

**STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD**

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<b>IN THE MATTER OF RULEMAKING</b>	<b>:</b>	<b>REPORT TO THE LEGISLATURE</b>
<b>PROCEEDINGS BEFORE THE</b>	<b>:</b>	<b>CR 25-052</b>
<b>DENTISTRY EXAMINING BOARD</b>	<b>:</b>	

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**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 are attached.

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

Informed consent regulations for dentists and dental therapists are in Wis. Admin. Code ch. DE 14. The proposed rule adds detail to the regulations for a dentist or dental therapist to obtain informed consent from a patient. It clarifies that the dentist or dental therapist must obtain the patient's informed consent to all services, treatments, or procedures in the treatment plan. For recordkeeping of the patient's informed consent, it requires that the dentist or dental therapist document:

- (1) The patient's informed consent to the treatment plan.
- (2) The patient's acknowledgment of reasonable alternate modes of treatment.
- (3) The patient's acknowledgment of the benefits and risks involved in the treatment plan and the benefits and risks involved with reasonable alternate modes of treatment.

The proposed rule also adds a provision to ch. DE 5, Unprofessional Conduct, to state that it is unprofessional conduct for a dentist or dental therapist to fail to obtain informed consent or fail to document that informed consent was obtained. The board believes this rule is important for patient safety and protection, and that current informed consent rules are not adequate.

**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 September 3, 2025. No comments were received.

**VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

All Legislative Council comments have been accepted and incorporated into the proposed rules.

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

N/A

STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD

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IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DENTISTRY EXAMINING BOARD
DENTISTRY EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 25-052)

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PROPOSED ORDER

A proposed order of the Dentistry Examining Board to **renumber and amend** DE 14.03; to **amend** DE 14.01 (2) and 14.02; and to **create** DE 5.02 (29) and 14.03 (1) to (3) relating to informed consent.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** Section 447.40, Stats.

**Statutory authority:** Sections 15.08 (5) (b), 227.11 (2) (a), 447.02 (2), and 447.02 (2) (i), 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 227.11 (2) (a), Stats., provides that “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Sections 447.02 (2) and 447.02 (2) (i), Stats.: “The examining board shall promulgate rules specifying all of the following: (i) Provisions implementing s. 447.40.”

**Related statute or rule:** None.

**Plain language analysis:**

Informed consent regulations for dentists and dental therapists are in Wis. Admin. Code ch. DE 14. The proposed rule adds detail to the regulations for a dentist or dental therapist to obtain informed consent from a patient. It clarifies that the dentist or dental therapist must obtain the patient’s informed consent to all services, treatments, or procedures in the treatment plan. For

recordkeeping of the patient's informed consent, it requires that the dentist or dental therapist document:

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The proposed rule also adds a provision to ch. DE 5, Unprofessional Conduct, to state that it is unprofessional conduct for a dentist or dental therapist to fail to obtain informed consent or fail to document that informed consent was obtained. The board believes this rule is important for patient safety and protection, and that current informed consent rules are not adequate.

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

**Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:** None.

**Comparison with rules in adjacent states:**

**Illinois:** In Illinois, medical patients have “The right of each patient to care consistent with sound nursing and medical practices, to be informed of the name of the physician responsible for coordinating his or her care, to receive information concerning his or her condition and proposed treatment, to refuse any treatment to the extent permitted by law, and to privacy and confidentiality of records except as otherwise provided by law” [410 Illinois Compiled Statutes 50/3(a)]. This applies to dental patients.

**Iowa:** Iowa law requires informed consent as follows: “*Informed consent.* Dental records shall include, at a minimum, documentation of informed consent that includes discussion of procedure(s), treatment options, potential complications and known risks, and patient's consent to proceed with treatment” [650 Iowa Administrative Code 27.11 (1) (e)]. It does not specify whether verbal or written informed consent is required, so it is presumed that verbal informed consent is allowed.

**Michigan:** In Michigan, at the inception of care for a patient, both of the following must occur: “Each dentist, dental therapist, dental assistant, registered dental assistant, and registered dental hygienist shall identify himself or herself to the patient as a dentist, dental therapist, dental assistant, registered dental assistant, or registered dental hygienist,” and “the patient shall be provided with a written consent for treatment” [Michigan Administrative Rules R 338.11103].

**Minnesota:** In Minnesota, the dental records for each patient must include a notation that: “the dentist, advanced dental therapist, dental therapist, dental hygienist, or licensed dental assistant discussed with the patient the treatment options and the prognosis, benefits, and risks of each treatment that is within the scope of practice of the respective licensee” and “the patient has consented to the treatment chosen” [Minnesota Administrative Rules 3100.9600]. It does not specify

whether verbal or written informed consent is required, so it is presumed that verbal informed consent is allowed.

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

The Board reviewed Wisconsin Administrative Code chapters DE 5, 8, and 14 to determine where changes were needed to update regulations on informed consent.

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

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

**Fiscal Estimate and Economic Impact Analysis:**

The Fiscal Estimate and Economic Impact Analysis are 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 [Jennifer.Garrett@wisconsin.gov](mailto:Jennifer.Garrett@wisconsin.gov), or by calling (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](mailto:DSPSAdminRules@wisconsin.gov).

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TEXT OF RULE

SECTION 1. DE 5.02 (29) is created to read:

**DE 5.02 (29)** A dentist or dental therapist failing to obtain informed consent from a patient or failing to document that informed consent was obtained, including all the information under s. DE 14.03.

SECTION 2. 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 and to obtain informed consent.

SECTION 3. 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. The dentist or dental therapist shall obtain the patient's informed consent to all services, treatments, or procedures in the treatment plan.

SECTION 4. DE 14.03 is renumbered to DE 14.03 (intro.) and 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. This shall include documentation of all of the following:

SECTION 5. DE 14.03 (1), (2), and (3) are created to read:

**DE 14.03 (1)** The patient's informed consent to all services, treatments, or procedures in the treatment plan.

**(2)** The patient's acknowledgment of reasonable alternate modes of treatment.

**(3)** The patient's acknowledgment of the benefits and risks involved with all services, treatments, or procedures in the treatment plan and the benefits and risks involved with reasonable alternate modes of treatment.

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

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(END OF TEXT OF RULE)  
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This Proposed Order of the Dentistry Examining Board is approved for submission to the Governor and Legislature.

Dated Sep 8, 2025

Troy Alton, DDS  
Troy Alton, DDS (Sep 8, 2025 11:36:37 CDT)

Vice Chair  
Dentistry Examining Board

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> June 27, 2025								
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> DE 5, 8, and 14									
<b>4. Subject</b> Informed Consent									
<b>5. Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>6. Chapter 20, Stats. Appropriations Affected</b> s20.165(1)(g)								
<b>7. Fiscal Effect of Implementing the Rule</b> <table style="width: 100%;"><tr><td><input type="checkbox"/> No Fiscal Effect</td><td><input type="checkbox"/> Increase Existing Revenues</td><td><input checked="" type="checkbox"/> Increase Costs</td><td><input type="checkbox"/> Decrease Costs</td></tr><tr><td><input type="checkbox"/> Indeterminate</td><td><input type="checkbox"/> Decrease Existing Revenues</td><td colspan="2"><input type="checkbox"/> Could Absorb Within Agency's Budget</td></tr></table>		<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input checked="" 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	
<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input checked="" 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							
<b>8. The Rule Will Impact the Following (Check All That Apply)</b> <table style="width: 100%;"><tr><td><input type="checkbox"/> State's Economy</td><td><input type="checkbox"/> Specific Businesses/Sectors</td></tr><tr><td><input type="checkbox"/> Local Government Units</td><td><input type="checkbox"/> Public Utility Rate Payers</td></tr><tr><td colspan="2"><input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b></td></tr></table>		<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 <b>(if checked, complete Attachment A)</b>			
<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 <b>(if checked, complete Attachment A)</b>									
<b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b> \$0									
<b>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)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No									
<b>11. Policy Problem Addressed by the Rule</b> Informed consent regulations for dentists and dental therapists are in Wis. Admin. Code ch. DE 14. The proposed rule adds detail to the regulations for a dentist or dental therapist to obtain informed consent from a patient. It clarifies that the dentist or dental therapist must obtain the patient's informed consent to all services, treatments, or procedures in the treatment plan. For recordkeeping of the patient's informed consent, it requires that the dentist or dental therapist document: (1) The patient's informed consent to the treatment plan. (2) The patient's acknowledgment of reasonable alternate modes of treatment. (3) The patient's acknowledgment of the benefits and risks involved in the treatment plan and the benefits and risks involved with reasonable alternate modes of treatment.  The proposed rule adds a provision to ch. DE 5, Unprofessional Conduct, to state that it is unprofessional conduct for a dentist or dental therapist to fail to obtain informed consent and fail to document that informed consent was obtained. The board believes this rule is important for patient safety and protection, and that current informed consent rules are not adequate.									
<b>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.</b> The rule was posted to the public for Economic Impact Analysis comments as required, and will be subject to an official public hearing, along with other steps of the rule process.									
<b>13. Identify the Local Governmental Units that Participated in the Development of this EIA.</b> None.									
<b>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)</b>									

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

DSPS estimates a total of \$4,100.00 in one-time and \$31,500.00 in ongoing staffing costs to implement the rule. The estimated need for 0.1 limited term employee (LTE) is for legal review, promulgating rules, updating systems, and training. The estimated annual staffing need for a 0.3 full time employee (FTE) is for increased customer service, intake, processing and investigation of complaints, prosecution and paralegal duties. The one-time and annual estimated costs cannot be absorbed in the currently appropriated agency budget.

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

The benefit of this rule is that it will increase dental patient safety and financial protection. The board believes this rule is necessary and that current informed consent regulations are not adequate. If the rule does not go forward, risks to dental patients may continue.

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#### 16. Long Range Implications of Implementing the Rule

The long range implication of implementing the rule is that it will increase safety and transparency in the dentistry industry and help improve dental care in the state.

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#### 17. Compare With Approaches Being Used by Federal Government

None.

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

Illinois: In Illinois, medical patients have “The right of each patient to care consistent with sound nursing and medical practices, to be informed of the name of the physician responsible for coordinating his or her care, to receive information concerning his or her condition and proposed treatment, to refuse any treatment to the extent permitted by law, and to privacy and confidentiality of records except as otherwise provided by law” [410 Illinois Compiled Statutes 50/3(a)]. This applies to dental patients.

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19. Contact Name	20. Contact Phone Number
Jake Pelegrin, Administrative Rules Coordinator	(608) 267-0989

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



**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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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)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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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

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes   ☐ No

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# 165 - DE 5, 8, and 14 - Informed Consent - Report to the Legislature, Final Rule Draft, EIA

Final Audit Report

2025-09-08

Created:	2025-09-08
By:	Jacob Pelegrin (jacob.pelegrin@wisconsin.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAADlcA-jz6PZoy1nF4qzxRBg93MR57vyRD

## "165 - DE 5, 8, and 14 - Informed Consent - Report to the Legislature, Final Rule Draft, EIA" History

-  Document created by Jacob Pelegrin (jacob.pelegrin@wisconsin.gov)  
2025-09-08 - 3:53:47 PM GMT
-  Document emailed to taltondds@gmail.com for signature  
2025-09-08 - 3:55:32 PM GMT
-  Email viewed by taltondds@gmail.com  
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-  Signer taltondds@gmail.com entered name at signing as Troy Alton, DDS  
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-  Document e-signed by Troy Alton, DDS (taltondds@gmail.com)  
Signature Date: 2025-09-08 - 4:36:37 PM GMT - Time Source: server
-  Agreement completed.  
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