

**Clearinghouse Rule 23-066**

STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD

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IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : DENTISTRY EXAMINING BOARD  
DENTISTRY EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE )  
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PROPOSED ORDER

An order of the Dentistry Examining Board to amend DE 3.03 (6) and create DE 3.05, relating to topical application of anesthetics by a dental hygienist.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** s. 447.06 (2) (c), Stats.

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

**Explanation of agency authority:**

15.08(5)(b) Each examining board shall 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.

447.02 (2) (e) The examining board shall promulgate rules specifying the educational requirements for administration of local anesthesia by a dental hygienist licensed under this chapter under s. 447.06 (2) (e) 2.

**Related statute or rule:** None.

**Plain language analysis:**

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.

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

**Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:** N/A

**Comparison with rules in adjacent states:**

**Illinois:** In Illinois, a dental hygienist may administer local anesthesia under the supervision of a dentist upon successful completion of a training program approved by the Illinois Department of Financial and Professional Regulation. [225 Illinois Compiled Statutes Section 18]. Additionally, the Illinois Administrative Code specifies that the dental hygienist must function under the supervision of a dentist who remains in the facility when administering local anesthesia [Illinois Administrative Code Title 68 Chapter VII Subchapter b Part 1220 Section 1220.240 (g)].

**Iowa:** In Iowa, administration of local anesthesia by a dental hygienist may only be performed under the direct supervision of a dentist [650 Iowa Administrative Code Chapter 10 Section 10.3 (4)].

**Michigan:** In Michigan, a dental hygienist may apply topical anesthetic agents by prescription of a dentist and subgingival medicaments under assignment from a dentist. Assignment means that the dentist has designated a patient and described the procedures to be performed but does not need to be physically present at the time of those procedures being performed. Michigan Administrative Rules R 338.11401 and 338.11411].

**Minnesota:** In Minnesota, a dental hygienist may administer local anesthesia and place subgingival medicaments under the general supervision of a dentist. Before a dental hygienist administers local anesthesia, they must successfully complete a didactic and clinical program accredited by the Commission on Dental Accreditation [Minnesota Administrative Rules 3100.8700 Subpart. 1].

**Summary of factual data and analytical methodologies:** The Board reviewed Wisconsin Administrative Code chapter DE 3 to determine where changes were needed to allow for the application of topical anesthesia by a dental hygienist without the presence of a dentist.

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

The proposed rules was posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

**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 Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-2112.

**Agency contact person:**

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-267-7139; email at DSPSAdminRules@wisconsin.gov.

**Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing, held on a date January 3, 2024, to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. DE 3.03 (6) is amended to read:

**DE 3.03 (6)** Administer injectable local anesthesia, except as provided in ch. DE 7.

SECTION 2. DE 3.05 is created to read:

- DE 3.05 Topical anesthetics. (1)** “topical anesthetics” means anesthetics applied to a body surface such as the skin or mucous membrane as a remediable procedure.
- (2)** “subgingival anesthetics” means non-injectable topical anesthetics applied below the gum tissue as a remediable procedure.
- (3)** Pursuant to s. 447.06 (2) (c), Stats., a dental hygienist may apply topical and subgingival anesthetics to a patient without the presence of a dentist, if all of the following conditions are met:
- (a) the remediable procedure is performed under a written or oral prescription.
  - (b) The dentist who made the written or oral prescription has seen the patient at least once during the 12-month period immediately preceding:
    - 1. The date on which the written or oral prescription was made; and
    - 2. The date on which the dental hygiene practice or remediable procedure is performed.
  - (c) The written or oral prescription specifies the practices and procedures that the dental hygienist may perform with the informed consent of the patient, or, if applicable, the patient’s parent or legal guardian.

SECTION 3. 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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