

**STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
DENTISTRY EXAMINING BOARD : CR 17-045**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS: N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The rule updates the unprofessional conduct provisions. The rule updates language, clarifies it is unprofessional conduct if a person surrenders a credential issued by another state while under investigation and moves the provision relating to irregularities in billing to the listing of unprofessional conduct rather than it's own section.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Dentistry Examining Board held a public hearing on July 5, 2017. No one testified at the hearing, or submitted written comments:

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment: In Section 4 of the proposed rule, the Board should consider clarifying what is meant by "irregularities in billing" in s. DE 5.02 (27). The provision that the Board proposes removing, s. DE 5.03, explains in detail a particular type of billing conduct that is prohibited. The Board could consider adding language from s. DE 5.03 to s. DE 5.02(27) or otherwise clarifying the practices it intends to prohibit as "irregularities".

Response: Section 447.07 (3) (k), Stats. states several practices that are included in "irregularities in billing". The Board decided it is not necessary to delineate practices in the rule when there is already clarification in the statutes.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

This rule does not a fiscal impact on small businesses.

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 17-045)

PROPOSED 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.

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 3rd 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, 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.

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 3rd 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.

(END OF TEXT OF RULE)

This Proposed Order of the Dentistry Examining Board is approved for submission to the Governor and Legislature.

Dated 7-17-2017

Agency Mark Broden
Chairperson EK
Dentistry Examining Board

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

DE 5

3. Subject

Unprofessional Conduct

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.165(1)(g)

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses **(if checked, complete Attachment A)**

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

The Board completed a comprehensive review of DE 5 Standards of Conduct to ensure the chapters are statutorily compliant and are current with professional standards and practices.

10. 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.

11. Identify the local governmental units that participated in the development of this EIA.

None

12. 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.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefit to implementing the rule is a code which has not been updated since 1999 will reflect current professional standards and practices.

14. Long Range Implications of Implementing the Rule

The long range implication is the unprofessional conduct provisions reflect current professional practice.

15. Compare With Approaches Being Used by Federal Government

None

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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'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

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

surrendering a license while under investigation.

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

17. Contact Name

Sharon Henes

18. Contact Phone Number

(608) 261-2377

This document can be made available in alternate formats to individuals with disabilities upon request.