

- EXPEDITE
- No hearing set
- Hearing is set

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Judge/Calendar: \_\_\_\_\_

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY

WASHINGTON STATE DENTAL  
ASSOCIATION,

Petitioner,

vs.

WASHINGTON STATE BOARD OF  
DENTURISTS,

Respondent.

No. \_\_\_\_\_

**PETITION FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE  
RELIEF PURSUANT TO RCW 34.05**

Petitioner, the Washington State Dental Association (“WSDA”), alleges as follows:

**INTRODUCTION**

1. This is an action for declaratory relief from improper rulemaking and for other relief under RCW Ch. 34.05, the Washington Administrative Procedure Act (“APA”).

Petitioner is an association whose membership includes more than 4,200 Washington dentists.

The Board of Denturists (“Board”), promulgated the new WAC 246-812-462, effective January

22, 2024, that purports to “establish[] the requirements that are to be followed in order for a

licensed denturist to place a prefabricated implant abutment on an implant for the purpose of

1 fabricating, repairing, relining, or rebasing a denture.” The new rule exceeds the Board’s  
2 statutory authority, was adopted without compliance with statutory rule-making procedures,  
3 and is arbitrary and capricious. On behalf of its members, WSDA seeks an order declaring the  
4 new rule invalid and enjoining the state from implementing it.  
5

6 **JURISDICTION AND VENUE**

7 2. The Court has jurisdiction to hear the petition because the new rule, or its  
8 threatened application, interferes with or impairs, or immediately threatens to interfere with or  
9 impair, the legal rights or privileges of WSDA’s members. RCW 34.05.570(2). There is no  
10 requirement that WSDA or its members exhaust administrative remedies or take any other  
11 action prior to bringing this petition. RCW 35.05.534(1).  
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13 3. Venue in this Court is proper under RCW 34.05.570(2).  
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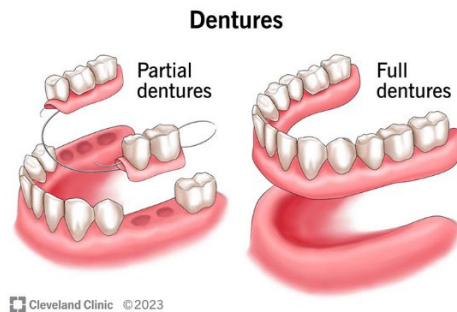
15 **PARTIES**

16 4. Petitioner, the Washington State Dental Association, is a Washington not-for-  
17 profit corporation, with principal offices in Seattle, Washington. WSDA’s membership  
18 includes more than 4,200 Washington dentists. WSDA’s purpose includes advocacy for  
19 reduced costs in oral health care; protecting the doctor-patient relationship; and promotion of  
20 health and safety of all people in Washington. The mailing address for WSDA is 126 N.W.  
21 Canal Street, Suite 300, Seattle, WA 98107.  
22  
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1           10.     Denturists are defined as those who engage in the “practice of denturism.”  
2 Pertinent to this Petition, the practice of denturism includes (a) “[m]aking, placing,  
3 constructing, altering, reproducing, or repairing a denture,” (b) “[t]aking impressions and  
4 furnishing or supplying a denture directly to a person or advising the use of a denture, and  
5 maintaining a facility for the same.” RCW 18.30.010(5). The statute defines “denture” as “a  
6 *removable* full or partial upper or lower dental appliance to be worn in the mouth to replace  
7 missing natural teeth.” RCW 18.30.010(2) (emphasis added). “Removable,” while not defined  
8 in Chapter 18.30, is a common term understood to mean the opposite of “fixed.” In oral health,  
9 “removable” refers to a device that is removable by the wearer without use of force or  
10 specialized tools.  
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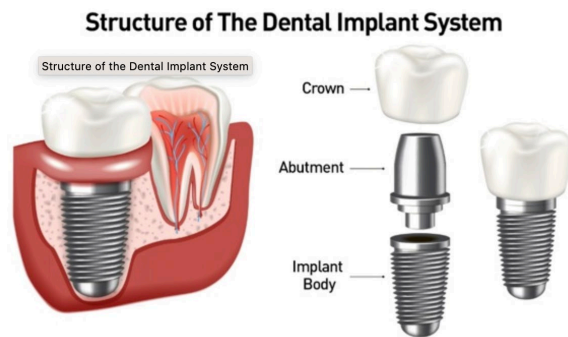
12           11.     The picture below depicts traditional dentures.  
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19 <https://my.clevelandclinic.org/health/treatments/10900-dentures>. They can be taken in and  
20 taken out by the wearer with their fingers, which is frequently done for purposes of cleaning  
21 and comfort. No visit to a practitioner or special tool is needed for their removal.  
22  
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1           12.     Denturists have been making, placing, constructing, altering, reproducing, and  
2 repairing traditional dentures like those pictured above for decades. It is a well-established part  
3 of a dentist’s scope of practice.

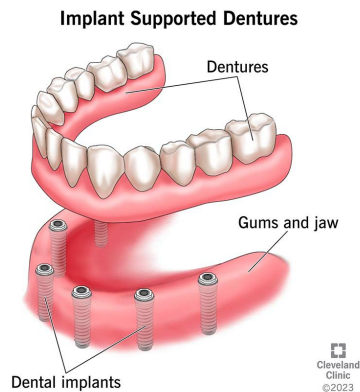
4           13.     In contrast to the device pictured above, dental implants are medical devices  
5 surgically implanted into the jaw to restore a person’s ability to chew or their appearance. An  
6 implant may be one tooth or may be used to affix an entire arch to the patient’s jawbone. Once  
7 placed, the patient cannot remove implants with their own fingers. A patient would need to  
8 return to a practitioner with the proper tools and skill to remove them. The picture below  
9 depicts a dental implant system for individual teeth.  
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17 <https://www.fda.gov/medical-devices/dental-devices/dental-implants-what-you-should-know>.

18 Pertinent to this Petition is the middle component called an “abutment,” which serves as a  
19 support and attachment apparatus, secured to the implant as well as the crown or other  
20 prosthesis. There are prefabricated and custom abutments. A prefabricated abutment is a  
21 machine-manufactured post that attaches to the superior part of a dental implant and protrudes  
22 through the gingival tissues and onto which a crown is fitted.  
23  
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1           14.     The picture below depicts an entire arch of teeth secured to implant bodies.



9           <https://my.clevelandclinic.org/health/treatments/24303-implant-supported-dentures>. As with the  
10 dental implant system for individual teeth shown above, a patient would need to return to a  
11 practitioner with the proper tools and skill to remove the implants.

12

13           15.     Implants and dentures are not the same. Dentures are within the scope of  
14 practice of denturists, but implants have never been.

15           16.     In February 2018, the Board received and reviewed an inquiry asking if  
16 placement of an implant abutment (described above) was within the scope of practice for a  
17 licensed denturist. In response, the Board wrote “yes . . . placement of an implant prefabricated  
18 abutment is within the scope of practice as listed under RCW 18.30.010(5).” The cited statute is  
19 the definition of “practice of denturist.”

20

21           17.     The decision sparked great concern in the dental community regarding the safety  
22 of the public. Those in opposition include WSDA, the Washington State Society of  
23 Prosthodontists, a retired dentist with 42 years of practice, the prosthodontic residency director  
24 for the University of Washington and who was formerly the prosthodontic program director for

1 the US Army and the Prosthodontic Consultant to Surgeon General of the Army, and a fellow  
2 of the American College of Prosthodontics. Concerns of the dental community include:

3 a. The process of placing implants and abutments is a significant medical  
4 process that leaves patients vulnerable to complications and unforeseen circumstances.  
5 Treatment of a patient with dental implants requires clinical judgment to determine  
6 health of the implant. This includes examination of soft tissues around the implant such  
7 as probing with a periodontal probe or visual/digital inspection and assessment of the  
8 bony support via radiograph evaluation. Many implant procedures require  
9 administration of anesthetics.  
10

11 b. Implants are prone to complications during placement and removal,  
12 including periimplantitis, occlusal load failure, and lack or loss of implant integration.  
13 Implants can also fail or become loose in the bone, and prosthetic components can  
14 break or snap.  
15

16 c. Proper implant treatment and management requires a comprehensive  
17 knowledge of pharmacology, physiology, and biomechanics. There are over 100  
18 medications that affect bone health and the physiology of the oral cavity. Knowledge of  
19 these medications is necessary before implant therapy can be recommended.  
20

21 d. Implant restoration requires hundreds of hours of dental education and  
22 training and includes radiographic and surgical components. Denturist training does not  
23 include the skills necessary to safely make necessary assessments and perform all of  
24

1 these tasks. The description given by denturists is oversimplified to shoehorn the task  
2 into denturist scope of practice, and it places the public at risk.

3 e. Authorization to perform assessments necessary for implants comes from  
4 an institution that has been accredited by the American Dental Association's  
5 Commission on Dental Accreditation (CODA). CODA explains why accreditation is  
6 important:  
7

8 Accreditation is the ultimate source of consumer protection for  
9 prospective students. It is often a prerequisite for governmental funding.  
10 Graduation from an accredited program is almost always stipulated by  
11 state law and is an eligibility requirement for licensure and/or certification  
12 examinations. In short, accreditation of a school or program is a student's  
13 most important source of independent validation that the program has at  
14 least enough educational value to be "approved" by a credible (expertise-  
15 based), independent (free of outside influence), reliable (consistently  
16 applied standards) organization that has the U.S. Department of  
17 Education's approval."

18 <https://coda.ada.org/>. CODA accredits pre-doctoral and post-doctoral education  
19 through a vigorous inspection.

20 f. The requirement that a patient see a dentist for an exam and x-ray twice  
21 during the course of treatment in the New Abutment Rule is impractical and impossible  
22 to enforce. Most patients will refuse to go through the hassle, which will result in poor  
23 patient compliance and poor patient outcomes. There are already examples of poor  
24 patient outcomes resulting from a denturist attempting to manage implants.  
25  
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1 g. Implants are not included within the definition of “dentures.” The  
2 definition of “dentures” is clear and unambiguous and require they be “removable.”

3 Implants are not removable. And unlike dentures, implants traverse the gum tissue.

4 h. Implant restoration and soft tissue management is not within the clear  
5 and unambiguous scope of practice of denturism as defined in RCW 18.30, nor did the  
6 legislature intend to include implants when RCW 18.30 was enacted. It is an example of  
7 “scope of practice creep.” The proper avenue to expand scope of practice is the  
8 legislature.  
9

10 i. Denturists do not carry the same liability insurance as dentists. If an  
11 issue arises, the patient may not have recourse.

12 18. In addition to community members, the Board received notice of concerns from  
13 the Washington State Dental Quality Assurance Commission (“DQAC”). DQAC is another  
14 Commission within the Department of Health. DQAC is comprised primarily of active,  
15 licensed dentists. RCW 18.32.0351. DQAC echoed the concerns of community members and  
16 expressed its view that placement of an implant prefabricated abutment is within the practice of  
17 dentistry and not within the practice of denturists. The basis for this view was safety of the  
18 patient – stating that prefabricated abutments are not desirable in all scenarios and whether to  
19 use one is a decision that should be made by a licensed dentist. Similarly, the decision whether  
20 to use a prefabricated abutment versus a custom abutment is also one that is proper for a  
21 licensed dentist.  
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1           19.     Despite being advised by many members of the dental health community that  
2 implants and dentures are not the same, that the proposed action would be contrary to law,  
3 contrary to decades of industry practice, arbitrary and unlawful, inconsistent with the design of  
4 the denturist scope of practice, unsafe for the public, unworkable, and would properly require  
5 legislative action, the Board set about to change the legislated and historical scope of the  
6 practice of denturists by administratively redefining “denture” to include “prefabricated implant  
7 abutments.”  
8

9           20.     The Board commenced the APA rule-making process on February 15, 2022,  
10 WSR 22-05-084. Rather than accurately describe the new rule as changing the denturist’s scope  
11 of practice, the Board described its proposed rulemaking as “establishing new sections of rule  
12 for requirements for prefabricated implant abutments.”  
13

14           21.     During the APA rule-making process, an agency is required to address certain  
15 criteria before adopting significant legislative rules. RCW 34.05.328. Rather than addressing  
16 why the New Abutment Rule was needed, the Board ignored the actual Board duties and  
17 objectives and instead explained how the new rule answers a question that the Board received.  
18 WSR 22-05-084. The Board later stated that the new rule was needed “to set out the  
19 requirements that are to be followed in order for a licensed denturist to place an abutment on an  
20 implant.” WSR 23-19-088. The Board offered no explanation for why such requirements were  
21 needed, or why denturists should be placing abutments at all.  
22

23           22.     In its comments on the rule, WSDA and several members of the dental  
24 community posed a series of questions and concerns intended to prompt a response by the  
25

1 Board consistent with the RCW 34.05.328 requirements, including RCW 34.05.328(1)(d) and  
2 (1)(e), which require a determination that the benefit outweighs the cost, and consideration of  
3 alternatives. The Board failed to respond. The Board similarly failed to address coordination of  
4 the rule with other state laws, such as RCW 18.30.090 (setting forth denturist licensing  
5 requirements) and WAC 182-535-1050 (providing a different definition of “dentures” for  
6 Medicaid coverage that is now inconsistent). The Board was also ambiguous as to whether it  
7 performed a cost-benefit analysis as required by RCW 34.05.328(1)(c). Instead, the Board  
8 stated “if” a cost-benefit analysis were done, it would be available by contacting the Board.  
9 WSR 24-02-029. The Board therefore failed to sufficiently address the significant legislative  
10 rule criteria, and the New Abutment Rule was therefore adopted without compliance with  
11 statutory rule-making procedures.  
12

13  
14 23. During the rule-making process, an agency is also required to comply with the  
15 Regulatory Fairness Act, which requires the agency to prepare a small business impact  
16 statement, unless an exemption applies. RCW 19.85.025. In one of its filings with the Office of  
17 the Code Reviser, the Board stated that the New Abutment Rule was “fully exempt” from the  
18 Regulatory Fairness Act. WSR 23-19-088. No explanation was provided. Then in its final Rule-  
19 Making Order, WSR 24-02-029, the Board did not address the Regulatory Fairness Act.  
20 Because the dental industry is comprised of both small (less than 50 employees) practices and  
21 large groups affiliated with dental service organizations (DSOs), the requisite analysis should  
22 have been completed. The New Abutment Rule was therefore adopted without compliance with  
23 statutory rule-making procedures.  
24

1           24.     Lastly, at the very end of its rule-making process, the Board changed the text of  
2 the proposed rule without receiving additional rule-making comments or having another public  
3 rule-making hearing. The Board simply changed the text of the proposed rule and implemented  
4 it. WSR 24-02-029. The Board therefore again failed to follow rule-making procedures, and the  
5 New Abutment Rule was adopted without compliance with statutory rule-making procedures.  
6

7           25.     The Board concluded its APA rule-making process on December 22, 2023, with  
8 publication of its Rule-Making Order, WSR 24-02-029. The new rule became effective on  
9 January 22, 2024. While the Board did not expressly change the definition of “denture” with its  
10 rulemaking, the effect of the new rule was exactly that – to change the definition of “denture”  
11 to include prefabricated implant abutments.  
12

13           26.     In correspondence with a dental community member dated January 3, 2024, the  
14 Board indicated that failure to comply with the newly promulgated rule would subject  
15 denturists to disciplinary action.

16           27.     Changing the scope of practice of denturists exceeds the statutory authority of  
17 the Board. Changing the definition of “dentures” exceeds the statutory authority of the Board.  
18 Adopting the New Abutment Rule exceeds the scope authority of the Board. Adopting the New  
19 Abutment Rule was arbitrary and capricious.  
20

21           28.     The New Abutment Rule will dramatically expand the activities of denturists  
22 without commensurate education and training. For example, despite concerns expressed  
23 regarding inadequate denturist training to handle complications during abutment placement, the  
24

1 Board did not modify denturist education, training, or competency requirements. The New  
2 Abutment Rule is therefore arbitrary and capricious.

3         29. The New Abutment Rule will also create significant inefficiencies without any  
4 commensurate gain. As an example, the New Abutment Rule requires a dentist to pre-examine  
5 and approve the health of the implant before a denturist can attach a prefabricated abutment. In  
6 other words, a patient will first need to go visit a dentist, then schedule another appointment  
7 with a denturist. As a further complication, these two visits must occur within 90 days of each  
8 other. The Board failed to address the inefficiency of this process and did not explain why the  
9 dentist should not simply insert the abutment at the same time the dentist performed the pre-  
10 examination. This is another basis showing that the New Abutment Rule is arbitrary and  
11 capricious.  
12

13         30. The requirement that a dentist pre-examine and “sign-off” on the implant prior  
14 to a denturist performing work without dentist oversight also poses substantial risk to the  
15 dentist. Should a complication arise when the denturist is working and a dentist is not present,  
16 the dentist may still get “blamed” since they signed off on the health of the implant pre-  
17 procedure. This exposes dentists to an unnecessary risk and would allow denturists to  
18 potentially shift responsibility to a dentist that is not present at the time the complication arises.  
19 This is another basis showing that the New Abutment Rule is arbitrary and capricious.  
20

21         31. In sum, expanding the scope of practice of denturists to include placement of  
22 prefabricated implant abutments without legislative action exceeds the Board’s statutory  
23 authority and impairs the rights of WSDA’s member dentists. Under the New Abutment Rule,  
24

1 dentists will be required to take more risk without a commensurate benefit; the New Abutment  
2 Rule imposes inefficiencies and delays in treatment without any countervailing benefit to  
3 patients; and the expanded scope of practice places the public at increased risk.

4 32. WSDA's members are aggrieved or will be adversely affected by the New  
5 Abutment Rule because (i) the Board action has prejudiced or is likely to prejudice the  
6 members; (ii) the members' asserted interests are among those the Board was required to  
7 consider; and (iii) the judicial relief sought would substantially eliminate the prejudice caused  
8 by the Board action.  
9

10 33. WSDA has standing to represent the interests of its members in challenging the  
11 New Abutment Rule because (i) its members would otherwise have standing to sue in their own  
12 right; (ii) the interests it seeks to protect are germane to the association's purpose; and (iii)  
13 neither the claims asserted nor the relief requested require participation of individual members  
14 in the lawsuit.  
15

### 16 CLAIMS

17 34. The allegations set forth above in paragraphs 1 through 33 are hereby  
18 incorporated by reference.  
19

20 35. The New Abutment Rule, or its application, interferes with or impairs or  
21 immediately threatens to interfere with or impair the legal rights or privileges of WSDA's  
22 members.  
23  
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1 36. The New Abutment Rule should be declared invalid and its implementation  
2 enjoined on the following grounds:  
3

4 a. The New Abutment Rule exceeds the statutory authority of the Board  
5 and conflicts with the plain meaning of clear and unambiguous statutes.

6 b. The New Abutment Rule is arbitrary and capricious because it imposes  
7 an interpretation and implies a definition that contradicts the meaning of a clear and  
8 unambiguous statute, expands denturist responsibilities without a corresponding  
9 increase of education and training, exposes dentists to additional risk without being  
10 present to see procedures through, and is contrary to historical understanding for the  
11 past several decades.  
12

13 c. The rule was adopted without compliance with statutory rule-making  
14 procedures by virtue of the Board's failure to adequately to address certain criteria  
15 before adopting significant legislative rules, by failing to conduct a cost-benefit  
16 analysis, by failing to comply with the Regulatory Fairness Act, and by changing the  
17 proposed text without further opportunity for public comment and hearing.  
18

#### 19 **REQUEST FOR RELIEF**

20 Petitioner WSDA respectfully requests the Court enter a judgment and order declaring  
21 the New Abutment Rule invalid and enjoining its implementation, and that it be awarded its  
22 costs and disbursements as permitted by law.  
23  
24

1 DATED this 2nd day of April, 2024.

2  
3 STUDEBAKER NAULT, PLLC

4  
5 

6  
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**CERTIFICATE OF SERVICE**

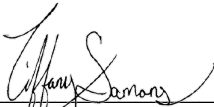
I certify that today I caused the foregoing PETITION FOR DECLARATORY JUDGEMENT AND INJUNCTIVE RELIEF PURSUANT TO RCW 34.05 to be served on the following persons by the method indicated:

Tina Crawford  
Executive Director  
Board of Denturists, Department of Health  
Town Center 2, Room 145  
111 Israel Road S.E.  
Tumwater, WA 98501  
Via Messenger and Certified Mail

Robert Ferguson  
Attorney General  
State of Washington  
1125 Washington Street S.E.  
Olympia WA 98504-1011  
Via Messenger and Certified Mail

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 2nd day of April, 2024 at Puyallup, Washington.

  
\_\_\_\_\_  
Tiffany Samons, Paralegal