

**Clearinghouse Rule 15-056**

STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD

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

An order of the Dentistry Examining Board to amend DE 3.03 (1) and 11.03 (1) and to create Chapter DE 15 relating to certificate for dental hygienists to administer nitrous oxide inhalation analgesia.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:**

Sections 447.04 (2) (d) 1., 447.06 (2) (e) 4., Stats.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) (a), and 447.02 (2) (j), Stats.

**Explanation of agency authority:**

Section 15.08 (5) (b), Stats. Each examining board shall promulgate rules for its own guidance and for the guidance of the trade or 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

Section 227.11 (2) (a), Stats., provides that “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Section 447.02 (2) (j), Stats. The examining board shall promulgate rules specifying, “[t]he educational requirements for a dental hygienist licensed under this chapter to administer nitrous oxide inhalation analgesia under s. 447.06 (2) (e) 4.”

**Related statute or rule:**

Section 447.065 (2), Stats.

**Plain language analysis:**

2013 Wisconsin Act 354 required the Dentistry Examining Board to grant a certificate to administer nitrous oxide inhalation analgesia to a dental hygienist who is licensed by the Board and who satisfies certain educational requirements that the Act directs the Board to establish by rule. Under 2013 Wisconsin Act 354, the certificate to administer nitrous oxide inhalation analgesia remains in effect while the dental hygienist holds a valid license to practice dental hygiene in Wisconsin, unless the Dentistry Examining Board suspends or revokes the certificate. The proposed rule implements 2013 Wisconsin Act 354 by establishing the requirements for the certificate.

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

None.

**Comparison with rules in adjacent states:**

**Illinois:** Dental hygienists may administer and monitor nitrous oxide provided they complete a 14 hour course relative to nitrous oxide analgesia and submit certification of completion of the required course to the supervising dentist. An individual who graduated from an approved dental hygiene program after January 1, 1998 that contained nitrous oxide analgesia administration and monitoring shall not be required to complete the 14 hour course upon proof to the dentist of the required curriculum. The dental hygienist must maintain BLS certification or its equivalent in addition to the required courses (Ill. Admin. Code tit. 68 pt. 1220).

**Iowa:** A dental hygienist may administer nitrous oxide inhalation analgesia provided the administration of nitrous oxide inhalation analgesia has been delegated by a dentist and the hygienist has completed a board approved course of training (Iowa Admin. Code r. 650- 29.6 (4)).

**Michigan:** A dentist may delegate administering nitrous oxide analgesia to a registered dental hygienist under direct supervision to a patient 18 years of age or older if the dental hygienist has met all of the following: (1) Successfully completed an approved course in the administration of nitrous oxide analgesia including content in nitrous oxide analgesia medical emergency techniques, pharmacology of nitrous oxide, nitrous oxide techniques, and if such a course is available, selection of pain control modalities. The course must consist of a minimum of 4 hours didactic instruction and 4 hours of clinical experience; (2) Successfully completed a state or regional board administered written examination in local anesthesia within 18 months of completion of the approved course; (3) Successfully completed a state or regional board administered written examination on nitrous oxide analgesia, within 18 months of completion of the approved course; and (4) Maintains and

provides evidence of current certification in basic or advanced cardiac life support. A dental hygienist shall not administer more than 50% nitrous oxide (Mich. Admin. Code r. 338.11410 and MCL 333.16611 (4)).

**Minnesota:** A dental hygienist may administer nitrous oxide inhalation analgesia in accordance with all of the following: (1) Completion of CPR training and current CPR certification; (2) Usage of only use fail-safe anesthesia equipment capable of positive pressure respiration; (3) Successful completion of a course on the administration of nitrous oxide inhalation analgesia from an institution accredited by the Commission on Dental Accreditation. The course must be a minimum of 12 hours comprised of didactic instruction, personally administering and managing at least three individual supervised cases of analgesia, and supervised clinical experience using fail-safe anesthesia equipment capable of positive pressure respiration; (4) Under the appropriate level of supervision by a dentist who is current with the requirements to administer nitrous oxide inhalation analgesia (Minn. Admin. Code 3100.3600 subp. 4.).

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

This rule implements 2013 Wisconsin Act 354. Numerous other states' requirements were reviewed and considered while drafting these rules.

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

The rule was posted for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units, and individuals, for a period of 14 days. No comments were received.

**Fiscal Estimate and Economic Impact Analysis:**

The Fiscal Estimate and Economic Impact Analysis document 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 Eric.Esser@wisconsin.gov, or by calling (608) 267-2435.

**Agency contact person:**

Katie Vieira (Paff), Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4472; email at Kathleen.Vieira@wisconsin.gov.

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

Comments may be submitted to Katie Vieira (Paff), Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to Kathleen.Vieira@wisconsin.gov. Comments must be received on or before the public hearing to be held on September 2, 2015 to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. DE 3.03 (1) is amended to read:

**DE 3.03 (1)** Administer or prescribe, either narcotic or analgesics or systemic-affecting nonnarcotic drugs, or anesthetics except as provided under ch. DE 15.

SECTION 2. DE 11.03 (1) is amended to read:

**DE 11.03 (1)** A dentist or a dental hygienist who holds a valid certificate under ch. DE 15 may use nitrous oxide inhalation on an outpatient basis for dental patients provided that he or she has adequate equipment with failsafe features and a 25% minimum oxygen flow.

SECTION 3. Chapter DE 15 is created to read:

CHAPTER DE 15

CERTIFICATION OF DENTAL HYGIENISTS TO ADMINISTER NITROUS OXIDE  
INHALATION ANALGESIA

**DE 15.01 Authority.** The rules in this chapter are adopted pursuant to ss. 15.085 (5) (b), 227.11 (2) (a), and 447.02 (2) (j), Stats.

**DE 15.02 Definitions.** In this chapter:

(1) “Accredited” has the meaning given in s. 447.01 (1), Stats.

(2) “ADA CERP” means american dental association continuing education recognition program.

(3) “AGD PACE” means academy of general dentistry program approval for continuing education.

**DE 15.03 Qualifications for certification of licensed dental hygienists to administer nitrous oxide inhalation analgesia.** An applicant for certification to

administer nitrous oxide inhalation analgesia shall be granted a certificate by the board if the applicant complies with all of the following:

- (1) Has a current license to practice as a dental hygienist in this state.
- (2) Has completed the educational requirements of s. DE 15.05.
- (3) Has submitted the information required in the application under s. DE 15.04.

**DE 15.04 Application procedure.** An applicant for a certificate to administer nitrous oxide inhalation analgesia shall file a completed application on a form provided by the board. The application shall include all of the following:

(1) The dental hygienist license number in this state and the signature of the applicant.

(2) Evidence of successful completion of a didactic and clinical certification program, resulting in the dental hygienist becoming competent to administer nitrous oxide inhalation analgesia under the delegation and supervision of a dentist, the curriculum of which meets or exceeds the basic course requirements set forth in s. DE 15.05.

**DE 15.05 Educational requirements.** The following educational requirements are necessary for the board to approve and grant certification to a licensed dental hygienist in the administration of nitrous oxide inhalation analgesia:

(1) The certification program in the administration of nitrous oxide inhalation analgesia shall be sponsored by an accredited dental or dental hygiene school or be an approved ADA CERP or AGD PACE provider.

(2) The nitrous oxide inhalation analgesia administration certification program shall provide a minimum of 8 hours of instruction and shall consist of all of the following:

(a) Didactic instruction including all of the following:

1. Legal aspects of nitrous oxide inhalation analgesia administration in Wisconsin.

2. Physiological and psychological aspects of anxiety.

3. Stages of consciousness and the levels of sedation.

4. Respiratory and circulatory physiology and related anatomy.

5. Pharmacology of nitrous oxide.

6. Advantages and disadvantages as well as the indications and contraindications for nitrous oxide inhalation analgesia administration.

7. Patient evaluation, selection, and preparation for nitrous oxide inhalation analgesia administration.

8. The function of the basic components of nitrous oxide inhalation analgesia delivery and scavenging systems including all of the following:

a. Inspecting all components of the nitrous oxide inhalation analgesia delivery equipment.

b. Assembling and disassembling components.

c. Operating nitrous oxide inhalation analgesia equipment.

d. Disinfecting and sterilizing nitrous oxide inhalation analgesia equipment.

9. Safe and effective administration of nitrous oxide inhalation analgesia to patients in a clinical setting including all of the following:

a. Determining the patient's ideal flow rate and tidal volume.

b. Performing titration to effect.

c. Determining the ideal percentage of nitrous oxide flow rate for individual patients.

d. Calculating the percentage of nitrous oxide at peak flow.

10. Monitoring and documenting a patient undergoing nitrous oxide inhalation analgesia.

11. Complications associated with nitrous oxide inhalation analgesia administration and the prevention, recognition, and management of associated medical emergencies.

12. Troubleshooting problems with nitrous oxide inhalation analgesia administration.

13. Potential health hazards associated with nitrous oxide inhalation analgesia administration.

(b) Clinical experience consisting of three inductions of nitrous oxide inhalation analgesia on another person under supervision of the instructor.

(c) A dentist licensed under ch. 447, Stats., shall be present in the facility and available to both the patients and to the students of the class.

**DE 15.06 Dentist responsibility for the administration of nitrous oxide inhalation analgesia.** The dentist is ultimately responsible for all decisions regarding the administration of nitrous oxide inhalation analgesia, particularly in determining the pharmacological and physiological considerations of each individual treatment plan.

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.

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(END OF TEXT OF RULE)  
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Dated \_\_\_\_\_

Agency \_\_\_\_\_

Chairperson  
Dentistry Examining Board