



Scott Walker, Governor
Dave Ross, Secretary

DENTISTRY EXAMINING BOARD
Room 121A, 1400 E. Washington Avenue, Madison
Contact: Brittany Lewin (608) 266-2112
November 4, 2015

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a description of the actions of the Board.

AGENDA

8:30 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

A. Pledge of Allegiance

B. Adoption of Agenda (1-3)

C. Approval of Minutes – September 2, 2015 (4-7)

D. Administrative Matters

- 1) Staff Updates
- 2) 2016 Meeting Dates
 - a. 1/6/2016
 - b. 3/2/2016
 - c. 5/4/2016
 - d. 7/6/2016
 - e. 9/7/2016
 - f. 11/2/2016

E. Legislative/Administrative Rule Matters – Discussion and Consideration ()

- 1) CR15-013 – Foreign Trained Dentists **(10-14)**
- 2) CR15-057 – Informed Consent **(15-22)**
- 3) CR15-056 – Certificate for Dental Hygienists to Administer Nitrous Oxide Inhalation Analgesia **(23-33)**
- 4) DE 10 – Mobile Dentistry – Economic Impact Analysis and Comments **(34-49)**
- 5) Possible Rulemaking Regarding Sedation **(50-52)**
- 6) 2015 Assembly Bill 368 and Senate Bill 327 **(53-60)**
- 7) Pending and Possible Legislation and Rulemaking Projects

F. Credentialing Matters

- 1) Liaison Report Regarding Basic Cardiac Life Support Certification Training Program

G. Examination Matters

- 1) Current Exam Options Discussion

H. Informational Items

I. Items Added After Preparation of Agenda

- 1) Introductions, Announcements and Recognition
- 2) Election of Board Officers
- 3) Appointment of Board Liaison(s)
- 4) Administrative Matters
- 5) Education and Examination Matters
- 6) Credentialing Matters
- 7) Practice Matters
- 8) Legislative/Administrative Rule Matters
- 9) Liaison Report(s)
- 10) Informational Item(s)
- 11) Disciplinary Matters
- 12) Presentations of Petition(s) for Summary Suspension
- 13) Petitions for Designation of Hearing Examiner
- 14) Presentation of Proposed Stipulation(s), Final Decision(s) and Order(s)
- 15) Presentation of Proposed Final Decision(s) and Order(s)
- 16) Presentation of Interim Orders
- 17) Petitions for Re-Hearing
- 18) Petitions for Assessments
- 19) Petitions to Vacate Orders
- 20) Requests for Disciplinary Proceeding Presentations
- 21) Motions
- 22) Petitions
- 23) Appearances from Requests Received or Renewed
- 24) Speaking Engagement(s), Travel, or Public Relation Request(s)

J. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (Wis. Stat. s. 19.85(1)(a),); to consider licensure or certification of individuals (Wis. Stat s. 19.85(1)(b), Stats.; to consider closing disciplinary investigations with administrative warnings (Wis. Stat. s. 19.85 (1)(b), and 440.205,); to consider individual histories or disciplinary data (Wis. Stat. s. 19.85 (1)(f),); and to confer with legal counsel (Wis. Stat. s. 19.85(1)(g),).

K. APPEARANCE – J.L. Application Review (61-91)

L. Monitoring Matters (92-235)

- 1) Gretchen Evenson, D.D.S. – Requesting Full Licensure **(94-140)**
- 2) Michael Laska, D.D.S. – Requesting a Monitoring Interruption **(141-174)**
- 3) Steven Schnoll, D.D.S. – Requesting a Reduction in Drug Screens **(175-198)**

- 4) Jeffrey Slavik, D.D.S. – Requesting Termination of Impairment Limitations (**199-235**)

M. Deliberation on Administrative Warnings

- 1) 14 DEN 054 (**236-237**)

N. Presentation and/or Deliberation on Proposed Stipulations, Final Decisions and Orders

- 1) 14 DEN 092 – Michael Kowalski, D.D.S. (**238-244**)
- 2) 15 DEN 022 – Robert J. Vandyke, D.D.S. (**245-252**)
- 3) 15 DEN 037 – Joseph R. Bullock, D.D.S. (**253-258**)

O. Consulting with Legal Counsel

P. Deliberation of Items Received After Preparation of the Agenda

- 1) Education and Examination Matters
- 2) Credentialing Matters
- 3) Disciplinary Matters
- 4) Monitoring Matters
- 5) Professional Assistance Procedure (PAP)
- 6) Petition(s) for Summary Suspensions
- 7) Petitions for Designation of Hearing Examiner
- 8) Proposed Stipulations, Final Decisions and Orders
- 9) Administrative Warnings
- 10) Review of Administrative Warning
- 11) Proposed Final Decisions and Orders
- 12) Matters Relating to Costs/Orders Fixing Costs
- 13) Case Closings
- 14) Proposed Interim Orders
- 15) Petitions for Assessments and Evaluations
- 16) Petitions to Vacate Orders
- 17) Remedial Education Cases
- 18) Motions
- 19) Petitions for Re-Hearing
- 20) Appearances from Requests Received or Renewed

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

Q. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

R. Open Session Items Noticed Above not Completed in the Initial Open Session

ADJOURNMENT

**DENTISTRY EXAMINING BOARD
MEETING MINUTES
September 2, 2015**

PRESENT: Debra Beres, RDH; Mark Braden, DDS; Eileen Donohoo, RDH; Leonardo Huck, DDS; Lyndsay Knoell, DDS; Timothy McConville, DDS; Wendy Pietz, DDS; Carrie Stempski, RDH; Beth Welter, DDS

STAFF: Brittany Lewin, Executive Director; Amber Cardenas, Legal Counsel; Kimberly Wood, Program Assistant Supervisor; and other Department staff

CALL TO ORDER

Lyndsay Knoell, Chair, called the meeting to order at 8:30 a.m. A quorum of nine (9) members was confirmed.

ADOPTION OF AGENDA

MOTION: Leonardo Huck moved, seconded by Debra Beres, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES

MOTION: Eileen Donohoo moved, seconded by Leonardo Huck, to approve the minutes of July 8, 2015 as published. Motion carried unanimously.

PUBLIC HEARING: DE 3, 11, 15, RELATING TO CERTIFICATE FOR DENTAL HYGIENISTS TO ADMINISTER NITROUS OXIDE INHALATION ANALGESIA

Review and Respond to Clearinghouse Report and Public Hearing Comments

MOTION: Wendy Pietz moved, seconded by Timothy McConville, to reject Clearinghouse comment number 2.a. and to accept all remaining Clearinghouse comments for Clearinghouse Rule 15-056, relating to certificates for dental hygienists to Administer Nitrous Oxide Inhalation Analgesia. Motion carried unanimously.

MOTION: Eileen Donohoo moved, seconded by Carrie Stempski, to amend the rule 15-056 at DE 15.05(1) to read ‘The certification program in the Administer Nitrous Oxide Inhalation Analgesia shall be sponsored by a CODA accredited dental or dental hygiene school.’ Motion failed.

MOTION: Eileen Donohoo moved, seconded by Carrie Stempski, to add a new section under 15.05 to read ‘the certification program shall include a final assessment of competency of the clinical and didactic components of the program.’ Motion carried unanimously.

MOTION: Eileen Donohoo moved, seconded by Mark Braden, to authorize Debra Beres to approve the Legislative Report and Draft for Clearinghouse Rule 15-056, relating to certificate for dental hygienists to Administer Nitrous Oxide Inhalation

Analgesia, for submission to the Governor's Office and Legislature. Motion carried unanimously.

PUBLIC HEARING: DE 5 AND 14, RELATING TO INFORMED CONSENT

Review and Respond to Clearinghouse Report and Public Hearing Comments

MOTION: Eileen Donohoo moved, seconded by Debra Beres, to accept all Clearinghouse comments for CR 15-057, relating to informed consent. Motion carried unanimously.

MOTION: Eileen Donohoo moved, seconded by Wendy Pietz, to authorize Mark Braden to approve the Legislative Report and Draft for Clearinghouse Rule 15-057, relating to informed consent, for submission to the Governor's Office and Legislature. Motion carried unanimously.

LEGISLATIVE/ADMINISTRATIVE RULE MATTERS – DISCUSSION AND CONSIDERATION

Adoption of Order for CR15-013, Relating to Foreign Trained Dentists

MOTION: Leonardo Huck moved, seconded by Beth Welter, to approve the Adoption Order for Clearinghouse Rule 15-013 relating to foreign trained dentists. Motion carried unanimously.

CREDENTIALING MATTERS

Basic Cardiac Life Support Certification

MOTION: Mark Braden moved, seconded by Debra Beres, to have the Chair appoint a liaison to review the Basic Cardiac Life Support Certification training program information and report back to the Board at the November meeting. Motion carried unanimously.

The Chair appointed Carrie Stempiski as the liaison to review the Basic Cardiac Life Support Certification training program information.

CLOSED SESSION

MOTION: Leonardo Huck moved, seconded by Mark Braden, to convene to closed session to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85 (1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.). Lyndsay Knoell, Chair, read the language of the motion. The vote of each member was ascertained by voice vote. Roll Call Vote: Debra Beres-yes; Mark Braden-yes; Eileen Donohoo-yes; Leonardo Huck-yes; Lyndsay Knoell-yes; Timothy McConville-yes; Wendy Pietz-yes; Carrie Stempiski-yes; and Beth Welter-yes. Motion carried unanimously.

The Board convened into Closed Session at 10:26 a.m.

RECONVENE TO OPEN SESSION

MOTION: Debra Beres moved, seconded by Eileen Donohoo, to reconvene to Open Session. Motion carried unanimously.

The Board reconvened into Open Session at 12:46 p.m.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MOTION: Eileen Donohoo moved, seconded by Wendy Pietz, to affirm all motions made and votes taken in Closed Session. Motion carried unanimously.

MONITORING MATTERS

Michael Uss, D.D.S. – Monitoring Request: Review Limited License

MOTION: Eileen Donohoo moved, seconded by Timothy McConville, to grant the request of Michael Uss for removal of license limitations. Motion carried unanimously.

CREDENTIALING MATTERS

Application Review

APPEARANCE: S.T.M., R.D.H. (Reinstatement)

MOTION: Eileen Donohoo moved, seconded by Debra Beres, to require S.T.M. to complete a clinical course approved by the credentialing liaison, or to successfully retake the CRDTS or other regionally approved examination, according to Wis. Stat. § 447.05 and Wis. Admin. Code § DE 2.03(5)(b), in order to reinstate her dental hygiene license once all requirements are met. Motion carried unanimously.

PRESENTATION AND/OR DELIBERATION ON PROPOSED STIPULATIONS, FINAL DECISIONS AND ORDERS

13 DEN 086 – Thomas A. Linstroth, D.D.S.

MOTION: Timothy McConville moved, seconded by Debra Beres, to **adopt** the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against **Thomas A. Linstroth, D.D.S.**, DLSC case **13 DEN 086**. Motion carried unanimously.

13 DEN 122 – Mary Vezzetti, D.D.S.

MOTION: Eileen Donohoo moved, seconded by Leonardo Huck, to **adopt** the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against **Mary Vezzetti, D.D.S.**, DLSC case **13 DEN 122**. Motion carried unanimously.

14 DEN 115 – Michael F. Martin, D.D.S.

MOTION: Timothy McConville moved, seconded by Leonardo Huck, to **adopt** the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against **Michael F. Martin, D.D.S.**, DLSC case **14 DEN 115**. Motion carried.
Recused: Pietz

(Wendy Pietz recused herself and left the room for deliberation and voting in the matter of the disciplinary proceedings against Michael F. Martin, D.D.S.)

15 DEN 002 – Golden Vu, D.M.D.

MOTION: Mark Braden moved, seconded by Debra Beres, to **adopt** the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against **Golden Vu, D.M.D.**, DLSC case **15 DEN 002**. Motion carried. Recused: McConville

(Timothy McConville recused himself and left the room for deliberation and voting in the matter of the disciplinary proceedings against Golden Vu, D.M.D.)

15 DEN 006 – Roman Gorodesky, D.D.S.

MOTION: Timothy McConville moved, seconded by Leonardo Huck, to **adopt** the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against **Roman Gorodesky, D.D.S.**, DLSC case **15 DEN 006**. Motion carried unanimously.

DELIBERATION ON CASE CLOSINGS

13 DEN 086

MOTION: Eileen Donohoo moved, seconded by Debra Beres, to close DLSC case **13 DEN 086** for **Insufficient Evidence**. Motion carried unanimously.

15 DEN 016

MOTION: Timothy McConville moved, seconded by Eileen Donohoo, to close DLSC case **15 DEN 016** for **Prosecutorial Discretion (P7)**. Motion carried unanimously.

ADJOURNMENT

MOTION: Debra Beres moved, seconded by Mark Braden, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 12:52 p.m.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Katie Vieira, Sharon Henes Administrative Rules Coordinators		2) Date When Request Submitted: 10/22/2015 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>									
3) Name of Board, Committee, Council, Sections: Dentistry Examining Board											
4) Meeting Date: 11/4/2015	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? 1) CR15-013 – Foreign Trained Dentists 2) CR15-057 – Informed Consent 3) CR15-056 – Certificate for Dental Hygienists to Administer Nitrous Oxide Inhalation Analgesia 4) DE 10 – Mobile Dentistry - Economic Impact Analysis and Comments 5) Possible rulemaking regarding certification and sedation 6) Pending and Possible Legislation and Rulemaking Projects									
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A									
10) Describe the issue and action that should be addressed: CR15-013 relating to foreign trained dentists went into effect on October 1, 2015. CR15-057 relating to informed consent and CR 15-056 relating to the certificate for dental hygienists to administer nitrous oxide inhalation analgesia were submitted to the Legislature on September 16, 2015 after receiving approval from the Governor's Office. On September 21, both rules were referred to the Senate Committee on Health and Human Services. On September 23 both rules were referred to the Assembly Committee on Health. The legislative review period for both rules is anticipated to end near the end of November. The Board can adopt the rules at the end of the legislative review period.											
11) Authorization <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; border-bottom: 1px solid black;">Katie Vieira</td> <td style="width: 30%; border-bottom: 1px solid black; text-align: right;">10/22/2015</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Signature of person making this request</td> <td style="border-bottom: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Supervisor (if required)</td> <td style="border-bottom: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td colspan="2" style="border-bottom: 1px solid black;">Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date</td> </tr> </table>				Katie Vieira	10/22/2015	Signature of person making this request	Date	Supervisor (if required)	Date	Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date	
Katie Vieira	10/22/2015										
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Supervisor (if required)	Date										
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date											
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.											

CERTIFICATE

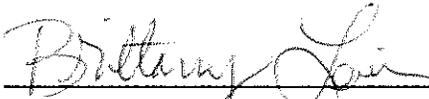
STATE OF WISCONSIN

DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

I, Brittany Lewin, Executive Director, Division of Policy Development in the Wisconsin Department of Safety and Professional Services and custodian of the official records of the Dentistry Examining Board, do hereby certify that the annexed rules were duly approved and adopted by the Dentistry Examining Board on the 2nd day of September, 2015.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the board at 1400 East Washington Avenue, Madison, Wisconsin this 2nd day of September, 2015.



*Brittany Lewin, Executive Director
Division of Policy Development
Department of Safety & Professional Services*

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	DENTISTRY EXAMINING BOARD
DENTISTRY EXAMINING BOARD	:	ADOPTING RULES
	:	CLEARINGHOUSE RULE 15-013

ORDER

An order of the Dentistry Examining Board to repeal DE 2.01(1m) (c) and create DE 2.01(1m) (d) relating to foreign trained dentists.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 447.04, Wis. Stats.

Statutory authority: ss. 15.08(5) (b) and 447.04 (1) (b) 1., Wis. Stats.

Explanation of agency authority:

The Board shall promulgate rules for the guidance of the profession not inconsistent with the law relating to the profession. The Board shall establish requirements for licensure established by rule for granting a license to an applicant licensed in another state, territory or country.

Related statute or rule:

None

Plain language analysis:

The current rule requires an applicant who is a graduate of a foreign dental school to provide evidence that they have completed a postgraduate program or a residency program. The proposed rule eliminates this requirement. To bring Wisconsin's requirements in line with other states, the proposed rule requires a foreign trained dentist to provide verification of being awarded a DDS or DMD degree from an accredited dental school or a dental diploma, degree, or certificate from a dental education program lasting at least two years at an accredited dental school which is equivalent to the didactic and clinical education at the level of a DDS or DMD degree.

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

None

Comparison with rules in adjacent states:

Illinois: Illinois requires graduates of programs outside of the United States or Canada to provide certification of completion of a minimum of 2 years of clinical training from an approved dental college in the United States or Canada in which the applicant met the same level of scientific knowledge and clinical competence as all graduates from that school or certification of completion of no less than 2 academic years of advanced dental education program.

Iowa: Iowa requires foreign trained applicants to receive a dental diploma, degree or certificate from a full-time, undergraduate supplemental dental education program of at least 2 academic years at an accredited dental college. The program must provide didactic and clinical education to the level of a DDS or DMD graduate.

Michigan: Michigan requires foreign trained applicants to complete a minimum 2 year program in dentistry in an approved school that leads to the awarding of a DDS or DMD or a minimum 2 year master's degree or certificate program in an approved dental school that leads to the awarding of a degree or certificate from a dental specialty program.

Minnesota: Minnesota requires foreign trained applicants to have an evaluation of the foreign dental school done by the International Credentialing Associates that the foreign dental school's education is equivalent to a dental school accredited by the Commission on Dental Accreditation.

Summary of factual data and analytical methodologies:

The Board reviewed the requirements of the surrounding states.

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

The rule was posted for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units, and individuals, for a period of 14 days and received no comment.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document 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 Eric.Esser@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Kathleen Vieira, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone (608) 261-4472; email at Kathleen.Vieira@wisconsin.gov.

TEXT OF RULE

SECTION 1. DE 2.01 (1m) (c) is repealed.

SECTION 2. DE 2.01 (1m) (d) is created to read:

DE 2.01 (1m) (d) Evidence of one of the following:

1. Verification of having been awarded a DDS or DMD degree from an accredited dental school.
2. Verification of having received a dental diploma, degree or certificate from a full time, undergraduate supplemental dental education program of at least two academic years at an accredited dental school. The program must provide didactic and clinical education to the level of a DDS or DMD graduate.

SECTION 3. **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)

Dated 9-2-15

Agency



Chairperson
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 2

3. Subject
Foreign trained dentists

4. Fund Sources Affected <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	5. Chapter 20, Stats. Appropriations Affected 20.165(1)(g)
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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 policy problem addressed is a pathway for foreign trained dentists to become licensed in Wisconsin.

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 impact comments and none were received.

11. Identify the local governmental units that participated in the development of this EIA.
None. It does not affect local governmental units.

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 does not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units and the State's economy as a whole.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
The benefit to implementing the rule is to provide for foreign trained dentists to become licensed in Wisconsin without compromising patient safety. The rule requires a foreign trained dentist to obtain a DDS or DMD from an accredited dental school or obtain a dental diploma, degree or certificate from a dental education program lasting at least two years at an accredited dental school which results in the equivalent education to a DDS or DMD degree.

14. Long Range Implications of Implementing the Rule
The long range implications of implementing the rule is that foreign trained dentists will have a clear pathway to licensure and the public will be protected.

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 requires foreign trained applicants to complete a minimum of 2 years of clinical training from an approved dental college. Iowa requires foreign trained applicants to receive a dental diploma, degree or certificate of at least 2 years to

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

the level of a DDS or DMD graduate. Michigan requires foreign trained applicants to complete a minimum 2 year program in dentistry that leads to the awarding of a DDS or DMD or a minimum 2 year master's or certificate program from a dental specialty program. Minnesota requires foreign trained applicants to have an evaluation of the foreign dental school done by the International Credentialing Associates that the foreign dental school is equivalent to a dental school accredited by the Commission on Dental Accreditation.

17. Contact Name Sharon Henes	18. Contact Phone Number (608) 261-2377
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This document can be made available in alternate formats to individuals with disabilities upon request.

**STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
: CR 15-057
DENTISTRY EXAMINING :
BOARD :**

I. THE PROPOSED RULE:

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

II. REFERENCE TO APPLICABLE FORMS:

None.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA document 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 duty of certain health care professionals, other than physicians, to obtain informed consent from their patients before conducting treatment had not been codified as a statutory duty prior to the passage of 2013 Wisconsin Act 345. Act 345 sets forth the dentists' duty to obtain informed consent from their patients and institutes the reasonable dentist standard as the standard for informing patients regarding their treatment options. The reasonable dentist standard requires disclosure only of the information that a reasonable dentist would know and disclose under the circumstances.

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 2, 2015. The Board did not receive any written or verbal comments.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

All of the recommendations suggested in the Clearinghouse Report have been accepted in whole.

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

N/A

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DENTISTRY EXAMINING
	:	BOARD
DENTISTRY EXAMINING	:	ADOPTING RULES
BOARD	:	(CLEARINGHOUSE RULE 15-057)

PROPOSED ORDER

An order of the Dentistry Examining Board to create DE Chapter 14 relating to informed consent.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 447.40, Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), 447.40, and 447.02 (2) (i), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats. Each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

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.”

Section 447.40, Stats. Any dentist 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 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 has not included in his or her diagnosis at the time the dentist informs the patient.

Section 447.02 (2) (i), Stats. The examining board shall promulgate rules specifying the provisions for implementing s. 447.40.

Related statute or rule:

Sections 446.08, 448.697, and 449.25, Stats.

Plain language analysis:

The duty of certain health care professionals, other than physicians, to obtain informed consent from their patients before conducting treatment had not been codified as a statutory duty prior to the passage of 2013 Wisconsin Act 345. Act 345 sets forth the dentists' duty to obtain informed consent from their patients and institutes the reasonable dentist standard as the standard for informing patients regarding their treatment options. The reasonable dentist standard requires disclosure only of the information that a reasonable dentist would know and disclose under the circumstances.

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

Although several federal agencies require investigators to obtain informed consent of human subjects participating in investigative trials, there are no specific federal regulations regarding dentists obtaining informed consent from their patients or the reasonable dentist standard.

Comparison with rules in adjacent states:

Illinois: Illinois Administrative Code is silent with regards to dentists' duty to obtain informed consent (68 Il. Admin. Code pt. 1220).

Iowa: Iowa Administrative Code regarding record keeping states that dental records must include, at a minimum, documentation of informed consent that includes a discussion of procedures, treatment options, potential complications, and known risks, and patient's consent to proceed with treatment (Iowa Admin. Code r. 650-27.11).

Michigan: Michigan Administrative Code is silent with regards to dentists' duty to obtain informed consent (Mich. Admin. Code r. 338.11101 - 338.11821).

Minnesota: Minnesota Administrative Code requires that dental records must include a notation that the dentist, advanced dental therapist, or dental therapist discussed with the patient the treatment options and the prognosis, benefits, and risks of each; and the patient has consented to the treatment chosen (Minn. R. 3100.9600 subp. 9).

Summary of factual data and analytical methodologies:

No factual data or analytical methodologies were used in drafting the proposed rule due to the proposed rule being prompted by the passage of 2013 WI Act 345. Adjacent states' requirements were reviewed.

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

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

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document 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 Eric.Esser@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Katie Vieira (Paff), Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4472; email at Kathleen.Vieira@wisconsin.gov.

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

Comments may be submitted to Katie Vieira (Paff), Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to Kathleen.Vieira@wisconsin.gov. Comments must be received on or before the public hearing to be held on September 2, 2015 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chapter DE 14 is created to read:

CHAPTER DE 14

INFORMED CONSENT

DE 14.01 Authority and purpose. (1) **AUTHORITY.** The rules in this chapter are adopted pursuant to the authority delegated in ss. 15.08 (5) (b), 227.11 (2) (a), and 447.02 (2) (i), Stats.

(2) **PURPOSE.** The purpose of the rules is to define the obligation of a dentist to communicate alternate modes of treatment to a patient.

DE 14.02 Informed consent. Any dentist 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.

DE 14.03 Recordkeeping. A dentist'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.

DE 14.04 Exceptions to communication of alternate modes of treatment. A dentist 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 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 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 has not included in his or her diagnosis at the time the dentist informs the patient."

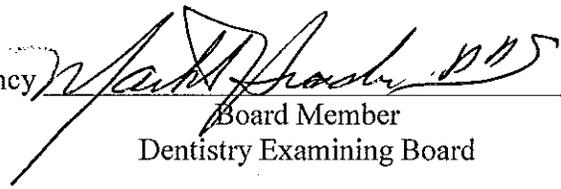
SECTION 2. **EFFECTIVE DATE.** The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

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

Dated _____

Agency



Board Member
Dentistry Examining Board

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

2013 Wisconsin Act 345.

14. Long Range Implications of Implementing the Rule

The long range implications of implementing the rule is regulatory clarity for dentist license holders as the administrative code will align with the statutory requirements established in 2013 Wisconsin Act 345.

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: Illinois Administrative Code is silent with regards to dentists' duty to obtain informed consent (68 Il. Admin. Code pt. 1220).

Iowa: Iowa Administrative Code regarding record keeping states that dental records must include, at a minimum, documentation of informed consent that includes a discussion of procedures, treatment options, potential complications, and known risks, and patient's consent to proceed with treatment (Iowa Admin. Code r. 650-27.11).

Michigan: Michigan Administrative Code is silent with regards to dentists' duty to obtain informed consent (Mich. Admin. Code r. 338.11101 - 338.11821).

Minnesota: Minnesota Administrative Code requires that dental records must include a notation that the dentist, advanced dental therapist, or dental therapist discussed with the patient the treatment options and the prognosis, benefits, and risks of each; and the patient has consented to the treatment chosen (Minn. R. 3100.9600 subp. 9).

17. Contact Name

Katie Vieira (Paff)

18. Contact Phone Number

(608) 261-4472

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

**STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
: CR 15-056
DENTISTRY EXAMINING BOARD :
:**

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 document 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:

2013 Wisconsin Act 354 required the Dentistry Examining Board to grant a certificate to administer nitrous oxide inhalation analgesia to a dental hygienist who is licensed by the Board and who satisfies certain educational requirements that the Act directs the Board to establish by rule. Under 2013 Wisconsin Act 354, the certificate to administer nitrous oxide inhalation analgesia remains in effect while the dental hygienist holds a valid license to practice dental hygiene in Wisconsin, unless the Dentistry Examining Board suspends or revokes the certificate. The proposed rule implements 2013 Wisconsin Act 354 by establishing the requirements for the certificate.

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 2, 2015. The following people either testified at the hearing, or submitted written comments:

Linda Jorgenson, Wisconsin Dental Hygienists Association
Mara Brooks, Wisconsin Dental Association

The Dentistry Examining Board summarizes the comments received either by hearing testimony or by written submission as follows:

The Wisconsin Dental Hygienists' Association (WI-DHA) Board of Trustees (BOT) testified in opposition to the proposed rule. The WI-DHA requested that their original recommendation for a 12 hour certification course offered only through CODA accredited dental programs be reinstated in the draft of administrative rules.

Mara Brooks testified in support of the proposed rule.

The Dentistry Examining Board did not modify its rule in response to public comments.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

2. Form, Style, and Placement in Administrative Code

Comment: The Board should add a provision to the rule that establishes a procedure for Board approval of certification programs referred to in s. DE 15.05. This will enable dental hygienists to know whether a certification program that is offered provides adequate instruction to entitle them to receive a certificate to administer nitrous oxide inhalation analgesia. It is unclear how the Board would know whether a certification program attended by a dental hygienist meets the requirements set forth in s. DE 15.05 (2) if a provision of this type is not added to the rule. [For examples of rule provisions providing for approval of training programs, see ss. ATCP 136.08 (2), FD 6.06, and DHS 129.27.]

Response: The Dentistry Examining Board does not have the authority to impose requirements on certification program providers including requiring prior program approval. The Board only has the authority to establish the educational requirements for dental hygienist certification to administer nitrous oxide inhalation analgesia.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

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

N/A

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DENTISTRY EXAMINING
	:	BOARD
DENTISTRY EXAMINING	:	ADOPTING RULES
BOARD	:	CLEARINGHOUSE RULE 15-056

PROPOSED ORDER

An order of the Dentistry Examining Board to amend DE 3.03 (1) and 11.03 (1) and to create Chapter DE 15 relating to certificate for dental hygienists to administer nitrous oxide inhalation analgesia.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 447.04 (2) (d) 1., 447.06 (2) (e) 4., Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), and 447.02 (2) (j), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats. Each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession

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.”

Section 447.02 (2) (j), Stats. The examining board shall promulgate rules specifying, “[t]he educational requirements for a dental hygienist licensed under this chapter to administer nitrous oxide inhalation analgesia under s. 447.06 (2) (e) 4.”

Related statute or rule:

Section 447.065 (2), Stats.

Plain language analysis:

2013 Wisconsin Act 354 required the Dentistry Examining Board to grant a certificate to administer nitrous oxide inhalation analgesia to a dental hygienist who is licensed by the Board and who satisfies certain educational requirements that the Act directs the Board to establish by rule. Under 2013 Wisconsin Act 354, the certificate to administer nitrous oxide inhalation analgesia remains in effect while the dental hygienist holds a valid license to practice dental hygiene in Wisconsin, unless the Dentistry Examining Board suspends or revokes the certificate. The proposed rule implements 2013 Wisconsin Act 354 by establishing the requirements for the certificate.

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

None.

Comparison with rules in adjacent states:

Illinois: Dental hygienists may administer and monitor nitrous oxide provided they complete a 14 hour course relative to nitrous oxide analgesia and submit certification of completion of the required course to the supervising dentist. An individual who graduated from an approved dental hygiene program after January 1, 1998 that contained nitrous oxide analgesia administration and monitoring shall not be required to complete the 14 hour course upon proof to the dentist of the required curriculum. The dental hygienist must maintain BLS certification or its equivalent in addition to the required courses (Ill. Admin. Code tit. 68 pt. 1220).

Iowa: A dental hygienist may administer nitrous oxide inhalation analgesia provided the administration of nitrous oxide inhalation analgesia has been delegated by a dentist and the hygienist has completed a board approved course of training (Iowa Admin. Code r. 650- 29.6 (4)).

Michigan: A dentist may delegate administering nitrous oxide analgesia to a registered dental hygienist under direct supervision to a patient 18 years of age or older if the dental hygienist has met all of the following: (1) Successfully completed an approved course in the administration of nitrous oxide analgesia including content in nitrous oxide analgesia medical emergency techniques, pharmacology of nitrous oxide, nitrous oxide techniques, and if such a course is available, selection of pain control modalities. The course must consist of a minimum of 4 hours didactic instruction and 4 hours of clinical experience; (2) Successfully completed a state or regional board administered written examination in local anesthesia within 18 months of completion of the approved course; (3) Successfully completed a state or regional board administered written examination on nitrous oxide analgesia, within 18 months of completion of the approved course; and (4) Maintains and provides evidence of current certification in basic or advanced cardiac life support. A

dental hygienist shall not administer more than 50% nitrous oxide (Mich. Admin. Code r. 338.11410 and MCL 333.16611 (4)).

Minnesota: A dental hygienist may administer nitrous oxide inhalation analgesia in accordance with all of the following: (1) Completion of CPR training and current CPR certification; (2) Usage of only use fail-safe anesthesia equipment capable of positive pressure respiration; (3) Successful completion of a course on the administration of nitrous oxide inhalation analgesia from an institution accredited by the Commission on Dental Accreditation. The course must be a minimum of 12 hours comprised of didactic instruction, personally administering and managing at least three individual supervised cases of analgesia, and supervised clinical experience using fail-safe anesthesia equipment capable of positive pressure respiration; (4) Under the appropriate level of supervision by a dentist who is current with the requirements to administer nitrous oxide inhalation analgesia (Minn. Admin. Code 3100.3600 subp. 4.).

Summary of factual data and analytical methodologies:

This rule implements 2013 Wisconsin Act 354. Numerous other states' requirements were reviewed and considered while drafting these rules.

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

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

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document 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 Eric.Esser@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Katie Vieira (Paff), Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4472; email at Kathleen.Vieira@wisconsin.gov.

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

Comments may be submitted to Katie Vieira (Paff), Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to Kathleen.Vieira@wisconsin.gov. Comments must be received on or before the public hearing to be held on September 2, 2015 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. DE 3.03 (1) is amended to read:

DE 3.03 (1) Administer or prescribe, either narcotic or analgesics or systemic-affecting nonnarcotic drugs, or anesthetics except as provided under ch. DE 15.

SECTION 2. DE 11.03 (1) is amended to read:

DE 11.03 (1) A dentist or a dental hygienist who holds a valid certificate under ch. DE 15 may use nitrous oxide inhalation on an outpatient basis for dental patients provided that he or she ~~has~~ utilizes adequate equipment with failsafe features and a 25% minimum oxygen flow.

SECTION 3. Chapter DE 15 is created to read:

CHAPTER DE 15

CERTIFICATION OF DENTAL HYGIENISTS TO ADMINISTER NITROUS OXIDE
INHALATION ANALGESIA

DE 15.01 Authority. The rules in this chapter are adopted pursuant to ss. 15.085 (5) (b), 227.11 (2) (a), and 447.02 (2) (j), Stats.

DE 15.02 Definitions. In this chapter:

- (1) “Accredited” has the meaning given in s. 447.01 (1), Stats.
- (2) “ADA CERP” means american dental association continuing education recognition program.
- (3) “AGD PACE” means academy of general dentistry program approval for continuing education.

DE 15.03 Qualifications for certification of licensed dental hygienists to administer nitrous oxide inhalation analgesia. The board shall grant certification to administer nitrous oxide inhalation analgesia to an applicant who satisfies all of the following conditions:

- (1) The applicant holds a valid license to practice as a dental hygienist in this state.
- (2) The applicant has completed the educational requirements of s. DE 15.05.
- (3) The applicant has submitted the information required in the application under s. DE 15.04.

DE 15.04 Application procedure. An applicant for a certificate to administer nitrous oxide inhalation analgesia shall file a completed application on a form provided by the board. The application shall include all of the following:

- (1) The dental hygienist license number in this state and the signature of the applicant.
- (2) Evidence of successful completion of a didactic and clinical certification program, resulting in the dental hygienist becoming competent to administer nitrous oxide inhalation analgesia under the delegation and supervision of a dentist, the curriculum of which meets or exceeds the basic course requirements set forth in s. DE 15.05.

DE 15.05 Educational requirements. The board shall grant certification to administer nitrous oxide inhalation analgesia to a licensed hygienist who completes a certification program that meets all of the following:

- (1) The certification program in the administration of nitrous oxide inhalation analgesia shall be sponsored by an accredited dental or dental hygiene school or be an approved ADA CERP or AGD PACE provider.
- (2) The nitrous oxide inhalation analgesia administration certification program shall provide a minimum of 8 hours of instruction and shall consist of all of the following:

(a) Didactic instruction including all of the following:

1. Legal aspects of nitrous oxide inhalation analgesia administration in Wisconsin.
2. Physiological and psychological aspects of anxiety.
3. Stages of consciousness and the levels of sedation.
4. Respiratory and circulatory physiology and related anatomy.
5. Pharmacology of nitrous oxide.

6. Advantages and disadvantages as well as the indications and contraindications for nitrous oxide inhalation analgesia administration.

7. Patient evaluation, selection, and preparation for nitrous oxide inhalation analgesia administration.

8. The function of the basic components of nitrous oxide inhalation analgesia delivery and scavenging systems including all of the following:

- a. Inspecting all components of the nitrous oxide inhalation analgesia delivery equipment.
- b. Assembling and disassembling components.
- c. Operating nitrous oxide inhalation analgesia equipment.
- d. Disinfecting and sterilizing nitrous oxide inhalation analgesia equipment.

9. Safe and effective administration of nitrous oxide inhalation analgesia to patients in a clinical setting including all of the following:

- a. Determining the patient's ideal flow rate and tidal volume.
- b. Performing titration to effect.
- c. Determining the ideal percentage of nitrous oxide flow rate for individual patients.
- d. Calculating the percentage of nitrous oxide at peak flow.

10. Monitoring and documenting a patient undergoing nitrous oxide inhalation analgesia.

11. Complications associated with nitrous oxide inhalation analgesia administration and the prevention, recognition, and management of associated medical emergencies.

12. Troubleshooting problems with nitrous oxide inhalation analgesia administration.

13. Potential health hazards associated with nitrous oxide inhalation analgesia administration.

(b) Clinical experience consisting of three inductions of nitrous oxide inhalation analgesia on another person under supervision of the instructor.

(3) The certification program shall have a dentist licensed under ch. 447, Stats., present in the facility and available to both the patients and to the students of the class.

(4) The certification program shall include a final assessment of competency of the didactic and clinical components of the program.

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

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

(2) The dentist remains on the premises.

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

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

(END OF TEXT OF RULE)

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

Dated 9-2-15

Agency 
Board Member
Dentistry Examining Board

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

The benefit of the proposed rule is that it brings the Dentistry Examining Board administrative rules in compliance with 2013 Wisconsin Act 354.

14. Long Range Implications of Implementing the Rule

The long range implications of implementing the rule is regulatory clarity for dental hygienist credential holders as the administrative code will align with the statutory requirements established in 2013 Wisconsin Act 354.

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: Dental hygienists may administer and monitor nitrous oxide provided they complete a 14 hour course relative to nitrous oxide analgesia and submit certification of completion of the required course to the supervising dentist. An individual who graduated from an approved dental hygiene program after January 1, 1998 that contained nitrous oxide analgesia administration and monitoring shall not be required to complete the 14 hour course upon proof to the dentist of the required curriculum. The dental hygienist must maintain BLS certification or its equivalent in addition to the required courses (Ill. Admin. Code tit. 68 pt. 1220).

Iowa: A dental hygienist may administer nitrous oxide inhalation analgesia provided the administration of nitrous oxide inhalation analgesia has been delegated by a dentist and the hygienist has completed a board approved course of training (Iowa Admin. Code r. 650- 29.6 (4)).

Michigan: A dentist may delegate administering nitrous oxide analgesia to a registered dental hygienist under direct supervision to a patient 18 years of age or older if the dental hygienist has met all of the following: (1) Successfully completed an approved course in the administration of nitrous oxide analgesia including content in nitrous oxide analgesia medical emergency techniques, pharmacology of nitrous oxide, nitrous oxide techniques, and if such a course is available, selection of pain control modalities. The course must consist of a minimum of 4 hours didactic instruction and 4 hours of clinical experience; (2) Successfully completed a state or regional board administered written examination in local anesthesia within 18 months of completion of the approved course; (3) Successfully completed a state or regional board administered written examination on nitrous oxide analgesia, within 18 months of completion of the approved course; and (4) Maintains and provides evidence of current certification in basic or advanced cardiac life support. A dental hygienist shall not administer more than 50% nitrous oxide (Mich. Admin. Code r. 338.11410 and MCL 333.16611 (4)).

Minnesota: A dental hygienist may administer nitrous oxide inhalation analgesia in accordance with all of the following: (1) Completion of CPR training and current CPR certification; (2) Usage of only use fail-safe anesthesia equipment capable of positive pressure respiration; (3) Successful completion of a course on the administration of nitrous oxide inhalation analgesia from an institution accredited by the Commission on Dental Accreditation. The course must be a minimum of 12 hours comprised of didactic instruction, personally administering and managing at least three individual supervised cases of analgesia, and supervised clinical experience using fail-safe anesthesia equipment capable of positive pressure respiration; (4) Under the appropriate level of supervision by a dentist who is current with the requirements to administer nitrous oxide inhalation analgesia (Minn. Admin. Code 3100.3600 subp. 4.).

17. Contact Name

Katie Vieira (Paff)

18. Contact Phone Number

(608) 261-4472

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

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

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

PROPOSED ORDER

An order of the Dentistry Examining Board to create DE 10 relating to mobile dentistry.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 447.058 and 447.07, Stats.

Statutory authority: ss. 15.08(5)(b) and 447.02(2)(f), (g) and (h), Stats.

Explanation of agency authority:

Each examining board shall promulgate rules for its own guidance and 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 particular profession. s. 15.08(5)(b)

The examining board shall promulgate rules specifying: a requirement that a mobile dentistry program registrant establish procedures for a patient treated in the mobile dentistry program to access his or her patient records; standards of conduct for the operation of a mobile dentistry program in this state, the provision of dental services through a mobile dentistry program and the use of portable dental equipment; and a definition of “mobile dentistry program: and the activities that constitute the operation of a mobile dentistry program for purposes of the registration requirement under s. 447.058. ss. 447.02(2)(f), (g) and (h), Stats.

Related statute or rule:

Plain language analysis:

This rule implements 2013 Act 244 by creating DE 10.

DE 10.01 defines mobile dentistry program as a program which uses portable equipment or supplies in a location that is not a dental or hospital facility or is a self-contained facility that moves. The definition excludes the following: dental or dental hygiene care provided within a 30 mile radius of a main or satellite facility provided the care is billed by that facility and necessary follow-up care is being provided by the dentist or dental hygienist; the care is being

provided to no more than 2 per day to a new or established patient of record of a main or satellite dental facility; and the Department of Health conducting screenings as part of the Centers for Disease Control and Prevention surveys. The first two exceptions allow for a dentist or dental hygienist to make “house calls” and the last recognizes the unique nature of the survey screenings.

DE 10.02 creates the registration requirements. An applicant would be required to fill out an application, pay a fee, and provide a list of all employees or contractors who are providing dental or dental hygiene care and their Wisconsin dentist or dental hygienist license number. A renewal fee requires a renewal form and fee and a current list of their employees or contractors. If a person owns or operates more than one mobile dentistry program, a registration is required for each program.

DE 10.03 requires access to patient records. Each patient is to be provided with the name and contact information of the program and the registration number. At the time of providing services, the program is required to provide the patient with a written description of the services provided, the provider’s name and license number and the findings and recommendations. Mobile dentistry records are subject to the same rules governing a dentist or dental hygienist working in a dental facility. A mobile dentistry program is required to provide access to patient records.

DE 10.04 requires a mobile dentistry program to have a written protocol for follow-up care in a dental facility that is permanently established within a 60 mile radius of where the mobile dentistry services were provided. The protocol must include a written agreement with at least one provider for emergency treatment.

DE 10.05 lists unprofessional conduct as a violation of the standards of conduct all licensed dentists and dental hygienists are required to maintain or the specific mobile dentistry access to patient records or written protocols. In addition, it is unprofessional conduct for a mobile dentistry program registrant to fail to update the department within 30 days of new employees or contractors providing dental or dental hygienist services in Wisconsin.

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

Comparison with rules in adjacent states:

Illinois: Illinois defines mobile dental vans and portable dental units as any self-contained or portable dental unit in which dentistry is practiced that can be moved, towed, or transported from one location to another in order to establish a location where dental services can be provided. A dentist providing services through a mobile dental van or portable dental unit is to provide to the patient or the patient’s parent or guardian, in writing, the dentist’s name, license number, address, and information on how the patient or the patient’s parent or guardian may obtain the patient’s dental records.

Iowa: Iowa does not require the registration of mobile dentistry programs.

Michigan: Michigan defines mobile dentistry as a self-contained, intact facility in which dentistry or dental hygiene is practiced that may be transported from one location to another or a site used on a temporary basis to provide dental services using portable equipment. An application shall include: a list of each dentist, dental hygienist and dental assistant who will provide care including each individual's name, address, telephone number and license number; a written plan and procedure for providing emergency follow-up care to each patient; a signed memorandum of agreement between the operator and at least one dentist who can arrange for or provide follow-up services at a site within a reasonable distance for the patient; if provides only preventative services, a signed memorandum of agreement for referral for comprehensive dental services between the operator and at least 1 dentist; and proof of general liability insurance covering the mobile dental facility. If an operator has a memorandum of agreement due to its status as a state of Michigan designated or funded oral health prevention program with oversight from the department of community health, the operator is exempt from any requirement concerning a memorandum of agreement. The patient shall be provided a copy of a written treatment plan which shall address comprehensive services to be provided either at the mobile dental facility or through a dentist under a memorandum of agreement with the operator of the mobile dental facility. If the operator is unable to make arrangements for continued treatment, he or she shall place written documentation of the attempts in the patient record and make the documentation available to the department upon request. The operator shall provide access to records upon request.

Minnesota: Minnesota does not require the registration of mobile dentistry programs.

Summary of factual data and analytical methodologies:

The Board formed a committee which looked at the proposals from stakeholders as well as reviewing other states' laws. The committee and Board spent considerable time discussing issues relating to the definition of mobile dentistry programs and protocols for follow-up care balancing the accessibility of the programs to operate in the state with the safety of the public.

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

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 Eric.Esser@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

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

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8366, or by email to Sharon.Henes@wisconsin.gov. Comments must be received on or before * to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chapter DE 10 is created to read:

CHAPTER DE 10
MOBILE DENTISTRY

DE 10.01 Definitions. In this chapter:

(1) “Mobile dentistry program”

(a) Mobile dentistry program means a program delivering dental or dental hygiene care in one of the following:

1. Using portable equipment or supplies that are transported to any location that is not an intact dental or hospital facility.
2. In a self-contained, intact facility that can be moved.

(b) A program providing dental or dental hygienist care is not a mobile dentistry program if it meets one of the following requirements:

1. The dental or dental hygiene care is provided within a 30 mile radius of their main or satellite facility and all of the following:
 - a. The care is billed by the main or satellite dental facility.
 - b. The dentist or dental hygienist provides any necessary follow-up care to the patient.
2. The dental 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.
3. Department of health conducting surveillance screenings as part of the state oral disease prevention program cooperative agreement with the Centers for Disease Control and Prevention, Division of Oral Health.

(2) “Mobile dentistry program registrant” means a person registered under s. 447.058, Stats.

DE 10.02 Mobile dentistry program registration. (1) REGISTRATION REQUIRED. (a) No person may own or operate a mobile dentistry program in this state unless the person is registered under this section. A person that wishes to own or operate more than one mobile dentistry program in this state shall apply for a separate registration under this section for each mobile dentistry program the person owns or operates.

(b) A mobile dentistry program providing dental hygiene as defined by s. 447.01(3), Stats. or dentistry as defined by s. 447.01(8), Stats. constitutes the operation of a mobile dentistry program and requires registration.

(2) REGISTRATION. An applicant for registration to own or operate a mobile dentistry program shall submit all of the following:

(a) An application for registration on a form provided by the department.

(b) The fee specified in s. 440.05(1).

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

(3) RENEWAL. A mobile dentistry program registrant renewing a registration shall submit all of the following:

(a) A renewal form provided by the department.

(b) The renewal fee as determined by the department under s. 440.03(9)(a).

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

DE 10.03 Access to patient records. The mobile dentistry program registrant shall do all of the following:

(1) Provide each patient with the name and contact information of the mobile dentistry program and registration number providing services.

(2) At the time of providing services, give each patient a written description of the dental services provided for that patient, any provider's name and license number, and the findings and recommendations.

(3) Maintain patient dental records in accordance with ch. DE 8, Wis. Admin. Code.

(4) Provide access to dental records in accordance with s. 146.83, Stats.

DE 10.04 Protocol for follow-up care. There is a written protocol for follow-up care for patients treated in the mobile dental program in a dental facility that is permanently established within 60 mile radius of where services were provided. The protocol shall include a written agreement with at least one provider for emergency treatment.

DE 10.05 Standards of conduct. Unprofessional conduct by a mobile dentistry program registrant includes any of the following:

(1) Failure to update the Department within 30 days of new employees or contractors providing dental or dental hygienist services in Wisconsin.

(2) Violating any provision under ss. DE 10.03 or 10.04.

(3) Engaging in unprofessional conduct under s. DE 5.02.

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

(END OF TEXT OF RULE)

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

DE 10

3. Subject

Regulation of mobile dentistry programs

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

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 policy addressed by the rule is to implement 2013 Act 244 by doing the following: create a definition of "mobile dentistry program"; define the activities that constitute the operation of a mobile dentistry program; requirements for obtaining a registration; requirements for patient access to dental records; and standards of conduct for the operation of a mobile dentistry program, the provision of dental services through a mobile dentistry program and the use of portable dental equipment.

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.

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

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)

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

The benefit to implementing the rule is to create clarity regarding the mobile dentistry program. In addition, 2013 Act 244 does not go into effect until the 1st day of the 3rd month after the rules have been submitted to the legislative reference bureau for publication. Therefore the alternative to implementing the rule is 2013 Act 244 would not become effective and there would be no registration of mobile dentistry programs.

14. Long Range Implications of Implementing the Rule

The long range implication is the registration of mobile dentistry program resulting in access to patient records and safety of the public.

15. Compare With Approaches Being Used by Federal Government

None

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

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

Iowa and Minnesota do not require the registration of mobile dentistry programs.

Illinois defines mobile dental vans and portable dental units as any self-contained or portable dental unit in which dentistry is practiced that can be moved, towed, or transported from one location to another in order to establish a location where dental services can be provided. A dentist providing services through a mobile dental van or portable dental unit is to provide to the patient or the patient's parent or guardian, in writing, the dentist's name, license number, address, and information on how the patient or the patient's parent or guardian may obtain the patient's dental records.

Michigan defines mobile dentistry as a self-contained, intact facility in which dentistry or dental hygiene is practiced that may be transported from one location to another or a site used on a temporary basis to provide dental services using portable equipment. An application shall include: a list of each dentist, dental hygienist and dental assistant who will provide care including each individual's name, address, telephone number and license number; a written plan and procedure for providing emergency follow-up care to each patient; a signed memorandum of agreement between the operator and at least one dentist who can arrange for or provide follow-up services at a site within a reasonable distance for the patient; if provides only preventative services, a signed memorandum of agreement for referral for comprehensive dental services between the operator and at least 1 dentist; and proof of general liability insurance covering the mobile dental facility. If an operator has a memorandum of agreement due to its status as a state of Michigan designated or funded oral health prevention program with oversight from the department of community health, the operator is exempt from any requirement concerning a memorandum of agreement. The patient shall be provided a copy of a written treatment plan which shall address comprehensive services to be provided either at the mobile dental facility or through a dentist under a memorandum of agreement with the operator of the mobile dental facility. If the operator is unable to make arrangements for continued treatment, he or she shall place written documentation of the attempts in the patient record and make the documentation available to the department upon request. The operator shall provide access to records upon request.

17. Contact Name Sharon Henes	18. Contact Phone Number (608) 261-2377
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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

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

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

- Yes No
-



September 28, 2015

Sharon Henes
Wisconsin Dental Examining Board
1400 E. Washington Ave – Room 112
Madison, WI 53703

Ms. Henes:

Enclosed are comments regarding the economic impact of DE 10, relating to mobile dentistry. School-based sealant programs are an efficient and effective method of reaching children from low-income families who are less likely to receive dental care.ⁱ Wisconsin Seal-A-Smile (SAS) is a partnership between Children's Health Alliance of Wisconsin (Alliance), Delta Dental of Wisconsin, WEA Trust and the Wisconsin Department of Health Services' Oral Health Program. More than 70 percent of the children who receive care through SAS are insured through Medicaid and an additional 20 percent are uninsured.ⁱⁱ For more than 15 years, SAS programs have been providing high quality mobile dentistry in schools across Wisconsin. In that time, the Wisconsin Dental Examining Board (WDEB) has not received one complaint nor had to take disciplinary or corrective action against a SAS program.

Wisconsin SAS background

As further evidence of our provision of high quality care, the SAS program is a recognized national model in school-based mobile dentistry. Wisconsin is 1 of 5 states that received an "A" grade in the latest report from the Pew Center on the States review of state sealant programs. Among the commendations highlighted by the report was the ability of Wisconsin dental hygienists to access children in the school setting without unnecessary restrictions or oversight of a dentist. Moreover, the Centers for Disease Control and Prevention (CDC) office of the Associate Director of Policy recently featured the Wisconsin SAS program as a program that could be replicated in other states to improve oral health.ⁱⁱⁱ

The requirement to have a written memorandum of understanding (MOU) places an unnecessary burden on programs that are already required by Wisconsin SAS to have a written protocol in place for case management.^{iv} These protocols include verbal agreements with providers to act as a referral source for patients with emergent needs. Moreover, SAS administrators require programs to follow strict guidelines, which can be reviewed in the Wisconsin SAS Administration Manual.

- We propose an exemption from the written MOU for the following:
 - Programs providing restorative care either onsite or at a fixed dental clinic within 60 miles of the location where mobile dentistry is being provided.
 - Programs funded by the Wisconsin Department of Health Services (i.e. SAS and other state funded programs).
 - Any mobile dentistry program unable to obtain a written MOU with a provider, but which documents a reasonable attempt was made. The Wisconsin Dental Examining Board (WDEB) credentialing committee would determine if the attempt was reasonable upon application for a mobile permit.



Economic impact to Wisconsin SAS

Wisconsin SAS programs began reaching out to local dentists and dental offices to obtain a written MOU in early August. To date, more than 2/3 of those approached have not agreed to sign an MOU with one of our sealant programs, including members of the WDEB. The amount of time in outreach to local dentists cost the program nearly \$10,000, which could have been spent providing necessary preventive treatment to children. Wisconsin SAS programs fear that even though they may obtain an MOU this year, there is no guarantee they will receive one in the future. This is particularly concerning as many programs have found only one provider to sign the MOU and providers may become overwhelmed with referrals and opt not to resign. The result would be the forced closure of programs.

Further economic burdens would be placed on the Wisconsin SAS program as a whole. There will be a fee involved in obtaining a mobile permit, which has yet to be determined. This fee will require SAS to divert funding allocated for providing care to a registration fee for up to 40 programs, possibly more in the future. The SAS program is funded in part by state general purpose revenue (GPR) funding. This means that state funding would be utilized to pay another state agency for a permit. For this reason, we support a waiver from the registration fee for programs funded by the State of Wisconsin Department of Health Services' Oral Health Program.

Economic impact to the oral health workforce

The economic impact on SAS programs unable to obtain a written MOU would negatively affect the livelihood of the oral health workforce. Oral health providers, including dental hygienists and dental assistants, would lose work and wages, as their programs would be forced to shut down. For instance, a program serving 1,500 children requires one to two dental hygienists and a dental assistant. The lost wages of these staff could total \$80,000.

Another concern the Alliance has with this rule is that currently dental hygienists are able to provide their complete scope of practice for public and private schools without the direct oversight of a dentist. The CDC reports that allowing dental hygienists to place sealants without a prior examination by a dentist can increase sealant receipt and lower program costs by 18-29 percent depending on the program size.^v This rule imposes an unnecessary restriction to the dental hygienists' ability to provide care. While we agree that mobile programs need to have a protocol in place for referral and should develop relationships with local providers, we see the requirement of a written MOU to not only be restrictive, but could potentially impede the ability for mobile programs to provide cost-effective care. In recent years, the North Carolina board of dentistry lost a case at the U.S. Supreme Court regarding restriction of trade because the Federal Trade Commission filed a lawsuit against the board for restraint of trade.^{vi} There are cases in other states similar to this where dental boards have over regulated the practice of dentistry or restricted fair competition and the Federal Trade Commission has intervened.^{vii}



Economic impact to children and families

However, the gravest economic impact would be borne by children and families, with increased dental costs. If a program with 1,500 children was to close for lack of obtaining an MOU and those children were unable to obtain dental care elsewhere, it would result in dramatic increases in dental disease and cost. The CDC estimates that placing a sealant on a tooth saves the state Medicaid program \$6 per tooth.^{viii} The Wisconsin SAS annually seals approximately 59,000 teeth on Medicaid children, which equates to savings of \$354,000 annually. This figure does not account for the time missed from work by parents to obtain dental services outside the school for their children. The CDC found that over a four year period the Wisconsin SAS program prevented 6,741 fillings and 10,781 over 9 years.^{ix}

Economic impact to the health care system

In 2012 the United States' dental expenditures for dental services for children 0 to 21 years exceeded \$25 billion.^x In addition, 830,000 emergency room visits were due to preventable dental conditions. With fewer children obtaining services in schools, emergency departments would see a spike in visits for preventable dental issues thus shifting an economic burden to hospitals that can only temporarily treat the patient who may become a more frequent visitor of the hospitals for emergency care. Additionally questions have been raised regarding the rules applicability to pediatric medical offices providing fluoride varnish and local public health departments who use nurses to provide oral health services. While this again was not the original intent there appears to be an unintended consequence that could negatively impact these and potentially other practices.

Conclusion

The Alliance supported the initial creation of a rule to regulate mobile dentistry. However, the original intent has been lost and most of the suggestions provided by partners are no longer included in the draft language. We do not support the requirement of a written MOU with a dentist, without a method for exemption based on the negative economic impact posed by this requirement. We hope the economic impact on our programs, their employees and most importantly the children they serve, as outlined in this letter is more completely understood. If you have further questions, I can be reached at (414) 339-0929 or via email at mcrespin@chw.org. In addition to the comments contained in this letter, we also submitted a memo to the entire board regarding the draft rule on behalf of more than 25 organizations in support of a change to the rule, as it pertains to the written MOU. This memo is attached for your reference.

Sincerely,

A handwritten signature in black ink that reads "Matt Crespin". The signature is written in a cursive, flowing style.

Matt Crespin, MPH, RDH
Associate Director



ⁱ Centers for Disease Control and Prevention: http://www.cdc.gov/oralhealth/dental_sealant_program/

ⁱⁱ Children's Health Alliance of Wisconsin SEALS data 2013-14.

ⁱⁱⁱ Centers for Disease Control and Prevention – Office of the Associate Director for Policy
www.cdc.gov/policy/hst/statestrategies/oralhealth/

^{iv} Wisconsin Seal-A-Smile Administration Manual:
<http://www.chawisconsin.org/documents/OH2SASAdminManual.pdf>

^v Scherrer CR, Griffin PM, Swann JL, Public Health Sealant Delivery Programs: Optimal Delivery and the Cost of Practice Acts. *Med Decision Making* 2007; 27; 762-771

^{vi} Federal Trade Commission - <https://www.ftc.gov/enforcement/cases-proceedings/north-carolina-state-board-dental-examiners>

^{vii} Federal Trade Commission - <https://www.ftc.gov/enforcement/cases-proceedings/0210128/south-carolina-state-board-dentistry-matter>

^{viii} Weintraub JA, Stearns SC, Rozier RG, Huang CC. Treatment outcomes and costs of dental sealants among children enrolled in Medicaid. *Am J Public Health* 2001; 91(11): 1877-81

^{ix} Wisconsin Seal-A-Smile 2000-2012 – Partnering to Seal-A-Smile (www.chawisconsin.org/sas)

^x Agency for Healthcare Research and Quality. Dental Services-Mean and Median Expenses per Person with Expense and Distribution of Expenses by Source of Payment: United States, 2012, Medical Expenditure Panel Survey Household Component Data. Generated interactively. (February 6, 2105)

To: Wisconsin Dentistry Examining Board

From: Children's Health Alliance of Wisconsin
Adams County Health & Human Services
Children's Hospital of Wisconsin
Columbia County Health & Human Services
Columbia St. Mary's
Community Healthy Systems of Wisconsin
Clark County Health Department
Delta Dental of Wisconsin
Jefferson County Community Dental Clinic
Juneau County Health Department
Ministry Health Care
NorthLakes Community Clinic
Price County Health & Human Services Department
Professional Dental Hygiene Express
Progressive Community Health Center
Seals On Wheels
School District of Janesville
Shawano County Healthy Smiles
Smiles for Eau Claire County LLC
Special Olympics of Wisconsin
Trempealeau County Health Department
Walworth County Health Department
Waupaca County Health Department
Waushara County Health Department Shara Smile Program
Wood County Health Department
Wisconsin Association of Local Health Departments and Boards
Wisconsin Dental Hygienists' Association
Wisconsin Oral Health Coalition
Wisconsin Primary Health Care Association
Wisconsin Public Health Association

Date: August 31, 2015

CC: Members of the Senate and Assembly Health Committees

RE: Chapter DE 10/Mobile dentistry

We are writing to share concerns and offer potential revisions to the draft rules on mobile dentistry.

At the July 2015 Wisconsin Dental Examining Board (WDEB) meeting, the board discussed changes to the draft rule DE 10. We support several of the proposed changes. We also understand and support the intent of the rule updates. However, there are several proposed changes that will place up to 40 Wisconsin Seal-A-Smile programs serving 62 Wisconsin counties at risk of closing. This would deny care to more than 50,000 children annually.

School-based sealant programs are an efficient and effective method of reaching children from low-income families who are less likely to receive dental care.ⁱ Wisconsin Seal-A-Smile (SAS) is a partnership between Children’s Health Alliance of Wisconsin, Delta Dental of Wisconsin, WEA Trust and the Wisconsin Department of Health Services Oral Health Program. More than 70 percent of the children who receive care through SAS are insured through Medicaid and an additional 20 percent are uninsured.ⁱⁱ For more than 15 years, SAS programs have been providing high quality mobile dentistry in schools across Wisconsin. In that time, the WDEB has not received one complaint nor had to take disciplinary or corrective action against a SAS program. As further evidence of our provision of high quality care, the SAS program is a recognized national model in school-based mobile dentistry. Wisconsin is 1 of 5 states that received an “A” grade in the latest report from the Pew Center on the States review of state sealant programs. Among the commendations highlighted by the report was the ability of Wisconsin dental hygienists to access children in the school setting without unnecessary restrictions or oversight of a dentist.

The following are areas of the current draft which we support:

- Mobile dentistry would be defined as a program delivering dental or dental hygiene care by one of the following methods:
 - Using portable equipment or supplies that are transported to any location that is not an intact dental or hospital facility.
 - Using equipment or supplies in a self-contained, intact facility that can be moved.
- The exemption provided to the Wisconsin Department of Health Services for the purpose of surveillance (i.e. third-grade oral health survey).
- The requirement of the mobile dentistry program to provide a list of employees, volunteers and independent contractors who are providing care in Wisconsin. The list shall include the license number for each person providing care. This information could be updated in writing throughout the year.

The following are areas of the current draft which we oppose and offer alternative language. The proposed revisions below would ensure the shared goal of protection of patient safety, while relieving programs of unnecessary and burdensome regulations.

- The requirement to have a written memorandum of understanding (MOU) places an unnecessary burden on programs that are already required by Wisconsin SAS to have a written protocol in place for case management.ⁱⁱⁱ These protocols include verbal agreements with providers to act as a referral source for patients with emergent needs. Moreover, SAS administrators require programs to follow strict guidelines, which can be reviewed in the Wisconsin SAS Administration Manual.
 - We propose an exemption from the written MOU for the following:
 - Programs providing restorative care either onsite or at a fixed dental clinic location within 60 miles of the location where mobile dentistry is being provided.
 - Programs funded by the Wisconsin Department of Health Services (i.e. SAS and other state funded programs).
 - Any mobile dentistry program unable to obtain a written MOU with a provider, but document and show reasonable attempt was made. The WDEB credentialing committee would determine if the attempt was reasonable upon application for a mobile permit.

- A list of mobile permit holders would be available upon request if dental offices are looking to partner with local programs to assist with follow up care or establishing long term dental homes for patients seen by mobile providers who do not provide comprehensive care.
- An exemption from obtaining a permit for programs that provide mobile dentistry, but also offer restorative care.
 - We propose all programs providing mobile dentistry apply for a permit. The exemption for programs that provide restorative care would come in the form of being exempt from the written MOU as described above.
- We also support the addition of new language that exempts programs that provide care for fewer than 5 days annually without remuneration from applying for a permit under this rule. (i.e. Mission of Mercy, Head Start screenings, Special Olympics athlete screening days, etc.)
- We also urge the WDEB to request additional information as part of the application process:
 - A list of locations where mobile dentistry will be provided, including the facility name and physical address. This information could be updated in writing throughout the year.
 - A list of the types of services offered by the mobile dentistry program.

The proposed revisions, as outlined above, are a means of balancing the goals of safety and quality with the need for Wisconsin’s most vulnerable children to access safe preventive care. As stated above, we feel strongly that the requirement to have an MOU with a provider is an unnecessary burden placed on programs that already have a protocol for case management on file with SAS administration. **We request programs funded by the Wisconsin Department of Health Services, including SAS, be exempt from the MOU requirement. There is precedence for an exemption as Michigan’s mobile dentistry regulations have a similar exemption in place.** We hope the WDEB will take into consideration the recommendations provided. If any questions should arise, please contact Matt Crespin, RDH, MPH, associate director, Children’s Health Alliance of Wisconsin at mcrespin@chw.org or (414) 337-4562.

ⁱ Centers for Disease Control and Prevention: http://www.cdc.gov/oralhealth/dental_sealant_program/

ⁱⁱ Children’s Health Alliance of Wisconsin SEALS data 2013-14.

ⁱⁱⁱ Wisconsin Seal-A-Smile Administration Manual:
<http://www.chawisconsin.org/documents/OH2SASAdminManual.pdf>

Chapter DE 11

ANESTHESIA

<p>DE 11.01 Authority and purpose. DE 11.02 Definitions. DE 11.025 Permit to administer anesthesia. DE 11.03 Requirements for nitrous oxide inhalation. DE 11.04 Requirements for anxiolysis. DE 11.05 Requirements for conscious sedation–enteral.</p>	<p>DE 11.06 Requirements for conscious sedation–parenteral. DE 11.07 Requirements for deep sedation and general anesthesia. DE 11.08 Office facilities and equipment. DE 11.09 Standards of care. DE 11.10 Reporting of adverse occurrences related to anesthesia administration.</p>
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DE 11.01 Authority and purpose. The rules in this chapter are adopted under authority in ss. 15.08 (5) (b), 227.11 (2) (a) and 447.02 (2) (b), Stats., for the purpose of defining standards for the administration of anesthesia by dentists. The standards specified in this chapter shall apply equally to general anesthesia and sedation, regardless of the route of administration.

History: Cr. Register, August, 1985, No. 356, eff. 9–1–85; am. Register, October, 1988, No. 394, eff. 11–1–88; am. Register, August, 1991, No. 428, eff. 9–1–91.

DE 11.02 Definitions. In this chapter,

(1) “Analgesia” means the diminution or elimination of pain in a conscious patient.

(1m) “Anxiolysis” means the use of medication to relieve anxiety before or during a dental procedure which produces a minimally depressed level of consciousness, during which the patient’s eyes are open and the patient retains the ability to maintain an airway independently and to respond appropriately to physical and verbal command.

(1s) “Class I permit” means a sedation permit enabling a dentist to administer oral conscious sedation–enteral.

(1t) “Class II permit” means a sedation permit enabling a dentist to administer conscious sedation–parenteral and conscious sedation–enteral.

(1u) “Class III permit” means a sedation permit enabling a dentist to administer deep sedation, general anesthesia, conscious sedation–parenteral, and conscious sedation–enteral.

(2) “Conscious sedation” means a depressed level of consciousness during which the patient mimics physiological sleep, has vitals that are not different from that of sleep, has his or her eyes closed most of the time while still retaining the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, produced by a pharmacologic or non–pharmacologic method, or a combination of pharmacologic and non–pharmacologic methods.

(3) “Deep sedation” means a controlled state of depressed consciousness, accompanied by partial loss of protective reflexes, including the ability to independently and continuously maintain an airway and to respond purposefully to verbal command, produced by a pharmacologic or non–pharmacologic method, or a combination of pharmacologic and non–pharmacologic methods.

(4) “General anesthesia” means a controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including the ability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or non–pharmacologic method, or a combination of pharmacologic and non–pharmacologic methods.

(6) “Nitrous oxide inhalation” means analgesia by administration of a combination of nitrous oxide and oxygen in a patient.

(7) “Operative supervision” means the dentist is in the operating room performing procedures with the aid of qualified staff.

(8) “Qualified staff” means a person is certified in the administration of basic life support in compliance with the standards set

forth by the American Heart Association, the American Red Cross, or other organization approved by the board, and has training in how to monitor vital signs, and how to use a pulse oximeter, blood pressure cuff, and a precordial or a pretracheal stethoscope. If the dentist is administering deep sedation and general anesthesia under s. DE 11.07, a person shall also be trained in how to use an EKG.

(9) “Routes of administration” include the following:

(a) “Enteral” means administration by which the agent is absorbed through the gastrointestinal tract or through the oral, rectal or nasal mucosa.

(b) “Inhalation” means administration by which a gaseous or volatile agent is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

(c) “Parenteral” means administration by which the drug bypasses the gastrointestinal tract through either intramuscular (IM), intravenous (IV), intranasal (IN), submucosal (SM), subcutaneous (SC), or intraocular (IO) methods.

(d) “Transdermal or transmucosal” means administration by which the drug is administered by patch or iontophoresis.

(10) “Time–oriented anesthesia record” means documentation at appropriate intervals of drugs, doses and physiologic data obtained during patient monitoring.

History: Cr. Register, August, 1985, No. 356, eff. 9–1–85; r. and recr. Register, October, 1988, No. 394, eff. 11–1–88; r. (4), renum. (1) to (3) to be (2) to (4) and am., cr. (1) and (5), Register, August, 1991, No. 428, eff. 9–1–91; CR 04–095: am. (1) to (4), cr. (1m) and (6) to (10), r. (5) Register August 2006 No. 608, eff. 1–1–07; CR 13–061: cr. (1s) to (1u) Register June 2014 No. 702, eff. 7–1–14.

DE 11.025 Permit to administer anesthesia. (1) Dentists shall submit an application to administer anesthesia as specified in this chapter on a form prepared for and approved by the board. Each application shall be specific to the sedation permit class.

Note: Copies of the Application For Dental Permit to Administer Conscious Sedation are accessible from the department’s webpage at: <http://dps.wi.gov/>.

(2) The board may grant a sedation permit and shall consider any of the following actions in developing their decision on an application:

(a) Defer a decision if the licensee has a pending investigation or has not met the conditions of a previous investigation.

(b) Defer a decision if any sedation permits held by the licensee have been temporally suspended.

(c) Defer a decision or recommend denial if any permits held by the licensee have been revoked or conditions of revocation have not been satisfactorily met.

(d) Recommend denial based on the severity of any investigations regarding noncompliance with ch. DE 5.

(e) Take any other action or actions necessary to maintain the health, welfare and safety of a patient or the public.

History: CR 13–061: cr. Register June 2014 No. 702, eff. 7–1–14.

DE 11.03 Requirements for nitrous oxide inhalation. (1) A dentist may use nitrous oxide inhalation on an outpatient basis for dental patients provided that he or she has adequate

equipment with failsafe features and a 25% minimum oxygen flow.

(2) A dentist utilizing nitrous oxide inhalation shall be trained and certified in administering basic life support. This certification shall be renewed in compliance with the standards set forth by the American Heart Association, the American Red Cross, or other organization approved by the board.

History: CR 04-095; cr. Register August 2006 No. 608, eff. 1-1-07.

DE 11.04 Requirements for anxiolysis. A dentist utilizing anxiolysis shall be trained and certified in administering basic life support. This certification shall be renewed in compliance with the standards set forth by the American Heart Association, the American Red Cross, or any other organization approved by the board.

History: CR 04-095; cr. Register August 2006 No. 608, eff. 1-1-07.

DE 11.05 Requirements for conscious sedation—enteral. (1) No dentist may administer conscious sedation via an enteral route without having first obtained a class I permit from the board, unless a dentist has been granted a permit under s. DE 11.06 or 11.07. A class I permit enables a dentist to utilize conscious sedation enterally. The board may grant a class I permit to administer conscious sedation enterally to a dentist who submits a completed application for this sedation permit class and does all of the following:

(a) Provides proof of one of the following:

1. A board approved training course which includes:

a. Eighteen hours of didactic instruction which addresses physical evaluation of patients, conscious sedation—enteral, emergency management, and conforms to the principles in part one or part 3 of the American Dental Association's "Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry."

b. Twenty clinical cases utilizing an enteral route of administration to achieve conscious sedation, which may include group observation.

2. Graduate level training approved by the board that, at a minimum, includes the requirements as set forth in subd. 1. a. and b.

(b) Provides proof of certification in basic cardiac life support for the health care provider and a board approved training program in airway management or a course in advanced cardiac life support. If the dentist is sedating patients age 14 or younger, the dentist shall provide proof of certification in pediatric advanced life support. This certification shall be renewed in compliance with the standards set forth by the American Heart Association, the American Red Cross, or any other organization approved by the board.

(2) Any dentist who utilizes an enteral route of administration to achieve conscious sedation shall have qualified staff present throughout the dental procedure.

History: CR 04-095; cr. Register August 2006 No. 608, eff. 1-1-07; CR 13-061: am. (1) (intro.) Register June 2014 No. 702, eff. 7-1-14.

DE 11.06 Requirements for conscious sedation—parenteral. (1) No dentist may administer conscious sedation via a parenteral route without having first obtained a class II permit from the board, unless a dentist has been granted a permit under s. DE 11.07. A class II permit enables a dentist to utilize conscious sedation—enteral, and conscious sedation—parenteral. A dentist who holds a class II permit does not have to obtain a class I sedation permit. The board may grant a class II permit to administer conscious sedation—parenterally to a dentist who submits a completed application for this sedation permit class and does all of the following:

(a) Provides proof of one of the following:

1. A board approved training course which includes:

a. A minimum of 60 hours of didactic instruction which addresses the physical evaluation of patients, IV sedation, and emergency management.

b. Twenty clinical cases of managing parenteral routes of administration.

2. Graduate level training approved by the board that, at a minimum, includes the requirements as set forth in subd. 1.

3. The utilization of conscious sedation administered parenterally on an outpatient basis for 5 years preceding January 1, 2007, by a dentist licensed under this chapter.

(b) Provides proof of certification in advanced cardiac life support. If the dentist is a pediatric specialist, the dentist is allowed to substitute certification in pediatric advanced life support. This certification shall be renewed in compliance with the standards set forth by the American Heart Association, or any other organization approved by the board.

(2) Any dentist who utilizes a parenteral route of administration to achieve conscious sedation shall have qualified staff present throughout the dental procedure.

History: CR 04-095; cr. Register August 2006 No. 608, eff. 1-1-07.; CR 13-061: am. (1) Register June 2014 No. 702, eff. 7-1-14.

DE 11.07 Requirements for deep sedation and general anesthesia. (1) No dentist may administer deep sedation or general anesthesia without having first obtained a class III permit from the board and submits a completed application for this sedation permit class. A class III permit enables a dentist to utilize conscious sedation—enteral, conscious sedation—parenteral, deep sedation, and general anesthesia. A dentist who holds class III sedation permit shall not have to obtain any other class of sedation permit. The board may grant a class III permit to administer deep sedation or general anesthesia to a dentist who does all of the following:

(a) Provides proof of one of the following:

1. Successful completion of a board approved postdoctoral training program in the administration of deep sedation and general anesthesia.

2. Successful completion of a postdoctoral training program in anesthesiology that is approved by the Accreditation Council for Graduate Medical Education.

3. Successful completion of a minimum of one year advanced clinical training in anesthesiology provided it meets the objectives set forth in part 2 of the American Dental Association's "Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry."

4. Has been a licensed dentist under this chapter who has been utilizing general anesthesia for 5 years prior to January 1, 2007.

(b) Provides proof of certification in advanced cardiac life support. If the dentist is a pediatric specialist, the dentist is allowed to substitute certification in pediatric advanced life support. This certification shall be renewed in compliance with the standards set forth by the American Heart Association, or any other organization approved by the board.

(2) Any dentist who administers deep sedation or general anesthesia shall have qualified staff present throughout the dental procedure.

(3) Nothing in this section may be construed to prevent a dentist from employing or working in conjunction with a certified registered nurse anesthetist, or with a licensed physician or dentist who is a member of the anesthesiology staff of an accredited hospital, provided that the anesthesia personnel must remain on the premises of the dental facility until the patient under general anesthesia or deep sedation regains consciousness.

History: CR 04-095; cr. Register August 2006 No. 608, eff. 1-1-07; CR 13-061: am. (1) (intro.) Register June 2014 No. 702, eff. 7-1-14.

DE 11.08 Office facilities and equipment. (1) A dental office shall have all of the following if a dentist is administering

conscious sedation–enteral, conscious sedation–parenteral, deep sedation, and general anesthesia:

- (a) An operating room containing all of the following:
1. Oxygen and supplemental gas–delivery system capable of delivering positive pressure oxygen ventilation.
 2. Suction and backup system.
 3. Auxiliary lighting system.
 4. Gas storage facilities.
 5. An operating chair capable of withstanding cardiopulmonary resuscitation or a back board.
 6. Emergency equipment including a defibrillator, cardiopulmonary pocket mask, and appropriate emergency medications.
 7. Monitoring equipment including a pulse oximeter, blood pressure cuff, and precordial or pretracheal stethoscope.
 8. An EKG if administering deep sedation or general anesthesia.
- (b) A recovery room containing all of the following:
1. Oxygen and supplemental gas–delivery system capable of delivering positive pressure oxygen ventilation.
 2. Suction and backup system.
 3. Auxiliary lighting system.
 4. Wheelchair.
 5. An operating chair capable of withstanding cardiopulmonary resuscitation or a back board.
 6. Emergency equipment including a defibrillator, cardiopulmonary pocket mask, and appropriate emergency medications.

(2) Nothing in this section shall be construed to prevent an operating room from also being used as a recovery room, nor shall it be construed to prevent the sharing of equipment between an operating room and a recovery room, provided all the required equipment is in the room being used.

History: CR 04–095: cr. Register August 2006 No. 608, eff. 1–1–07.

DE 11.09 Standards of care. (1) Before the administration of any type of sedation a complete written medical history shall be obtained from each patient. The medical history shall identify any medications a patient is taking and any allergies to medication a patient has.

(2) The recording of a time–oriented anesthesia record including appropriate vital signs, blood pressure, pulse, and oxygen saturation q 5 minutes, is required for conscious sedation–enteral, conscious sedation–parenteral, deep sedation, and general anesthesia.

(3) During the anesthesia period for conscious sedation–enteral, conscious sedation–parenteral, deep sedation, or general anesthesia, the oxygenation, ventilation, and circulation of the patient shall be continually evaluated, and any medications that are administered shall be documented in writing, including the dosages, time intervals, and the route of administration.

(4) A patient shall be continually observed during the anesthesia period for conscious sedation–enteral, conscious sedation–parenteral, deep sedation, and general anesthesia either by the treating dentist or by qualified staff. No permit holder shall have more

than one person in conscious sedation–enteral, conscious sedation–parenteral, deep sedation, or general anesthesia at one time, notwithstanding patients in recovery.

(5) Operative supervision is required for deep sedation and general anesthesia.

(6) Qualified staff shall continuously monitor post–treatment patients before final evaluation and discharge by the dentist. Written post–operative instructions shall be given to each patient or to a responsible adult who accompanies the patient for those individuals having undergone conscious sedation–enteral, conscious sedation–parenteral, deep sedation, or general anesthesia. Documentation of the post–operative instructions shall be noted in the patient’s chart.

(8) Any dentist whose patient lapses into conscious sedation–enteral from anxiolysis shall meet the requirements found in s. DE 11.05 and shall follow any applicable requirements in s. DE 11.09.

(9) Unless a dentist holds a class 3 permit, he or she shall not administer any drug that has a narrow margin for maintaining consciousness including, but not limited to, ultra–short acting barbiturates, propofol, ketamine, or any other similarly acting drugs.

(10) Dentists shall maintain verifiable records of the successful completion of any and all training of staff.

History: CR 04–095: cr. Register August 2006 No. 608, eff. 1–1–07.

Note: Section DE 11.09 (7) dealing with titration, has been removed from the rule in compliance with statutory restraints based on the objections by the Senate Committee on Health and the Joint Committee for Review of Administrative Rules. The Wisconsin Dentistry Examining Board intends to promulgate s. DE 11.09 (7) upon resolution of those objections.

DE 11.10 Reporting of adverse occurrences related to anesthesia administration. Dentists shall submit a report within 30 days to the board of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of a patient during, or as a result of, anesthesia administration under this chapter. The report shall be on a form approved by the board and shall include, at the minimum, responses to all of the following:

- (1) A description of the dental procedures.
- (2) The names of all participants in the dental procedure and any witnesses to the adverse occurrence.
- (3) A description of the preoperative physical condition of the patient.
- (4) A list of drugs and dosage administered before and during the dental procedures.
- (5) A detailed description of the techniques utilized in the administration of all drugs used during the dental procedure.
- (6) A description of the adverse occurrence, including the symptoms of any complications, any treatment given to the patient, and any patient response to the treatment.
- (7) A description of the patient’s condition upon termination of any dental procedures undertaken.

Note: Forms are available at the office of the Dentistry Examining Board located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

History: CR 04–095: cr. Register August 2006 No. 608, eff. 1–1–07.



2015 ASSEMBLY BILL 368

September 25, 2015 – Introduced by Representatives STEFFEN, ALLEN, BALLWEG, BARNES, BERNIER, BILLINGS, BRANDTJEN, E. BROOKS, R. BROOKS, DOYLE, EDMING, GENRICH, HINTZ, KATZMA, KOLSTE, KREMER, KULP, T. LARSON, LOUDENBECK, MASON, MILROY, MURPHY, NOVAK, NYGREN, A. OTT, PETRYK, RIEMER, RODRIGUEZ, ROHRKASTE, SARGENT, SPREITZER, STUCK, SUBECK, TAUCHEN, THIESFELDT, TRANEL, VORPAGEL, WACHS and WEATHERSTON, cosponsored by Senators ROTH, COWLES, GUDEx, HANSEN, HARRIS DODD, C. LARSON, LASSA, MOULTON, NASS, OLSEN, RINGHAND, WANGGAARD and WIRCH. Referred to Committee on Small Business Development.

1 **AN ACT to amend** 447.07 (1), 447.07 (3) (intro.), 447.07 (3) (a), 447.07 (3) (b),
2 447.07 (3) (e), 447.07 (3) (f), 447.07 (3) (m), 447.07 (5) and 447.07 (7); **to repeal**
3 **and recreate** 447.07 (1), 447.07 (3) (intro.), 447.07 (3) (a), 447.07 (3) (e), 447.07
4 (3) (f), 447.07 (3) (m) and 447.07 (7); and **to create** 440.03 (13) (b) 20m., 440.08
5 (2) (a) 25m., 447.01 (5m), 447.02 (2) (k) and 447.059 of the statutes; **relating**
6 **to:** regulation of persons that own or operate dental practices and granting
7 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill requires persons that own or operate dental practices in Wisconsin to be registered by the Dentistry Examining Board (board). A person must receive a separate registration for each dental practice the person owns or operates. The bill requires the board to promulgate rules establishing standards of conduct for the operation of a dental practice in Wisconsin. No registration is required under the bill for licensed dentists or for mobile dentistry programs subject to separate regulation by the board.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 440.03 (13) (b) 20m. of the statutes is created to read:

2 440.03 (13) (b) 20m. Dental practice registrant.

3 **SECTION 2.** 440.08 (2) (a) 25m. of the statutes is created to read:

4 440.08 (2) (a) 25m. Dental practice registration: October 1 of each
5 odd-numbered year.

6 **SECTION 3.** 447.01 (5m) of the statutes is created to read:

7 447.01 (5m) "Dental practice registrant" means a person registered under s.
8 447.059.

9 **SECTION 4.** 447.02 (2) (k) of the statutes is created to read:

10 447.02 (2) (k) Standards of conduct for the operation of a dental practice in this
11 state.

12 **SECTION 5.** 447.059 of the statutes is created to read:

13 **447.059 Dental practice registration. (1) REGISTRATION REQUIRED.** No
14 person may own or operate a dental practice in this state unless the person is
15 registered under this section. A person shall apply for a separate registration under
16 this section for each dental practice the person owns or operates.

17 **(2) REGISTRATION.** (a) The examining board may grant a registration under this
18 section to a person who does all of the following:

19 1. Submits an application for registration to the department on a form provided
20 by the department. The application shall include the person's name and tax

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1 identification number, the person's business address and telephone number, and any
2 other information the department or the examining board requires.

3 2. Pays the fee specified in s. 440.05 (1).

4 3. Satisfies any other requirements established by the examining board by
5 rule.

6 (b) A dental practice registrant shall submit an application for renewal, and
7 the applicable renewal fee determined by the department under s. 440.03 (9) (a), to
8 the department on a form provided by the department on or before the applicable
9 renewal date specified under s. 440.08 (2) (a).

10 (c) The examining board may not promulgate a rule that prohibits a person who
11 is not a dentist from owning or operating a dental practice in this state consistent
12 with this section.

13 **(3) EXCEPTIONS TO REGISTRATION REQUIREMENT.** No registration is required under
14 this section for any of the following:

15 (a) A dentist who is licensed under this chapter.

16 (b) A mobile dentistry program registrant, unless the mobile dentistry program
17 registrant owns or operates a dental practice other than the mobile dentistry
18 program.

19 (c) A hospital, a federally qualified health center, or an affiliate of a hospital
20 or health care system, as determined by the examining board.

21 **SECTION 6.** 447.07 (1) of the statutes is amended to read:

22 447.07 (1) The examining board may, without further notice or process, limit,
23 suspend, or revoke the license or certificate of any dentist or dental hygienist, or the
24 registration of a dental practice registrant, who fails, within 60 days after the

ASSEMBLY BILL 368**SECTION 6**

1 mailing of written notice to the dentist's ~~or~~, dental hygienist's, or registrant's
2 last-known address, to renew his ~~or her~~ the license ~~or~~, certificate, or registration.

3 **SECTION 7.** 447.07 (1) of the statutes, as affected by 2013 Wisconsin Act 244 and
4 2015 Wisconsin Act (this act), is repealed and recreated to read:

5 447.07 (1) The examining board may, without further notice or process, limit,
6 suspend, or revoke the license or certificate of any dentist or dental hygienist, or the
7 registration of a mobile dentistry program registrant or a dental practice registrant,
8 who fails, within 60 days after the mailing of written notice to the dentist's, dental
9 hygienist's, or registrant's last-known address, to renew the license, certificate, or
10 registration.

11 **SECTION 8.** 447.07 (3) (intro.) of the statutes is amended to read:

12 447.07 (3) (intro.) Subject to the rules promulgated under s. 440.03 (1), the
13 examining board may make investigations and conduct hearings in regard to any
14 alleged action of any dentist or dental hygienist, of a dental practice registrant, or
15 of any other person it has reason to believe is engaged in or has engaged in the
16 practice of dentistry or dental hygiene, or the operation of a dental practice, in this
17 state, and may, on its own motion, or upon complaint in writing, reprimand any
18 dentist or dental hygienist who is licensed or certified under this chapter, or any
19 dental practice registrant, or deny, limit, suspend, or revoke his or her license or
20 certificate, or the registration of the dental practice registrant, if it finds that the
21 dentist ~~or~~, dental hygienist, or dental practice registrant has done any of the
22 following:

23 **SECTION 9.** 447.07 (3) (intro.) of the statutes, as affected by 2013 Wisconsin Act
24 244 and 2015 Wisconsin Act (this act), is repealed and recreated to read:

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1 447.07 (3) (intro.) Subject to the rules promulgated under s. 440.03 (1), the
2 examining board may make investigations and conduct hearings in regard to any
3 alleged action of any dentist or dental hygienist, of a mobile dentistry program
4 registrant or a dental practice registrant, or of any other person it has reason to
5 believe is engaged in or has engaged in the practice of dentistry or dental hygiene,
6 or the operation of a mobile dentistry program or a dental practice, in this state, and
7 may, on its own motion, or upon complaint in writing, reprimand any dentist or
8 dental hygienist who is licensed or certified under this chapter, or any mobile
9 dentistry program registrant or dental practice registrant, or deny, limit, suspend,
10 or revoke his or her license or certificate, or the registration of the mobile dentistry
11 program registrant or dental practice registrant, if it finds that the dentist, dental
12 hygienist, mobile dentistry program registrant, or dental practice registrant has
13 done any of the following:

14 **SECTION 10.** 447.07 (3) (a) of the statutes is amended to read:

15 447.07 (3) (a) Engaged in unprofessional conduct or violated the standards of
16 conduct established by the examining board under s. 447.02 (2) (k).

17 **SECTION 11.** 447.07 (3) (a) of the statutes, as affected by 2013 Wisconsin Act 244
18 and 2015 Wisconsin Act (this act), is repealed and recreated to read:

19 447.07 (3) (a) Engaged in unprofessional conduct or violated the standards of
20 conduct established by the examining board under s. 447.02 (2) (g) or (k).

21 **SECTION 12.** 447.07 (3) (b) of the statutes is amended to read:

22 447.07 (3) (b) Made any false statement or given any false information in
23 connection with an application for a license ~~or~~, certificate, or registration or for
24 renewal or reinstatement of a license ~~or~~, certificate, or registration, or received a
25 license ~~or~~, certificate, or registration through error.

ASSEMBLY BILL 368**SECTION 13**

1 **SECTION 13.** 447.07 (3) (e) of the statutes is amended to read:

2 447.07 (3) (e) Subject to ss. 111.321, 111.322, and 111.335, been convicted of a
3 crime, the circumstances of which substantially relate to the practice of dentistry or
4 dental hygiene or the operation of a dental practice.

5 **SECTION 14.** 447.07 (3) (e) of the statutes, as affected by 2013 Wisconsin Act 244
6 and 2015 Wisconsin Act (this act), is repealed and recreated to read:

7 447.07 (3) (e) Subject to ss. 111.321, 111.322, and 111.335, been convicted of a
8 crime, the circumstances of which substantially relate to the practice of dentistry or
9 dental hygiene or the operation of a mobile dentistry program or a dental practice.

10 **SECTION 15.** 447.07 (3) (f) of the statutes is amended to read:

11 447.07 (3) (f) Violated this chapter or any federal or state statute or rule which
12 that relates to the practice of dentistry or dental hygiene, or the operation of a dental
13 practice.

14 **SECTION 16.** 447.07 (3) (f) of the statutes, as affected by 2013 Wisconsin Act 244
15 and 2015 Wisconsin Act (this act), is repealed and recreated to read:

16 447.07 (3) (f) Violated this chapter or any federal or state statute or rule that
17 relates to the practice of dentistry or dental hygiene, or the operation of a mobile
18 dentistry program or a dental practice.

19 **SECTION 17.** 447.07 (3) (m) of the statutes is amended to read:

20 447.07 (3) (m) Made a substantial misrepresentation in the course of practice,
21 or in the operation of a dental practice, that was relied upon by a client.

22 **SECTION 18.** 447.07 (3) (m) of the statutes, as affected by 2013 Wisconsin Act
23 244 and 2015 Wisconsin Act (this act), is repealed and recreated to read:

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1 447.07 (3) (m) Made a substantial misrepresentation in the course of practice,
2 or in the operation of a mobile dentistry program or a dental practice, that was relied
3 upon by a client.

4 **SECTION 19.** 447.07 (5) of the statutes is amended to read:

5 447.07 (5) The examining board may reinstate a license ~~or~~, certificate, or
6 registration that has been voluntarily surrendered or revoked on terms and
7 conditions that it considers appropriate. This subsection does not apply to a license
8 or registration that is revoked under s. 440.12.

9 **SECTION 20.** 447.07 (7) of the statutes is amended to read:

10 447.07 (7) In addition to or in lieu of a reprimand or denial, limitation,
11 suspension, ~~or~~ revocation of a license ~~or~~, certificate, or registration under sub. (3), the
12 examining board may assess against an applicant, licensee ~~or~~, certificate holder, or
13 dental practice registrant a forfeiture of not more than \$5,000 for each violation
14 enumerated under sub. (3).

15 **SECTION 21.** 447.07 (7) of the statutes, as affected by 2013 Wisconsin Act 244
16 and 2015 Wisconsin Act (this act), is repealed and recreated to read:

17 447.07 (7) In addition to or in lieu of a reprimand or denial, limitation,
18 suspension, or revocation of a license, certificate, or registration under sub. (3), the
19 examining board may assess against an applicant, licensee, certificate holder, mobile
20 dentistry program registrant, or dental practice registrant a forfeiture of not more
21 than \$5,000 for each violation enumerated under sub. (3).

22 **SECTION 22. Nonstatutory provisions.**

23 (1) MOBILE DENTISTRY PROGRAMS. If this act takes effect before 2013 Wisconsin
24 Act 244, other than as specified in section 16 (1) of that act, a person who owns or
25 operates a mobile dentistry program, as determined by the dentistry examining

ASSEMBLY BILL 368**SECTION 22**

1 board, is not required to be registered under section 447.059 (1) of the statutes, as
2 created by this act, for that mobile dentistry program.

3 **SECTION 23. Effective dates.** This act takes effect on the day after publication,
4 except as follows:

5 (1) **REGISTRATION REQUIREMENT.** The treatment of section 447.059 (1), as created
6 by this act, takes effect on the first day of the 7th month beginning after publication.

7 (2) **DELAYED MOBILE DENTISTRY PROVISIONS.** The repeal and recreation of section
8 447.07 (1), (3) (intro.), (a), (e), (f), and (m), and (7) takes effect on the first day of the
9 3rd month beginning after the legislative reference bureau receives the notice under
10 SECTION 15 (1) of 2013 Wisconsin Act 244, or on the day after publication, whichever
11 is later.

12 (END)