



---

---

## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

---

---

**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 04-095

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]**

#### 1. Statutory Authority

The rule allows a dentist to delegate administration of conscious sedation procedures to a non-dentist, in apparent conflict with the statutes. Section 447.065 (2), Stats., permits a dentist to delegate administration of local anesthesia subject to s. 447.06 (2) (e), Stats., under which the dentist must be “available to the patient throughout the completion of the appointment” and the dental hygienist must be certified under s. 447.04 (2) (c) 1., Stats. The latter is the only statutory certification of a dental hygienist for anesthesia administration and is limited to local anesthesia. Moreover, conscious sedation is statutorily distinguished from local anesthesia. The statutory provision interpreted by the rule, s. 447.02 (2) (b), Stats., requires the board to specify conditions “that must be met *by a dentist* to be permitted to induce general anesthesia or *conscious sedation*,” whereas par. (e) requires the board to specify “requirements for administration of *local anesthesia by a dental hygienist* licensed under this chapter under s. 447.06 (2) (e) 2.” [Emphasis added.] While the rule definitions also distinguish conscious sedation from local anesthesia, s. DE 11.09 (6) allows conscious sedation to be administered under “direct supervision.” Unlike “operative supervision,” defined in s. DE 11.02 (7) as requiring the dentist to be “in the operatory performing procedures,” under direct supervision the dentist “personally authorizes the procedures, and remains in the dental office or treatment facility while the procedures are being performed and, before dismissal of the patient, evaluates any work that was done.” [s. DE 11.02 (3m).] Because this definition implies that a non-dentist performs the “procedures” and “work,” the use of direct supervision under s. DE 11.09 (6) for administering conscious sedation appears to lack statutory authority.

## **2. Form, Style and Placement in Administrative Code**

a. The April 13, 2004, memorandum from the Director of the Wisconsin Legislative Council Rules Clearinghouse regarding new rule-making requirements imposed by 2003 Wisconsin Acts 118 and 145 suggests, on page 2, a format for an analysis that prefaces a rule. The format lists 13 statutorily required items. The analysis in this rule does not appear to follow that format and some of the items listed as numbers 8 to 13 in the memorandum appear to be missing, although a couple are addressed in the second copy of the fiscal estimate.

b. Section DE 11.02 (10) (intro.) should read: “‘Sedation levels’ means any of the following:”.

c. Titles to rule units are not part of rule text. [See ss. 227.27 (1) and 990.001 (6), Stats.] Consequently, in s. DE 11.02 (10), either the sedation levels should simply be listed as part of the text of the rule or the titles should be repeated in the text of the rule. The entire rule should be reviewed to ensure that sedation levels are not only referred to in titles, but also appropriately referred to in the text of the rule.

d. Section DE 11.05 (1) (intro.), should read: “Beginning on the effective date of this section...[revisor insert dates], no dentist...” The entire rule should be reviewed for the use of this format.

e. Sections DE 11.05 (1) (a) 1., 11.06 (1) (a) 1., and 11.07 (1) (a) 1., 2., and 3. should begin with the phrase “Successful completion of.”

## **3. Conflict With or Duplication of Existing Rules**

The terms defined in s. DE 11.02 (10) (d) and (e) duplicate those defined previously under s. DE 11.02 (3) and (4), but differ somewhat. For example, the definition of “deep sedation” under s. DE 11.02 (10) (d) adds the example of partial loss of the ability to maintain a patent airway independently. Also, the definition of “general anesthesia” under s. DE 11.02 (10) (e) differs from the “partial or complete loss” of the ability to “respond purposefully to physical stimulation or verbal command” under s. DE 11.02 (4), by stating instead that the patient “does not respond purposefully to physical or verbal command.” Each term should be defined only once.

## **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In s. DE 11.02 (1), the word “conscious” should not be underlined, since it exists in the current rule.

b. The definition of “anxiolysis” in s. DE 11.02 (1m) states that anxiolysis “does not produce a depressed level of consciousness.” This appears to conflict with s. DE 11.02 (10) (b), under which “Level 2-anxiolysis” can cause a “minimally depressed level of consciousness.”

c. In s. DE 11.02 (2), the “a” at the end of “non-pharmacological” should be deleted to correspond to the current rule.

d. The first sentence of s. DE 11.05 (1) states: “...no dentist may administer enteral conscious sedation without having first obtained a class one permit from the board, unless a dentist has been granted a permit under s. DE 11.05 or 11.06.” It appears that the reference to s. DE 11.05 is a mistake, since a permit granted under that provision is a class 1 permit and therefore not an exception to the class 1 permit requirement. Similarly, in the first sentence of s. DE 11.06, it appears that the reference s. DE 11.06 is a mistake, since a permit granted under s. DE 11.06 is a class 2 permit and therefore not an exception to the class 2 permit requirement. Presumably, the references to ss. DE 11.05 and 11.06 should be replaced by references to ss. DE 11.06 and 11.07, respectively.

e. The second sentence of s. DE 11.05 (1) states: “A class one permit enables a dentist to utilize sedation at levels 1, 2 and 3.” This appears to conflict with s. DE 11.06 (1), which requires a class 2 permit for parenteral sedation at level 3. Similarly, the second sentence of s. DE 11.06 (1) states: “A class 2 permit enables a dentist to utilize sedation at levels 1, 2, 3 and 4.” This appears to conflict with s. DE 11.07 (1), which requires a class 3 permit for deep sedation at level 4.

f. In s. DE 11.06 (1) (a) 2., the notation “par. (2)” should be replaced by the notation “subd.”

g. In s. DE 11.10, the second sentence requires the report to be “on a form approved by the board.” A note to the rule should include a reference to the form, along with other specified information, under s. 1.09 (2), Manual and s. 227.14, Stats.

### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. To clarify the purpose of the rule, the remainder of the first sentence of the analysis beginning after “to establish and modify the requirements for...” should be replaced with something like the following: “...anesthesia administration in connection with the practice of dentistry, including related office facilities, standards of care, supervision levels, and reporting of adverse occurrences.”

b. In the third paragraph of the analysis, the word “amends” should be replaced by the word “amend.”

c. The term “nitrous oxide *or* oxygen inhalation analgesia” [emphasis added] is used in the fourth paragraph of the analysis, in the title of s. DE 11.03, and in s. DE 11.03 (1) and (2). It appears that this term should be replaced with the term “nitrous oxide inhalation analgesia,” which is defined in s. DE 11.02 (6) in terms of “a *combination* of nitrous oxide and oxygen.” The use of definitions is important to achieve consistency and clarity. [See s. 1.01 (7), Manual.]

d. In s. DE 11.02 (1m), the words “before or during a dental procedure” appear to repeat the meaning of “perioperative,” in which case “perioperative” should be deleted so as to use the plainer language.

e. Is there a reason for amending the language in s. DE 11.02 (2) that follows “produced by...” but not amending the same language in s. DE 11.02 (3) and (4)?

f. Section DE 11.02 (6) would be clearer if it used the previously defined term “analgesia” and avoided repetition of the definition for the previously defined term “conscious sedation,” as follows: “Nitrous oxide inhalation analgesia” means analgesia by administration of a combination of nitrous oxide and oxygen in a patient to induce conscious sedation.

g. In s. DE 11.02 (8), “, and in the use of...” should be replaced with “and how to use...” Also, in the last clause, “but only if administering...” should be replaced with “if the dentist is administering...” since non-dentist staff are statutorily prohibited from administering deep sedation and general anesthesia (see statutory authority comment above).

h. Section DE 11.02 (9) defines “Routes of administration,” but each of the definitions included refers to “*technique* of administration” [emphasis added]. In each of the definitions under sub. (9), “any technique of administration in” should be replaced with “administration by.” Also, it appears that sub. (9) (c) should conclude with the word “methods.”

i. In s. DE 11.02 (10) (c), the phrase “airway only” should be replaced by the phrase “and has an airway that only.”

j. Section DE 11.05 (1) (b), 11.06 (1), and 11.07 (1) (b) should begin with the word “Provides.” In ss. DE 11.05 (1) (a) 1. a. and 11.07 (1) (a) 3., all three words in “American Dental Association” should be capitalized. Also, in s. DE 11.07 (1) (a) 2. and 3., the “Accreditation Council for Graduate Medical Education” and the “Joint Commission on Accreditation of Healthcare Organization” should be capitalized and their acronyms deleted. [See s. 1.01 (4) and (8), Manual.]

k. The clarity of the rule suffers from the use of inconsistent terminology. For example, s. DE 11.02 (10) refers to level 3-enteral or parenteral sedation, but does not include the word “sedation” in the title or the text of the rule. However, s. DE 11.08 (1) (intro.) refers to “enteral conscious sedation” and “parenteral conscious sedation” and s. DE 11.09 (1) refers to “conscious sedation.” Not only is the terminology inexact, the frequent use of the phrase “conscious sedation” causes confusion since the definition of “conscious sedation” in s. DE 11.02 (2) does not track with the wording of s. DE 11.02 (10) (c). The entire rule should be reviewed for this problem.

l. In s. DE 11.08 (1), the first clause beginning with “Notwithstanding...” is confusing and should be deleted, thus beginning the sentence with “No anxiolysis-level 2,....”