

Report From Agency

**STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
DENTISTRY EXAMINING BOARD : CR 17-068**

I. THE PROPOSED RULE:

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

II. REFERENCE TO APPLICABLE FORMS: N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The Dentistry Examining Board conducted a comprehensive review of DE 2 relating to license requirements of dentists and dental hygienists and DE 3 relating to the practice of dental hygiene and made revisions to ensure the chapters are statutorily compliant, and current with professional standards and practices. The proposed rules removed obsolete or burdensome requirements and created consistent and clear requirements.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Dentistry Examining Board held a public hearing on November 1, 2017. The following people either testified at the hearing, or submitted written comments:

Matt Crespin representing Children's Health Alliance of Wisconsin
Linda Jorgenson representing Wisconsin Dental Hygienists' Association

The Dentistry Examining Board summarizes the comments received either by hearing testimony or by written submission as follows:

Both individuals spoke in support of the rules.

Following the public hearing the Dentistry Examining Board, the Dentistry Examining Board made modifications to the testing service requirements in DE 2.

The Dentistry Examining Board did not make any modifications to DE 3 since the first public hearing.

The Dentistry Examining Board held a second public hearing on November 7, 2018. The following people either testified at the hearing, or submitted written comments:

Lance Kisby, DDS

Matt Crespin representing Children's Health Alliance of Wisconsin

Patti DeQuardo representing Sixteenth Street Community Health Center

Linda Jorgenson representing Wisconsin Dental Hygienists' Association

Herbert Kaske, DDS

The Dentistry Examining Board summarizes the comments received either by hearing testimony or by written submission as follows:

Mr. Kisby testified in support of the proposed rule. However, he did indicate that the Dentistry Examining Board should consider no live patient clinical examination be utilized.

Mr. Crespin registered as neither in support or opposed to the rules. Mr. Crespin did request the Dentistry Examining Board to consider modifications to the proposed rule in DE 3 to allow the dental hygienist role to continue to evolve by allowing a dental hygienist to do the following:

- Order and expose radiographs.
- Prescribe and/or dispense medications.
- Provide local anesthetic without a dentist being present

Ms. DeQuardo registered as neither in support or opposed to the rules. Ms. DeQuardo requested the Dentistry Examining Board consider modification to the proposed rule to allow a dental hygienist to order radiographs when working in an integrated dental/medical office.

Ms. Jorgenson registered as neither in support or opposed to the rules. Ms. Jorgenson requested the Dentistry Examining Board consider modifications to the proposed rule in DE 3. Ms. Jorgenson indicated that when 2017 Act 20 gave permission for dental hygienists to work in additional settings, the Act also authorized the following in order to not provide sub-standard care:

- Order radiographs in order to accurately assess periodontal therapy.
- Administer local anesthesia, antibiotic medications, nitrous oxide or periodontal anti-microbial medications without a dentist present.

Ms. Jorgenson also suggests other health care providers authorize hygienists to expose dental radiographs and administer the prescription medications. Ms. Jorgenson is not seeking permission for dental hygienists to order radiographs or utilize prescription drugs without any oversight.

Dr. Kaske registered as neither in support or opposed to the rule. Dr. Kaske indicated a physician ordering radiographic images for the purpose of diagnosis for treatment of periodontal disease is legally responsible for diagnosis of any pathology of the ordered

image. This proposed rule change does not address the pathway for required interpretation of the exposed image.

The Board of Dentistry explains modifications to its rule-making proposal prompted by public comments as follows:

The Dentistry Examining Board did not make any modifications prompted by public hearing comments.

In the year between the two public hearings, the Dentistry Examining Board researched various testing services. The option in the proposed rule already addresses Dr. Kisby's suggestion by allowing the practical examination to be done utilizing a simulated patient instead of a live patient.

The Dentistry Examining Board does not have jurisdiction over physicians nor does DE 2 or 3 address physicians practicing dentistry or dental hygiene. Therefore, the Dentistry Examining Board did not make modifications prompted by Dr. Kaske's concern regarding a pathway for interpretation of an exposed image ordered by a physician.

The Dentistry Examining Board does not have the ability to promulgate a rule which goes beyond the statutes (s. 227.11, Stats.). The prohibitions listed in the proposed DE 3.03 and 3.04 are based upon statutes.

Pursuant to s. 447.06 (2) (d), Stats., a dental hygienist may not diagnose a dental disease or ailment, determine any treatment or any regimen of any treatment outside of the scope of dental hygiene, prescribe or order medication or perform any procedure that involves the intentional cutting of soft or hard tissue of the mouth by any means.

Pursuant to s. 447.06 (2) (e), Stats., pursuant to a treatment plan approved by a dentist who is licensed under this chapter, a dental hygienist licensed under this chapter may administer the following upon delegation by the dentist if the dentist remains on the premises in which the practices are performed and is available to the patient throughout the completion of the appointment: 1. Oral systemic premedications specified by the examining board by rule. 2. If the dental hygienist is certified under s. 447.04 (2) (c) 1., local anesthesia. 3. Subgingival sustained release chemotherapeutic agents specified by the examining board by rule. 4. If the dental hygienist is certified under s. 447.04 (2) (d) 1., nitrous oxide inhalation analgesia.

2017 Act 20 only identified settings in which a dental hygienist may work without the presence of a licensed dentist. 2017 Act 20 did not expand the scope of practice to include items enumerated in statute as prohibited or needing a dentist on the premises to perform.

Under current law, radiographs may generally only be performed if authorized pursuant to a prescription or order issued by one of several types of licensed professionals specified under statute. The statutes do not include dental hygienists as a licensed professional who may issue a prescription or order.

The Dentistry Examining Board is not taking a position on the statutory prohibitions on the scope of practice of dental hygienists. The Dentistry Examining Board is merely conforming their rules to statutes.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 2d: Instead of creating proposed s. DE 2.01 (1m) €, the board could add sub. (1) (h) to the paragraphs referenced in sub. (1m) (b). Likewise, instead of creating proposed s. DE 2.01 (2) (d), the board could modify the introductory material in sub. (2) to reference sub. (1) (h).

Response: The Dentistry Examining Board is rejecting this comment. It is the Dentistry Examining Board's the proposed rule as drafted is less confusing.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

These proposed rules do not have an economic impact on small businesses.