

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : DENTISTRY EXAMINING BOARD
DENTISTRY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 13-061)

ORDER

An order of the Dentistry Examining Board in s. 15.08 (5) (b) and 447.02 (2) (b) Stats., and interpreting. 447.02 (2) (b), Stats. to amend DE 11.05 (1), 11.06 (1) and 11.07 (1) and create DE 11.02 (1s), (1t) and (1u), and DE 11.025, relating to sedation permits and classes of permits.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 447.02 (2) (b), Stats.

Statutory authority: ss. 15.08 (5) (b) and 447.02 (2) (b), Stats.

Explanation of agency authority:

15.08 (5) (b), Stats. The 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 particular trade or profession.

447.02 (2) (b), Stats. The examining board shall promulgate rules specifying the "...standards, conditions and any educational requirements that are in addition to the requirements specified in s. 447.04(1) that must be met by a dentist to be permitted to induce general anesthesia or conscious sedation in connection with the practice of dentistry."

Related statute or rule: s. 447.01 (8) (d), Stats.

Plain language analysis:

The intent of the rule is to allow the Dentistry Examining Board discretion in approving sedation permits for licensees who have received discipline action against their permit(s) or are currently under investigation regarding their permit(s). Therefore, the granting of

permits shall be permissive. In addition, A definition for each class of sedation permits is added as no such reference occurs in the rule or the rule series, chs. DE 1 to 13.

SECTION 1. This section provides a definition for each sedation permit class which corresponds to the permit application process.

SECTION 2. This section was created in response to comments received from the Clearinghouse, in that once the approval of a permit becomes discretionary, by what guidelines would the Board base such discretion. This section proposes a number of actions that may be considered by the Board in their review of permit applications.

SECTIONS 3. to 5. These sections modify the current text that was created in an earlier rule revision and before the enactment of s. DE 11.05. In addition this section makes the approval of permits permissive and updates the text to reflect the permit classes as now defined in DE 11.02 (1s), (1t) and (1u).

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

No existing or proposed rules or laws were found in an Internet-based search of the U.S. Code or the Code of Federal Register (CFR) regarding classes of sedation, sedation permits for licensed dentists or how discipline may affect dentists applying for or maintaining such permits.

Comparison with rules in adjacent states:

Illinois - The State of Illinois has an application process for dental sedation permits, which includes conscious sedation - Permit A and deep sedation and general anesthesia - Permit B. A permit application includes a request for information on fines, reprimands, probations, censures, revocations, suspensions, license surrenders, restrictions or limitations, but does not specifically list a prohibition of permit approval as a consequence of any discipline. [Title 68, subch. VIIb, sec. 1220.510]

Iowa - Iowa rules, IAC 650--Chapter 29, much like Illinois, have permits for sedation and their application forms request the following information: "...have your clinical activities ever been limited, suspended, revoked, not renewed, voluntarily relinquished, or subject to other disciplinary or probationary conditions?" In order to obtain a permit for deep sedation/general anesthesia, a dentist must hold current certification in *Advanced Cardiac Life Support (ACLS)* 650 IAC 29.3(4) – procedures by a dentist with a permit for deep sedation/general anesthesia can only be done with the assistance of at least two auxiliary personnel that have current basic life support certification [IAC 29.3(5)]. In this search, no rule or law was found to specifically prohibit applying for or maintaining such a permit while a licensee has been disciplined.

Michigan – In a search of ch. 33 Michigan health code, no provisions for application for sedation classes or permits were found.

Minnesota – In Minnesota, dentists must obtain a certificate from the Board to administer general anesthesia or conscious sedation per Ch. 3100.3600 Subp 9. Requirements for both general anesthesia and conscious sedation stipulate for the dentist to have current *ACLS certification* (Subp 2, 3).

Dentists, dental hygienists and registered dental assistants may administer nitrous oxide inhalation analgesia with current CPR certification (Subp 4D). The required continuing education includes both advanced cardiac life support (ACLS) and pediatric advanced life support (PALS). There is no mention of the ability to apply for or termination of such certification based on discipline or a licensee.

Summary of factual data and analytical methodologies:

The purpose of the proposed rule is to provide the Dentistry Examining Board with discretion in reviewing and approving applications for sedation permits. As the rule is currently written, ch. DE 11, approval is not discretionary; thus eliminating the Board opportunity to consider in its review an applicant’s record of discipline or investigation, current or pending.

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

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats.

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 Greg.Gasper@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Jean MacCubbin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-266-0955 or telecommunications relay services via 711; email at Jean.MacCubbin@wisconsin.gov.

TEXT OF RULE

SECTION 1. DE 11.02 (1s), (1t) and (1u) are created to read:

DE 11.02 (1s) “Class I permit” means a sedation permit enabling a dentist to administer oral conscious sedation-enteral.

(1t) “Class II permit” means a sedation permit enabling a dentist to administer conscious sedation-parenteral and conscious sedation-enteral.

(1u) “Class III permit” means a sedation permit enabling a dentist to administer deep sedation, general anesthesia, conscious sedation-parenteral, and conscious sedation-enteral.

SECTION 2. DE 11.025 is created to read:

DE 11.025 Permit to administer anesthesia. (1) Dentists shall submit an application to administer anesthesia as specified in this chapter on a form prepared for and approved by the board. Each application shall be specific to the sedation permit class.

Note: Copies of the Application For Dental Permit to Administer Conscious Sedation are accessible from the department’s webpage at: <http://dsps.wi.gov/>.

(2) The board may grant a sedation permit and shall consider any of the following actions in developing their decision on an application:

(a) Defer a decision if the licensee has a pending investigation or has not met the conditions of a previous investigation.

(b) Defer a decision if any sedation permits held by the licensee have been temporally suspended.

(c) Defer a decision or recommend denial if any permits held by the licensee have been revoked or conditions of revocation have not been satisfactorily met.

(d) Recommend denial based on the severity of any investigations regarding noncompliance with ch. DE 5.

(e) Take any other action or actions necessary to maintain the health, welfare and safety of a patient or the public.

SECTION 3. DE 11.05 (1) (intro.) is amended to read:

DE 11.05 (1) ~~Beginning on January 1, 2007, no~~ No dentist may administer conscious sedation via an enteral route without having first obtained a class-~~one~~ I permit

from the board, unless a dentist has been granted a permit under s. DE 11.06 or 11.07. A class-~~one~~ I permit enables a dentist to utilize conscious sedation enterally. The board ~~shall~~ may grant a class-~~one~~ I permit to administer conscious sedation enterally to a dentist who submits a completed application for this sedation permit class and does all of the following:

SECTION 4. DE 11.06 (1) is amended to read:

DE 11.06 (1) ~~Beginning on January 1, 2007, no~~ No dentist may administer conscious sedation via a parenteral route without having first obtained a class-~~2~~ II permit from the board, unless a dentist has been granted a permit under s. DE 11.07. A class-~~2~~ II permit enables a dentist to utilize conscious sedation=~~enteral~~, and conscious sedation-parenteral. A dentist who holds a class II permit does not have to obtain a class I sedation permit. The board ~~shall~~ may grant a class-~~2~~ II permit to administer conscious sedation-parenterally to a dentist who ~~does~~ submits a completed application for this sedation permit class and does all the following:

[NOTE TO LRB: In s. DE 11.06 (1), the change is correcting the equals sign to a hyphen in the following: “sedation=~~enteral~~” to “sedation-~~enteral~~”.]

SECTION 5. DE 11.07 (1) is amended to read:

DE 11.07 (1) ~~Beginning on January 1, 2007, no~~ No dentist may administer deep sedation or general anesthesia without having first obtained a class-~~3~~ III permit from the board and submits a completed application for this sedation permit class. A class-~~3~~ III permit enables a dentist to utilize conscious sedation-~~enteral~~, conscious sedation-parenteral, deep sedation, and general anesthesia. A dentist who holds class III sedation permit shall not have to obtain any other class of sedation permit. The board ~~shall~~ may grant a class-~~3~~ III permit to administer deep sedation or general anesthesia to a dentist who does all of the following:

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.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Board Chairperson
Dentistry Examining Board