

May 11, 2020

Dr. Matthew Bistan
Chair, Dentistry Examining Board
Department of Safety and Professional Services
4822 Madison Yards Way
Madison, Wisconsin 53705

Dr. Bistan:

The effects of coronavirus, particularly on the most vulnerable populations, are devastating and tragic. Government has a key role to play in implementing and guiding an appropriate response to this crisis, but a complete halt of all economic activity, especially in the context of the healthcare industry is irresponsible. A crisis does not absolve the government from respecting core separation-of-powers principles and honoring the legislature and the public's role in addressing a crisis.

Americans for Prosperity – Wisconsin and the MacIver Institute have serious policy and legal concerns about potential proposed action by the Dentistry Examining Board (DEB) which would prohibit dentists from performing non-emergency, or non-urgent procedures. Our understanding is that the original meeting at which this was to be taken up was canceled and rescheduled for Monday, May 11. It remains unclear exactly what actions will be taken, but in the event the Board is considering taking adverse action against Wisconsin's dentists it should keep in mind that it too is not absolved from Wisconsin's law during a public health emergency.

The Board's now-deleted statement set forth responsible and well-balanced guidance for dentists and was well within the Board's scope:

“The Department of Health Services’ Emergency Order #28 recognizes dental offices as essential to the healthcare of Wisconsin citizens. Dental offices can stay open to provide care to their patients, recognizing that a delay in routine care can lead to unintended health consequences. Dental offices will be required to continue practicing universal precautions in addition to following the Covid-19 guidelines set by the American Dental Association, Wisconsin Department of Health Services, and outlines by the Governor’s Safe Business Practice.”

The Board, and the Department of Safety and Professional Services should keep in mind, that, as an agency, the Dentistry Examining Board is subject to Wisconsin laws governing permissible agency action. It is unclear to us what authority the Board has to try to restrict the scope of practice in this manner, but to the extent the Board has the underlying statutory authority necessary to implement any kind of rule, it must follow the Chapter 227 rulemaking process to allow for legislative and public input prior to enforcing any changes to licensure requirements.

For many dentists a restriction such as this might spell the end of their practice, just as we've seen with countless businesses across the state forced to close their doors permanently. Beyond providing for accountability and transparency, Wisconsin's rulemaking process also provides citizens of Wisconsin due process before their rights are affected. Responding appropriately to a pandemic does not leave agencies free to trample on due process.

We urge this Board, and any other administrative agency contemplating depriving Wisconsinites of due process and input under the rulemaking process to reconsider that action and ensure that they comply with Wisconsin law.

Sincerely,

Americans for Prosperity
Wisconsin

John K. MacIver Institute
for Public Policy