

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 17-045)

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PROPOSED ORDER

An order of the Dentistry Examining Board to repeal DE 5.02 (12) and 5.03; to amend DE 5.02 (13); and to create DE 5.02 (14m) and (27) relating to unprofessional conduct.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** s. 447.07, Stats.

**Statutory authority:** s. 15.08 (5) (b), Stats.

**Explanation of agency authority:**

Each 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 profession.

**Related statute or rule:** ch. DE 5

**Plain language analysis:**

This rule updates the unprofessional conduct provisions.

Section 1 repeals the provision relating to false, deceptive or misleading advertising due to it being redundant in that ch. DE 6 governs advertising and it is unprofessional conduct to violate any valid rule of the board.

Section 2 updates the provision relating to refusing to render services based upon discriminatory basis by removing the words “color and sex” and adding the word “gender”.

Section 3 clarifies it is unprofessional conduct if the person surrenders a credential issued by another state while under investigation by that other jurisdiction.

Sections 4 and 5 create a provision under unprofessional conduct relating to engaging in irregularities in billing a 3<sup>rd</sup> party for services provided to a patient and then eliminates the prohibited practice section as being duplicative. The Board determined the prohibited practice section is not required and the new unprofessional conduct provision adequately protects the public.

**Summary of, and comparison with, existing or proposed federal regulation:** None

**Comparison with rules in adjacent states:**

**Illinois:** Illinois' unprofessional conduct provisions include irregularities in billing for services rendered to a patient. It does not include surrendering a license while under investigation. It also does not address failure to treat a person due to color, sex or gender.

**Iowa:** Iowa's unprofessional conduct provisions include: various billing violations; and refusing to accept patients or deny dental service to patients because of the patient's race, creed, sex or national origin. It does not mention a person surrendering a license while under investigation.

**Michigan:** The provisions addressed in this proposed rule are not included in Michigan's unprofessional conduct provisions.

**Minnesota:** The provisions addressed in this proposed rule are not included in Minnesota's unprofessional conduct provisions.

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

The Dentistry Examining Board did a comprehensive review of chapter DE 5 to create clarity and remove obsolete provisions.

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

This rule was posted for economic comments and none were received. The rule relates to unprofessional conduct and does not have a fiscal or economic impact.

**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 [Kirsten.Reader@wisconsin.gov](mailto:Kirsten.Reader@wisconsin.gov), or by calling (608) 267-2435.

**Agency contact person:**

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TEXT OF RULE

SECTION 1. DE 5.02 (12) is repealed.

SECTION 2. DE 5.02 (13) is amended to read:

DE 5.02 (13) Refusing to render services to a person because of race, ~~color, sex~~ gender, or religion.

SECTION 3. DE 5.02 (14m) is created to read:

DE 5.02 (14m) Surrendering, while under investigation, a license, certificate, permit or registration granted by another state to practice as a dentist or dental hygienist.

SECTION 4. DE 5.02 (27) is created to read:

DE 5.02 (27) Engaging in irregularities in billing a 3<sup>rd</sup> party for services rendered to a patient.

SECTION 5. DE 5.03 is repealed.

SECTION 6. 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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This Proposed Order of the Dentistry Examining Board is approved for submission to the Governor and Legislature.

Dated \_\_\_\_\_

Agency \_\_\_\_\_

Chairperson  
Dentistry Examining Board