

STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD

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IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : DENTISTRY EXAMINING BOARD  
DENTISTRY EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE 06-016)  
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PROPOSED ORDER

An order of the Dentistry Examining Board to renumber DE 7.02; and to create DE 7.02 (2), relating to the definition of “local anesthesia” administered by dental hygienists.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

**Statutes interpreted:**

Section 447.01 (3) (g), Stats.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2), 447.02 (1) (d) and (2) (d) and (e), Stats.

**Explanation of agency authority:**

Section 447.02 (2) (d), Stats., authorizes the Dentistry Examining Board to promulgate rules relating to agents that may be administered by a dental hygienist.

**Related statute or rule:**

There are no statutes or rules related other than those listed above.

**Plain language analysis:**

This proposed rule-making order will exempt subgingival, local anesthetics administered topically or by applicator from the educational and certification requirements of ch. DE 7, which currently apply to dental hygienists who administer local anesthesia by injection. A dental hygienist would not be required to get certification or complete 10 hours of didactic and 11 hours of clinical education if the dental hygienist only applies local anesthetics topically or by applicator.

A new type of subgingival, local anesthesia applied by applicator, not by injection, is available and is being marketed in Wisconsin. The current rule concerning certification of dental hygienists to administer local anesthesia does not explicitly contemplate local

anesthetics administered topically or by applicator. This proposed rule defines “local anesthesia” to exclude such types of administration. A certificate to apply local anesthesia will only be required to administer anesthesia by injection.

SECTION 1 rennumbers DE 7.02.

SECTION 2 creates a definition for “local anesthesia” that limits the meaning of “local anesthesia” to be drugs administered by injection. Drugs administered topically or by applicator for the elimination of sensation are excepted from the definition of “local anesthesia.” That allows dental hygienists to apply drugs topically and by applicator without having to meet the educational and certification requirements for the administration of “local anesthesia” by injection.

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

There is no existing or proposed federal regulation for summary and comparison.

**Comparison with rules in adjacent states:**

**Illinois:**

Illinois law allows dental hygienists and dental assistants to apply topical anesthetics. There are no additional requirements other than licensure to be able to apply topical anesthetics. 225 ILCS 25/17(g)(4) and Title 68, Chapter VII, Section 1220.240(c), Ill.

**Iowa:**

Iowa law requires a dental hygienist to have a certificate for administration of a local anesthesia. The law does not define “local anesthesia.” The Iowa Dentistry Board’s position is that local anesthesia does not include topical applications and that topical applications are part of a hygienist’s regular scope of practice. Iowa Stats. s. 153.15.

**Michigan:**

Michigan law requires dental hygienists to receive specified education and pass an examination before a dental hygienist may apply topical anesthesia. Public Health Code, s. 333.1611 and Admin. Rules ss. 338.11101(p) and 338.11409(1)(b)(i) and (ii).

**Minnesota:**

Minnesota law allows a hygienist to apply topical anesthesia without any educational or certificate requirements. S. 150.05 and subd.1.a., MN Stats., and ss. 3100.8400 and 3100.8700, MN Rules

**Summary of factual data and analytical methodologies:**

The Dentistry Examining Board discussed how ch. DE 7 applies to Oraqix, a new medicament that is administered via a surface applicator rather than by injection. In considering the rule as currently written, the board decided the rule is not clear as applied to the new medicaments because it was written to require training for administering injection of local anesthetics. The board also decided that because of the recent introduction of the product type, the rule did not contemplate training requirements necessary to administer it. The board decided by consensus that local anesthetics delivered via surface applicators should not be subject to the course requirements for injections.

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

This proposed rule will impact all dental hygienists licensed in Wisconsin. There are no small businesses affected by this rule that meet the statutory definition contained in s. 227.114 (1), Stats. The certification of no impact on small business is based on the fact that a substantial number of the 4,886 total active licensed hygienists work as employees of a dentist as defined by the practice limitation in s. 447.06, Stats. The proposed rule does not include any additional reporting or bookkeeping requirements. The proposed rule does not require dental hygienists to obtain additional professional skills related to coursework for providing local anesthetics delivered via surface applicators.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

**Anticipated costs incurred by private sector:**

The department finds that this rule has no significant fiscal effect on the private sector.

**Fiscal estimate:**

The proposed rule will have no impact on the department’s funds.

**Effect on small business:**

These proposed rules will have no significant 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 [larry.martin@dr1.state.wi.us](mailto:larry.martin@dr1.state.wi.us), or by calling (608) 266-8608.

**Agency contact person:**

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Telephone: (608) 266-0495. Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us).

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Email [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us).

Comments must be received on or before May 15, 2006, to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. DE 7.02 is renumbered DE 7.02 (1).

SECTION 2. DE 7.02 (2) is created to read:

DE 7.02 (2) As used in this chapter, “local anesthesia” requiring a certification pursuant to s. 447.04 (2) (c) 1., Stats., means medication administered by a local injection for the elimination of sensation, especially pain, on one part of the body, but not medications administered topically or by applicator for that purpose. Medications administered topically or by applicator for the elimination of sensation, especially pain in one part of the body, may be administered by a dental hygienist without the certification under s. 447.04 (2) (c) 1., Stat., as long as all other requirements of s. 447.06 (2) (e), Stats., are met and subject to s. DE 7.06.

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(END OF TEXT OF RULE)  
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These proposed rules shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Dated \_\_\_\_\_

Agency \_\_\_\_\_

Member of the Board  
Dentistry Examining Board