

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Joint Committee for
Review of
Administrative Rules

(JCR-AR)

Sample:

- Record of Comm. Proceedings
- 97hr_AC-EdR_RCP_pt01a
- 97hr_AC-EdR_RCP_pt01b
- 97hr_AC-EdR_RCP_pt02

- Appointments ... Appt
-
- Clearinghouse Rules ... CRule
- 97hr_JCR-AR_CRule_98-077
-
- Committee Hearings ... CH
-
-
- Committee Reports ... CR
-
-
- Executive Sessions ... ES
-
-
- Hearing Records ... HR
-
-
- Miscellaneous ... Misc
-
-
- Record of Comm. Proceedings ... RCP
-

98-077-DE 212 DENTAL HYGIENISTS /
DENTISTS

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-077

AN ORDER to repeal DE 1.02 (6), 2.01 (1) (b) and 11.11 (6) (b); to amend DE 1.02 (4) and (8), 2.01 (1) (intro.), (a), (c), (e) and (f), 2.02 (title), (1), (2) and (3), 2.03 (1) (b), (5) (a) 2. and (6) (b), 2.04 (1) (intro.), (c) and (e) and (2) (intro.), (c) and (d), 5.02 (3), (6), (18), (19), (21), (22) and (23) and 6.01; and to create DE 2.05, 2.06, 2.07 and 2.08, relating to dentists and dental hygienists.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

05-22-98 RECEIVED BY LEGISLATIVE COUNCIL.
06-22-98 REPORT SENT TO AGENCY.

RS:RJC;jt;kjf

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 98-077

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. In the treatment clause of SECTION 9 of the rule, the word "and" should be inserted between the comma and the "(2)".

b. In s. DE 2.04 (1) (intro.) and (2) (intro.), the phrase "all of the following conditions are met," or a similar phrase should be inserted before the colon. [See s. 1.03 (8), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

It appears that the reference to s. 441.01 (3), Stats., in s. DE 5.02 (22) should instead be a reference to s. 447.01 (3), Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the introduction of the second paragraph of the analysis, the word "section" should be replaced by the word "sections."

b. In the second sentence of the analysis describing SECTION 10 of the rule, the word "assistant" should be "assistance."

c. It would be helpful to explain, perhaps in a note to the rule, where the passing score determined in s. DE 2.05 can be obtained. Will each examinee be told what the passing score is? Will it be published in the Wisconsin Administrative Register?

d. Section DE implies that there may be authorized assistance. If so, who authorizes assistance with exams? For what purposes would assistance be authorized? Perhaps the clarity of the rule would be enhanced if the rule would address the issue of “authorized assistance” in addition to the prohibition on “unauthorized assistance.” Perhaps the word “unauthorized” should be deleted.

e. For clarity purposes, the phrase “review the examination with” should be inserted in s. DE 2.07 (1) between “request to” and “the board”.

f. The relationship between s. DE 2.07 (2) (d) and s. DE 2.08 is not clear. Both provisions appear to be dealing with the issue of “claims of error” in the examination. It also seems as though the substance of s. DE 2.07 (2) (d) is included within s. DE 2.08. Is s. DE 2.07 (2) (d) necessary?

g. In both ss. DE 2.07 and 2.08, a note should be included identifying the address of the board for purposes of submitting the various requests.

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 98-)

PROPOSED ORDER

An order of the Dentistry Examining Board to *repeal* DE 1.02 (6), 2.01 (1) (b) and 11.11 (6) (b); to *amend* DE 1.02 (4) and (8), 2.01 (1) (intro.), (a), (c), (e) and (f), 2.02 (title), (1), (2) and (3), 2.03 (1) (b), (5) (a) 2. and (6) (b), 2.04 (1) (intro.), (c), (e), (2) (intro.), (c) and (d), 5.02 (3), (6), (18), (19), (21), (22) and (23) and 6.01; and to *create* DE 2.05, 2.06, 2.07 and 2.08, relating to dentists and dental hygienists.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 447.02 and 447.04 (1) (a) 6. and (2) (a) 6., Stats. 96, 97

Statutes interpreted: ss. 447.04, 447.05 and 447.07, Stats.

This proposed rule-making order of the Dentistry Examining Board contains many amendments which relate to the definitions, the statutory authority, and the form, style, placement, clarity, grammar, punctuation and plain language of the current rules.

The following section⁵ contain changes of a more substantive nature or are specifically identified to facilitate review of the proposal:

SECTION 1 amends s. DE 1.02 (4) by deleting the reference to a "written part" of the examination as being included within the definition of the clinical and laboratory demonstration required of candidates for a license to practice dentistry. The dentistry examination described within the definition no longer contains a written portion.

SECTION 2 repeals s. DE 1.02 (6) deleting the definition of "examination" as the examinations required for licensure are more specifically described in ch. DE 2.

SECTION 5 repeals s. DE 2.01 (1) (b) which currently requires that applicants for a license submit a current photograph. The submission of a photograph does not serve any real purpose, in that applicants are required to provide adequate identification through a driver's license or other means at the time of examination.

SECTION 9 amends portions of s. DE 2.04 to change the current references from "clinical examination" to "clinical and laboratory demonstrations," so as to be consistent with the definition contained in s. DE 1.02 (4).

SECTION 10 creates s. DE 2.05, making the criteria for determining a passing score on an examination similar to other rules of the department and boards in the department permitting the use of scoring procedures that testing experts agree are acceptable for establishing valid and reliable examinations. SECTION 10 also creates s. DE 2.06, specifying the actions which may be taken by the board in the event an examination candidate is found to have provided or received unauthorized assistant during an examination. SECTION 10 also creates s. DE 2.07, to provide a specific mechanism by which an examination administered by the board may be reviewed by failing candidates. Similarly, SECTION 10 creates s. DE 2.08, to describe the specific format to be followed in requesting that the board review the failing candidate's examination for claimed errors in scoring.

SECTION 13 repeals s. DE 11.11 (6) (b), which is no longer necessary in that it gave licensees until November 1, 1989 to obtain specified equipment for the use of nitrous oxide in a dental facility.

TEXT OF RULE

SECTION 1. DE 1.02 (4) is amended to read:

DE 1.02 (4) "Clinical and laboratory demonstration" means a comprehensive examination approved by the board consisting of ~~a written part and~~ a demonstration of skills, operative and restorative techniques and practical application of the basic principles of the practice of dentistry or a comprehensive examination approved by the board consisting of a written part and a demonstration of skills, techniques and practical application of the basic principles of the practice of dental hygiene.

SECTION 2. DE 1.02 (6) is repealed.

SECTION 3. DE 1.02 (8) is amended to read:

DE 1.02 (8) "Supervision" means the direction of the practice of dental hygiene, as ~~specified in~~ authorized by s. DE 3.02, by a licensed dentist.

SECTION 4. DE 2.01 (1) (intro.) and (a) are amended to read:

DE 2.01 (1) (intro.) An applicant for license as a dentist shall submit all of the following to the board:

(a) An application on a form approved by the board;

SECTION 5. DE 2.01 (1) (b) is repealed.

SECTION 6. DE 2.01 (1) (c), (e) and (f) are amended to read:

DE 2.01 (1) (c) The fee ~~specified in~~ authorized by s. 440.05 (1), Stats.;

(e) Evidence satisfactory to the board of having completed educational requirements in s. 447.04 (1), Stats. In the case of a graduate of a foreign dental school, verification shall be provided from a board-approved foreign graduate evaluation program of successful completion of the evaluation course;

(f) Verification from the commission on national examinations of the American dental association or other board-approved professional testing services of successful completion of an examination; ~~and~~.

SECTION 7. DE 2.02 (title), (1), (2) and (3) are amended to read:

DE 2.02 (title) DURATION OF LICENSE. (1) Every person granted a license as a dentist shall be deemed ~~registered~~ licensed for the current ~~registration~~ biennial license period.

(2) Every person granted a license as a dental hygienist shall be deemed ~~registered~~ licensed for the current ~~registration~~ biennial license period.

(3) ~~Registrants~~ Licensees shall qualify biennially for ~~certificates of registration~~ renewal of license.

SECTION 8. DE 2.03 (1) (b), (5) (a) 2. and (6) (b) are amended to read:

DE 2.03 (1) (b) The fee ~~specified in~~ authorized by s. 440.08 (2), Stats.

(5) (a) 2. The fee ~~specified in~~ authorized by s. 440.08 (2), Stats., plus the applicable late renewal fee ~~specified in~~ authorized by s. 440.08 (3), Stats.

(6) (b) The fee ~~specified in~~ authorized by s. 440.05 (1), Stats.;

SECTION 9. DE 2.04 (1) (intro.), (c) and (e), (2) (intro.), (c) and (d) are amended to read:

DE 2.04 (1) (intro.) The board may grant a license as a dentist to an applicant who holds a valid license issued by the proper authorities of any other jurisdiction of the United States or Canada upon payment of the fee ~~specified in~~ authorized by s. 440.05 (2), Stats., and submission of evidence satisfactory to the board that:

(c) The applicant has not failed the central regional dental testing service clinical and laboratory demonstration examination, or any other dental licensing examination, within the previous 3 years.

(e) The applicant has successfully completed a clinical and laboratory demonstration licensing examination on a human subject which, in the board's judgment, is substantially equivalent to the clinical and laboratory demonstration examination administered by the central regional dental testing services, or, alternatively, has successfully completed a board specialty certification examination of an American dental association accredited specialty within the previous 10 years.

(2) (intro.) The board may grant a license as a dental hygienist to an applicant who holds a license issued by the proper authorities of any other jurisdiction of the United States or Canada upon payment of the fee ~~specified in~~ authorized by s. 440.05 (2), Stats., and submission of evidence satisfactory to the board that:

(c) The applicant has not failed the central regional dental testing service clinical and laboratory demonstration examination, or any other dental hygiene licensing examination, within the previous 3 years.

(d) The applicant has successfully completed a clinical and laboratory demonstration examination on a human subject which, in the board's judgment, is substantially equivalent to the clinical and laboratory demonstration examination administered by the central regional dental testing service.

SECTION 10. DE 2.05, 2.06, 2.07 and 2.08 are created to read:

DE 2.05 EXAMINATION PASSING SCORE. The score required to pass an examination shall be based on the board's determination of the level of examination performance required for minimum acceptable competence in the profession. The board shall make the determination after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession.

DE 2.06 UNAUTHORIZED ASSISTANCE. An applicant may not give or receive unauthorized assistance during the examination. The action taken by the board when unauthorized assistance occurs shall be related to the seriousness of the offense. These actions may include withholding the score of the applicant, entering a failing grade for the applicant, and suspending the ability of the applicant to sit for the next scheduled examination after the examination in which the unauthorized assistance occurred.

DE 2.07 EXAMINATION REVIEW. (1) An applicant who fails an examination administered by the board may request a review of that examination by filing a written request to the board within 30 days after the date on which the examination results were mailed to the applicant.

(2) An examination review shall be conducted under the following conditions:

- (a) The time for review shall be limited to one hour.
- (b) The examination shall be reviewed only by the applicant and in the presence of a proctor.
- (c) The proctor may not respond to inquiries by the applicant regarding allegations of examination error.
- (d) Any comments or claims of error regarding specific questions or procedures in the examination may be placed in writing by the applicant on the form provided for this purpose. The request shall be reviewed by the board in consultation with a subject matter expert. The applicant shall be notified in writing of the board's decision.
- (e) An applicant shall be permitted only one review of the failed examination each time it is taken and failed.

DE 2.08 CLAIM OF EXAMINATION ERROR. (1) An applicant wishing to claim an error on an examination administered by the board must file a written request for board review in the board office within 30 days after the date the examination was reviewed. The request shall include all of the following:

- (a) The applicant's name and address.
 - (b) The type of license applied for.
 - (c) A description of the perceived error, including reference text citations or other supporting evidence for the applicant's claim.
- (2) The request shall be reviewed by the board in consultation with a subject matter expert. The applicant shall be notified in writing of the board's decision.

SECTION 11. DE 5.02 (3), (6), (18), (19), (21), (22) and (23) are amended to read:

DE 5.02 (3) Practicing or attempting to practice beyond the scope of any license or certificate.

(6) Administering, dispensing, prescribing, supplying or obtaining controlled substances as defined in s. 461.01 (4) 961.01 (4), Stats.

(18) Failing to maintain records and inventories as required by the United States department of justice drug enforcement administration, and under ch. 461 961, Stats., and s. Phar 8.02, Wis. Adm. Code.

(19) Failing to supervise the practice of a dental hygienist as specified in s. ~~447.08 (1) or (4)~~ 447.065, Stats., and s. DE 3.01.

(21) Aiding or abetting or permitting unlicensed persons in the practice of dentistry, as defined in s. ~~447.02 (1) (a) to (j)~~ 447.01 (8), Stats.

(22) Aiding or abetting or permitting unlicensed persons in the practice of dental hygiene, as defined in s. ~~3.02 441.01 (3)~~, Stats.

447.01(3)

(23) Obtaining, prescribing, dispensing, administering or supplying a controlled substance designated as a schedule II, III or IV stimulant in s. ~~161.15 (5), 161.18 (2m) or 161.20 (2m)~~ 961.16 (5), 961.18 (2m) or 961.20 (2m), Stats., unless the dentist has submitted, and the board has approved, a written protocol for use of a schedule II, III or IV stimulant for the purpose of clinical research, prior to the time the research is conducted.

SECTION 12. DE 6.01 is amended to read:

DE 6.01 AUTHORITY. The rules in this chapter are adopted pursuant to authority ~~in~~ in s. ~~447.07 (6)~~ 447.07 (3) (o), Stats.

SECTION 13. DE 11.11 (6) (b) is repealed.

(END OF TEXT OF RULE)

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.

Dated _____

Agency _____

Chairperson
Dentistry Examining Board

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

g:\rules\denrrc.doc
5/21/98

**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 98-077)

TO: Senator Robert Welch, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
1 East Main Street
Room 201
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the DENTISTRY EXAMINING BOARD is submitting in final draft form proposed rules relating to dentists and dental hygienists.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.



Tommy G. Thompson
Governor

State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING



Marlene A. Cummings
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Administrative Rules in Final Draft Form

Dentistry Examining Board

Rule: Chapters DE 1, 2, 3, 5 and 6

**Relating to: Dentists and Dental
Hygienists**

**Clearinghouse Rule:
No. 98-077**

Regulatory Boards

Accounting; Architects; Landscape Architects; Professional Engineers, Designers and Land Surveyors; Professional Geologists, Hydrologists and Soil Scientists; Auctioneer; Barbering and Cosmetology; Chiropractic; Controlled Substances; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Podiatry; Psychology; Real Estate; Real Estate Appraisers; Social Workers; Marriage and Family Therapists and Professional Counselors; and Veterinary

Committed to Equal Opportunity in Employment and Licensing

**STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 98-077
DENTISTRY EXAMINING BOARD : (s. 227.19 (3), Stats.)**

I. THE PROPOSED RULE:

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

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

This proposed rule-making order contains amendments which relate to definitions, statutory authority, and the form, style, placement, clarity, grammar, punctuation and plain language of the current rules. The following are of a more substantive nature.

The reference to a "written part" of the examination as being included within the definition of the clinical and laboratory demonstration required of candidates for a license to practice dentistry is deleted. The examination described within that definition no longer contains a written portion. The definition of "examination" is deleted as the examinations required for licensure are more specifically described in ch. DE 2. The requirement that applicants submit a current photograph is repealed as it does not serve any real purpose, in that applicants are required to provide adequate identification through a driver's license or other means at the time of examination. The current references from "clinical examination" to "clinical and laboratory demonstrations" is changed to be consistent with the definition contained in s. DE 1.02 (4). Criteria for determining a passing score on an examination is created similar to other rules of the department and boards in the department permitting the use of scoring procedures that testing experts agree are acceptable for establishing valid and reliable examinations. Actions which may be taken by the board in the event an examination candidate is found to have provided or received unauthorized assistance during an examination are specified. A specific mechanism by which an examination administered by the board may be reviewed by failing candidates is created. And a specific format to be followed in requesting that the board review the failing candidate's examination for claimed errors in scoring is created.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on July 8, 1998. There were no appearances at the public hearing nor were any written comments received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 5.c. It would be helpful to explain, perhaps in a note to the rule, where the passing score determined in s. DE 2.05 can be obtained. Will each examinee be told what the passing score is? Will it be published in the Wisconsin Administrative Register?

Response: Each examinee will be notified of either passing or failing the examination.

Comment 5.d. Section DE implies that there may be authorized assistance. If so, who authorizes assistance with exams? For what purposes would assistance be authorized? Perhaps the clarity of the rule would be enhanced if the rule would address the issue of "authorized assistance" in addition to the prohibition on "unauthorized assistance." Perhaps the word "unauthorized" should be deleted.

AND

Comment 5.g. The relationship between s. DE 2.07 (2) (d) and s. DE 2.08 is not clear. Both provisions appear to be dealing with the issue of "claims of error" in the examination. It also seems as though the substance of s. DE 2.07 (2) (d) is included within s. DE 2.08. Is s. DE 2.07 (2) (d) necessary?

Response: The creation of these rules relating to unauthorized assistance and the issuance of claims of error is consistent with other rules of the department and boards. See sections RL 122.04, RL 122.05, RL 122.06 and RL 122.07.

The remaining recommendations suggested in the Clearinghouse Report were accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

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 98-077)

PROPOSED ORDER

An order of the Dentistry Examining Board to *repeal* DE 1.02 (6), 2.01 (1) (b) and 11.11 (6) (b); to *amend* DE 1.02 (4) and (8), 2.01 (1) (intro.), (a), (c), (e) and (f), 2.02 (title), (1), (2) and (3), 2.03 (1) (b), (5) (a) 2. and (6) (b), 2.04 (1) (intro.), (c), (e), (2) (intro.), (c) and (d), 5.02 (3), (6), (18), (19), (21), (22) and (23) and 6.01; and to *create* DE 2.05, 2.06, 2.07 and 2.08, relating to dentists and dental hygienists.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 447.02 and 447.04 (1) (a) 6. and (2) (a) 6., Stats.

Statutes interpreted: ss. 447.04, 447.05 and 447.07, Stats.

This proposed rule-making order of the Dentistry Examining Board contains many amendments which relate to the definitions, the statutory authority, and the form, style, placement, clarity, grammar, punctuation and plain language of the current rules.

The following sections contain changes of a more substantive nature or are specifically identified to facilitate review of the proposal:

SECTION 1 amends s. DE 1.02 (4) by deleting the reference to a "written part" of the examination as being included within the definition of the clinical and laboratory demonstration required of candidates for a license to practice dentistry. The dentistry examination described within the definition no longer contains a written portion.

SECTION 2 repeals s. DE 1.02 (6) deleting the definition of "examination" as the examinations required for licensure are more specifically described in ch. DE 2.

SECTION 5 repeals s. DE 2.01 (1) (b) which currently requires that applicants for a license submit a current photograph. The submission of a photograph does not serve any real purpose, in that applicants are required to provide adequate identification through a driver's license or other means at the time of examination.

SECTION 9 amends portions of s. DE 2.04 to change the current references from "clinical examination" to "clinical and laboratory demonstrations," so as to be consistent with the definition contained in s. DE 1.02 (4).

SECTION 10 creates s. DE 2.05, making the criteria for determining a passing score on an examination similar to other rules of the department and boards in the department permitting the use of scoring procedures that testing experts agree are acceptable for establishing valid and reliable examinations. SECTION 10 also creates s. DE 2.06, specifying the actions which may be taken by the board in the event an examination candidate is found to have provided or received unauthorized assistance during an examination. SECTION 10 also creates s. DE 2.07, to provide a specific mechanism by which an examination administered by the board may be reviewed by failing candidates. Similarly, SECTION 10 creates s. DE 2.08, to describe the specific format to be followed in requesting that the board review the failing candidate's examination for claimed errors in scoring.

SECTION 13 repeals s. DE 11.11 (6) (b), which is no longer necessary in that it gave licensees until November 1, 1989 to obtain specified equipment for the use of nitrous oxide in a dental facility.

TEXT OF RULE

SECTION 1. DE 1.02 (4) is amended to read:

DE 1.02 (4) "Clinical and laboratory demonstration" means a comprehensive examination approved by the board consisting of ~~a written part and~~ a demonstration of skills, operative and restorative techniques and practical application of the basic principles of the practice of dentistry or a comprehensive examination approved by the board consisting of a written part and a demonstration of skills, techniques and practical application of the basic principles of the practice of dental hygiene.

SECTION 2. DE 1.02 (6) is repealed.

SECTION 3. DE 1.02 (8) is amended to read:

DE 1.02 (8) "Supervision" means the direction of the practice of dental hygiene, as ~~specified in~~ authorized by s. DE 3.02, by a licensed dentist.

SECTION 4. DE 2.01 (1) (intro.) and (a) are amended to read:

DE 2.01 (1) (intro.) An applicant for license as a dentist shall submit all of the following to the board:

(a) An application on a form approved by the board;

SECTION 5. DE 2.01 (1) (b) is repealed.

SECTION 6. DE 2.01 (1) (c), (e) and (f) are amended to read:

DE 2.01 (1) (c) The fee ~~specified in~~ authorized by s. 440.05 (1), Stats.;

(e) Evidence satisfactory to the board of having completed educational requirements in s. 447.04 (1), Stats. In the case of a graduate of a foreign dental school, verification shall be provided from a board-approved foreign graduate evaluation program of successful completion of the evaluation course;

(f) Verification from the commission on national examinations of the American dental association or other board-approved professional testing services of successful completion of an examination; ~~and~~.

SECTION 7. DE 2.02 (title), (1), (2) and (3) are amended to read:

DE 2.02 (title) DURATION OF LICENSE. (1) Every person granted a license as a dentist shall be deemed ~~registered~~ licensed for the current ~~registration~~ biennial license period.

(2) Every person granted a license as a dental hygienist shall be deemed ~~registered~~ licensed for the current ~~registration~~ biennial license period.

(3) ~~Registrants~~ Licensees shall qualify biennially for ~~certificates of registration~~ renewal of license.

SECTION 8. DE 2.03 (1) (b), (5) (a) 2. and (6) (b) are amended to read:

DE 2.03 (1) (b) The fee ~~specified in~~ authorized by s. 440.08 (2), Stats.

(5) (a) 2. The fee ~~specified in~~ authorized by s. 440.08 (2), Stats., plus the applicable late renewal fee ~~specified in~~ authorized by s. 440.08 (3), Stats.

(6) (b) The fee ~~specified in~~ authorized by s. 440.05 (1), Stats.;

SECTION 9. DE 2.04 (1) (intro.), (c) and (e), and (2) (intro.), (c) and (d) are amended to read:

DE 2.04 (1) (intro.) The board may grant a license as a dentist to an applicant who holds a valid license issued by the proper authorities of any other jurisdiction of the United States or Canada upon payment of the fee ~~specified in~~ authorized by s. 440.05 (2), Stats., and submission of evidence satisfactory to the board that all of the following conditions are met:

(c) The applicant has not failed the central regional dental testing service clinical and laboratory demonstration examination, or any other dental licensing examination, within the previous 3 years.

(e) The applicant has successfully completed a clinical and laboratory demonstration licensing examination on a human subject which, in the board's judgment, is substantially equivalent to the clinical and laboratory demonstration examination administered by the central regional dental testing services, or, alternatively, has successfully completed a board specialty certification examination of an American dental association accredited specialty within the previous 10 years.

(2) (intro.) The board may grant a license as a dental hygienist to an applicant who holds a license issued by the proper authorities of any other jurisdiction of the United States or Canada upon payment of the fee ~~specified in~~ authorized by s. 440.05 (2), Stats., and submission of evidence satisfactory to the board that all of the following conditions are met:

(c) The applicant has not failed the central regional dental testing service clinical and laboratory demonstration examination, or any other dental hygiene licensing examination, within the previous 3 years.

(d) The applicant has successfully completed a clinical and laboratory demonstration examination on a human subject which, in the board's judgment, is substantially equivalent to the clinical and laboratory demonstration examination administered by the central regional dental testing service.

SECTION 10. DE 2.05, 2.06, 2.07 and 2.08 are created to read:

DE 2.05 EXAMINATION PASSING SCORE. The score required to pass an examination shall be based on the board's determination of the level of examination performance required for minimum acceptable competence in the profession. The board shall make the determination after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession.

DE 2.06 UNAUTHORIZED ASSISTANCE. An applicant may not give or receive unauthorized assistance during the examination. The action taken by the board when unauthorized assistance occurs shall be related to the seriousness of the offense. These actions may include withholding the score of the applicant, entering a failing grade for the applicant, and suspending the ability of the applicant to sit for the next scheduled examination after the examination in which the unauthorized assistance occurred.

DE 2.07 EXAMINATION REVIEW. (1) An applicant who fails an examination administered by the board may request a review of that examination by filing a written request to the board within 30 days after the date on which the examination results were mailed to the applicant.

(2) An examination review shall be conducted under the following conditions:

- (a) The time for review shall be limited to one hour.
- (b) The examination shall be reviewed only by the applicant and in the presence of a proctor.
- (c) The proctor may not respond to inquiries by the applicant regarding allegations of examination error.

(d) Any comments or claims of error regarding specific questions or procedures in the examination may be placed in writing by the applicant on the form provided for this purpose. The request shall be reviewed by the board in consultation with a subject matter expert. The applicant shall be notified in writing of the board's decision.

(e) An applicant shall be permitted only one review of the failed examination each time it is taken and failed.

Note: The board office is located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

DE 2.08 CLAIM OF EXAMINATION ERROR. (1) An applicant wishing to claim an error on an examination administered by the board must file a written request for board review in the board office within 30 days after the date the examination was reviewed. The request shall include all of the following:

- (a) The applicant's name and address.
- (b) The type of license applied for.
- (c) A description of the perceived error, including reference text citations or other supporting evidence for the applicant's claim.

(2) The request shall be reviewed by the board in consultation with a subject matter expert. The applicant shall be notified in writing of the board's decision.

Note: The board office is located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 11. DE 5.02 (3), (6), (18), (19), (21), (22) and (23) are amended to read:

DE 5.02 (3) Practicing or attempting to practice beyond the scope of any license or certificate.

(6) Administering, dispensing, prescribing, supplying or obtaining controlled substances as defined in s. ~~461.01 (4)~~ 961.01 (4), Stats.

(18) Failing to maintain records and inventories as required by the United States department of justice drug enforcement administration, and under ch. ~~161~~ 961, Stats., and s. Phar 8.02, Wis. Adm. Code.

(19) Failing to supervise the practice of a dental hygienist as specified in s. ~~447.08 (1) or (4)~~ 447.065, Stats., and s. DE 3.01.

(21) Aiding or abetting or permitting unlicensed persons in the practice of dentistry, as defined in s. ~~447.02 (1) (a) to (j)~~ 447.01 (8), Stats.

(22) Aiding or abetting or permitting unlicensed persons in the practice of dental hygiene, as defined in s. ~~3-02~~ 447.01 (3), Stats.

(23) Obtaining, prescribing, dispensing, administering or supplying a controlled substance designated as a schedule II, III or IV stimulant in s. ~~161.15 (5), 161.18 (2m) or 161.20 (2m)~~ 961.16 (5), 961.18 (2m) or 961.20 (2m), Stats., unless the dentist has submitted, and the board has approved, a written protocol for use of a schedule II, III or IV stimulant for the purpose of clinical research, prior to the time the research is conducted.

SECTION 12. DE 6.01 is amended to read:

DE 6.01 AUTHORITY. The rules in this chapter are adopted pursuant to authority ~~[in]~~ in s. ~~447.07 (6)~~ 447.07 (3) (o), Stats.

SECTION 13. DE 11.11 (6) (b) is repealed.

(END OF TEXT OF RULE)

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.

Dated _____

Agency _____

Chairperson
Dentistry Examining Board

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

g:\rules\denrrc.doc
9/18/98

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-077

AN ORDER to repeal DE 1.02 (6), 2.01 (1) (b) and 11.11 (6) (b); to amend DE 1.02 (4) and (8), 2.01 (1) (intro.), (a), (c), (e) and (f), 2.02 (title), (1), (2) and (3), 2.03 (1) (b), (5) (a) 2. and (6) (b), 2.04 (1) (intro.), (c) and (e) and (2) (intro.), (c) and (d), 5.02 (3), (6), (18), (19), (21), (22) and (23) and 6.01; and to create DE 2.05, 2.06, 2.07 and 2.08, relating to dentists and dental hygienists.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

05-22-98 RECEIVED BY LEGISLATIVE COUNCIL.

06-22-98 REPORT SENT TO AGENCY.

RS:RJC:jt;kjf

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 98-077

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. In the treatment clause of SECTION 9 of the rule, the word "and" should be inserted between the comma and the "(2)".

b. In s. DE 2.04 (1) (intro.) and (2) (intro.), the phrase "all of the following conditions are met," or a similar phrase should be inserted before the colon. [See s. 1.03 (8), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

It appears that the reference to s. 441.01 (3), Stats., in s. DE 5.02 (22) should instead be a reference to s. 447.01 (3), Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the introduction of the second paragraph of the analysis, the word "section" should be replaced by the word "sections."

b. In the second sentence of the analysis describing SECTION 10 of the rule, the word "assistant" should be "assistance."

c. It would be helpful to explain, perhaps in a note to the rule, where the passing score determined in s. DE 2.05 can be obtained. Will each examinee be told what the passing score is? Will it be published in the Wisconsin Administrative Register?

d. Section DE implies that there may be authorized assistance. If so, who authorizes assistance with exams? For what purposes would assistance be authorized? Perhaps the clarity of the rule would be enhanced if the rule would address the issue of "authorized assistance" in addition to the prohibition on "unauthorized assistance." Perhaps the word "unauthorized" should be deleted.

e. For clarity purposes, the phrase "review the examination with" should be inserted in s. DE 2.07 (1) between "request to" and "the board".

f. The relationship between s. DE 2.07 (2) (d) and s. DE 2.08 is not clear. Both provisions appear to be dealing with the issue of "claims of error" in the examination. It also seems as though the substance of s. DE 2.07 (2) (d) is included within s. DE 2.08. Is s. DE 2.07 (2) (d) necessary?

g. In both ss. DE 2.07 and 2.08, a note should be included identifying the address of the board for purposes of submitting the various requests.