

**Report From Agency**

**STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD**

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**IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE  
PROCEEDINGS BEFORE THE : CR 23-066  
DENTISTRY EXAMINING BOARD :**

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**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 objective of this proposed rule is to revise DE 3 to allow licensed dental hygienists to apply topical anesthetics without the presence of a licensed dentist. This was achieved by creating DE 3.05 to include definitions for “topical anesthetics” and “subgingival anesthetics,” as well as outline the practice limitations associated with their application. The list of prohibited practices in DE 3.03 was also amended to specify that the administration of injectable local anesthesia is prohibited except as provided in ch. DE 7.

**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 January 3, 2024. The Board received the following verbal and written comment from Linda Jorgenson, RDH, representing WI-DHA:

WI-DHA is in support of this rules change so that dental hygienists will be permitted to administer topical anesthetics without the presence of a dentist as they practice dental hygiene. However, we would argue that the phrase "as a remediable procedure" should be eliminated from the rules regarding the use of topical anesthetics.

*“Remediable procedures” means patient procedures that create changes within the oral cavity or surrounding structures that are reversible and do not involve any increased health risks to the patient.*

Topical anesthetics cannot be considered a remediable procedure because there are numerous increased health risks associated with them. To refer to topical anesthetics as

remediable would necessitate a redefinition of the term *remediable*. The proposed rules language contradicts the known facts about topical anesthetics. The current statutes and rules allow dental hygienists to "practice dental hygiene or remediable procedures" without the presence of a dentist as long as certain conditions are met. The word or establishes that allowable patient procedures fall into two categories.

Practicing dental hygiene (in the scope of practice)  
Or Remediable procedures

We suggest that administration of topical anesthetics should fall under the first category and that it is inappropriate to refer to it as remediable. Thank you for receiving my testimony on behalf of the WI-DHA.

Response: The Board decided not to make any changes in response to this comment. As long as the administration of topical anesthetics meets the definition of a remediable procedure in s. 447.01 (12), Stats. then that is what is intended to be allowed by this rule. The administration of anesthesia outside the definition of a remediable procedure would not be allowed by this rule.

**VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

All Legislative Council recommendations have been incorporated into the proposed rules.

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

N/A