

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1173/P1dn
MPG:eev:rs

February 18, 2013

Representative Jagler:

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

The drafting instructions were to replace the current definition of dentistry under s. 447.01 (8), stats., with the following language:

Dentistry is defined as 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.

Consistent with the drafting instructions, the draft repeals s. 447.01 (8) (a) to (h), stats., and amends the language of the general definition of dentistry under s. 447.01 (8) (intro.), stats., to include specific elements from the above proposed language. For the reasons I discuss below, however, not all of that language is represented in the draft.

1. We cannot use “and/or,” or similar constructions, or parentheses in the statutes. That is fixed in the draft.
2. By defining dentistry as services provided by a dentist, the definition becomes circular because, under s. 447.01 (7), stats., a dentist is someone who practices dentistry. The circular definition is a problem in part because it renders unclear the prohibition against the unlicensed practice of dentistry, i.e., a person may not practice dentistry without being a licensed dentist, but now, by definition, a person is not practicing dentistry if the person is not a dentist. Therefore, it is better to continue to define dentistry based on the nature of the practice rather than the title of the practitioner. Please let me know how you would like to proceed.
3. The proposed language defining dentistry as being within the scope of a dentist’s education, etc., and in accordance with the ethics of the profession is nondefinitional. Instead, that language presents substantive requirements—that a dentist must practice consistent with his or her professional education and controlling ethical

standards. LRB's general policy is to avoid putting substantive requirements in a definition because doing so makes it difficult to understand the requirements of the law and may lead to unintended consequences. For example, certainly someone who performs the acts of a dentist badly—who does not perform those acts within the scope of a satisfactory education and in accordance with the ethics of the profession—is not excluded from regulation by the Dentistry Examining Board. Yet the inclusion of that language in the definition confuses the law's meaning and the examining board's authority to discipline professional misconduct. Also, that language is unnecessary because the relevant substantive requirements already exist elsewhere in the statutes and administrative rules.

If your intent is to make specific changes to the substantive requirements for the practice of dentistry, then we should discuss your intent and how best to achieve that intent by amending the substantive legal requirements for the practice of dentistry in Wisconsin.

4. The current definition of dentistry in the statutes under s. 447.01 (8) (a) to (h) already contains most of the elements included in the proposed language. There are, however, significant exceptions. For example, under current law, surgery is not explicitly included under the definition of dentistry, although that definition can reasonably be interpreted to include surgery. In particular, see current s. 447.01 (8) (intro.), (f), and (g), stats. Consistent with the drafting instructions, the draft explicitly includes surgery.

5. What is more significant is that the definition of dentistry under current law does not include language extending the practice of dentistry, including surgery, to the "maxillofacial area." Consistent with the proposed language in the drafting instructions, the definition in this draft incorporates that additional element. Note, however, that by doing so, the draft expands or broadens the scope of dentistry in Wisconsin.

Under current law, dentistry is limited to "the human oral cavity or its adjacent tissues and structures." But, the human maxillofacial area is larger or includes more than "the human oral cavity or its adjacent tissues and structures." *Webster's* defines "maxillofacial" as "of, relating to, or treating the maxilla *and the face*" (my emphasis). The maxilla consist essentially of the upper jaw.

According to *Webster's*, the maxillofacial area includes the face, but the definition of dentistry under current law only includes the oral cavity itself or its adjacent tissues and structures, not the whole face. Therefore, for example, while procedures affecting the bones of the eye socket could not qualify as dentistry under current law because those bones are not adjacent to the oral cavity, procedures affecting the bones of the eye socket could be considered dentistry under the proposed language because the maxillofacial area includes the entire face. If you want to include a narrower definition of "maxillofacial area" for purposes of the definition of dentistry in this draft, please let me know. Also, let me know if, instead, you are satisfied with the language under current law limiting dentistry to the oral cavity and adjacent tissues and structures and want to remove "maxillofacial area" from the draft.

Please let me know how you would like to proceed with this request. I'd be happy to sit down and discuss any questions or concerns you may have.

Thank you.

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