

STATEMENT OF SCOPE

DENTISTRY EXAMINING BOARD

Rule No.: DE 5, 8, and 14

Relating to: Informed Consent

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

The objective of the proposed rule is to clarify the regulations on informed consent for dental patients, which may include revisions to DE 5, 8, and 14.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The Board has identified a need to clarify the rules on informed consent for dental patients. Current rules are unclear on whether a verbal informed consent or a written, signed informed consent is required for various procedures. The Board will consider updating the code to clarify when a signed informed consent is required, and when a verbal informed consent is acceptable.

An alternative would be not to revise the code, which would leave the requirements unclear and can create confusion for licensees, patients, and regulators.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 15.08 (5) (b), Stats., provides that an examining board “[s]hall 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.”

Sections 447.02 (2) and 447.02 (2) (i), Stats.: “The examining board shall promulgate rules specifying all of the following:

(i) Provisions implementing s. 447.40.”

Section 447.40, Stats.: “Informed consent. Any dentist or dental therapist who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and
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risks of these treatments. The reasonable dentist standard is the standard for informing a patient under this section. The reasonable dentist standard requires disclosure only of information that a reasonable dentist would know and disclose under the circumstances. The dentist's or dental therapist's duty to inform the patient under this section does not require disclosure of any of the following:

- (1) Detailed technical information that in all probability a patient would not understand.
- (2) Risks apparent or known to the patient.
- (3) Extremely remote possibilities that might falsely or detrimentally alarm the patient.
- (4) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.
- (5) Information in cases where the patient is incapable of consenting.
- (6) Information about alternate modes of treatment for any condition the dentist or dental therapist has not included in his or her diagnosis, assessment, or treatment plan at the time the dentist or dental therapist informs the patient.”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

Approximately 80 hours

6. List with description of all entities that may be affected by the proposed rule :

Licensed dentists, dental therapists, dental hygienists, and their patients.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

None.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The proposed rule will have minimal to no economic impact on small businesses and the state's economy as a whole.

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