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DENTISTS AND PHYSICIANS—GROUP SHARING COMMON OFFICE FACILITIES—DESIGNATED "X CLINIC"—COMMON NAME ON STATIONERY, BILLS TO PATIENTS, RECEIPTS, DIRECTORIES, ON AND ABOUT BUILDING WHERE OFFICES LOCATED — EACH DENTIST IS PRACTICING DENTISTRY OTHER THAN "UNDER HIS NAME ONLY"—VIOLATION OF SECTION 1329-1 GC.

SYLLABUS:

Where a group of dentists and physicians sharing certain common office facilities practice their professions under the group designation of "X Clinic" by using in common the clinic name on their stationery, on bills to patients for fees, on receipts to patients for payment of fees, in professional directories, and on and about the building in which their professional offices are located, each of the dentists concerned is practicing dentistry otherwise than "under his name only" in violation of Section 1329-1, General Code.

Columbus, Ohio, June 9, 1953

Hon. Hugh B. Smith, Secretary, Ohio State Dental Board
Columbus, Ohio

Dear Sir:

This will acknowledge your request that I review Opinion No. 4081, Opinions of the Attorney General for 1948, p. 559, and include therein a consideration of the legality of the use by a dentist in the private practice of the word "clinic" as the designation of the office in which such private practice is carried on.

In considering the designation of an office where private dental practice is carried on as a "clinic," we may first observe the provisions of Section 1329-1, General Code, which reads:

> "It shall be unlawful for any person or persons to practice or offer to practice dentistry or dental surgery, under the name of any company, association, or corporation, and any person or persons practicing or offering to practice dentistry or dental surgery shall do so under his name only and he shall not conduct a dental office in his name or advertise his name in connection with any dental office or offices unless he is himself personally present in said office operating as a dentist or personally overseeing such operations as are performed in said office or each of said offices

during a majority of the time said office or each of said offices is being operated by him; any person convicted of a violation of the provisions of this section shall be fined for the first offense not less than one hundred dollars, nor more than five hundred dollars, and upon a second conviction therefor, his license may be suspended or revoked, as provided in section 1325 of this act."

Prior to the amendment of this section in 1935, 116 O.L. 82, this section read:

"It shall be unlawful for any person or persons to practice or offer to practice dentistry or dental surgery, under the name of any company, association, or corporation, and any person or persons practicing or offering to practice dentistry or dental surgery shall do so under his name only; any person convicted of a violation of the provisions of this section shall be fined for the first offense not less than one hundred dollars, nor more than two hundred dollars, and upon a second conviction therefor, his license may be suspended or revoked, as provided in section 1325 of this act."

This section was under scrutiny in Ex Parte Craycroft, 24 N.P. (N.S.) 513 (C.P. Hamilton County, 1916), the fourth paragraph of the headnotes in which is as follows:

"Section 1329-1, making the pactice of dentisty unlawful unless carried on under the name of the individual practitioner, is an abuse of the police power and unconstitutional."

In the course of the opinion by Judge Nippert we find the following statement, p. 522:

"The provision of the statute requiring that the name of the dentist should appear in readable letters in connection with the 'advertising name' might be considered a salutary provision of the statute to protect the public against fraud and imposition. But we are not called upon to decide this particular question in the case at bar as Section 1329-1 contains no such qualification. Section 1329-1 virtually prohibits any dentist from practicing dental surgery under any other name except his own. If this was held to be a proper exercise of police power, all of the 'good will' attached to such names as 'New York Dental Parlors,' 'Albany Dentists,' etc., would be wiped out; the property rights in these names would be nil, and an irreparable loss would be suffered by those who for years have used these names and built up a large and legitimate practice under these designations. What is there to prevent the legislature of the state of Ohio from passing a law requiring all soap manufacturers to sell their soap under their own names only,

so that the purchasing public might know where to look for recourse in case a certain soap should contain ingredients detrimental to the user's health? If our Constitution would permit the enactment of such a law, the most extensive industry for which Cincinnati is noted would be put out of business instanter.

"Section 1329-1 is certainly an abuse of the police power of the state, and therefore unconstitutional."

This decision does not appear to have been accorded much weight in subsequent cases such as Taylor v. New System Laboratory, 29 N.P. (N.S.) 451 (C.P. Cuyahoga County, 1932) and Brown v. State, 30 N.P. (N.S.) 439 (C.P. Cuyahoga County, 1933.) In the Taylor case the first paragraph of the headnotes is as follows:

"Where a certain occupation, such as the practice of dentistry, has a direct bearing on the public health and requires special knowledge and skill, it is within the power of the state to regulate such occupation. The state dental code, Sections 1314-1333, General Code, and Section 1329-1, forbidding the practice of dentistry except under the individual name of the practitioner, are constitutional."

In the course of the opinion in this case Judge McMahon said, pp. 453, 454:

"This court is not impressed by the reasoning in the Craycroft case. In the first place much of the argument used by the court in arriving at its opinion, does not apply to the case at bar, in that at the time the defendant corporation was formed the sections of the Code referred to in plaintiffs' petition were in full force and effect and had been so for a period of fifteen years.

"The analogy attempted to be drawn by the court in the Craycroft case, between the profession of dentistry and the making of soap, is not at all applicable. The profession of dentistry has a direct relation to the public health.

"In Volume 8, Ohio Jurisprudence, 412, par. 289, we find the following language:

" 'It is a well-settled principle of law that the legislature has the power for the protection of the public, to regulate the practice of any particular profession which requires the possession of special knowledge, skill and training in its exercise. Such professions include those of attorneys at law, dentists, pharmacists and physicians and surgeons.'

"What logical reason can any professional man have for wanting to substitute some impersonal trade name or proprietary

name for his own? One of the certain effects in so doing being the concealment of his identity from the public. This court accepts the reasoning of the Kansas Supreme Court in the case of Winslow v. Kansas State Dental Examiners, 115 Kan., 450, wherein it is said:

"'Dentistry is a profession having to do with the public health, and so is subject to regulation by the state. The purpose of regulation is to protect the public from ignorance, unskillfulness, unscrupulousness, deception and fraud. To that end the state requires that the relation of the dental practitioner to his patients and patrons must be personal.'"

In the Brown case the first two paragraphs of the headnotes are as follows:

"1. The purpose of Section 1329-1, General Code, is to require dentists to advertise in their individual capacity and not under a trade name.

"2. The restriction so imposed is within the authority of the legislature."

Judge Harris said in the opinion of this case (pp. 440, 441):

"I do not agree with the views expressed by Judge Nippert in Ex parte Craycroft, decided March 12, 1916, and published in 24 N.P. (N.S.) page 513 and do heartily concur with the views expressed by Judge McMahon of this court in the case of Taylor et al. v. The New System Prosthetic Dental Laboratory, Inc., et al., 29 N.P. (N.S.) 451.

"It seems quite clear to me that the word 'only' contained in the foregoing section of the General Code means something. To my mind it means that a dentist may only offer himself to the public as a practitioner of dentistry under his genuine name. In this case it is perfectly evident that Dr. Brown offered himself as a practitioner of dentistry under the name of The New Method Dental Parlor and also under his own name. Consequently he violated the statute.

"The plain purpose of the statute was to require dentists, who see fit to advertise themselves in any manner, to do so in their individual capacity and not under a trade name. Obviously, if the public seeking dental services can be invited into a dental parlor called The New Method Dental Parlor, which today Dr. Carl F. Brown is operating, but next month another dentist may be operating and the following month still another, patients would be likely to be misled, possibly, indeed probably, to their injury.

> "Dentistry is a learned profession, so recognized by our General Assembly, our courts and the people at large. Therefore, it is perfectly proper for a legislature to impose a restriction such as contained in Section 1329-1, and it is incumbent upon all dentists to conform thereto."

I am inclined to agree with the rules thus stated in the Taylor case and in the Brown case. I am inclined to agree with Judge Harris also that the employment of the word "only" in Section 1329-1, General Code, has the effect of prohibiting the use of a trade name even when the practitioner uses his own name also. We may, therefore, next inquire whether the designation of a dental office as a "clinic" constitutes the use of a trade name.

The word "clinic" is defined in Webster's New International Dictionary, 1949 Edition, as follows:

> "3. Med. a Instruction of a class of medical students by the examination and treatment of patients in the presence of the pupils. b A gathering of a number of students at a clinical lecture. c An institution or station, often connected with a hospital or medical school, for the examination and treatment of outpatients.
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> "4. An institution usually connected with a school, court or settlement, in which concrete cases or problems of a special type are studied, and expert advice or treatment given; as, a vocational child-guidance, or psychiatric clinic."

In Dorland's The American Illustrated Medical Dictionary, 22nd Edition, 1951, the word clinic is defined as:

> "1. A clinical lecture; examination of patients before a class of students; instruction at the bedside. 2. An establishment where patients are admitted for special study and treatment by a group of physicians practicing medicine together. *ambulant c.*, one for patients not confined to the bed. *dry c.*, a clinical lecture with case histories but without the presence of the patients described."

From these definitions it is abundantly clear that an office where a dentist is engaged solely in the private practice of his profession is not a clinic in the usual and ordinary meaning of the word.

In this connection it may be noted that the application of Section 1329-1, General Code, to the use of the designation of "clinic" in connection with the private practice of dentistry, was very briefly considered in Opin-

ion No. 4081, Opinions of the Attorney General for 1948, p. 559, the opinion which you have asked me to review.

The recited factual situation in the 1948 opinion is set out in the inquiry therein as follows:

> "The Ohio State Dental Board is concerned with the existence of a number of so-called clinics and respectfully requests your formal opinion concerning the legality of their operation. The facts relating to the conduct and operation of the most flagrant of these clinics is briefly as follows:
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> "Clinic C:
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> This clinic is incorporated not for profit under the laws of Ohio. The purpose as set forth in the charter is quite lengthy, but its main purpose seems to be to 'own and conduct hospitals for sick and disabled persons—and charging and receiving compensation for services, care, treatment and accommodations for the purpose of maintaining said hospitals not for profit.' This clinic, of course, employs a number of physicians and surgeons. It also employs a dentist on a salary basis. The dental equipment is owned by the clinic. The clinic purchases and pays for all the dental supplies, and any other expenses incident to the cost of operation of the dental department.
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> "Clinic Cu:
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> This clinic is incorporated not for profit under the laws of Ohio. Its purpose as set forth in the charter is briefly 'to operate, manage and own clinics, dispensaries and hospitals for reception, medical treatment and care of patients.' This clinic is owned and operated by a number of physicians and one dentist. This clinic is admittedly a group practice. The clinic as such owns the dental equipment, buys all supplies and pays all the bills. The cash receipts, including those from the operation of the dental office, are deposited in a common fund from which all expenses are paid. The owners of the clinic are paid by means of a drawing account on some undesignated point system. The clinic employs a number of other physicians on a salary basis, and it may be observed here that the dentist is sharing in this expense, as well as in the income provided through the efforts of these physicians; likewise the dentist is sharing in the income and expenses incident to the effort of the physician. All other salaries are paid by the clinic. In addition to the clinic's name on the building, letterheads, etc., the name of the dentist also appears on the outside of the building.
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> "E Clinic:
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> This clinic is not incorporated. A number of physicians and dentists occupy the same building, and this group is nominally

titled 'The E Clinic.' Each dentist and physician has his own separate practice, but the waiting room, receptionist, bookkeeper and stenographer are shared by all and paid for by the clinic. Monthly each doctor is assessed his proportionate share of the expenses. All of this group use the same stationery, headed 'E Clinic.' Receipts for all work are given in the name of the clinic, and in some cases the services rendered by them, medical or dental, are billed in the name of the clinic. In addition to the name of the clinic appearing about the building, in directories, etc., the names of the individual dentists or physicians also appear.

"L. Clinic

This clinic is incorporated not for profit under the laws of the State of Ohio. Its purpose as set forth in its charter are similar to those hereinbefore referred to. This clinic is owned by several physicians. The clinic pays for the bookkeeping and billing, and buys all dental supplies, and pays all expenses, including the salary of the dental assistant. The dentist owns the dental equipment and receives a depreciation allowance from the clinic. He then divides the net profit from the operation of the dental office with the clinic, and from his share the dentist employs another dentist. In addition to the display of the name of the clinic, the names of the dentists employed there also appear on the outside of the building.

"The question confronting the Ohio State Dental Board is whether the dentists connected with these clinics are violating the provisions of the dental law, particularly Sections 1329 and 1329-1, General Code."

In considering the application of Section 1329-1, General Code, to these facts, the writer of the 1948 opinion had only the following comment, p. 565:

"The recited factual situation is such that it cannot reasonably be asserted aforesaid Section 1329-1, General Code, is being violated in that a dentist is practicing or offering to practice dentistry 'under the name of any company, association or corporation.' Nor does it appear that a dentist is *advertising* his name with any particular office without being personally present therein a majority of his time. Nor does it appear that other prohibited acts are in fact being committed."

Here it will be observed that no consideration was given to that provision in Section 1329-1, General Code, requiring that "any person * * * practicing * * * dentistry * * * shall do so under his own name only"; nor was any consideration given to the judicial decisions in interpretation of this provision.

The limited scope of the 1948 opinion will be observed in the non-committal nature of the "syllabus" and in the carefully limited language of the conclusions reached. The "syllabus" of this opinion reads:

> "Discussion as to whether certain clinics are being operated in violation of the dental practice act, Section 1314 et seq., General Code, and as to whether the dentists connected therewith are violating said law."

In expressing the view that the corporate clinics involved were not engaged in the practice of dentistry (p. 563), and that there was not involved any division of fees with unlicensed persons (p. 566), the writer emphasized the fact that such conclusions were based *on the facts recited.*

I have already expressed, in my opinion No. 1751, dated August 20, 1952, my disagreement with the basic reasoning in the 1948 opinion relative to the corporate practice of a profession. In that opinion I said:

> "There is an implication in the 1948 opinion, supra, to the effect that the corporations may lawfully contract with patients to supply medical services generally and may contract with physicians to furnish treatment to such patients. This implication is found in the fact that the writer quotes with approval from State ex rel Sager v. Lewin (1907), 128 Mo. App., 149, 106 S.W. 581, the following passage:
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> " '* * * In all the larger cities, and connected with most of the medical colleges in the country, hospitals are maintained by private corporations, incorporated for the purpose of furnishing medical and surgical treatment to the sick and wounded. *These corporations do not practice medicine, but they receive patients and employ physicians and surgeons to give them treatment.* No one has ever charged that these corporations were practicing medicine. The respondents are chartered to do, in the main, what these hospitals are doing every day—that is, *contracting with persons for medical treatment and contracting with physicians to furnish treatment,*—and the fact that Dr. W. A. Lewin is the principal stockholder and the manager of respondent corporation, and is employed by it to furnish medical and surgical treatment to the patients who may contract with it for such treatment, does not alter the legal status of the corporation, or show it has violated the terms of its charter.'
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> "The decision in this case is probably representative of the minority American rule, but however this may be it can hardly be said to be the rule followed in this state. In the Buhl Optical Company case, supra, the court says in the syllabus that 'a corporation may not * * * employ an optometrist to do optometrical

work in connection with its business * * *.' In the opinion by Williams, J., in the same case we find this statement:

"'This court has never held and does not hold in the instant case that companies incorporated to engage in the business of an optician may not employ optometrists in connection therewith. They may; but since they cannot incorporate to engage in optometry, they cannot do indirectly what they are forbidden to do directly. They cannot employ optometrists to engage in the practice of optometry. The optometrists employed can as employees do only the work the employers are authorized by law to do.'

"In the opinion in the Dworken case, supra, it is said (p. 119):

"'Now if a corporation cannot be formed in Ohio for the purpose of practicing law directly, *it cannot practice law indirectly by employing lawyers to practice for it,* as that would be an evasion which the law would not tolerate.'

"In the Land Title Abstract & Trust Company case, supra, the court said in paragraph 3 of the syllabus:

"'3. The practice of law involves a personal relation which cannot be fulfilled by a corporation, * * *.'

"In view of these clear expressions of the law, I am bound to conclude that in this state corporations, whether or not organized and operated for profit, may not practice a profession indirectly by hiring licensed members of such profession to do the actual professional work involved."

The first paragraph of the syllabus in my opinion No. 1751, supra, is as follows:

"1. A corporation, whether or not organized for profit, may not lawfully engage in the practice of medicine in this state."

Moreover, in my opinion No. 1717, dated August 5, 1952, I held:

"3. A corporation, whether or not partially supported by a local community fund, is not authorized to engage in the practice of dentistry, and such corporation would be unlawfully engaged in the practice of dentistry where it has undertaken to operate a dental clinic by utilizing the professional services of licensed dentists and to charge and collect a fee for such professional services.

"4. Under the provisions of Section 1329, General Code, a licensed dentist may not lawfully accept employment from a corporation or association of persons not licensed as dentists under the terms of which employment such employee performs professional dental services for which such corporation or association charges and collects a fee."

As to the three incorporated clinics which were under scrutiny in the 1948 opinion, therefore, it would appear to be in order first to ascertain their status under the rule prohibiting the corporate practice of a profession.

It cannot be said that dentistry, under the Ohio statutes, is any the less a profession than the practice of medicine, and for this reason I conclude that the rule quoted above from Opinion No. 1751 is equally applicable to the practice of dentistry.

In the case of "Clinic C," because the professional personnel involved are mere employes of the corporation, it is clear that the corporation itself is unlawfully engaged in the practice of dentistry; and under the rule quoted above from Opinion No. 1717, the dentist concerned would be acting in violation of Section 1329, General Code. In these circumstances it is not necessary to consider the possible application of Section 1329-1, General Code, to the operations of a dentist in a clinic thus organized and operated.

In the case of "Clinic Cu," because some of the professional personnel concerned are employed by the corporation, it is clear here, too, there is an instance of illegal corporate practice of a profession; and the same conclusion as stated above as to "Clinic C" must be reached with respect to the salaried professional personnel involved.

As to the physicians and the one dentist who "own" the "non-profit" corporation, and as such owners "are paid by means of a drawing account on some undesignated point system," since we have already concluded that the corporation is not authorized to practice a profession, it must necessarily follow that the "owners" of the corporation are not authorized to utilize the corporate organization as the vehicle through which their own practice is carried on; and the dentist who is one of such "owners" is, of course, practicing otherwise than "under his own name only" in violation of Section 1329-1, General Code.

In the case of the "L clinic" it will be observed that the dentist "divides the net profit from the operation of the dental office with the clinic." This division of "net profit" is a clear indication that the corporation is unlawfully engaged in the practice of dentistry; and since such unlawful practice is made possible only through the consent and cooperation of the dentist concerned, it cannot be said that the dentist's operations under this arrangement is authorized by law.

In the case of the "E Clinic," which is unincorporated, it is stated that "each dentist and physician has his own separate practice." This appears to be an instance in which several professional practitioners utilize certain office facilities in common and share the expense of such facilities proportionately. There is nothing objectionable, of course, in this arrangement. It is indicated, however, that all practitioners, including the dentists, "use the same stationery, headed "E Clinic"; that receipts are given in the name of the clinic, and that in some cases patients are billed in the name of the clinic. It is further indicated that "in addition to the name of the clinic appearing about the building, in directories, etc., the names of the individual dentists * * * also appear."

All of these arrangements appear to me to be calculated to build up good will in the name of the clinic as an organization entirely separate from the individual dentists. For this reason it seems to me that this arrangement is subject to the same criticism made by Judge Harris in the Brown case, supra, where he said, pp. 440, 441:

> "Obviously, if the public seeking dental services can be invited into a dental parlor called The New Method Dental Parlor, which today Dr. Carl F. Brown is operating, but next month another dentist may be operating, and the following month still another, patients would be likely to be misled, possibly, indeed probably, to their injury."

I concur in this view of the purpose of Section 1329-1, General Code, and conclude, therefore, that in the case of the "E Clinic," each of the dentists concerned is practicing dentistry otherwise than "under his own name only" in violation of this section.

Accordingly, in specific answer to your inquiry, it is my opinion that where a group of dentists and physicians sharing certain common office facilities practice their professions under the group designation of "X Clinic" by using in common the clinic name on their stationery, on bills to patients for fees, on receipts to patients for payment of fees, in professional directories, and on and about the building in which their professional offices are located, each of the dentists concerned is practicing dentistry otherwise than "under his name only" in violation of Section 1329-1, General Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General