

**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 amend DE 11.05 (1), 11.06 (1) and 11.07 (1) and create DE 11.02 (9m), relating to sedation permits and classes of permits.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 447.02 (2) (b), Stats.

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

Explanation of agency authority:

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

447.02 (2) (b), Stats. The examining board shall promulgate rules specifying the "...standards, conditions and any educational requirements that are in addition to the requirements specified in s. 447.04(1) that must be met by a dentist to be permitted to induce general anesthesia or conscious sedation in connection with the practice of dentistry."

Related statute or rule: s. 447.01 (8) (d), Stats.

Plain language analysis:

The intent of the rule is to allow the Dentistry Examining Board discretion in approving sedation permits for licensees who have received discipline action against their permit(s) or are currently under investigation regarding their permit(s). Therefore, the granting of permits shall be permissive. In addition, the definitions of classes of sedation permits are added as no such reference occurs in the rule or the rule series, chs. DE 1 to 13.

SECTION 1 provides a definition of sedation permit classes which correspond to the permit application process.

SECTIONS 2 to 4 modify the current text making the approval of permits permissive and update the permit classes as now defined in DE 11.02 (9m).

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

No existing or proposed rules or laws were found in an Internet-based search of the U.S. Code or the Code of Federal Register (CFR) regarding classes of sedation, sedation permits for licensed dentists or how discipline may affect dentists applying for or maintaining such permits.

Comparison with rules in adjacent states:

Illinois - The State of Illinois has an application process for dental sedation permits, which includes conscious sedation - Permit A and deep sedation and general anesthesia - Permit B. A permit application includes a request for information on fines, reprimands, probations, censures, revocations, suspensions, license surrenders, restrictions or limitations, but does not specifically list a prohibition of permit approval as a consequence of any discipline. [Title 68, subch. VIIb, sec. 1220.510]

Iowa - Iowa rules, IAC 650--Chapter 29, much like Illinois, have permits for sedation and their application forms request the following information: "...have your clinical activities ever been limited, suspended, revoked, not renewed, voluntarily relinquished, or subject to other disciplinary or probationary conditions?" In order to obtain a permit for deep sedation/general anesthesia, a dentist must hold current certification in *Advanced Cardiac Life Support (ACLS)* 650 IAC 29.3(4) – procedures by a dentist with a permit for deep sedation/general anesthesia can only be done with the assistance of at least two auxiliary personnel that have current basic life support certification. IAC 29.3(5) In this search, no rule or law was found to specifically prohibit applying for or maintaining such a permit while a licensee has been disciplined.

Michigan – In a search of ch. 33 Michigan health code, no provisions for application for sedation classes or permits were found.

Minnesota – In Minnesota, dentists must obtain a certificate from the Board to administer general anesthesia or conscious sedation per Ch. 3100.3600 Subp 9. Requirements for both general anesthesia and conscious sedation stipulate for the dentist to have current *ACLS certification* (Subp 2, 3).

Dentists, dental hygienists and registered dental assistants may administer nitrous oxide inhalation analgesia with current CPR certification (Subp 4D). The required continuing education includes both advanced cardiac life support (ACLS) and pediatric advanced life support (PALS). There is no mention of the ability to apply for or termination of such certification based on discipline or a licensee.

Summary of factual data and analytical methodologies:

No factual data and analytical methodologies were used to draft these rules.

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

The information comparing the states listed in this analysis was obtained directly from an Internet-based search and a review of the applicable regulations and rules, when found.

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 Greg.Gasper@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Jean MacCubbin, Program Manager, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708-8935; telephone (608) 266-0955 or telecommunications services at 711; email at Jean.MacCubbin@wisconsin.gov

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

Comments may be submitted to Jean MacCubbin, Program Manager, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to Jean.MacCubbin@wisconsin.gov. Comments must be received on or before the end of the hearing to be held on November 6, 2013 to be included in the record of rule-making proceedings.

RULE TEXT BEGINS ON NEXT PAGE

TEXT OF RULE

SECTION 1. DE 11.02 (9m) is created to read:

DE 11.02 (9m) “Sedation permit classes” mean all of the following:

(a) A class I permit only enables a dentist to do oral conscious sedation-enteral.

(b) A class II permit enables a dentist to do conscious sedation-parenteral and conscious sedation-enteral.

Note: Dentists who hold a Class II permit do not have to obtain a Class I Permit.

(c) A class III permit enables a dentist to do deep sedation, general anesthesia, conscious sedation-parenteral, and conscious sedation-enteral.

Note: Dentists who hold Class III Permits do not have to obtain any other class of sedation permit.

SECTION 2. DE 11.05 (1) (intro.) is amended to read:

DE 11.05 (1) ~~Beginning on January 1, 2007, no~~ No dentist may administer conscious sedation via an enteral route without having first obtained a class ~~one~~ I permit from the board, unless a dentist has been granted a permit under s. DE 11.06 or 11.07. A class ~~one~~ I permit enables a dentist to utilize conscious sedation enterally. The board ~~shall~~ may grant a class ~~one~~ I permit to administer conscious sedation enterally to a dentist who ~~does~~ meets all of the following:

SECTION 3. DE 11.06 (1) is amended to read:

DE 11.06 (1) ~~Beginning on January 1, 2007, no~~ No dentist may administer conscious sedation via a parenteral route without having first obtained a class ~~one~~ II permit from the board, unless a dentist has been granted a permit under s. DE 11.07. A class ~~one~~ II permit enables a dentist to utilize conscious sedation ~~=~~ -enteral, and conscious sedation-parenteral. The board ~~shall~~ may grant a class ~~one~~ II permit to administer conscious sedation-parenterally to a dentist who ~~does~~ meets all the following:

[NOTE TO LRB: In s. DE 11.06 (1), the change is correcting the equals sign to a hyphen in the following: “sedation=enteral” to “sedation-enteral”.]

SECTION 4. DE 11.07 (1) is amended to read:

DE 11.07 (1) ~~Beginning on January 1, 2007, no~~ No dentist may administer deep sedation or general anesthesia without having first obtained a class-~~3~~ III permit from the board. A class-~~3~~ III permit enables a dentist to utilize conscious sedation-enteral, conscious sedation-parenteral, deep sedation, and general anesthesia. The board ~~shall~~ may grant a class-~~3~~ III permit to administer deep sedation or general anesthesia to a dentist who does all of the following:

SECTION 5. 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 _____

Agency _____

Board Chairperson
Dentistry Examining Board