

To: Members, Assembly Committee on Small Business Development

From: Association of Dental Support Organizations (ADSO)

Re: AB 368 - Response to Statements Made at the Nov. 11th Public Hearing

Thank you for taking the time to hear from concerned members of the public and business community during the November 11th public hearing on AB 368. Many claims were made during the hearing by supporters of AB 368 that we believe mischaracterize current law, the provisions of the bill, the changes made by the proposed amendments to the bill, and the nature of our opposition to the legislation. These claims and our response are summarized below.

Claim: 92% of dental practices are covered by Wis. Ch. 447. AB 368 merely extends these provisions to the other 8% of practices not currently covered.

Response: Wis. Ch. 447 provides no reference to “dental practices,” whether it’s owned by dentist or a non-dentist. Rather, it establishes licensing procedures for dentists, hygienists and mobile dentistry programs. Further, current statutes authorize the Dental Examining Board to investigate and enjoin ANY person, dentist or non-dentist, for violations of Wis. Ch. 447. Bottom line: Ch. 447 already applies to EVERYONE.

Claim: The proposed amendments to AB 368 eliminate the authority of the Dental Examining Board to promulgate rules relating to the operations of a dental practice.

Response: While the amendments render AB 368 silent on rule-making, they do nothing to lessen the broad rule-making authority contained in current law that the bill will now apply to non-dentists. For instance, Wis. Stat. 447.02(1)(d) authorizes the Board to promulgate additional rules specifying the practice of dental hygiene. Also, Wis. Stat. 447.07(3)(a) grants the Board broad authority to define “unprofessional conduct,” leaving practices vulnerable to an arbitrary or unfair interpretation.

Claim: It’s impractical for the Dental Examining Board to exercise their current law authority to enjoin in circuit court non-dentists for violations of Ch. 447.

Response: The solution to a concern about the impracticability of the Dental Examining Board to take action should not be to create more regulations. This is about due process under the law. All private businesses in Wisconsin are entitled to due process in the court system for alleged

violations of the law. AB 368 would eliminate this protection and, for the first time, allow the Dental Examining Board to close a non-clinical private business without due process.

Claim: AB 368 does not create new regulations on businesses.

Response: AB 368 will, for the first time, subject non-clinical private businesses to new administrative rules crafted by the Dental Examining Board. The Board will, in effect, go from an entity that oversees the licensing and practice of dentistry to one regulating private business in Wisconsin.

Conclusion

New regulations on business should result from careful consideration of existing problems in the marketplace and a careful balancing of consumer protection and consumer choice. At a minimum, those proposing new regulations should demonstrate existing harm in the marketplace that the regulations would prevent.

To date, the proponents of AB 368 have demonstrated zero instances of patient harm that AB 368 would have prevented. In the case of a clinic that has closed, the ability of the Dental Examining Board to revoke that clinic's registration would serve no preventative purpose and would not assist patients in actually obtaining their dental records.