



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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February 22, 2005

Ms. Sandra Rowe
Deputy Secretary
Department of Regulation and Licensing
1400 East Washington Avenue
Madison, WI 53702

Dear Ms. Rowe:

Your office asks whether taking impressions of human teeth for the purpose of constructing a gel tray to be used for whitening the teeth constitutes the practice of dentistry, so that only a licensed dentist could lawfully take these impressions. In my opinion, taking impressions for the ultimate purpose of whitening teeth does not constitute the practice of dentistry, and therefore may be done by persons other than licensed dentists.

No person may practice dentistry without a license. Sec. 447.03(1)(a), Wis. Stats. (2003-04).

Dentistry is expressly defined by statute. In general, "[d]entistry" means the examination, diagnosis, treatment, planning or care of conditions within the human oral cavity or its adjacent tissues and structures." Sec. 447.01(8), Wis. Stats. (2003-04).

The key word in this definition is "condition." If discoloration constitutes a condition within the definition of dentistry, then treating discolored teeth by whitening them would constitute the practice of dentistry. But if discoloration is not an included condition, whitening teeth would not be practicing dentistry.

The statute does not readily resolve the problem since condition is not further defined. Resort to a dictionary does not provide an immediate answer either since condition has many meanings, including both a more general meaning of a mode or state of being, which would include discoloration, and a more specific meaning of a state of health or disease, which would seem to exclude it. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 473 (unabridged ed. 1986); THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 393 (3d ed. 1996).

The principle that statutes should be construed to avoid unreasonable or absurd results, *HMO-W, Inc. v. SSM Health Care System*, 2003 WI App 137, ¶ 5, 266 Wis. 2d 69, 667 N.W.2d 733, points to the more specific meaning of condition as the one intended by the Legislature. Otherwise, treating or caring for ordinary oral conditions such as particles caught between the teeth or deposits left on the teeth by means of flossing or brushing would constitute the practice of dentistry, so everyone would have to visit their dentist twice a day to have their teeth cleaned.

Moreover, examination, diagnosis and treatment are terms commonly associated with conditions involving health or disease. In particular, "diagnosis" is primarily defined as the act of identifying a disease. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 622 (unabridged ed. 1986); THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 515 (3d ed. 1996). So the conditions whose examination, treatment, and especially diagnosis constitute the practice of dentistry are reasonably understood to be those conditions that involve dental health or disease.

This conclusion is confirmed by the first of the several subsections of the statute defining dentistry which specify particular acts that constitute the practice of dentistry. This subsection provides that

"[d]entistry" includes . . .

(a) [e]xamining into the . . . condition . . . of dental health or dental disease . . .

Sec. 447.01(8)(a), Wis. Stats. Clearly, the condition contemplated by this section of the statute is not the general condition of being but the specific condition of health or disease.

A word used more than once in a statute should ordinarily be given the same meaning every time it appears. *Harnishfager Corp. v. LJRC*, 196 Wis. 2d 650, 663, 539 N.W.2d 98 (1995). So condition should mean the same thing in the general definition of dentistry as in the first specific application of the definition. Both times, condition should be understood to mean a condition of dental health or disease rather than any normal condition of the mouth.

This meaning of condition is also suggested by the statutory definition of "dental disease," the third section of the statute to include the word condition. "Dental disease" means any pain, injury, deformity, physical illness or departure from complete dental health or the proper condition of the human oral cavity or any of its parts." Sec. 447.01(2), Wis. Stats. Thus, the oral condition contemplated in this section is a condition relating to dental disease.

Applying again the principle that the same word should be given the same meaning, condition should mean the same thing in the definition of dentistry as in the definition of dental

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disease. Again, condition should be understood to mean a condition of dental disease rather than any normal condition of the mouth.

Discoloration of teeth is not a condition of dental disease. Mere discoloration is not pain, injury, deformity, physical illness or departure from complete dental health or the proper condition of the human oral cavity, but a normal condition involving the external appearance of the surface of the teeth caused by contact with staining agents in ordinary food and drink or by the inescapable process of aging.

Furthermore, as you point out, teeth bleaching is markedly different from prophylactic teeth cleaning. It involves the application of a commonly available substance, hydrogen peroxide, to change nothing more than the color of the outer layer of the tooth enamel. This process produces no change in the texture or structure of the teeth. Whitening is primarily a cosmetic exercise with no significant health implications.

Thus, treating or caring for discolored teeth by whitening them does not constitute the practice of dentistry because discoloration is not a condition within the definition of dentistry.

The fact that another specific application of the definition of dentistry includes taking an impression with a view to making a dental appliance, section 447.01(8)(c) of the Wisconsin Statutes, does not broaden the practice of dentistry to include impressions made with a view to whitening teeth. Dental appliances include only those "structures to be used or worn as substitutes for natural human teeth." *Id.* A gel tray to be used for whitening teeth is not a dental appliance, so taking an impression for the purpose of making a gel tray to be used for whitening teeth already in place is not the practice of dentistry.

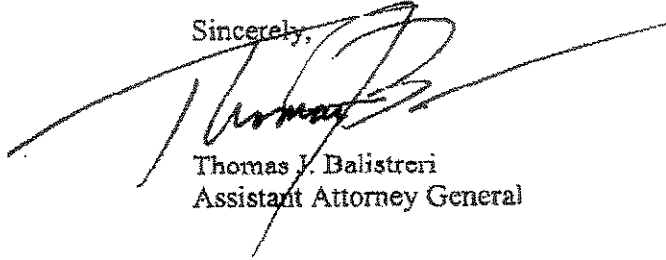
Besides, it is now common for people who are not licensed dentists to whiten their own teeth. Numerous products for that purpose are readily available without a prescription. These products are classified as cosmetics by the Food and Drug Administration. It would be unreasonable to conclude that all these people were guilty of the crime of practicing dentistry without a license by treating or caring for their teeth with a cosmetic for the purpose of whitening them.

There are undoubtedly some who will operate unscrupulous or incompetent commercial ventures which purport to whiten teeth. Those who are harmed by these ventures are not without a remedy even though the operators may not be prosecuted for practicing dentistry without a license. Like any other consumers who have been harmed by the provision of inadequate or improper services, they may complain to the Office of Consumer Protection for redress.

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Although I have answered your inquiry, I should remind you that any dispute between an examining board and the secretary may be arbitrated by the Governor under section 440.045 (2003-04).

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas J. Balistreri', is written over a large, sweeping horizontal line that extends across the width of the signature area.

Thomas J. Balistreri
Assistant Attorney General

* Department of Regulation and Licensing General Counsel concurs with this opinion *