

OPINION NO. 98-003**Syllabus:**

1. R.C. 4731.36 exempts from the prohibition against practicing medicine without a certificate from the State Medical Board a regularly qualified dentist when engaged exclusively in the practice of dentistry, or when administering anesthetics as a regularly qualified dentist. (1917 Op. Att'y Gen. No. 595, vol. II, p. 1674, overruled.)
2. A person who is licensed to practice dentistry in the State of Ohio pursuant to R.C. Chapter 4715 is permitted to administer anesthetics only as authorized by the State Dental Board. Under existing law, the person may administer general anesthesia and deep sedation only in accordance with 11 Ohio Admin. Code 4715-5-05 and may administer conscious intravenous sedation only in accordance with 11 Ohio Admin. Code 4715-5-07. There is no authority for a dentist to administer anesthesia for surgical operations unrelated to dental procedures.
3. R.C. 4731.35 and R.C. 4723.43(B) exempt from the prohibition against practicing medicine without a certificate from the State Medical Board a certified registered nurse anesthetist who administers an anesthetic under the direction of and in the immediate presence of a dentist, within the limits of the anesthesia procedures that the dentist has authority under R.C. Chapter 4715 to perform.
4. A certified registered nurse anesthetist licensed under R.C. Chapter 4723 may act under the supervision of a dentist to perform anesthesia procedures that the dentist has authority to perform under R.C. Chapter 4715 and applicable rules. Existing law permits the administration of general anesthesia and deep sedation only in accordance with 11 Ohio Admin. Code 4715-5-05 and the administration of conscious intravenous sedation only in accordance with 11 Ohio Admin. Code 4715-5-07. There is no authority for a certified registered nurse anesthetist, acting under the supervision of a dentist, to administer anesthesia for surgical operations unrelated to dental procedures.

To: Nora M. Noble, President, State Medical Board of Ohio, Columbus, Ohio

By: Betty D. Montgomery, Attorney General, January 21, 1998

We have received your request for an opinion concerning the authority of a dentist to administer anesthesia or to supervise the administration of anesthesia. You have asked whether a dentist licensed under R.C. Chapter 4715 can administer anesthesia for surgical operations not within the scope of practice of dentistry, and whether a certified registered nurse anesthetist licensed under R.C. Chapter 4723 can administer anesthesia under the

supervision of a dentist for surgical operations not within the scope of practice of dentistry. Your concern in this regard relates to the authority of the State Medical Board to regulate the administration of anesthesia when it is performed by a dentist or by a certified registered nurse anesthetist under the supervision of a dentist.¹

R.C. 4731.34 defines the practice of medicine or surgery in terms that encompass the administration of anesthesia.² R.C. 4731.41 prohibits the practice of medicine or surgery by a person who does not have a certificate from the State Medical Board. Exceptions to that prohibition apply to "a regularly qualified dentist when engaged exclusively in the practice of dentistry, or when administering anaesthetics," R.C. 4731.36, and to "the administration of an anaesthetic by a certified registered nurse anesthetist under the direction of and in the immediate presence of a licensed physician," R.C. 4731.35. Recent legislation permits certified registered nurse anesthetists to administer anesthesia "with the supervision and in the immediate presence of a physician, podiatrist, or dentist." R.C. 4723.43(B) (as amended by Am. Sub. S.B. 154, 121st Gen. A. (1996) (eff. Sept. 10, 1996)). When supervision is provided by a dentist, "the nurse's scope of practice is limited to the anesthesia procedures that the dentist has the authority under [R.C. Chapter 4715] to perform." R.C. 4723.43(B).

Your questions concern the interpretation of these exceptions to the prohibition against practicing medicine. An opinion issued by the Attorney General of Ohio in 1917 concluded that a dentist is permitted to administer anesthetics "both in the exclusive practice of dentistry and otherwise." 1917 Op. Att'y Gen. No. 595, vol. II, p. 1674, at 1674 (syllabus). In accordance with that opinion, some dentists are currently working in hospitals and administering anesthetics in surgical operations involving non-dental procedures. You ask whether dentists have the authority to administer anesthetics for all types of procedures, including

¹By statute, the Attorney General is authorized to give legal advice to state officers and boards "in all matters relating to their official duties." R.C. 109.12. Hence, this opinion considers the authority of dentists to administer anesthesia or supervise the administration of anesthesia as that authority relates to the official duties of the State Medical Board.

²The definition states, in part:

A person shall be regarded as practicing medicine, surgery, or podiatry, within the meaning of this chapter, who uses the words or letters, "Dr.," "Doctor," "Professor," "M.D.," "D.S.C.," "Pod.D.," "M.B.," or any other title in connection with the person's name that in any way represents the person as engaged in the practice of medicine, surgery, or podiatry, in any of its branches, or who examines or diagnoses for compensation of any kind, or prescribes, advises, recommends, administers, or dispenses for compensation of any kind, direct or indirect, a drug or medicine, appliance, mold or cast, application, operation, or treatment, of whatever nature, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease, provided that the treatment of human ills through prayer alone by a practitioner of the Christian Science church, in accordance with the tenets and creed of such church, shall not be regarded as the practice of medicine; and provided further that sanitary and public health laws shall be complied with, no practices shall be used that may be dangerous or detrimental to life or health, and no person shall be denied the benefits of accepted medical and surgical practices.

R.C. 4731.34 (emphasis added); see, e.g., 1917 Op. Att'y Gen. No. 528, vol. II, p. 1497, at 1497 (syllabus) ("[t]he giving of drugs to produce anesthesia is a practice of medicine under our laws"); see also 1917 Op. Att'y Gen. No. 890, vol. III, p. 2427.

non-dental procedures, so that they are excepted from the medical practice statute whenever they administer anesthetics. The alternative would be that their authority to administer anesthetics as dentists is restricted, and whenever they exceed those restrictions they are no longer within the exception but, instead, are subject to the medical practice statute. The same question applies to the administration of anesthesia by certified registered nurse anesthetists acting under the supervision of dentists.

In order to determine the extent of the dental exception to the medical practice statute, let us first look at the statutory provisions governing the practice of dentistry. The practice of dentistry is defined to include dental operations, R.C. 4715.01,³ and the practice of dentistry without a license from the State Dental Board is prohibited, R.C. 4715.09(A). *See also* R.C. 4715.12 (a license from the State Dental Board is "conclusive evidence of [the] right to practice dentistry"). The prohibition applies to individuals who work in any setting, including hospitals. *See* 1939 Op. Att'y Gen. No. 1270, vol. III, p. 1880. The holder of a license to practice dentistry is subject to disciplinary action by the State Dental Board for various reasons, including violating any provision of R.C. Chapter 4715 or any rule adopted under that chapter. R.C. 4715.30(A)(9).

The statutory provisions of R.C. Chapter 4715 governing the practice of dentistry do not expressly authorize a dentist to administer anesthesia, but they reflect an understanding that a dentist may be trained and authorized to administer anesthesia. On this point, R.C. 4715.13 establishes fees for a general anesthesia⁴ permit or a conscious intravenous seda-

³The definition states, in part:

Any person shall be regarded as practicing dentistry, who is a manager, proprietor, operator, or conductor of a place for performing dental operations, or who teaches clinical dentistry, or who performs, or advertises to perform, dental operations of any kind, or who diagnoses or treats diseases or lesions of human teeth or jaws, or associated structures, or attempts to correct malpositions thereof, or who takes impressions of the human teeth or jaws, or who constructs, supplies, reproduces, or repairs any prosthetic denture, bridge, artificial restoration, appliance, or other structure to be used or worn as a substitute for natural teeth, except upon the order or prescription of a licensed dentist and constructed upon or by the use of casts or models made from an impression taken by a licensed dentist, or who advertises, offers, sells, or delivers any such substitute or the services rendered in the construction, reproduction, supply, or repair thereof to any person other than a licensed dentist, or who places or adjusts such substitute in the oral cavity of another, or uses the words "dentist," "dental surgeon," the letters "D.D.S.," or other letters or title in connection with his name, which in any way represents him as being engaged in the practice of dentistry.

R.C. 4715.01 (emphasis added).

⁴"General anesthesia" is defined as:

A controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or non-pharmacologic method, or combination thereof.

11 Ohio Admin. Code 4715-3-01(G).

tion⁵ R.C. 4715.13(D), (E). R.C. 4715.09(E) prohibits a dentist from employing or using conscious intravenous sedation without a valid permit from the State Dental Board, and R.C. 4715.03(F) authorizes the State Dental Board to adopt rules governing conscious intravenous sedation permits.⁶ Thus, existing statutes indicate that a dentist may be authorized to administer anesthesia, but that there will be limits on that authority.

The State Dental Board has, by rule, adopted additional provisions that restrict the authority of a dentist to administer anesthesia.⁷ The use of conscious intravenous sedation is governed by rule 4715-5-07, which prohibits its employment or use "unless such dentist possesses a permit of authorization issued by the Ohio state dental board." 11 Ohio Admin. Code 4715-5-07. Rule 4715-5-05 requires that a dentist possess a permit of authorization issued by the Ohio State Dental Board in order to "employ or use general anesthesia or deep sedation on an outpatient basis for dental patients." 11 Ohio Admin. Code 4715-5-05. The existing rules do not directly address the authority to employ or use general anesthesia or

⁵"Conscious sedation" is defined as:

A minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, produced by a pharmacologic or non-pharmacologic method, or a combination thereof.

11 Ohio Admin. Code 4715-3-01(I).

⁶R.C. 4715.03(F) states:

In accordance with Chapter 119. of the Revised Code, the board shall adopt, and may amend or rescind, rules establishing the eligibility criteria, the application and permit renewal procedures, and safety standards applicable to a dentist licensed under this chapter who applies for a permit to employ or use conscious intravenous sedation. These rules shall include all of the following:

- (1) The eligibility requirements and application procedures for an eligible dentist to obtain a conscious intravenous sedation permit;
- (2) The minimum educational and clinical training standards required of applicants, which shall include satisfactory completion of an advanced cardiac life support course;
- (3) The facility equipment and inspection requirements;
- (4) Safety standards;
- (5) Requirements for reporting adverse occurrences.

⁷The State Dental Board is authorized by statute to "make such reasonable rules as it determines necessary pursuant to [R.C. Chapter 119]," R.C. 4715.03(A), to "adopt rules establishing standards for the safe practice of dentistry and dental hygiene by qualified practitioners," R.C. 4715.03(C), and to "administer and enforce the provisions of [R.C. Chapter 4715]," R.C. 4715.03(D). The Board is required to examine eligible applicants to practice dentistry, or cause them to be examined. R.C. 4715.03(E). The Board has express authority to adopt rules governing the administration of conscious intravenous sedation. R.C. 4715.03(F). There is no corresponding provision specifically authorizing the adoption of rules governing the administration of other types of sedation or anesthesia. Nonetheless, the Board's more general authority permits it to adopt rules establishing standards for the safe practice of dentistry and thus to place limitations on activities that may be undertaken by practicing dentists.

deep sedation in situations other than administration on an outpatient basis for dental patients. It is unreasonable, however, to suppose that the use of general anesthesia or deep sedation on an outpatient basis for dental patients would require a permit but that a dentist would be allowed to use general anesthesia or deep sedation on other patients or in other settings without a permit or other authorization. Rather, it must be concluded that a dentist's authority to employ or use general anesthesia or deep sedation extends only to situations that come within a permit granted to the dentist pursuant to 11 Ohio Admin. Code 4715-5-05.⁸

In addition, to insure compliance with professional standards, administrative rules require that licensees report "any mortality or other incident occurring in the outpatient facilities of such dentist which results in temporary or permanent physical or mental injury requiring hospitalization of said patient during, or as a direct result of, dental procedures or anesthesia related thereto." 11 Ohio Admin. Code 4715-5-06(A). The implication is that dentists will be administering anesthesia only in relation to dental procedures. The rules of the Dental Board thus indicate that the Board has defined standards of the dental profession regarding anesthesia as extending only to anesthesia related to dental procedures.

You have asked for a reconsideration of the conclusion reached in 1917 Op. Att'y Gen. No. 595, vol. II, p. 1674, at 1674, that a dentist is permitted to administer anesthetics "both in the exclusive practice of dentistry and otherwise." In order to understand that opinion, it is necessary to consider first an opinion from 1912. In 1912 Op. Att'y Gen. No. 243, vol. I, p. 843, the Attorney General considered the question whether dentists were permitted to administer anesthetics under the direction of a surgeon or for surgeons at surgical operations not incident to the practice of dentistry. He concluded that they were not and stated that dentists' authority to administer anesthetics was limited to purely dental cases. The analysis relied on the conclusion that the administration of anesthetics constituted the practice of medicine and surgery and could not be undertaken by a person who was not a registered physician. The statutes governing the practice of medicine provided an exception for a "regularly qualified dentist when engaged *exclusively* in the practice of dentistry." 1912 Op. Att'y Gen. No. 243, vol. I, p. 843, at 843 (quoting G.C. 1287).

The question was presented to a different Attorney General in 1917. At that time, the statutes governing the practice of medicine had been amended to provide an exception for "a regularly qualified dentist when engaged exclusively in the practice of dentistry, or when administering anaesthetics." 1917 Op. Att'y Gen. No. 595, vol. II, p. 1674, at 1675 (quoting G.C. 1287). Relying on the amendment that specifically referred to anesthetics, the Attorney General concluded that a dentist could administer anesthetics "both in the exclusive practice of dentistry and otherwise." *Id.* at 1674 (syllabus).

1917 Op. Att'y Gen. No. 595, vol. II, p. 1674, at 1676, concluded that the statutory amendment must be given some effect and "that it was intended by said amendment to give to the holders of certificates to practice dentistry in Ohio the right to administer anaesthetics generally, or, in other words, at such times as the administration of same is necessary." The conclusion was also phrased as permitting a dentist to administer anesthetics "when otherwise properly required to do so." *Id.* The opinion recited the contention that "because a knowledge of anaesthetics was required of dentists, the holder of a certificate to practice

⁸Rule 4715-5-05 contains provisions that allow the State Dental Board to grant permits to dentists who have different types of training or experience. 11 Ohio Admin. Code 4715-5-05(G). It is beyond the scope of this opinion to determine whether a particular permit is valid or to prescribe the limits on the discretion of the Board to grant such a permit.

dentistry in this state was also permitted, on account of said required knowledge and said certificate, to administer anaesthetics generally." *Id.* at 1675.

Notwithstanding the general language of the syllabus of the 1917 opinion, the authority of a dentist to administer anesthetics cannot extend beyond a dentist's training and areas of competence or statutory scope of practice. *See* R.C. 4715.10-11; R.C. 4715.16. *See generally, e.g., Williams v. Scudder*, 102 Ohio St. 305, 131 N.E. 481 (1921), *error dismissed*, 258 U.S. 607 (1922); 1934 Op. Att'y Gen. No. 2164, vol. I, p. 35. Thus, implicit in the language of R.C. 4731.36 is the concept that the dental exception applies only when the dentist is "a regularly qualified dentist when engaged exclusively in the practice of dentistry, or when administering anaesthetics [in the capacity of a regularly qualified dentist]."

When 1917 Op. Att'y Gen. No. 595, vol. II, p. 1674, was written, the statute governing examination for licensure as a dentist stated that the examination would include certain subjects, among them anesthetics. 1917 Op. Att'y Gen. No. 595, vol. II, p. 1674, at 1675 (quoting G.C. 1322, predecessor to R.C. 4715.11). At that time, G.C. 1287 permitted a dentist to be exempt from the medical practice laws "when administering anaesthetics" and no statutory provisions or rules limited the authority of a dentist to administer anesthetics.

Under existing law, there is no statutory requirement that anesthetics be included among the subjects tested. Rather, the State Dental Board has discretion to give an examination "consisting of practical demonstrations and written or oral tests, or both, as the board determines necessary." R.C. 4715.11.⁹ Thus, the State Dental Board may determine the extent to which the examination covers anesthetics, within the reasonable exercise of its discretion. *See* 1934 Op. Att'y Gen. No. 2164, vol. I, p. 35. *See generally, e.g.,* 1931 Op. Att'y Gen. No. 3343, vol. II, p. 841.

We are aware that 1917 Op. Att'y Gen. No. 595, vol. II, p. 1674, has been construed by some individuals as permitting a dentist to administer anesthetics in any setting without restriction and that the adoption of a different interpretation of that opinion may be a source of disruption. Nonetheless, it appears, as discussed above, that statutes and rules currently in effect restrict the authority of a dentist to administer anesthetics. Although we are reluctant to interfere with established practice, we feel compelled to conclude that the dental exception to the medical practice statute cannot reasonably be read to permit a dentist to administer anesthetics in situations that exceed the scope of the dentist's training or extend beyond activities that the dentist is authorized to perform as a regularly qualified dentist.

Therefore, because existing law restricts the authority of a dentist to administer anesthetics, it is necessary to limit the application of the dental exception to the medical practice statute. To the extent that 1917 Op. Att'y Gen. No. 595, vol. II, p. 1674 concludes that no restrictions apply to the authority of a dentist to administer anesthetics, that opinion is overruled and it is concluded, under existing law, that the holder of a certificate to practice dentistry in the State of Ohio is permitted to administer anesthetics only when engaged in the exclusive practice of dentistry or when administering anesthetics as a regularly qualified

⁹In 1933, the list of required subjects was amended to include, generally, "such other subjects as the board may deem necessary to meet changed conditions in dental education." 1933 Ohio Laws 67, 67 (H.B. 241, filed Mar. 24, 1933, amending G.C. 1322, predecessor to R.C. 4715.11). Later, the statute was amended to specify that only other subjects "relating to dentistry" were permissible. 1955-1956 Ohio Laws 384, 385 (Am. H.B. 20, eff. Oct. 5, 1955). The express reference to named subjects, including anesthetics, remained in the statute until 1969. *See* 1969-1970 Ohio Laws, Book III, 2582, 2583 (enacting Am. H.B. 737, eff. Nov. 14, 1969).

dentist. A dentist who administers anesthetics in any other circumstances does not do so in the capacity of a regularly qualified dentist and does not come within the dental exception to the medical practice statute.

As applicable to the State Medical Board, therefore, R.C. 4731.36 exempts from the prohibition against practicing medicine without a certificate from the State Medical Board a regularly qualified dentist when engaged exclusively in the practice of dentistry, or when administering anesthetics as a regularly qualified dentist. A dentist who administers anesthetics within the scope of practice of dentistry, or as a regularly qualified dentist, is exempt from the statutory provisions governing the practice of medicine and, therefore, cannot be disciplined by the State Medical Board. R.C. 4731.36; *see also* R.C. 4731.22. When a dentist administers anesthetics in any other circumstances, the dentist is not exempt from the medical practice statute, and the State Medical Board may take appropriate action against such an individual for engaging in the unauthorized practice of medicine. *See, e.g.*, R.C. 4731.34; R.C. 4731.341; R.C. 4731.41.

The scope of the practice of dentistry is determined in accordance with the statutes governing the State Dental Board and the rules that the State Dental Board adopts. The State Dental Board is authorized to discipline the holder of a certificate or license for providing, or allowing those under supervision to provide, "dental care that departs from or fails to conform to accepted standards for the profession." R.C. 4715.30(A)(7). Thus, the State Dental Board can require that dentists conform with the standards of the profession in all areas of dental practice, including the administration of anesthesia in the practice of dentistry. *See also* R.C. 4715.30(A)(9).

A person who is licensed to practice dentistry in the State of Ohio pursuant to R.C. Chapter 4715, therefore, is permitted to administer anesthetics only as authorized by the State Dental Board. Under existing law, the person may administer general anesthesia and deep sedation only in accordance with 11 Ohio Admin. Code 4715-5-05 and may administer conscious intravenous sedation only in accordance with 11 Ohio Admin. Code 4715-5-07. There is no authority for a dentist to administer anesthesia for surgical operations unrelated to dental procedures.

Let us turn now to your second question, which asks whether a certified registered nurse anesthetist licensed under R.C. Chapter 4723 can administer anesthesia under the supervision of a dentist for surgical operations not within the scope of practice of dentistry. As noted above, a certified registered nurse anesthetist is exempt from medical practice prohibitions when administering an anesthetic "under the direction of and in the immediate presence of a licensed physician." R.C. 4731.35. Certified registered nurse anesthetists are also permitted to administer anesthesia under the supervision of a dentist, but are limited to the anesthesia procedures that the dentist is authorized to perform. R.C. 4723.43(B). Thus, R.C. 4731.35 and R.C. 4723.43(B) exempt from the prohibition against practicing medicine without a certificate from the State Medical Board a certified registered nurse anesthetist who administers an anesthetic under the direction of and in the immediate presence of a dentist, within the limits of the anesthesia procedures that the dentist has authority under R.C. Chapter 4715 to perform. Because, as discussed above, those procedures are limited by rule to the procedures authorized by permit, the nurse's authority is also so limited.

A certified registered nurse anesthetist licensed under R.C. Chapter 4723, therefore, may act under the supervision of a dentist to perform anesthesia procedures that the dentist has authority to perform under R.C. Chapter 4715 and applicable rules. Existing law permits the administration of general anesthesia and deep sedation only in accordance with 11 Ohio Admin. Code 4715-5-05 and the administration of conscious intravenous sedation only in

accordance with 11 Ohio Admin. Code 4715-5-07. There is no authority for a certified registered nurse anesthetist, acting under the supervision of a dentist, to administer anesthesia for surgical operations unrelated to dental procedures.

The analysis set forth in this opinion is a difficult one, for the statutes do not speak directly to all the matters at issue. The legal questions are complicated by advancements in medical practice that have occurred throughout the last eighty years. We have struggled with the question whether it is appropriate or necessary to overrule the longstanding opinion of a predecessor Attorney General. Nonetheless, on balance, we conclude that the better result in this instance is to recognize expressly that the authority of a dentist to administer anesthetics cannot extend beyond the dentist's training and areas of competence or statutory scope of practice. Thus, a dentist cannot be permitted to administer anesthetics outside the areas specifically addressed by the statutes and rules that govern the practice of dentistry and the qualifications of dentists.

This opinion has been written with consideration of existing statutes and rules governing the practice of dentistry and the qualifications of dentists. It is possible, of course, for the General Assembly to modify the existing scheme through legislative action. In addition, the Dental Board has authority to modify its rules to clarify the nature of the practice of dentistry and the types of procedures that dentists are qualified to perform.

For the reasons discussed above, it is my opinion, and you are advised:

1. R.C. 4731.36 exempts from the prohibition against practicing medicine without a certificate from the State Medical Board a regularly qualified dentist when engaged exclusively in the practice of dentistry, or when administering anesthetics as a regularly qualified dentist. (1917 Op. Att'y Gen. No. 595, vol. II, p. 1674, overruled.)
2. A person who is licensed to practice dentistry in the State of Ohio pursuant to R.C. Chapter 4715 is permitted to administer anesthetics only as authorized by the State Dental Board. Under existing law, the person may administer general anesthesia and deep sedation only in accordance with 11 Ohio Admin. Code 4715-5-05 and may administer conscious intravenous sedation only in accordance with 11 Ohio Admin. Code 4715-5-07. There is no authority for a dentist to administer anesthesia for surgical operations unrelated to dental procedures.
3. R.C. 4731.35 and R.C. 4723.43(B) exempt from the prohibition against practicing medicine without a certificate from the State Medical Board a certified registered nurse anesthetist who administers an anesthetic under the direction of and in the immediate presence of a dentist, within the limits of the anesthesia procedures that the dentist has authority under R.C. Chapter 4715 to perform.
4. A certified registered nurse anesthetist licensed under R.C. Chapter 4723 may act under the supervision of a dentist to perform anesthesia procedures that the dentist has authority to perform under R.C. Chapter 4715 and applicable rules. Existing law permits the administration of general anesthesia and deep sedation only in accordance with 11 Ohio Admin. Code 4715-5-05 and the administration of conscious intravenous sedation only in accordance with 11 Ohio Admin. Code 4715-5-07. There is no authority for a certified registered nurse anesthetist, acting under the supervision of a dentist, to administer anesthesia for surgical operations unrelated to dental procedures.