provided further, the purpose or purposes for which the corporation was formed shall not be substantially changed. Such amendment shall be adopted at a meeting of the members by the affirmative vote of a majority of the members present thereat, if the members present constitute a quorum as specified in the regulations, unless the regulations require the vote of a greater or lesser number of members. Upon the adoption thereof, the president or a vice-president and the secretary or an assistant secretary shall execute and sign a certificate containing a copy of the resolution of amendment, which shall be filed in the office of the secretary of state, whereupon the articles shall be deemed to be amended."

As you point out, the right to amend articles of incorporation of a corporation not for profit is, by the terms of this section, limited to such provisions as it would be lawful to insert or omit, as the case may be, in original articles made at the time of making such amendment. Quite obviously it would not be lawful for a corporation not for profit to make any provision with respect to the issuance of shares at the present time and, since the new general corporation act requires that all provisions with respect to shares shall be included in the articles or in amendments thereto, there is no method by which the corporation in question could now amend its articles so as to increase the number of its shares.

I am not unmindful of the fact that Section 8623-102, heretofore quoted, apparently makes the restriction as to issuance of certificates of shares only applicable to corporations not for profit *hereafter organized.* In my opinion the effect of this is to permit the issuance of certificates within the authority already existing, but that effect cannot be extended to authorize an increase of the authorized number of shares in the face of the other provisions of law which I have quoted.

Section 8623-113, supra, apparently provides a method whereby the corporation in question may accomplish substantially the same result as it seeks in increasing the authorized number of its shares. By proper amendment of its articles pursuant to this section, the articles may be so amended as to adjust the property rights of its members and authorize the issuance of membership certificates. If such an amendment is properly worded it might prove an effective substitute for the proposed action. Of course, the filing fee for such an amendment would be ten dollars, as you state in your communication.

Respectfully,
EDWARD C. TURNER.
Attorney General.

1739.

DENTIST—GROSSLY IMMORAL CONDUCT—REVOCATION OF LICENSE.

SYLLABUS:

Where a dentist advises patients to have certain dental work performed, and performs certain dental work, such advice being given and such dental work being performed deliberately and with knowledge that the diagnoses are wrong and that such work is unnecessary and with the intention of getting more money out of his patients, such conduct amounts to grossly immoral conduct likely to deceive or defraud the public, or which disqualifies him to practice with safety to the people

within the purview of Section 1325, *General Code. The state dental board upon the establishment of such facts would be justified in revoking such dentist's license to practice dentistry in this state.*

COLUMBUS, OHIO, February 21, 1928.

DR. JOSEPH T. WILLIAMSON, *President, Ohio State Dental Board, East Liverpool, Ohio.*

DEAR SIR:—Under date of January 25, 1928, the secretary of the state dental board submitted to me a statement of facts prepared by you relative to the practice indulged in by a Dr. S.————, and containing a suggestion that such practice would justify the dental board in revoking his license. Two instances are cited by you in support of such suggestion: First, that on one occasion Dr. S.———— advised a patient that six of her teeth required filling; whereas your examination and that of another dentist revealed only two teeth that required filling; and second, that Dr. S.————advised another patient that two molar teeth must be extracted, whereas, in your judgment and that of the other dentist above referred to, whom you called in to examine her teeth, such advice was wrong. You also state that in your opinion Dr. S.————is indulging quite generally in this kind of practice.

Section 1325, General Code, sets out the various grounds for which a license to practice dentistry may be revoked. Said section provides:

> "The state dental board may revoke or suspend a license obtained by fraud or misrepresentation, or if the person named therein is convicted subsequent to the date of his license of a felony involving moral turpitude, or becomes guilty of chronic or persistent inebriety or addiction to drugs; or if the person holding such license shall advertise with a view of deceiving the public; or be guilty of any grossly immoral conduct likely to deceive or defraud the public; or which disqualifies the applicant to practice with safety to the people."

It is manifest, from a reading of the above quoted section, that if any grounds for revoking Dr. S.————'s license exist, they must be found in the latter part of the language of Section 1325, General Code, to-wit: "guilty of any grossly immoral conduct likely to deceive or defraud the public; or which disqualifies the applicant to practice with safety to the people." Unless Dr. S.————'s conduct is such as to amount to grossly immoral conduct likely to deceive or defraud the public or which disqualifies him to practice with safety to the people, there exists no ground for revoking his license.

There is no definition of the words "grossly immoral conduct" to be found in the group of sections pertaining to the state dental board, nor are those words defined anywhere else in the statutes of this state. Section 1275, General Code, found in the chapter relating to the state medical board, sets out the grounds for refusal or revocation of a license to practice medicine or surgery, and one of the grounds therein set out is "gross immorality." I see no essential difference between the words "grossly immoral conduct" and "gross immorality." While there is no statutory definition of the words "gross immorality," they have been the subject of judicial construction in numerous cases. One of the cases most frequently cited is the case of *Moore* vs. *Strickling,* 33 S. E. 274, 278; 46 Va. 515; 50 L. R. A. 279, wherein it is said:

> "'Gross' as used in modifying the word 'immorality' does not mean great, or excessive, but rather, wilful, flagrant, or shameless, showing a

moral indifference to the court and respectable members of the community, and to the just obligations of the position held by an officer; * * *"

The case of *Rose* vs. *Baxter,* 7 O. N. P. (N. S.) 132, arose in the Court of Common Pleas of Franklin County, Ohio, and was an injunction proceeding to enjoin the revocation of plaintiff's license to practice medicine. In denying the injunction the court said:

"Gross immorality is a term which has been used and has received adjudication at the hands of a great many courts. The word 'gross' does not mean great, or big, or excessive, necessarily, but rather such a wilful, flagrant and shameful quality with respect to the office involved as renders the officer unfit to hold his license and authority to act. Sometimes the expression is found, under the law, 'gross misbehavior.'"

Adopting the definition of "gross immorality" as laid down by the court in the *Rose* vs. *Baxter* case, supra, as a proper definition of the words "grossly immoral conduct," and applying the same to the statement of facts submitted by you, I am inclined to the opinion that if it can be shown that Dr. S.———— is generally indulging in the kind of practice you point out, deliberately, and knowing that some of his diagnoses are wrong and are made for the purpose of getting more money out of his patients, the dental board would be justified in revoking his license.

Should the dental board desire to take action, it must be remembered that it must clearly appear that Dr. S.———— is making wrong diagnoses wilfully, and with knowledge that they are wrong, as distinguished from mistakes in diagnosis. It is common knowledge that physicians often differ greatly in diagnosis and the same is undoubtedly true of dentists.

It must also be borne in mind that Section 1327, General Code, gives a dentist whose license has been revoked or suspended a right to appeal to the Common Pleas Court of his county and that the judgment of the Common Pleas Court may be reviewed upon proceedings in error in the Court of Appeals. Unless, therefore, the board is satisfied that the facts are such that if the case were carried to the Common Pleas Court on appeal that court would reach the same judgment as the board, I would advise against the proceeding.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1740.

CANAL LEASE—INSERTION OF CLAUSE IN PROPOSED LEASE TO DAYTON CANAL LANDS TO RAILROAD COMPANY, DISCUSSED.

SYLLABUS:

1. *In view of the provisions of Section* 5330, *General Code, a perpetual leasehold renewable forever in abandoned canal lands owned by the State is not clearly assessable under the general laws of the State for municipal improvements benefiting the property held under such leasehold as will for that reason justify the exclusion from the lease of a clause which incorporates an agreement on the part of the lessee*