION 39. DE 12.02 is amended to read:

DE 12.02 Training. A dentist or dental therapist 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 40. DE 12.03 is amended to read:

DE 12.03 Reporting violations. (1) A licensee shall report to the board any dentist or dental therapist who is improperly delegating the performance of any dental or dental therapy procedure or function to an unlicensed person, or is delegating to a person performing any dental or dental therapy procedure or function in a manner which is less than minimally competent.

(2) A licensee who fails to report the circumstances as specified in sub. (1) constitutes aiding and abetting the violation of a law substantially related to the practice of dentistry, dental therapy, or dental hygiene, and shall be in violation of s. DE 5.02 (20), (21), (21m), or (22).

SECTION 41. DE 12.04 is created to read:

DE 12.04 Dental therapist delegation to unlicensed persons. (1) In this section, “supervising dentist” has the meaning given in s. DE 17.01 (6).

(2) A dental therapist may delegate to an unlicensed person only the performance of remediable procedures, and only if all of the following conditions are met:

(a) The unlicensed individual performs the remediable procedures in accordance with a treatment plan approved by the dentist or dental therapist.

(b) The dental therapist is on the premises when the unlicensed individual performs the remediable procedures.

(c) The unlicensed individual's performance of the remediable procedures is subject to inspection by the dentist or dental therapist.

(d) The dental therapist has the authority to perform the activity personally, pursuant to the requirements in s. 447.06 (3) (bm) 1. and 2., Stats.

(e) The unlicensed individual remains under the direct supervision of the dental therapist for the duration of the procedure.

(f) The supervising dentist has allowed the dental therapist to perform the specific remediable procedure within the dental therapist's collaborative management agreement.

(g) The supervising dentist has expressly allowed the dental therapist to delegate the specific remediable procedure within the dental therapist's collaborative management agreement.

(3) In sub. (2), the dentist who approves the treatment plan and may inspect the performance of the remediable procedures may be a different dentist than the supervising dentist for the dental therapist.

(4) The dental therapist and the dental therapist's supervising dentist shall be responsible for any services, treatments, or procedures delegated and performed under sub. (2).

SECTION 42. DE 13.01 is amended to read:

DE 13.01 Authority. The rules in this chapter are adopted by the dentistry examining board under the authority of ss. 227.11 (2), 447.02 (1) (f), 447.055, ~~and~~ 447.056, and 447.057, Stats.

SECTION 43. DE 13.02 (3) and (4) are amended to read:

DE 13.02 (3) "Professional organization" means an organization that seeks to further the dental, dental therapy, dental hygiene, or medical professions, the interests of licensees engaged in those professions, and the public interests. "Professional organization" includes a study group, as defined in sub. (4).

(4) "Study group" means a group of 2 or more dentists, dental therapists, or dental hygienists who discuss continuing education topics relating to the practice of dentistry, dental therapy, or medicine, or the clinical practice of dental hygiene, and that satisfies all of the following:

SECTION 44. DE 13.035 is created to read:

DE 13.035 Continuing education requirements for dental therapists. (1) COMPLETION OF CONTINUING EDUCATION CREDIT HOURS. Except as provided under sub. (5), during the 2-year period immediately preceding the renewal date specified under s. 440.08 (2) (a), Stats., a dental therapist shall complete 12 credit hours of continuing education related to the practice of dental therapy. 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) **PRESCRIBING CONTROLLED SUBSTANCES CONTINUING EDUCATION.** If a dental therapist has a federal drug enforcement administration registration number, the 12 credit hours of continuing education shall include 2 hours in the topic of prescribing of controlled substances for the treatment of dental pain.

(3) **CREDIT FOR COLLEGE LEVEL COURSES.** One credit hour of a college level course is equivalent to 6 credit hours of continuing education. A licensee may substitute credit hours of college level courses related to the practice of dentistry, dental therapy, or 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 LICENSEES.** Subsection (1) does not apply to an applicant for renewal of a license that expires on the first renewal date after the date on which the applicant is licensed.

(6) **CERTIFICATION STATEMENT.** At the time of each renewal, each licensee shall sign a statement certifying that, within the 2 years immediately preceding the renewal date specified under s. 440.08 (2) (a), Stats., he or she has completed the continuing education credit hours required under sub. (1).

(7) **FAILURE TO COMPLETE CONTINUING EDUCATION HOURS.** A licensee who fails to complete the continuing education requirements by the renewal date specified under s. 440.08 (2) (a), Stats., shall not practice dental therapy until his or her license is restored under s. DE 2.03 (5).

(8) **TIME LIMITS ON OBTAINING CREDITS.** Credit hours completed before the 2-year period immediately preceding renewal of a license to practice dental therapy may not be applied to fulfill the credit hours required under sub. (1).

(9) **RECORDKEEPING.** Every licensee 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 licensee from meeting the requirements.

SECTION 45. DE 13.05 (1m) is created to read:

DE 13.05 (1m) DENTAL THERAPISTS. The board accepts continuing education programs for dental therapists that satisfy the following criteria:

(a) The subject matter of the continuing education program relates to the practice of dental therapy 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 therapy, dental hygiene, dental assisting, or medical related professional organization.
2. A college level course that is offered by a postsecondary institution accredited by the American Dental Association Commission on Dental Accreditation or a successor agency, or by another recognized accrediting body.
3. A study group as specified in s. DE 13.02 (4).

SECTION 46. DE 14.01 (2) is amended to read:

DE 14.01 (2) PURPOSE. The purpose of the rules is to define the obligation of a dentist or dental therapist to communicate alternate modes of treatment to a patient.

SECTION 47. DE 14.02 is amended to read:

DE 14.02 Informed consent. Any dentist or dental therapist who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments prior to treating the patient. The reasonable dentist standard is the standard for informing a patient under this section. The reasonable dentist standard requires disclosure only of information that a reasonable dentist would know and disclose under the circumstances.

SECTION 48. DE 14.03 is amended to read:

DE 14.03 Recordkeeping. A dentist's or dental therapist's patient record shall include documentation that alternate modes of treatment have been communicated to the patient and informed consent has been obtained from the patient.

SECTION 49. DE 14.04 is amended to read:

DE 14.04 Exceptions to communication of alternate modes of treatment. A dentist or dental therapist is not required to disclose the types of information listed in ss. 447.40 (1) to (6), Stats.

Note: Section 447.40, Stats., reads: "Any dentist or dental therapist who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments. The reasonable dentist standard is the standard for informing a patient under this section. The reasonable dentist standard requires disclosure only of information that a reasonable dentist would know and disclose

under the circumstances. The dentist's or dental therapist's duty to inform the patient under this section does not require disclosure of any of the following: (1) Detailed technical information that in all probability a patient would not understand. (2) Risks apparent or known to the patient. (3) Extremely remote possibilities that might falsely or detrimentally alarm the patient. (4) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment. (5) Information in cases where the patient is incapable of consenting. (6) Information about alternate modes of treatment for any condition the dentist or dental therapist has not included in his or her diagnosis, assessment, or treatment plan at the time the dentist or dental therapist informs the patient.

SECTION 50. DE 15.06 (intro.) is amended to read:

DE 15.06 Dentist responsibility for the administration of nitrous oxide inhalation analgesia. A dentist may delegate to a dental hygienist ~~may administer~~ the administration of nitrous oxide inhalation analgesia only if all of the following requirements are met:

SECTION 51. DE 15.07 is created to read:

DE 15.07 Dental therapist delegation of the administration of nitrous oxide inhalation analgesia. (1) In this section, "supervising dentist" has the meaning given in s. DE 17.01 (6).

(2) Pursuant to the requirements under ss. 447.06 (2) (e) and 447.065 (2), Stats., a dental therapist may delegate to a dental hygienist the administration of nitrous oxide inhalation analgesia only if all of the following requirements are met:

(a) The nitrous oxide inhalation analgesia is administered pursuant to a treatment plan approved by the dentist.

(b) The dentist remains on the premises.

(c) The dentist is available to the patient throughout the completion of the appointment.

(d) The dental therapist has the authority to perform the activity personally, pursuant to the requirements in s. 447.06 (3) (bm) 1. and 2., Stats.

(e) The dental therapist remains under the supervision of the supervising dentist for the duration of the procedure.

(f) The supervising dentist has allowed the dental therapist to administer nitrous oxide inhalation analgesia within the dental therapist's collaborative management agreement.

(g) The supervising dentist has expressly allowed the dental therapist to delegate the administration of nitrous oxide inhalation analgesia within the dental therapist's collaborative management agreement.

(3) In sub. (2), the dentist who approves the treatment plan and remains available to the patient may be a different dentist than the supervising dentist for the dental therapist.

(4) The dental therapist and the dental therapist's supervising dentist shall be responsible for any services, treatments, or procedures delegated and performed under sub. (2).

SECTION 52. Chapter DE 17 is created to read:

Chapter DE 17

PRACTICE OF DENTAL THERAPY

DE 17.01 Definitions. In this chapter:

(1) "Dental health shortage area" has the meaning given in s. 36.60 (1) (ad), Stats.

(2) "Direct Supervision" means that the supervising dentist or dental therapist is present in the dental office or other practice setting, personally diagnoses the condition to be treated, personally authorizes each procedure, and before dismissal of the patient, evaluates the performance of the supervised dental personnel.

(3) "General Supervision" means that the supervising dentist is not present in the dental office or other practice setting or on the premises at the time tasks or procedures are being performed by the supervised dental personnel, but that the tasks or procedures performed by the supervised dental personnel are being performed with the prior knowledge and consent of the dentist.

(4) "Indirect Supervision" means that the supervising dentist is present in the dental office or other practice setting, authorizes each procedure, and remains in the office while the procedures are being performed by the supervised dental personnel.

(5) "Medical Assistance patient" means a patient who is a recipient of services under the Medical Assistance program under subch. IV of ch. 49, Stats.

(6) "Supervising dentist" means a licensed dentist supervising a dental therapist under a collaborative management agreement described in s. DE 17.03 (5).

(7) "Uninsured patient" means a patient who lacks dental health coverage, either through a public health care program or private insurance, and has an annual gross family income equal to or less than 200 percent of the federal poverty guidelines.

DE 17.02 Scope of Practice. (1) The scope of practice of a dental therapist shall, subject to the terms of a collaborative management agreement, be limited to providing the following services, treatments, and procedures:

(a) Oral evaluation and assessment of dental disease and formulation of an individualized treatment plan.

(aa) Identification of oral and systemic conditions requiring evaluation or treatment by dentists, physicians, or other health care providers and managing referrals.

(b) Comprehensive charting of the oral cavity.

(bb) Oral health instruction and disease prevention education, including nutritional counseling and dietary analysis.

(c) Exposure and evaluation of radiographic images.

(d) Dental prophylaxis, including subgingival scaling and polishing procedures.

(e) Dispensing and administration via the oral or topical route of nonnarcotic analgesic, anti-inflammatory, and antibiotic medications as prescribed by a licensed health care provider.

(f) Application of topical preventive or prophylactic agents, including fluoride varnish, antimicrobial agents, caries arresting medicaments, and pit and fissure sealants.

(g) Pulp vitality testing.

(h) Application of desensitizing medications or resins.

(i) Fabrication of athletic mouth guards and soft occlusal guards.

(j) Changing of periodontal dressings.

(k) Administration of local anesthetic and nitrous oxide.

(l) Simple extraction of erupted primary teeth.

(m) Nonsurgical extraction of periodontally diseased permanent teeth with tooth mobility of +3 to +4 to the extent authorized in the dental therapist's collaborative management agreement, except for the extraction of a tooth that is unerupted, impacted, or fractured or that needs to be sectioned for removal.

(n) Emergency palliative treatment of dental pain limited to the procedures in this paragraph.

(o) Preparation and placement of direct restoration in primary and permanent teeth.

(p) Fabrication and placement of single-tooth temporary crowns.

- (q) Preparation and placement of preformed crowns on primary teeth.
 - (r) Indirect and direct pulp capping on permanent teeth.
 - (s) Indirect pulp capping on primary teeth.
 - (t) Intraoral suture placement and removal.
 - (u) Minor adjustment and repair of removable prostheses.
 - (v) Placement and removal of space maintainers.
 - (w) Pulpotomy on primary teeth.
 - (x) Tooth reimplantation and stabilization.
 - (y) Recementing of a permanent crown.
 - (z) The practice of dental hygiene, as defined in s. 447.01 (3), Stats.
- (2) Notwithstanding sub. (1), a dental therapist shall, except as provided in sub. (3), limit his or her practice of dental therapy to providing the services, treatments, and procedures covered by his or her dental therapy education program.
- (3) If any service, treatment, or procedure under sub. (1) was not covered by a dental therapist's dental therapy education program, the dental therapist may provide that service, treatment, or procedure if the dental therapist has subsequently received additional dental therapy educational training to provide that service, treatment, or procedure.

DE 17.03 Dentist supervision of dental therapists. (1) Except as provided in sub. (2), a dental therapist licensed under ch. DE 2 may provide dental therapy services in this state only under the direct supervision or indirect supervision of a supervising dentist.

(2) (a) Once a dental therapist licensed under ch. DE 2 has provided dental therapy services for at least 2,000 hours under direct supervision or indirect supervision, the dental therapist may provide dental therapy services in this state under the general supervision of a supervising dentist.

(b) For purposes of the 2,000 hours requirement under par. (a), hours may include hours of providing dental therapy services in this state under direct supervision or indirect supervision of a supervising dentist as described in sub. (1) or hours of providing dental therapy services under direct supervision or indirect supervision while licensed as a dental therapist outside this state, but may not include any hours completed prior to graduating from the dental therapy education program.

(3) Notwithstanding subs. (1) and (2), the level of supervision for a dental therapist may be further limited under the terms of a collaborative management agreement under sub. (5).

(4) A supervising dentist shall accept responsibility for all services performed by a dental therapist pursuant to a collaborative management agreement described in sub. (5). If services needed by a patient are beyond the dental therapist's scope of practice or authorization under the collaborative management agreement, the dental therapist shall, to the extent required under the collaborative management agreement, consult with the supervising dentist as needed to arrange for those services to be provided by a dentist or another qualified health care provider.

(5) Prior to providing any dental therapy services, a dental therapist shall enter into a written collaborative management agreement with a licensed dentist who will serve as a supervising dentist under the requirements of this chapter. The dentist must be licensed in this state and must be actively practicing in this state. The agreement must be signed by the dental therapist and the supervising dentist and address all of the following:

(a) The practice settings where services may be provided and the patient populations that may be served.

(b) Consistent with and subject to s. DE 17.02 and subs. (1) to (4), any conditions or limitations on the services that may be provided by the dental therapist, the level of supervision required, and any circumstances requiring consultation with the supervising dentist prior to performing services.

(c) Age-specific and procedure-specific practice protocols.

(d) Dental record-keeping procedures.

(e) Plans for managing dental or medical emergencies.

(f) A quality assurance plan for monitoring care provided by the dental therapist.

(g) Protocols for administering and dispensing medications.

(h) Criteria or protocols relating to the provision of care to patients with specific medical conditions, treatments, or medications.

(i) Policies relating to supervision of dental hygienists and other staff.

(j) A plan for the referral of patients to other dental or health care providers or clinics when services needed are beyond the scope of practice or authorization of the dental therapist.

(k) Whether and to what extent the dental therapist may perform services described in s. DE 17.02 (1) (m).

(6) A collaborative management agreement shall be limited to covering one supervising dentist and one dental therapist.

(7) A dental therapist may enter into multiple collaborative management agreements.

(8) No supervising dentist may have collaborative management agreements with more than 4 dental therapists at any time.

DE 17.04 Dental therapist employment. (1) A dental therapist may, subject to sub. (3), provide dental therapy services only as an employee of one or more of the following that satisfies sub. (2):

(a) A dentist with whom the dental therapist has entered into a collaborative management agreement.

(b) A dental practice.

(c) A school district or the operator of a private school, as defined in s. 115.001 (3r), Stats., or a tribal school, as defined in s. 115.001 (15m), Stats.

(d) The operator of a school for the education of dentists or dental hygienists.

(e) A state or federal prison, a county jail, or other federal, state, county, or municipal correctional or detention facility, or a facility established to provide care for terminally ill patients.

(f) A local health department, as defined in s. 250.01 (4), Stats.

(g) A charitable institution open to the general public or to members of a religious sect or order.

(h) A nonprofit home health care agency.

(i) The operator of a nonprofit dental care program serving primarily indigent, economically disadvantaged, or migrant worker populations.

(j) A health care employer, as defined in s. 440.094 (1) (b), Stats.

(2) A dentist may not enter into a collaborative management agreement with a dental therapist unless the dentist directly employs the dental therapist as provided in sub. (1) (a) or the dentist is employed by or contracts with the dental therapist's employer described in sub. (1) (b) to (j).

(3) A dental therapist shall at all times comply with at least one of the following:

(a) Limit his or her practice to practicing in one or more dental health shortage areas. If a dental therapist begins practicing in a dental health shortage area, and that area loses its designation as a dental health shortage area while the dental therapist continues to practice in that area, the dental therapist is considered to satisfy this paragraph as long as the dental therapist continues to practice in that area.

(b) Practice in one or more settings in which at least 50 percent of the total patient base of the dental therapist consists of patients who are any of the following:

1. Medical Assistance patients.
2. Uninsured patients.
3. Patients receiving dental care at free and charitable clinics.
4. Patients receiving dental care at federally qualified health centers.
5. Patients who reside in long-term care facilities.
6. Veterans.
7. Patients who are members of a federally recognized Indian tribe or band.
8. Patients receiving dental care at clinics or facilities located on tribal lands.
9. Patients with medical disabilities or chronic conditions that create barriers of access to dental care.

DE 17.05 Dental therapist supervision of other dental staff. (1) DENTAL THERAPIST SUPERVISION OF DENTAL HYGIENISTS.

(a) A dental therapist may authorize a dental hygienist to practice dental hygiene under the requirements of s. 447.06 (2), Stats., and ch. DE 3.

(b) A dental therapist may delegate to a dental hygienist the performance of remediable procedures under the requirements of ss. 447.06 (2) and 447.065 (2), Stats., and ch. DE 3 only if all of the following conditions are met:

1. The supervising dentist has allowed the dental therapist to perform the specific remediable procedure within the dental therapist's collaborative management agreement.
2. The supervising dentist has expressly allowed the dental therapist to delegate the specific remediable procedure within the dental therapist's collaborative management agreement.

- 3.** The dental therapist has the authority to perform the specific remediable procedure personally, pursuant to the requirements in s. 447.06 (3) (bm) 1. and 2., Stats.
 - 4.** The dental hygienist remains under the direct supervision of the dental therapist for the duration of the procedure.
- (c)** The dental therapist and the dental therapist's supervising dentist shall be responsible for any services, treatments, or procedures delegated and performed under par. (b).
- (d)** A dental therapist may delegate to a dental hygienist the administration of oral systemic premedications, local anesthesia, subgingival sustained release chemotherapeutic agents, and nitrous oxide inhalation analgesia under the requirements of ss. 447.06 (2) and 447.065 (2), Stats., and chs. DE 3, DE 7, and DE 15 only if all of the following conditions apply:
- 1.** The administration is performed pursuant to a treatment plan for the patient approved by a dentist.
 - 2.** The dentist remains on the premises in which the administration is performed and is available to the patient throughout the completion of the appointment.
 - 3.** The dental therapist has the authority to perform the activity personally, pursuant to the requirements in s. 447.06 (3) (bm) 1. and 2., Stats.
 - 4.** The dental therapist remains under the supervision of the supervising dentist for the duration of the procedure.
 - 5.** The supervising dentist has allowed the dental therapist to perform the administration personally within the dental therapist's collaborative management agreement.
 - 6.** The supervising dentist has expressly allowed the dental therapist to delegate the administration within the dental therapist's collaborative management agreement.
- (e)** In par. (d), the dentist who approves the treatment plan and remains available to the patient may be a different dentist than the supervising dentist for the dental therapist.
- (f)** The dental therapist and the dental therapist's supervising dentist shall be responsible for any services, treatments, or procedures delegated and performed under par. (d).
- (2) DENTAL THERAPIST SUPERVISION OF UNLICENSED STAFF. (a)** A dental therapist may delegate to an unlicensed person the performance of remediable procedures under the requirements of s. 447.065 (1), Stats., and ch. DE 12 only if all of the following conditions apply:

1. The unlicensed individual performs the remediable procedures in accordance with a treatment plan approved by the dentist or dental therapist.
2. The dental therapist is on the premises when the unlicensed individual performs the remediable procedures.
3. The unlicensed individual's performance of the remediable procedures is subject to inspection by the dentist or dental therapist.
4. The dental therapist has the authority to perform the activity personally, pursuant to the requirements in s. 447.06 (3) (bm) 1. and 2., Stats.
5. The unlicensed individual remains under the direct supervision of the dental therapist for the duration of the procedure.
6. The supervising dentist has allowed the dental therapist to perform the specific remediable procedure within the dental therapist's collaborative management agreement.
7. The supervising dentist has expressly allowed the dental therapist to delegate the specific remediable procedure within the dental therapist's collaborative management agreement.

(b) In par. (a), the dentist who approves the treatment plan and may inspect the performance of the remediable procedures may be a different dentist than the supervising dentist for the dental therapist.

(c) The dental therapist and the dental therapist's supervising dentist shall be responsible for any services, treatments, or procedures delegated and performed under par. (a).

(3) DENTAL THERAPIST SUPERVISION OF EXPANDED FUNCTION DENTAL AUXILIARIES. Pursuant to the requirements under s. 447.035, Stats., a dental therapist may not supervise or delegate procedures to expanded function dental auxiliaries.

(4) LIMITATION BY COLLABORATIVE MANAGEMENT AGREEMENT. Notwithstanding subs. (1) and (2), a dental therapist's authorization to supervise or delegate procedures to other dental staff is subject to further limitation by the collaborative management agreement described in s. DE 17.03 (5).

(5) DENTAL THERAPIST RESPONSIBILITY FOR DELEGATED PROCEDURES. A dental therapist who delegates to another individual the performance of any practice or procedure is responsible for that individual's performance of that delegated practice or procedure.

SECTION 53. Pursuant to 2023 Wisconsin Act 87 section 65 (2) (a), this emergency rule shall take effect upon publication in the official state newspaper and remain in effect for 2 years, or until the date on which permanent rules take effect, whichever is sooner.

(END OF TEXT OF RULE)

Dated 07/22/2024



Chairperson
Dentistry Examining Board