

Clearinghouse Rule 17-068

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

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

PROPOSED ORDER

An order of the Dentistry Examining Board to repeal DE 2.03 (7), 2.04 (1) (c) and (d), 2.04 (2) (c), 2.04 (2) (f), 2.06, 2.07, 2.08 and 2.09; to amend DE 2.01 (1) (d) and (g), 2.01 (2) (b), 2.015 (1) (d), 2.03 (5) (title), 2.03 (5) (a) 2., 2.04 (1), 2.04 (1) (e) and (g), 2.04 (2), 2.04 (2) (d) 2.05 and 3.04 (2); to repeal and recreate DE 2.03 (5) (b), 2.03 (6), 3.02 and 3.03; and to create DE 2.01 (1) (h), 2.01 (1m) (e), 2.01 (2) (c) and (d), and 2.015 (1) (f) relating to dental licensure and the practice of dental hygiene.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: 447.04, 447.05, and 447.06 (2), Stats.

Statutory authority: ss. 15.08 (5) (b), 440.08 (3) (b) 447.02 (1) (a), (d) and (e), 447.02 (2) (d), 447.07 (1) (a) 6., 447.04 (1) (a) 6. and (b) 1. and 447.04 (2) (a) 6. and (b) 1., Stats.

Explanation of agency authority:

Each examining board shall promulgate rules for its own guidance and 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 profession. [s. 15.08 (5) (b) , Stats.]

The examining may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under ch. 447, that the examining board determines are necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed in order to obtain an initial credential from the examining board. [s. 440.08 (3) (b), Stats.]

The examining board may promulgate rules governing the reexamination of an applicant who fails an examination specified in s. 447.04 (1) (a) 5. or (2) (a) 5. The rules may specify

additional educational requirements for those applicants and may specify the number of times an applicant may be examined. [s. 447.02 (1) (a) , Stats.]

The examining board may promulgate rules specifying practices, in addition to the practices specified under s. 447.01 (3) (a) to (f), that are included within the practice of dental hygiene. [s. 447.02 (1) (d) , Stats.]

The examining board may promulgate rules providing for the granting of temporary licenses under this chapter. [s. 447.02 (1) (e) , Stats.]

The examining board shall promulgate rules specifying the oral systemic premedications and subgingival sustained release chemotherapeutic agents that may be administered by a dental hygienist licensed under this chapter under s. 447.06 (2) (e) 1. and 3. [s. 447.02 (2) (d) , Stats.]

The examining board shall grant a license to practice dental hygiene to an individual who completes any other requirements established by the examining board by rule and to an individual licensed in another state or territory or another country if the applicant meets the requirements for licensure established by the examining board by rule. [ss. 447.04 (1) (a) 6. and 447.04 (1) (b) 1., Stats.]

The examining board shall grant a license to practice dentistry to an individual who completes any other requirements established by the examining board by rule and to an individual licensed in another state or territory or another country if the applicant meets the requirements for licensure established by the examining board by rule. [ss. 447.04 (2) (a) 6. and 447.04 (2) (b) 1., Stats.]

Related statute or rule: N/A

Plain language analysis:

Section 1 amends the provision to statutes and rules relating to dentistry rather than listing the statutory and code references in order to eliminate the need to update each time the chapter numbers change.

Sections 2, 3 and 7 update the requirements to include the statutory requirement to provide proof of current cardiopulmonary resuscitation (CPR) training.

Section 4 amends the requirement to a board-approved testing service recognizing that there are several testing services. The term “clinical and laboratory demonstrations” is repealed as the phrase is outdated. It also states the exam must be taken within 1 year preceding application to create consistency.

Section 5 updates the requirements to include the statutory requirements of graduation from an accredited dental hygiene school and proof of CPR training.

Section 6 removes the requirement that applicant for a faculty license must have an interview with the board to prove competency, but allows the board to interview the applicant as necessary.

Section 8 amends the title of the subsection in order to address the requirements for late renewal and reinstatement separately.

Section 9 updates the renewal fee statutory reference.

Section 10 provides the requirements for renewing a license after 5 years. A person renewing after 5 years is required to pay the renewal fee and late fee, proof of CPR training and then evidence of one of the following to show competency: licensed in another state; passed an examination within the past year; completed a one year general practice residency; completed a clinical education program approved by the board.

Section 11 repeals and recreates the requirements for reinstatement of license after suspension or revocation or unmet disciplinary requirements and a license lapsed more than 5 years. The individual must provide evidence of completion of any disciplinary requirements and rehabilitation or change in circumstances showing that reinstatement to the practice will not constitute a danger to the public or a patient. In addition, if the license has not been renewed within 5 years the individual is required to complete the renewing after 5 years requirements.

Section 12 repeals the requirement that the license must be displayed in a prominent place. This requirement creates an unnecessary burden and is obsolete due to the ease of electronic license verification for the public and registrations are no longer mailed to the licensees.

Sections 13 and 16 clarify the license held in another jurisdiction is in good standing and updates the statutory reference.

Section 14 repeals the requirement for endorsement that the applicant has not failed an examination within the last three years recognizing that the passage of the examination reflects competency. This repeal makes the requirement consistent with non-endorsement applicants. This section also removes the requirement that an endorsement applicant must demonstrate active practice within at least 48 or the last 60 months. This requirement created a burden on applicants and barred those applicants who had a license less than 48 months.

Section 15 clarifies the examination requirement for endorsement applicants by requiring the applicant to have passed a test which the board determines is substantially equivalent to a board approved examination. It also amends the CPR requirement to create consistency throughout the rule.

Section 17 repeals the requirement for endorsement that the applicant has not failed an examination within the last three years recognizing that the passage of the examination reflects competency. This repeal makes the requirement consistent with non-endorsement applicants.

Section 18 clarifies the examination requirement for endorsement applicants by requiring the applicant to have passed a test which the board determines is substantially equivalent to a board approved examination.

Section 19 This section removes the requirement that an endorsement applicant must demonstrate active practice. This requirement created a burden on applicants and barred those applicants who recently obtained a license in another state.

Section 20 simplifies the examination passing score to be the recommended passing score of the exam provider.

Section 21 repeals obsolete provisions relating to examinations including unauthorized assistance, examination review, and claim of examination error. It also repeals the limitation an applicant can fail an examination only 3 times without more training or education. The board does not have knowledge of what questions the applicant fails, therefore can't prescribe further training or education to remediate those areas.

Section 22 creates conformity with the statutes regarding the practice of dental hygiene. It also removes the confusing references regarding a dentist being present in the dental facility which is not referenced in statute. The new language also allows for the scope of practice to evolve without a list of items which can be performed by a dental hygienist.

Section 24 further defines subgingival sustained release chemotherapeutic agents as antibiotics.

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

Comparison with rules in adjacent states:

Illinois: Illinois accepts the following examinations: North East Regional Board of Dental Examiners (NERB); Central Regional Dental Testing Service (CRDTS); Southern Regional Testing Agency (SRTA), Western Regional Examining Board (WREB) or Council of Interstate Testing Agencies (CITA) completed within the last 5 years if never licensed in another jurisdiction. The examination scores are set by the testing service. Illinois requires Basic Life Support (BLS) certification. Applicants for a faculty license are not required to appear before the Board for an interview. A dentist or dental hygienist renewing after 5 years shall complete 48 hours of continuing education and provide one of the following: active practice in another jurisdiction for 3 of the last 5 years; military service; or pass one of the licensing examinations. A dental hygienist may not perform procedures that require the professional judgment and skill of dentist or those procedures that constitute the practice of dentistry.

Iowa: Iowa accepts the following regional examinations: CRDTS, WREB, SRTA, Commission on Dental Competency Assessments (CDCA) [*NOTE: CDCA was formerly known as NERB*], CITA within the previous 5 years. A passing grade of at least 75% is required. Iowa requires CPR certification. Applicants based upon licensure in another state shall have passed a regional examination within the previous 5 year period or 3 consecutive years immediately prior to the filing of the application been in active practice of dentistry. Applicants for a faculty license are

not required to appear before the Board for an interview. Renewal of a lapsed license requires evidence of completion of a total of 15 hours of continuing education per each lapsed year up to a maximum of 75 hours or evidence of licensure in another state in good standing.

Michigan: Michigan accepts the NERB examination or one that is substantially equivalent. The board adopts the score recommended by NERB but not less than a converted score of 75 on each component of the examination. Applicants for a faculty license are not required to appear before the Board for an interview. Applicants based upon license in another state are required to demonstrate practicing in another state of a minimum of 5 years immediately preceding the application or successful completion of a regional examination. Renewal of a license which has lapsed more than 5 years may be renewed by meeting initial licensure requirements or evidence held a license in another state within 3 years immediately preceding renewal. The license shall be displayed in the principal place of practice. A dentist may not delegate, the following: the diagnosing or prescribing for disease, pain, deformity, deficiency, injury or physical condition; the cutting of hard and soft tissue; the removal of accretions, stains, or calculus deposits; deep scaling; root planning; any intra-oral restorative procedures (some procedures allowed under direct supervision); administration of local anesthesia, nitrous oxide analgesia (may perform if certain qualifications are met) or acupuncture; irrigation and medication of root canals, try-in of cones or points, filing or filling of root canals; taking impressions for any purpose other than study or opposing models; or permanent cementation of any restorative or appliance.

Minnesota: Minnesota requires passage of a board approved examination. Applications for a faculty license are not required to appear before the Board for an interview. An application based upon licensure in another state requires at least 2,000 of active practice within 36 months of application. Renewal of a lapsed license after 2 years requires a jurisprudence exam, physical examination attesting to the applicant's physical and mental condition and optical examination; and successfully pass an examination or completion or board approved education. A dental hygienist may perform various procedures based upon direct or indirect supervision and whether a dentist is present on the premises.

Summary of factual data and analytical methodologies:

The Board conducted a comprehensive review of chapters DE 2 and 3 to ensure the chapters are statutorily compliant, current with professional standards and practices and remove obsolete provisions.

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

This rule was posted for economic impact comments and none 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 Kirsten.Reader@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Sharon Henes, 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; telephone 608-261-2377; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held on November 1, 2017 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. DE 2.01 (1) (d) and (g) are amended to read:

DE 2.01 (1) (d) Evidence of successful completion of an examination on ~~provisions in ch. 447, Stats, and chs. DE 1 to 9~~ the statutes and rules relating to dentistry.

(g) Verification from ~~the central regional dental testing service or other~~ a board-approved testing services of successful completion of an examination ~~in clinical and laboratory demonstrations~~ taken within ~~the 5 1 year period~~ immediately preceding application. ~~In this paragraph, "successful completion" means an applicant has passed all parts of the examination in no more than 3 attempts on any one part, as required in s. DE 2.09.~~

SECTION 2. DE 2.01 (1) (h) is created to read:

DE 2.01 (1) (h) Submits evidence satisfactory to the board the applicant has current proficiency in cardiopulmonary resuscitation, including the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved by the Wisconsin department of health services.

SECTION 3. DE 2.01 (1m) (e) is created to read:

DE 2.01 (1m) (e) Submits evidence satisfactory to the board the applicant has current proficiency in cardiopulmonary resuscitation, including the use of an automated external

defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved by the Wisconsin department of health services.

SECTION 4. DE 2.01 (2) (b) is amended to read:

DE 2.01 (2) (b) Verification from the ~~central regional dental hygiene testing service or other a~~ board-approved testing service of successful completion of an examination ~~in clinical and laboratory demonstrations~~ taken within ~~the 5~~ 1 year period immediately preceding application.

SECTION 5. DE 2.01 (2) (c) and (d) are created to read:

DE 2.01 (2) (c) Evidence satisfactory to the board of having graduated from an accredited dental hygiene school.

(d) Evidence satisfactory to the board the applicant has current proficiency in cardiopulmonary resuscitation, including the use of an automated external defibrillator achieved through instruction provided by an individual, organization or institution of higher education approved by the Wisconsin department of health services.

SECTION 6. DE 2.015 (1) (d) is amended to read:

DE 2.015 (1) (d) Submits to ~~an initial interview and any other~~ interview that the board may require that demonstrates, to the board's satisfaction, that the applicant is competent to practice dentistry.

SECTION 7. DE 2.015 (1) (f) is created to read:

DE 2.015 (1) (f) Submits evidence satisfactory to the board the applicant has current proficiency in cardiopulmonary resuscitation, including the use of an automated external defibrillator achieved through instruction provided by an individual, organization or institution of higher education approved by the Wisconsin department of health services.

SECTION 8. DE 2.03 (5) (title) is amended to read:

DE 2.03 (5) REQUIREMENTS FOR LATE RENEWAL; REINSTATEMENT.

SECTION 9. DE 2.03 (5) (a) 2. is amended to read:

DE 2.03 (5) (a) 2. The fee ~~authorized by s. 440.08 (2) as determined by the department under s. 440.03 (9) (a), Stats.,~~ plus the applicable late renewal fee authorized by s. 440.08 (3), Stats.

SECTION 10. DE 2.03 (5) (b) is repealed and recreated to read:

DE 2.03 (5) (b). This paragraph does not apply to dentists or dental hygienists who have unmet disciplinary requirements. A dentist or dental hygienist renewing the license after 5 years shall do all of the following:

1. Pay the renewal fee as determined by the department under s. 440.03 (9) (a), Stats. and the renewal late fee.
2. Submits evidence satisfactory to the board the applicant has current proficiency in cardiopulmonary resuscitation, including the use of an automated external defibrillator achieved through instruction provided by an individual, organization or institution of higher education approved by the Wisconsin department of health services.
3. Provide evidence of one of the following:
 - a. An active license in good standing in another state.
 - b. If a dentist, successful completion of a ~~central regional dental testing service examination, or other~~ board approved testing service examination within the 1 year of renewal.
 - c. If a dental hygienist, successful completion of a ~~central regional dental hygiene testing service~~ board approved examination within 1 year of renewal.
 - d. Completion of a 1 year general practice residency.
 - e. Completion of a clinical education program approved by the Board.

SECTION 11. DE 2.03 (6) is repealed and recreated to read:

DE 2.03 (6) REINSTATEMENT. A dentist or dental hygienist who has unmet disciplinary requirements and failed to renew the license within 5 years or whose license has been surrendered or revoked may apply to have the license reinstated in accordance with all of the following:

- (a) Evidence of completion of the requirements in DE 2.03 (5) (b) if the license has not been active within 5 years
- (b) Evidence of completion of the disciplinary requirements, if applicable.
- (c) Evidence of rehabilitation or change in circumstances that indicates reinstatement to practice will not constitute a danger to the public or a patient.

SECTION 12. DE 2.03 (7) is repealed.

SECTION 13. DE 2.04 (1) is amended to read:

DE 2.04 (1) The board may grant a license as a dentist to an applicant who holds a valid license in good standing issued by the proper authorities of any other jurisdiction of the United States or Canada upon payment of the fee ~~authorized by s. 440.05 (2) as determined by the department~~ under s. 440.03 (9) (a), Stats., and submission of evidence satisfactory to the board that all of the following conditions are met:

SECTION 14. DE 2.04 (1) (c) and (d) is repealed.

SECTION 15. DE 2.04 (1) (e) and (g) are amended to read:

DE 2.04 (1) (e) The applicant has successfully completed a ~~clinical and laboratory demonstration~~ licensing examination ~~on a human subject~~ which, in the board's judgment, is substantially equivalent to ~~the clinical and laboratory demonstration examination administered by the central regional dental testing service~~ a board approved examination, or, alternative, has

successfully completed a board specialty certification examination in a dental specialty recognized by the American Dental Association.

(g) The applicant possesses a current certificate of current proficiency in cardiopulmonary resuscitation, from a course provider including the use of an automated external defibrillator, achieved through instruction provided by an individual, organization, or institution of higher education approved by the Wisconsin department of health services.

SECTION 16. DE 2.04 (2) is amended to read:

DE 2.04 (2) The board may grant a license as a dental hygienist to an applicant who holds a license in good standing issued by the proper authorities of any other jurisdiction of the United States or Canada upon payment of the fee ~~authorized by s. 440.05 (2)~~ as determined by the department under s. 440.03 (9) (a), Stats., and submission of evidence satisfactory to the board that all of the following conditions are met:

SECTION 17. DE 2.04 (2) (c) is repealed.

SECTION 18. DE 2.04 (2) (d) are amended to read:

DE 2.04 (2) (d) The applicant has successfully completed ~~a clinical and laboratory demonstration~~ an examination on a human subject which, in the board's judgment, is substantially equivalent to the ~~clinical and laboratory demonstration~~ examination administered by the central regional dental testing service a board approved examination.

SECTION 19. DE 2.04 (2) (f) is repealed.

SECTION 20. DE 2.05 is amended to read:

DE 2.05 Examination passing score. The score required to pass an examination shall be the recommended passing score of the examination provider. ~~based on the board's determination of the level of examination performance required for minimum acceptable competence in the profession. The board shall make the determination after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession~~

SECTION 21. DE 2.06, 2.07, 2.08 and 2.09 are repealed.

SECTION 22. DE 3.02 and 3.03 are repealed and recreated to read:

DE 3.02 Practice of dental hygiene. (1) (a) This subsection applies to a dental hygienist who is practicing dental hygiene or performing remediable procedures as an employee or as an independent contractor in a dental office.

(b) A dental hygienist may practice dental hygiene or perform remediable procedures only as authorized by a licensed dentist who is present in the facility in which those practices or procedures are performed, except as provided in par. (c).

(c) A dental hygienist may practice dental hygiene or perform remediable procedures if a licensed dentist is not present in the facility in which those practices or procedures are performed only if all of the following conditions are met:

1. The dental hygiene practices or remediable procedures are performed under a written or oral prescription.
2. The dentist who made the written or oral prescription has examined the patient at least once during the 12-month period immediately preceding all of the following:
 - a. The date on which the written or oral prescription was made.
 - b. The date on which the dental hygiene practices or remediable procedures are performed.
3. 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.

(2) (a) This subsection applies to a dental hygienist who is practicing dental hygiene or performing remediable procedures as an employee or as an independent contractor as follows:

1. For a school board, a governing body of a private school, as defined in s. 115.001(3d), Stats., or a governing body of a tribal school, as defined in s. 115.001 (15m), Stats..
2. For a school for the education of dentists or dental hygienists.
3. For a state or federal prison, county jail or other federal, state, county or municipal correctional or detention facility, or a facility established to provide care for terminally ill patients.
4. For a local health department, as defined in s. 250.01(4), Stats.
5. For a charitable institution open to the general public or to members of a religious sect or order.
6. For a nonprofit home health care agency.
7. For a nonprofit dental care program serving primarily indigent, economically disadvantaged or migrant worker populations.
8. At a facility, as defined in s. 50.01 (1m) , Stats., an adult family home certified under s. 50.032, Stats. or licensed under s. 50.033, Stats., an adult day care center, as defined in s. 49.45 (47) (a) , Stats., a community rehabilitation program, a hospital, as defined in s. 50.33 (2) , Stats., or a facility that is primarily operated to provide outpatient medical services.

(b) A dental hygienist may only practice dental hygiene as defined in s. 447.01 (3), Stats. or perform remediable procedures as defined by s. 447.01 (12), Stats.

3.03 Prohibited practices. A dental hygienist may not do any of the following:

- (1) Diagnose a dental disease or ailment.
- (2) Determine any treatment or any regimen of any treatment outside of the scope of dental hygiene.
- (3) Prescribe or order medication or radiograph.

- (4) Perform any procedure that involves the intentional cutting of soft or hard tissue of the mouth by any means.
- (5) Administer nitrous oxide inhalation, except as provided in ch. DE 15.
- (6) Administer local anesthesia, except as provided in ch. DE 7.

SECTION 23. DE 3.04 (2) is amended to read:

DE 3.04 (2) “Subgingival sustained release chemotherapeutic agents” means ~~medications~~ antibiotics that are applied under the gum tissue in periodontal pockets to treat periodontal or gum disease.

SECTION 24. 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)
