

**OPINION 65-67****Syllabus:**

1. Supervision by a licensed dentist as required by Section 4715.22, Revised Code, means actual inspection of the work performed by a dental hygienist.

2. Supervision of a dental hygienist in a dental office as required by Section 4715.22, Revised Code, is restricted to supervision by the dentist employing such hygienist to assist him in his practice.

3. The practice of a dental hygienist in a dental office where there are more than one practicing dentist must be supervised by the dentist upon whose patient the hygienist is performing services.

4. A dentist is authorized pursuant to Section 4715.22, Revised Code, to employ more than one dental hygienist provided that at no time is there more than one hygienist present in the office to assist him with his practice.

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**To: Lowell E. Burnelle, President, Ohio State Dental Board, Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, April 21, 1965**

Your request for my opinion reads as follows:

"We respectfully request your consideration of some questions pertaining to Section 4715.22, Revised Code, which section reads as follows:

'A licensed dental hygienist may practice in a dental office, public or private school, hospital, dispensary, or public institution, provided the service is rendered under the supervision of

a licensed dentist of this state. No dentist shall employ more than one dental hygienist in the conducting of his private practice.'

"Question No. 1. Do you concur with the opinion of one of your predecessors that the word 'supervision' means inspection of the hygienist's work?

"Question No. 2. Does the language, 'rendered under the supervision of a licensed dentist of this state' mean that any dentist may supervise her, or is supervision restricted to the dentist-employer of the hygienist?

"Question No. 3. Is a dental hygienist permitted to practice during the absence of her dentist-employer provided another dentist in the same office supervises her?

"Question No. 4. Is a dentist permitted to employ more than one dental hygienist provided they do not work the same hours? In other words, just what does the last sentence in Section 4715.22 really mean?"

In your first question you are apparently referring to Opinion No. 4032, Opinions of the Attorney General for 1932, in which it was considered whether a dental hygienist could practice in an office or location apart from the office where the dentist, under whose supervision the hygienist works, maintains his practice. The opinion was based upon an interpretation of Section 1320-2, General Code, presently Section 4715.22, Revised Code, which is quoted in your request as set forth herein.

The Attorney General, in Opinion No. 4032, supra, concluded the following:

"A dental hygienist may legally practice such profession only in a dental office, public or private school, hospital or dispensary or public institutions, and there only when such practice is under the supervision of a licensed dentist."

Although the term "supervision" as used in Section 4715.22, supra, was not defined by the legislature, the opinion stated that supervision implies inspection, and that the requirement of the statute is satisfied when the dentist inspects the work of a dental hygienist in a dental office or other place where he or she is legally entitled to perform such services.

It is a well established rule of statutory interpretation that words are to be given their usual and ordinary meaning except where the legislature has otherwise provided. Carter v. Division of Water, City of Youngstown, Board of Review, Bureau of Unemployment Compensation, 146 Ohio St., 203. Upon review of Chapter 4715, Revised Code, and in particular the

statutes pertaining to dental hygienists, Sections 4715.20 through 4715.29, Revised Code, I can find no basis for concluding that the legislature intended "supervision" to have a meaning other than that commonly attributed to such word.

Webster's Third New International Dictionary defines the word "supervise" as follows:

"to coordinate, direct and inspect continuously and at first hand the accomplishment of: oversee with the powers of direction and decision the implementation of one's own or another's intention."

The interpretation of the word supervision to include actual inspection and overseeing of the acts performed was accepted by the court in the case of State ex rel. Coleman v. Christmann, 6 Ohio Law Abs., 266. The Court of Appeals in this case determined that a county superintendent of schools in order to carry out his statutory duty to spend time in "actual classroom supervision" was required to personally attend the classrooms and oversee instruction. The court stated on page 267 of the Opinion:

"It has been held that supervision means more than the power to advise and suggest. It imposes a duty to oversee, review, and correct the errors of those over whom supervision is to be exercised."

It is noted that prior to the enactment of the dental hygiene laws in 1921 (109 Ohio Laws 261), the practice therein permitted to be performed by a licensed dental hygienist could have been performed only by a licensed dentist. It is reasonable to conclude therefore that the legislature intended that this specific exception to dental operations which could be performed by one not licensed as a dentist were to be restricted to certain persons performing such services under the immediate inspection and supervision of a licensed dentist. I therefore concur with the opinion of my predecessor that supervision as required by Section 4715.22, supra, means that the supervisory dentist must inspect and oversee the work of a dental hygienist performed in a dental office or such other place as permitted by law.

It is my understanding that questions No. 2 and No. 3 are directed to practice by a dental hygienist in a private dental office as contrasted with practice in other places enumerated in Section 4715.22, supra. Although Section 4715.22, supra, clearly restricts the place and manner of practice by a dental hygienist, it is not altogether clear who may act as the supervisory dentist.

Section 4715.01, Revised Code, contains 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 for a fee, salary or reward paid or to be paid either to himself or to another person, performs\* \* \*dental operations of any kind\* \* \*"

The only exception to this definition of the practice of dentistry which requires a dental license is the limited practice which a dental hygienist is authorized to perform pursuant to Section 4715.23, Revised Code. Section 4715.18, Revised Code, requires that any person practicing dentistry must conduct such practice in an office under his own name. It is evident therefore that a dental office is one that only can be conducted and operated by and in the name of a licensed dentist.

Section 4715.22, *supra*, authorizes a dental hygienist to work in a dental office but the last portion of the section clearly provides that the hygienist shall work as the employee of a dentist to assist him "in the conducting of his private practice." The dental hygienist therefore acts as the agent of such dentist in performing services for the dentist's patients and the dentist can be held responsible for such acts. Section 4715.22, *supra*, imposes upon the working relationship between the dentist and his dental hygienist the requirement of supervision by a licensed dentist and this leads to the conclusion that such supervision was intended to be restricted solely to the dentist employing the hygienist to assist him in his practice.

It is the apparent desire of some practicing dentists to arrange during their absence from the office for another dentist to come in and supervise the dental hygienist who remains to check and clean the teeth of the dentist's patients. It is my opinion, however, that patients coming to a dental office are entitled to expect the presence of the dentist to whom they come for services and who ultimately will bill them for services received. Although under such an arrangement the requirement of supervision is met, the fact remains that the dental hygienist is performing services for and on behalf of another dentist not present in the office. The accommodating dentist who comes in to supervise has neither an employment relationship with the hygienist nor a contractual relationship with the patient and such an arrangement in my opinion is not provided for under Section 4715.22, *supra*. This conclusion is further supported by the fact that Section 4715.18, *supra*, prohibits a dentist from practicing in an office which does not carry his name.

Furthermore, it could be concluded that the dental hygienist who conducts and operates the office during the dentist's absence is practicing dentistry as defined in Section 4715.01, *supra*, which she is not authorized by law to do. It is also of note that Sections 4715.24 and 4715.26, Revised Code, require that all dental hygienists annually provide the state dental board with information pertaining to their working location and the name of the dentist under whose supervision they are practicing. The requirement for such information would have little significance if the legislature had intended that supervision could be provided by any licensed dentist.

Upon considering all the statutory language as herein discussed, it is my opinion that a dental hygienist may only work in a dental office under the supervision of the dentist employing such hygienist to assist in the conduct of his practice. The dentist employer is therefore prohibited from having any other dentist supervise the practice of his dental hygienist during his absence from the office.

I recognize as pointed out in your third inquiry that there may be various business arrangements between and among dentists and that a dental hygienist may be in the employ of one or more dentists within the same office or employed by one dentist to assist himself and other dentists. In such circumstances, it is my further opinion based upon the foregoing that the practice of the dental hygienist must be performed under the supervision of the dentist employer or dentist upon whose patient the hygienist is performing services.

The remaining inquiry is directed to the question of whether a dentist may employ more than one dental hygienist on a part time basis provided that at no time such dentist has more than one hygienist assisting him in the office. In order to answer this question it will be helpful to consider Section 4715.22, supra, as originally enacted in 1921:

"Any licensed dental hygienist may practice in a dental office, public or private school, hospital, dispensary or public institution, provided such service is rendered under the supervision of a licensed dentist of the state, and provided further, that no dentist shall employ more than one hygienist in the conducting of his private practice."

At the time of recodification in 1953 this statute was changed and the words "provided further" were deleted and the last portion of the section was placed in a separate sentence. Such re-drafting however was not intended to effect any substantive change in the law as stated in Section 1.24, Revised Code. The last portion of Section 4715.22, supra, with which we are concerned was originally enacted in the style of a proviso and in order to arrive at its correct interpretation it must be considered in light of the provisions of the statute to which it relates as well as to its function and purpose in the context of the entire statute in which it is found. Thomas, Jr. v. The Board of County Commissioners of Hamilton County, 88 Ohio St., 489. The following statements cited from the Supreme Court case of Zumstein v. Mullen et al., 67 Ohio St., 382 at pages 409 and 410 provide some guiding principles:

"\* \* \*The controlling rule of construction is to ascertain the intent of the general assembly, and when that is clear, from the language used, other rules of construction are not regarded.

"In this section the word 'provided' is used twice, and hence it is argued that there are two provisos in the section, that each must in some manner modify the enacting clause, and that the last proviso cannot modify the first.

"A proviso is generally used in a statute to qualify, limit or restrain the operation of general terms contained in a previous part of the section or act, and not to introduce a distinct and independent proposition." Allen v.

Parish, 3 Ohio, 187, 193. It will be noticed that this rule as to provisos does not go to the extent of holding that a second proviso cannot modify a preceding one.

"In 23 Am. and Eng. Ency Law (1 ed.), 436, the rule is stated thus: 'The proviso should be confined to what immediately precedes, unless the contrary intent clearly appears'. Under this rule the second proviso in this section would modify the first, because the first immediately precedes the second."

It is therefore necessary for purposes of answering this question to determine whether the last portion of Section 4715.22, supra, is a true proviso or whether it introduces an additional and independent provision into this section. In reading Section 4715.22, supra, it is evident that the purpose of this section is to establish the place and manner of practice by a dental hygienist. The first portion of the section sets forth the places in which such practice may be maintained. The next portion of the section is clearly in the nature of a proviso as it places a restriction or modification upon the right to practice in such places by imposing the requirement of supervision. The final portion of the section places a further restriction upon the requirement of supervision by limiting a dentist to the employ of not more than one hygienist in the conducting of his practice.

It is my opinion that this last portion of the section readily can be interpreted as modifying the supervised practice of a dental hygienist in a dental office. It follows therefore that the restriction that no dentist may employ more than one dental hygienist relates to supervision and not to employment except as it may be so affected by this restriction at any one time.

The object of any investigation in the construction of a statute is, of course, to ascertain and give effect to the intent of the law making body which enacted it and a rule of construction should not be used to defeat or impair such intent. In this instance the intent may only be derived from the words employed and the legislative purpose implied therefrom. In my opinion to interpret Section 4715.22, supra, in accordance with the general principle that a proviso be confined to what immediately precedes it does not oppose the apparent intent of the legislature in enacting this law.

As stated hereinbefore, the legislature provided the maximum amount of protection for the public by requiring that the limited practice of dentistry by a dental hygienist must be conducted under the supervision of a licensed dentist who under the prior law was the only person authorized to perform such services. It is obvious that a means to assure this protection to the public is to prohibit a dentist from supervising more than one dental hygienist. The purpose of the law is certainly not defeated by permitting a dentist to employ more than one dental hygienist to assist him on a part time basis as long as not more than one hygienist is present in the office and working under his supervision.

It is therefore my opinion and you are hereby advised:

1. Supervision by a licensed dentist as required by Section 4715.22, Revised Code, means actual inspection of the work performed by a dental hygienist.
2. Supervision of a dental hygienist in a dental office as required by Section 4715.22, Revised Code, is restricted to supervision by the dentist employing such hygienist to assist him in his practice.
3. The practice of a dental hygienist in a dental office where there are more than one practicing dentist must be supervised by the dentist upon whose patient the hygienist is performing services.
4. A dentist is authorized pursuant to Section 4715.22, Revised Code, to employ more than one dental hygienist provided that at no time is there more than one hygienist present in the office to assist him with his practice.