

2013 DRAFTING REQUEST

Bill

Received: 11/7/2013 Received By: mgallagh
Wanted: As time permits Same as LRB: -1173
For: Paul Farrow (608) 266-9174 By/Representing: Scott
May Contact: Drafter: mgallagh
Subject: Occupational Reg. - misc Addl. Drafters:
Occupational Reg. - prof lic Extra Copies: MED

Submit via email: YES
Requester's email: Sen.Farrow@legis.wisconsin.gov
Carbon copy (CC) to: michael.gallagher@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Changes to statutory definition of dentistry

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	mgallagh 11/7/2013	evinz 11/7/2013		_____	sbasford 11/7/2013	lparisi 11/18/2013	

FE Sent For:

*None
Needed*

<END>

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/1	mgallagh	1 eev 11/7/13	1 eev 11/7/13	_____	_____		

FE Sent For:

<END>

Gallagher, Michael

From: Rausch, Scott
Sent: Thursday, November 07, 2013 11:15 AM
To: Gallagher, Michael
Subject: Definition of Dentistry final draft and supporting doc
Attachments: Def of DDS Draft Oct 2013 WMS Changes Incorpor.pdf; ADA list of all states def of DDS ADA and non ADA defs June 2013.doc

Mike,

Sen. Farrow would like to draft the Definition of Dentistry Bill, which you will find the preliminary draft attached.

Please let me know if you have any questions.

Regards,

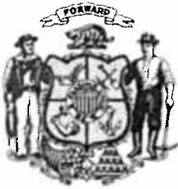
Scott Rausch

Chief of Staff

[Office of Senator Paul Farrow](#)

(608) 266-9174

Scott.Rausch@legis.wi.gov



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 447.01 (8) (a), 447.01 (8) (b), 447.01 (8) (c), 447.01 (8) (d), 447.01
2 (8) (e), 447.01 (8) (f), 447.01 (8) (g) and 447.01 (8) (h); **to renumber and amend**
3 447.01 (8) (intro.); **to amend** 447.03 (3) (h); and **to create** 447.01 (8) (bm) of the
4 statutes; **relating to:** the definition and practice of dentistry for professional
5 licensing purposes.

Analysis by the Legislative Reference Bureau

Generally, under current law, to practice dentistry in Wisconsin, a person must be licensed as a dentist by the Dentistry Examining Board. Current law defines “dentistry” as “the examination, diagnosis, treatment, planning or care of conditions within the human oral cavity or its adjacent tissues and structures.” The definition of dentistry under current law further specifies a number of activities that constitute dentistry, including extracting teeth or correcting their malposition; prescribing or administering drugs, including anesthetics, in conjunction with providing purported dental services; engaging in any of the practices, techniques, or procedures included in the curricula of accredited dental schools; or penetrating, piercing, or severing the tissues within the human oral cavity or adjacent associated structures.

This bill replaces that definition and defines “dentistry” to mean “the examination, evaluation, diagnosis, prevention, or treatment, including surgery, of diseases, disorders, or conditions of the human oral cavity or its adjacent or associated tissues and structures, or of the maxillofacial area, and their impact on the human body.”

The bill also provides that a licensed dentist may not perform dental services that are outside the scope of the dentist's relevant education, training, and experience, and the bill excludes from the dentistry licensing requirement any physician who is licensed in this state to the extent that the physician is acting within the scope of his or her license. Current law excludes a physician only to the extent that he or she extracts teeth or performs other activities specified by statute.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 447.01 (8) (intro.) of the statutes is renumbered 447.01 (8) (am) and
2 amended to read:

3 447.01 (8) (am) “Dentistry” means the examination, evaluation, diagnosis,
4 prevention, or treatment, ~~planning or care including surgery~~, of diseases, disorders,
5 or conditions within of the human oral cavity or its adjacent or associated tissues and
6 structures. “Dentistry” includes ~~any of the following~~, or of the maxillofacial area,
7 and their impact on the human body.

8 **SECTION 2.** 447.01 (8) (a) of the statutes is repealed.

9 **SECTION 3.** 447.01 (8) (b) of the statutes is repealed.

10 **SECTION 4.** 447.01 (8) (bm) of the statutes is created to read:

11 447.01 (8) (bm) A dentist licensed under this chapter may not perform dental
12 services that are outside the scope of the dentist's relevant education, training, and
13 experience.

14 **SECTION 5.** 447.01 (8) (c) of the statutes is repealed.

15 **SECTION 6.** 447.01 (8) (d) of the statutes is repealed.

16 **SECTION 7.** 447.01 (8) (e) of the statutes is repealed.

17 **SECTION 8.** 447.01 (8) (f) of the statutes is repealed.

18 **SECTION 9.** 447.01 (8) (g) of the statutes is repealed.

19 **SECTION 10.** 447.01 (8) (h) of the statutes is repealed.

A Summary of States' Definitions of Dentistry

ADA Definition:

The evaluation, diagnosis, prevention and/or treatment (nonsurgical, surgical or related procedures) of diseases, disorders and/or conditions of the oral cavity, maxillofacial area and/or the adjacent and associated structures and their impact on the human body; provided by a dentist, within the scope of his/her education, training and experience, in accordance with the ethics of the profession and applicable law.

Adopted: ADA Resolution 1997 H 33

Methodology

A review of each state's definition of dentistry resulted in classification of four categories of definitions or means of describing what constitutes the practice of dentistry. The first category consists of states that have adopted some form of the ADA definition of "dentistry" (which is broad and allows dental board's significant freedom in interpreting what procedures a dentist may legally perform). The second category consists of states with a very short formal definition of "dentistry". The third category consists of states that employ a combination of a formal definition of "dentistry" along with a list of duties that dentists may perform. The fourth category consists of states that employ only a list of procedures a dentist can perform as what constitutes the practice of dentistry. This is known as the "laundry list." The "laundry list," since it lists specific procedures that a dentist may perform, is more vulnerable to a claim that dentists may not perform procedures not on the list.

Definitions with two key elements allow the states' dental boards maximum flexibility in interpreting what procedures dentists may legally perform. One element are the words "*associated structures*," and the other is a statement or sentence emphasizing that dentists may perform procedures that are within the *scope of their education*.

List of States

Nineteen (19) states have adopted what is similar to the ADA definition of "dentistry." The language of a particular state statute may vary from the ADA definition but the substance is the same. These are Alaska, Arizona, Arkansas, Colorado, Delaware, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maine*, Mississippi, Nevada, Ohio*, Oregon, Rhode Island, Tennessee, Virginia and West Virginia. All except Illinois and Maine amended the definition of dentistry in their Dental Practice Acts. Illinois adopted the ADA definition in a regulation and Maine* and Ohio adopted a policy statement that the ADA definition was consistent with the dental practice act and board rules.

Three (3) states Michigan, New York, North Dakota have only a brief formal definition of "dentistry" that differs from the ADA definition. (MI and ND definitions do and NY's definition does not predate the ADA definition.)

Fifteen (15) states plus the District of Columbia, use a formal definition of "dentistry" along with a list of procedures that constitute the practice of dentistry. These are California, District of Columbia, Florida, Hawaii, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, North Carolina, Pennsylvania, South Carolina**, South Dakota, Tennessee, Texas, and Wisconsin.

Fifteen (15) states only provide a list of procedures that constitute the practice of dentistry: Alabama, Connecticut, Idaho, Indiana, Kansas, Maine*, Missouri, Montana, Nebraska, New Hampshire, Oklahoma, Utah, Vermont, Washington, and Wyoming.

The following tables list which states do not incorporate one or both of the two key elements of the ADA definition identified above.

These states do not include the words "*associated structures*" in the definition of dentistry:

Alabama	Missouri	Oklahoma
Dist. of Columbia	Montana	Texas
Florida	Nebraska	Utah
Idaho	Nevada	Vermont
Indiana	New Hampshire	Washington
Kansas	New Mexico	Wisconsin
Maine	New York	Wyoming
Michigan	North Carolina	

These states do not emphasize (in the definition of dentistry) that dentists can perform procedures that are within their *scope of education*:

Alabama	Michigan	Pennsylvania
Arizona	Minnesota	South Carolina**
Arkansas	Missouri	South Dakota
California	Montana	Texas
Connecticut	Nebraska	Utah
Dist. of Columbia	Nevada	Vermont
Florida	New Hampshire	Virginia
Hawaii	New Jersey	Washington
Idaho	New Mexico	West Virginia
Indiana	New York	Wisconsin
Kansas	North Carolina	Wyoming
Maine*	North Dakota***	
Massachusetts	Oklahoma	

These 15 states have a separate definition of oral-maxillofacial surgery (OMS):

California	Michigan	South Carolina**
Georgia	Mississippi	Tennessee
Iowa	New Jersey	Texas
Kansas	Oklahoma	Washington
Louisiana	Oregon	West Virginia

These 4 states have provisions detailing criteria an OMS must satisfy to perform elective cosmetic procedures:

California	North Carolina	Tennessee
Virginia		

* Maine, Ohio – the Board of Dental Examiners has a policy that when deciding whether a regulated dentist is acting within the scope of practice, it will look to the ADA definition to make its determination.

** South Carolina – the Board of Dentistry has policy defining the scope of OMS practice that includes treatment of the oral cavity and maxillofacial area or adjacent or associated structures and listed procedures found within dental school curricula.

***North Dakota - the definition of dentistry does not emphasize that dentists can perform procedures that are within their *scope of education*. A separate statute found within the dental practice act does however state: “A dentist shall practice within the scope of that dentist’s education, advanced training as recognized by the board and any specialty practice recognized by the American dental association or other professional entity recognized by the board.”

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State Government Affairs
#52 Definition of Dentistry-summary
June 3, 2013



IN 11/7 By 11/8
State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1173/P3
MPG:eev&cjs:rs

Thanks
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

- Companion RMR
- No changes

3592/1

regen

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3592/1dn

MPG:cjs:rs

eev

~~October 9, 2013~~

date

✓
Senator Farrow:

Please review this draft carefully to ensure that it is consistent with your intent.

In this draft, I included a paragraph under the definition of “dentistry” that prohibits a dentist from performing dental services that are outside the scope of the dentist’s relevant education, training, and experience. It is generally against LRB policy to put that kind of language—language setting forth a substantive practice requirement—in a definition. If you have any questions about why that substantive language was included in the definition in this draft, you should contact Representative Jagler’s office.

Please let me know if you have any questions.

Thank you.

Michael Gallagher
Legislative Attorney
Phone: (608) 267-7511
E-mail: michael.gallagher@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3592/1dn
MPG:eev:ev

November 7, 2013

Senator Farrow:

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Legislative Attorney
Phone: (608) 267-7511
E-mail: michael.gallagher@legis.wisconsin.gov

Barman, Mike

From: Rausch, Scott
Sent: Monday, November 18, 2013 11:04 AM
To: LRB.Legal
Subject: Draft Review: LRB -3592/1 Topic: Changes to statutory definition of dentistry

Please Jacket LRB -3592/1 for the SENATE. Thank you.

Regards,

Scott Rausch

Chief of Staff

Office of Senator Paul Farrow