

STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD

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IN THE MATTER OF RULEMAKING : ORDER OF THE  
PROCEEDINGS BEFORE THE : DENTISTRY EXAMINING BOARD  
DENTISTRY EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE 13-074)

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ORDER

An order of the Dentistry Examining Board to amend DE 12.01 (intro.), (1), (2), and (3), 12.02 and 12.03, relating to training of unlicensed persons.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** ss. 447.02 (2) (b), 447.03 (3) and 447.065, 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 finds that clarity is needed with respect to delegating procedures and functions to unlicensed persons. There are several exceptions to the requirements for a license contained in s. 447.03 (3), Stats. The Board desires to provide additional information

where a license is not required for remedial procedures. In addition, clarification of licensee's roles in reporting such violations has been included in this proposed rule.

Section 1. includes a minor amendment relating to currently acceptable format and adds the phrase "and function" 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 conducted. Licensees are allowed to delegate remediable procedures or functions, specifically procedures or functions that create changes within the oral cavity or surrounding structures that are reversible and do not involve any increased health risks to the patient. 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 report:**

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.

**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 Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

**Agency contact person:**

Jean MacCubbin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608.266.0955; email at jean.maccubbin@wisconsin.gov.

RULE TEXT BEGINS ON NEXT PAGE

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TEXT OF RULE  
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SECTION 1. DE 12.01 (intro.), (1), (2) and (3) are 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 is any of the following:

(1) ~~Is of~~ Of a character which may cause damage to the patient's teeth or oral cavity which cannot be remedied without professional intervention.

(2) ~~Is of~~ Of a character which may cause adverse or unintended general systemic reaction.

(3) ~~Is intended~~ Intended, interpreted, or represented to be preliminary assessments, dental hygiene treatment planning, oral screenings, oral prophylaxes, scaling or root planing, or dental sealants, or any portion of an oral prophylaxis other than supragingival rubber cup and air polishing after calculus is removed if necessary.

SECTION 2. DE 12.02 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 first 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 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. 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)

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Dated \_\_\_\_\_

Agency \_\_\_\_\_

Chair Board  
Dentistry Examining Board