

Clearinghouse Rule 13-074

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE :
DENTISTRY EXAMINING BOARD : NOTICE OF PUBLIC HEARING
: :
: :
: :
: (CR 13-)

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Dentistry Examining Board in ss. 15.08 (5) (b) and 447.02 (2) (b), Stats., and interpreting s. 447.02 (2) (b), Stats., the Dentistry Examining Board will hold a public hearing at the time and place indicated below to consider an order to renumber and amend DE 12.03 (intro.) as DE 12.03 (1) and (2), and to amend DE 12.02 (intro.) and DE 12.03 (intro.), relating to training of unlicensed persons.

Date: November 6, 2013
Time: 9:30 a.m.
Location: 1400 East Washington Avenue*
Room 121A
Madison, Wisconsin

***Enter at 55 North Dickenson Street**

APPEARANCES AT THE HEARING:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708-8935. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

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), Stats.

Plain language analysis:

The Board desires to provide clarity on delegating procedures and functions to unlicensed persons and in addition clarifying licensee’s roles in reporting such violations.

Section 1. includes a minor amendment relating to currently acceptable format and adds the phrase “and functions” in s. DE 12.01 (intro.) to the list of activities to be delegated to an unlicensed person. The term ‘function’ is used throughout the chapter when dental procedures are listed.

Sections 2. and 3. are the major revisions to this rule whereby deleting the verification form and the reporting to the board if training of unlicensed persons is made. In addition, this section also clarifies various violations if a licensee fails to report any known violations conducted by other licensees.

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 dentists training unlicensed individuals and required forms verifying such training.

Comparison with rules in adjacent states:

An Internet-based search of the statutes, rules and codes of the four adjacent states revealed the following with respect to training of unlicensed individuals, and any required forms to verify such training.

Illinois: Illinois Department of Financial & Professional Regulation issues temporary training licenses during residency requirements for dentists, hygienists and dental specialists. In the code, there is no mention of a requirement to apply or report such activity to the Division of Professional Regulation.

Iowa: The Iowa Dental Board has responsibility over dentistry, dental hygiene and dental assisting and administers the state code, section 1220.156. Iowa chapter 11, Licensure to Practice Dentistry or Dental Hygiene, contains no reference to training of unlicensed individuals or for any forms so required.

Michigan: The Michigan Board of Dentistry is charged with the licensing and practice requirements of dentists; these rules include dentists training on various methods of sedation and proper handling of waste. No rules currently list training and verification forms for the training of unlicensed individuals. [Public Health Code: Act 368 of 1978, Part 166, Dentistry]

Minnesota: Under the Minnesota Board of Dentistry, "...dentists employing, assisting, or enabling in any manner an unlicensed person to practice dentistry..." as found in Minnesota Statutes, section 150A.08, subdivision 1, is in violation of the state code. A brief review of the code did not reveal that a licensee has the authority to train an unlicensed individual, nor is there a means to report such training to the board. [Chapter 3100, Dentists, Hygienists, and Assistants]

Summary of factual data and analytical methodologies:

The Board, in reviewing their rules in response to Executive Order 61, recognized that in practice, no form has been approved by the Board or required to be submitted to the Board for each circumstance of training an unlicensed person.

The proposed provisions are expected to reflect current practice.

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

The Dentistry Examining Board in reviewing their rules in response to Executive Order 61 found that neither the Board nor the industry was in conformance to the rule, which was deemed unnecessary.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Initial Regulatory Flexibility Analysis or Summary:

This rule change will not have an effect on small business.

Environmental Assessment/Statement: [if required]

None required.

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; email at Jean.MacCubbin@wisconsin.gov or telecommunications contact at 711..

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 public hearing to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. DE 12.01 (intro.) is amended to read:

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

SECTION 2. DE 12.02 (intro.) is amended to read:

DE 12.02 Training. A dentist who delegates any remediable dental procedure or function to an unlicensed person ~~must first train or verify the training of~~ shall provide training to the person in the performance of the procedure or function, ~~and must maintain verifiable records on forms approved by the board of the successful completion of the training by the unlicensed person.~~

SECTION 3. DE 12.03 (intro.) is renumbered and amended as renumbered DE 12.03 (1) and (2) read:

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

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

SECTION 4. 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)

COPIES OF RULE

Copies of this proposed rule are available upon request to Jean MacCubbin, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935, by email at Jean.MacCubbin@wisconsin.gov or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>.