December 22, 1995

OPINION NO. 95-045

Pamela C. Powell, Executive Director
State Dental Board
77 South High Street, 18th Floor
Columbus, Ohio 43266-0306

Dear Executive Director Powell:

On behalf of the State Dental Board you have requested an opinion regarding the ability of an unlicensed person to manage or operate a dental office or a chain of dental offices pursuant to an agreement with either a licensed dentist or a professional corporation, general corporation, limited liability company, or partnership that employs licensed dentists engaged in the practice of dentistry. In accordance with the terms of the agreement, the unlicensed person furnishes various services to the dentist or other business entity in conjunction with a dental practice. You have indicated that the unlicensed person that provides these services is usually a business entity such as a corporation or partnership. You have referred to these types of entities generally as "management companies," and your letter describes the range of services that they are capable of providing:

> These companies often provide office space, business equipment, dental equipment and staff in addition to performing the following services: bookkeeping; tax filing and tax planning; investing; billing and collections; payroll; advertising and marketing; etc. Depending upon the agreement, the management company may provide just one of the services listed above, such as payroll services or billing services, or all of the services listed above. In the most extreme cases, the Dental Board has seen management agreements which grant the management company complete discretion to set the hours of operation of the "managed" dental office, the fees to be charged for dental services rendered, minimum production standards for dentists practicing in the "managed" office, and to determine the type, content and frequency of advertising, as well as to hire all of the office personnel, including unlicensed dental assistants and others who directly participate in the delivery of patient care. In many instances, the management fee paid to the management company under the agreement is based upon the profitability of the practice or the volume of business. These management companies are both local and national, and are privately and publicly-held.

The Board wishes to know whether the provision of the foregoing services by a management company constitutes the practice of dentistry as defined in R.C. 4715.01. R.C. 4715.09(A) states that no person shall practice dentistry without a current license from the State Dental Board. R.C. 4715.01 further provides, in pertinent part, that "[a]ny person shall be regarded as practicing dentistry, who is a manager, proprietor, operator, or conductor of a place for performing dental operations." Divisions (A), (B), and (C) of R.C. 4715.01 then identify, by way of example, three situations in which a person is a manager, proprietor, operator, or conductor of a place for performing dental operations:

> Manager, proprietor, operator, or conductor as used in this section includes any person:
> (A) Who employs licensed operators;
> (B) Who places in the possession of licensed operators dental offices or dental equipment necessary for the handling of dental offices on the basis of a lease or any other agreement for compensation or profit for the use of such office or equipment, when such compensation is manifestly in excess of the reasonable rental value of such premises and equipment;
> (C) Who makes any other arrangements whereby he derives profit, compensation, or advantage through retaining the ownership or control of dental offices or necessary dental equipment by making the same available in any manner for the use of licensed operators; provided that this section does not apply to bona fide sales of dental equipment secured by chattel mortgage.

The Board's request sets forth a series of eleven questions. Question one asks whether a management or service agreement between a licensed dentist or a professional corporation, general corporation, limited liability company, or partnership, which is wholly owned by licensed dentists engaged in the practice of dentistry, and one or more unlicensed entities, which are not wholly owned by licensed dentists, pursuant to which the unlicensed entity provides business or management services to the licensed dentist or other business entity, violates R.C. 4715.01 on its face. Question two asks whether a management company is a "manager, proprietor, operator, or conductor of a place for performing dental operations," as that language is used in R.C. 4715.01, solely because the management company provides business services to a licensed dentist or to a professional corporation or other entity that employs licensed dentists. Questions three through ten describe particular services that may be provided to a dentist by a management company. In each of those questions the Board wishes to know whether the management company, by its provision of that service, is a "manager, proprietor, operator, or conductor of a place for performing dental operations," as that language is used in R.C. 4715.01. Finally, recognizing that neither R.C. 4715.01 nor any other provision in R.C. Chapter 4715 directly addresses many of the services described in your letter, the Board has asked that I specify the level at which a combination of these various services, when provided to a dentist by a management company, constitutes control of the dental office by the management company.

In response to the Board's first question, it is my opinion that the fact that there exists a management or service agreement between a licensed dentist or a professional corporation, general corporation, limited liability company, or partnership, which is wholly owned by licensed dentists engaged in the practice of dentistry, and one or more unlicensed entities, pursuant to which the unlicensed entity provides business or management services to the licensed dentist or other business entity, does not, per se, violate R.C. 4715.01. R.C. 4715.01 is primarily a definitional section, yet its final paragraph does proscribe certain conduct on the part of a licensed dentist or dental hygienist for which the State Dental Board may impose disciplinary sanctions: "Whoever having a license to practice dentistry or dental hygiene *enters the employment of, or enters into any of the arrangements described in this section with*, an unlicensed manager, proprietor, operator, or conductor ... may have his license suspended or revoked by the state dental board." (Emphasis added.)

R.C. 4715.01 thus prohibits an employment relationship between a licensed dentist or a licensed dental hygienist and an unlicensed manager, proprietor, operator, or conductor. It also prohibits a licensed dentist or a licensed dental hygienist from entering into any of the arrangements described in divisions (A), (B), and (C) of that section with an unlicensed manager, proprietor, operator, or conductor. R.C. 4715.01 does not, however, impose a blanket prohibition against any management or service agreement that a licensed dentist may have with an unlicensed person, including a management company. Only if the agreement provides for the employment of a licensed dentist by an unlicensed[1] management company, or establishes between the licensed dentist and an unlicensed management company any of the arrangements enumerated in R.C. 4715.01(A)-(C), is there a basis for a finding by the State Dental Board that R.C. 4715.01 has been violated.

In the case of the Board's second question, it also is my opinion that the single fact that a management company furnishes business services to a licensed dentist or to a professional corporation or other entity that employs licensed dentists does not compel the conclusion that the management company is a "manager, proprietor, operator, or conductor of a place for performing dental operations" under R.C. 4715.01. The provisions of R.C. 4715.01 do not state that any person that provides business services to a licensed dentist or to a professional corporation or other entity that employs licensed dentists is a manager, proprietor, operator, or conductor of a place for

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[1] The provisions of R.C. 4715.10 and R.C. 4715.11 set forth the requirements that must be satisfied by a person that applies to the State Dental Board for a license to practice dentistry. R.C. 4715.10(A) specifically provides that "[e]ach person who desires to practice dentistry shall file with the secretary of the state dental board a written application for a license and furnish satisfactory proof that he is at least eighteen years of age, of good moral character, and a graduate of an accredited dental college or a graduate of a foreign dental college who meets the standards adopted under [R.C. 4715.10(C)]." R.C. 4715.11 further provides that "[a]n applicant for a license to practice dentistry shall appear before the state dental board at its first examination meeting after the filing of his application, and pass an examination, consisting of practical demonstrations and written or oral tests, or both, as the board determines necessary." Given these particular requirements, it follows that a management company such as that described in the Board's request, being an impersonal entity, cannot be granted a license under R.C. 4715.12 to practice dentistry in Ohio.

performing dental operations. Rather, it is the nature of those services or the manner in which they are provided that, *inter alia*, determines whether a person is a manager, proprietor, operator, or conductor of a place for performing dental operations. Divisions (A), (B), and (C) of R.C. 4715.01 thus set forth three specific examples of circumstances in which a person is a manager, proprietor, operator, or conductor. If the business services provided by a management company present one or more of those circumstances, the management company is a manager, proprietor, operator, or conductor of a place for performing dental operations. There also may be situations in which a management company furnishes business services or arrangements other than those described in R.C. 4715.01(A)-(C). The nature of those services or arrangements or the manner in which they are provided will determine whether the management company is, for purposes of that section, a "manager, proprietor, operator, or conductor of a place for performing dental operations."

Questions three through ten of the request list specific arrangements or services that may comprise the business relationship that a licensed dentist has with an unlicensed management company. In each question the Board asks whether the management company is a "manager, proprietor, operator, or conductor of a place for performing dental operations," and thus engaged in the practice of dentistry for purposes of R.C. 4715.01, whenever it maintains a particular arrangement with, or provides a particular service to, the licensed dentist.[2] The Board's questions thus concern the appropriate construction of the phrase "manager, proprietor, operator, or conductor of a place for performing dental operations," as used in the first paragraph of R.C. 4715.01, and the application of that language to each arrangement or service described in its request.

In construing the foregoing language of R.C. 4715.01, one should first consider the meanings that might be accorded the terms "manager," "proprietor," "operator," and "conductor." The General Assembly has not enacted separate definitions of those terms as they are used in any of the provisions of R.C. Chapter 4715. In such a circumstance R.C. 1.42 establishes the following rule of construction as an aid to discerning their proper meaning: "Words and phrases shall be read in

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[2] The specific business arrangements, practices, or services listed in questions three through ten are as follows: computing the management company's fees for its services upon the volume of dental services provided by the dental practice, or as a percentage of the gross or net profit of the dental practice; leasing to the licensed dentist office space or dental equipment that is owned exclusively by the management company, or requiring that specific equipment be used or a specific size or location of office be selected; authorizing a management company to hire and set the compensation of dental practice personnel other than licensed dentists, dental hygienists, and dental radiographers, establish the business hours for the dental office or require that the dental office be open a specific number of hours each week, set the fees that will be charged for particular dental procedures, determine when and by what amount those fees shall be reduced or increased, or set quotas for the number of patients that must be served or the number of dental procedures that must be performed within a given timespan; assigning to a management company the responsibility to collect, deposit, and disburse all funds generated by the dental practice; and management agreements between a licensed dentist and management company that are of a lengthy duration (*e.g.*, twenty years or more) or contain automatic renewal provisions.

context and construed according to the rules of grammar and common usage." *See, e.g., John Ken Alzheimer's Ctr. v. Ohio Cert. of Need Review Bd.*, 65 Ohio App. 3d 134, 138, 583 N.E.2d 337, 339 (Franklin County 1989). A review of the entries that appear in *Black's Law Dictionary* (6th ed. 1990) discloses that the conceivable meanings of those specific terms, or the root forms from which they derive, are many and varied. A "[m]anager" is "[o]ne who has charge of [a] corporation and control of its business, or of its branch establishments, divisions, or departments, and who is vested with a certain amount of discretion and independent judgment." *Id.* at 960. A "[m]anager" also is "[a] person chosen or appointed to manage, direct, or administer the affairs of another person or of a business, sports team, or the like. The designation of _manager_ implies general power and permits reasonable inferences that the employee so designated is invested with the general conduct and control of his employer's business." *Id.* The verb "[m]anage" means "[t]o control and direct, to administer, to take charge of. To conduct; to carry on the concerns of a business or establishment." *Id.*

A "[p]roprietor" is the "[o]wner of [a] proprietorship. One who has the legal right or exclusive title to property, business, etc. In many instances it is synonymous with owner." *Id.* at 1220. A "[p]roprietorship" is "[a] business which is owned by a person who has either the legal right and exclusive title, or dominion, or the ownership of that business," or "[a] business, usually unincorporated, owned and controlled exclusively by one person. Such a business is commonly designated a _sole proprietorship._" *Id.* The verb "[o]perate" means "[t]o perform a function, or operation, or produce an effect." *Id.* at 1091. The verb "[c]onduct" means "[t]o manage; direct; lead; have direction; carry on; regulate; do business." *Id.* at 295.

The dictionary entries set out above indicate that the terms "manager," "proprietor," "operator," and "conductor" do not share identical meanings and thus are not strict synonyms of each other. Legal ownership, for example, is the essential characteristic of a person who is a "proprietor." Legal ownership or title is not, however, the defining characteristic of a person who is either a "manager," an "operator," or a "conductor." Those entries also suggest that the breadth of meaning attributable to each of these terms varies in certain degrees. The terms "manager" and "proprietor" may reasonably be said to connote a broader range of authority and responsibility on the part of a person who bears either of those designations than do the terms "conductor" and "operator." However, an attribute fairly represented by each of these terms is the ability to assume and exercise control over a given activity or situation.

As a general matter, therefore, the dictionary definitions of these several terms furnish only partial guidance in the construction and application of the language of R.C. 4715.01. Indeed, the breadth and variety of meanings to which the terms "manager," "proprietor," "operator," and "conductor" are susceptible lend an element of ambiguity to the whole of R.C. 4715.01 that may complicate the application of that statute to the services and arrangements described in the Board's request. I believe this also means that it will be necessary to examine other relevant factors and rules of statutory construction in accomplishing that task. The paramount objective in that regard will be to ascertain the intent of the General Assembly that prompted the enactment of R.C. 4715.01. As the Ohio Supreme Court has stated: "The primary purpose ... in the interpretation or construction of statutes is to give effect to the intention of the General Assembly, as gathered from the provisions

enacted, by the application of well-settled rules of interpretation, the ultimate function being to ascertain the legislative will." *Henry v. Central Nat'l Bank*, 16 Ohio St. 2d 16, 16, 242 N.E.2d 342, 343 (1968) (syllabus, paragraph two). The language of R.C. 4715.01 must, in turn, be construed and applied in a way that faithfully reflects that legislative intent.

In Ohio, the absence of pertinent written materials (*e.g*., recorded floor debates on bills pending before the Senate or House of Representatives; transcripts of Senate or House committee hearing proceedings, or published reports of those proceedings) from which to compile a genuine legislative history of the General Assembly's enactments often presents a formidable challenge whenever one wishes to identify the specific intent that forms the foundation for a particular statute. Nonetheless, the General Assembly has enacted several statutory provisions that set forth certain principles that may be followed in identifying legislative intent. Among those provisions is R.C. 1.49, which specifies certain factors that may be considered in that regard:

> If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:
> (A) The object sought to be attained;
> (B) The circumstances under which the statute was enacted;
> (C) The legislative history;
> (D) The common law or former statutory provisions, including laws upon the same or similar subjects;
> (E) The consequences of a particular construction;
> (F) The administrative construction of the statute.

In construing the language of R.C. 4715.01, it is important to bear in mind the factor in R.C. 1.49(A) concerning the object to be attained by the statute. Dentistry is among those professions that have long been subject to regulation by the state. In R.C. Chapter 4715 the General Assembly has enacted a comprehensive scheme for the licensure, supervision, and discipline of dental practitioners, and has delegated to the State Dental Board the responsibility of administering and enforcing the provisions of that chapter. Similar licensing and disciplinary schemes exist for a host of other healing professions that minister to the needs of the human body. *See, e.g.*, R.C. Chapters 4725 (optometry and optical dispensing); 4729 (pharmacy); 4731 (medicine and surgery); 4734 (chiropractic); 4761 (respiratory therapy).

The ultimate goal, or intent, of such regulation by the state is the preservation of the health, safety, and general welfare of every person who is served by a practitioner of the profession in question. *See Springfield v. Hurst*, 144 Ohio St. 49, 56 N.E.2d 185 (1944); *State ex rel. Copeland v. State Medical Bd.*, 107 Ohio St. 20, 140 N.E. 660 (1923); *Williams v. Scudder*, 102 Ohio St. 305, 131 N.E. 481 (1921); *State v. Gravett*, 65 Ohio St. 289, 62 N.E. 325 (1901). In *State ex rel. Copeland v. State Medical Bd.*, for example, the Ohio Supreme Court upheld the authority of the State Medical Board to deny a license to an applicant who wished to practice certain limited branches of surgery and medicine without submitting to a Board examination. In the course of its opinion the court explained the police power basis of the Board's authority to deny the requested license:

> It has been urged that the state medical board does not have any discretion in the matter, nor any *quasi*-judicial powers, but, that, on the contrary, its duty upon the mere filing of an affidavit is purely ministerial and so clear that the performance of that duty can be compelled by the extraordinary writ of mandamus. In considering this question it must be borne in mind that the state medical board has a most important function imposed upon it, that of safeguarding the public against the ministrations of those who are not qualified by proper training, education and experience to minister to the wants of those who are afflicted by functional or organic diseases or are the unfortunate victims of accident. Acting under a very proper exercise of police power the general assembly has placed upon the state medical board the duty of thus safeguarding the public interest.... If the state board is permitted to satisfy itself as to the actual experience of the applicant, the license not only becomes a recommendation to the licensee, but also serves as a protection to the public, who have no means of making intelligent inquiry.
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> The underlying purpose of conferring upon the board the power to issue licenses to practice medicine and surgery is protection against inexperience and incompetency. The construction contended for, if put upon this section, is such as to take away all inquiry as to the applicant's experience, and to substitute therefor the simple and worse than useless expedient of the mere form of an affidavit.

107 Ohio St. at 27-28, 140 N.E. at 662.

Similar sentiments were expressed about the profession of dentistry in *Taylor v. New System Prosthetic Dental Laboratory*, 29 Ohio N.P. (n.s.) 451, 12 Ohio L. Abs. 54 (C.P. Cuyahoga County 1932), a decision that upheld the constitutionality of those provisions of the General Code that required the licensure of persons who wished to practice as dentists:

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:
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> "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."
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> ....
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> In the case of *State of Ohio v. Gardner*, 58 Ohio St., 599, it was held as follows:
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> "The right to labor and enjoy the rewards thereof is a natural right which may not be unreasonably interfered with by legislation. Where, however, the pursuit concerns,

> in a direct manner, the public health and welfare, and is of such a character as to require a special course of study or training, or experience, to qualify one to pursue such occupation with safety to the public interest, it is within the competency of the General Assembly to enact reasonable regulations to protect the public against evils which may result from incapacity and ignorance."
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> In that particular case regulations with reference to plumbers and plumbing were upheld. The practice of the dental profession is as closely related to the public health as the practice of plumbing.

29 Ohio N.P. (n.s.) at 453-455, 12 Ohio L. Abs. at 55-56.

The provisions of R.C. Chapter 4715, therefore, have as their essential, underlying purpose the protection of the health and welfare of every person who seeks care and treatment from an Ohio dental practitioner. Accordingly, R.C. 4715.01's language of "manager, proprietor, operator, or conductor of a place for performing dental operations" should be construed in a manner that relates to that specific purpose. The most appropriate way to proceed in that regard is to apply the commonly understood meanings of the terms "manager," "proprietor," "operator," and "conductor" with reference to activities or functions that have a direct and palpable relation to the actual care and treatment provided to an individual dental patient. Specifically, one may determine that certain activities or functions that occur or are performed as part of a typical dental practice have a direct, immediate, and tangible effect upon the actual care and treatment received by an individual patient of that practice. To the extent that they do, one may further determine that the language "manager, proprietor, operator, or conductor of a place for performing dental operations" denotes a person who, as the case may be, carries out the authority or responsibilities of a manager, proprietor, operator, or conductor with respect to those patient care and treatment functions.

It is readily apparent that the authority to decide whether particular treatment will be provided to a dental patient, or to direct the mode or manner of particular treatment procedures, is directly and unequivocally related to the care and treatment received by the patient, and, ultimately, to the patient's health and welfare. It follows, therefore, that a person that retains and exercises such authority qualifies as a "manager, proprietor, operator, or conductor of a place for performing dental operations" under R.C. 4715.01.

The remaining inquiry concerns the extent to which the retention and exercise of similar decision-making authority over the individual activities and services described in the Board's letter affect or relate directly to patient care and treatment. Except for the matters mentioned in question eight, it is my opinion that the activities and services described in the Board's letter do not affect a dental patient's health and well-being in any direct or significant way. Rather, it appears to me that those activities and services are more closely related to the proper and efficient management of the economics of a dental practice, and any connection they may have to patient care and treatment is simply too attenuated to conclude that a management company that assumes responsibility for those matters thereby qualifies as a "manager, proprietor, operator, or conductor of a place for performing dental operations" under R.C. 4715.01.

In that category I would first place arrangements whereby a management company leases dental equipment and office space to the dentist (provided the compensation for that equipment and office space is not manifestly in excess of its reasonable rental value, R.C. 4715.01(B)), is responsible for bill preparation and the collection, deposit, and disbursement of funds of the practice, or enters into a management agreement with a dentist that is of a lengthy or indefinite duration or is automatically renewable.[3] The foregoing matters are addressed in questions four, nine, and ten of the Board's request. In my view arrangements of this character pertain to the general financial management of a dental practice and bear little or no relation to patient health and well-being.

Certain other matters addressed in the Board's request may bear a closer relationship to the treatment of patients, rather than to the simple business operations of a dental practice, and thus are deserving of a more detailed examination. For example, the Board asserts in question three that calculating a management company's compensation as a percentage of dental practice profits or with reference to the volume of dental services provided by a dental office may give the management company an incentive to cut costs in order to increase the amount of compensation it will receive, indicating that the management company has retained an impermissible ownership interest in the dental practice.[4] The Board further asserts in question five that granting a management company the authority to hire and set the compensation of office personnel other than dentists, dental hygienists, and dental radiographers may mean that the management company retains control of those employees, and that such control could eventually compromise the quality of care provided to patients because those employees will make patient treatment decisions that reflect the best interests of the management company.

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[3] I believe, however, that an agreement that either is of a lengthy or indefinite duration or automatically renewable ordinarily should incorporate a provision that permits the dentist to terminate the agreement under certain defined circumstances. Otherwise, I discern in such an agreement a potential for ceding to the management company a degree of control over the dental practice that might ultimately affect patient health and well-being.

[4] I do not believe that compensation arrangements between a dentist and a management company that are based upon the volume of dental services or the amount of profit generated by a dental practice should affect or bear upon patient care and treatment. On the other hand, there may be situations in which the nature of the arrangement and the amount of compensation it produces for the management company effectively grant the management company an interest in the dental practice that is akin to ownership, which would enable one to conclude that the management company is a "proprietor" of the dental practice as that term is commonly understood. This might be the case, for example, if the compensation actually paid to the management company under the terms of the management agreement for its services amounts to an excessively large percentage of the profits generated by the dental practice.

Similarly, granting a management company the authority to establish the business hours for a dental office or to require that the office be open for a specific number of hours each week, which is the premise of question six, may adversely affect the quality of patient care because dentists, dental hygienists, and dental assistants will be required to work long hours, and the quality of dental care may be diminished whenever a patient is treated by a practitioner who is fatigued or exhausted. Question seven suggests that permitting a management company to set the fees that will be charged for dental procedures and to decide when or by what amount those fees shall be reduced or increased may present a situation in which the management company effectively controls the dental office and all treatment decisions made by the dental practitioners in that office, especially when the management company sets fees that are extremely low in order to remain competitive in the dental care marketplace. In particular, lower fees may mean that less expensive and lower quality equipment and materials will be used in the treatment of patients, and a dentist or dental hygienist will have to examine and treat more patients within shorter periods of time, thereby affecting the quality of care that is provided to a patient.

I have reviewed and considered carefully the Board's explanations in support of its position on these issues. I further acknowledge and recognize that the Board has valid concerns about the kind of care and treatment that is provided to dental patients whenever an unlicensed entity is, in some fashion, associated with a particular dental practice. Reasonable minds may differ about the exact extent to which each of these activities or arrangements ultimately may affect patient health and well-being. In addition, a conclusive determination in that regard may, in each case, require an examination of the precise terms of the agreement that confers upon a management company responsibility to undertake the performance of such matters for a licensed dentist. In a given instance that examination may demonstrate that a management company has been granted unqualified discretion to make decisions and take actions that do, in fact, bear directly upon the quality of care and treatment that is provided to individual dental patients.[5] It may, on the other

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[5] R.C. 4715.39, for example, states that, subject to the rules of the State Dental Board, *see* 11 Ohio Admin. Code Chapter 4715-11, licensed dentists "may assign to qualified personnel dental procedures that do not require the professional competence or skill of the licensed dentist or dental hygienist as the [B]oard by rule authorizes such personnel to perform." R.C. 4715.39 also provides that the performance of dental procedures by qualified personnel "shall be under *direct supervision* and *full responsibility* of the licensed dentist." (Emphasis added.) Accordingly, should a management company be authorized to schedule the working hours of qualified personnel such as dental assistants, it will have to ensure that those working hours coincide with those of a dentist who is able to directly supervise such dental procedures as may be assigned to the dental assistants. If the working hours of the licensed dentist and dental assistants do not coincide, however, then the dental assistants may be placed in the position of performing assigned dental procedures without the necessary and proper supervision, which, in turn, may adversely affect the quality of care and treatment received by dental patients at the hands of those dental assistants.

hand, demonstrate that the management company's responsibilities have been carefully limited and circumscribed by the terms of the agreement to avoid any interference with patient care and treatment.

As a general matter, however, I am unable to adopt the Board's position that each of the activities and arrangements described in questions three, five, six, and seven of the Board's request have a direct effect upon the health and welfare of individual dental patients, and thus a management company that contracts with a licensed dentist to assume the responsibility for such activities and arrangements thereby qualifies as a "manager, proprietor, operator, or conductor of a place for performing dental operations" under R.C. 4715.01.

I am less certain about the activities described in question eight of the Board's request. Question eight asks about setting quotas for the number of patients that must be seen by a dentist or for the number of procedures that must be performed by a dentist. Either situation has the potential to place in jeopardy the best interests of a dental patient. Requiring a dentist to examine and treat a certain number of patients may compromise the quality of care received by a patient if an insufficient amount of time is made available to the dentist to fulfill that quota. Requiring a dentist to perform a certain number of treatment procedures may cause a dentist to recommend or perform a procedure that is not absolutely necessary and that he would not otherwise recommend in the absence of the quota. The imposition of quotas of this nature may thus have a direct bearing upon the health and welfare of patients served by a dentist who must satisfy those quotas. Accordingly, it is my opinion that any person that retains the authority to set and enforce quotas of this nature qualifies as a "manager, proprietor, operator, or conductor of a place for performing dental operations" under R.C. 4715.01.

In its final question the Board has asked that I specify the level at which a combination of these activities and services, when provided to a dentist by a management company, constitutes control of the dental office, such that the management company qualifies as a "manager, proprietor, operator, or conductor of a place for performing dental operations" under R.C. 4715.01. I have no reason to believe that a different conclusion is warranted regarding a management company's status under R.C. 4715.01 when that company is responsible for the performance of several activities and services in varying combinations. There may be individual instances, however, in which a particular combination of activities, in conjunction with the terms of the agreement between the management company and the dentist, presents a situation in which the role of the management company has a direct and immediate effect upon patient health and welfare. If that is the case, then it is within the power of the State Dental Board, in the reasonable exercise of its discretion, to determine that the management company in question qualifies as a "manager, proprietor, operator, or conductor of a place for performing dental operations" under R.C. 4715.01.

In light of the foregoing, therefore, it is my opinion, and you are advised that:

1.The existence of a management agreement between a licensed dentist and an unlicensed entity, which is not wholly owned by licensed dentists, pursuant to which the unlicensed entity provides business or management services to the licensed dentist, does not, per se, violate R.C. 4715.01.

2.The existence of a management agreement between a professional corporation, general corporation, limited liability company, or partnership, which is wholly owned by licensed dentists engaged in the practice of dentistry, and an unlicensed entity, which is not wholly owned by licensed dentists, pursuant to which the unlicensed entity provides business or management services to the professional corporation, general corporation, limited liability company, or partnership, does not, per se, violate R.C. 4715.01.

3.The single fact that a management company furnishes business or management services to a licensed dentist or to a professional corporation or other entity that employs licensed dentists does not compel the conclusion that the management company is a "manager, proprietor, operator, or conductor of a place for performing dental operations" under R.C. 4715.01.

4.R.C. 4715.01's language of "manager, proprietor, operator, or conductor of a place for performing dental operations" denotes a person that retains and exercises the authority or responsibilities of a manager, proprietor, operator, or conductor, in accordance with the common understanding of those terms, with respect to any matter that affects or relates directly to the health and welfare of a dental patient that receives care or treatment from a dentist, dental hygienist, dental x-ray machine operator, or any other individual subject to licensure or regulation by the State Dental Board.

5.A person that retains and exercises the authority to decide whether particular treatment will be provided to a dental patient or to direct the mode or manner of particular treatment procedures qualifies as a "manager, proprietor, operator, or conductor of a place for performing dental operations" under R.C. 4715.01.

6.A person that retains and exercises the authority to set and enforce quotas that require a licensed dentist to examine and treat a certain number of patients or to perform a certain number of treatment procedures qualifies as a "manager, proprietor, operator, or conductor of a place for performing dental operations" under R.C. 4715.01.

Respectfully,

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December 22, 1995

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Columbus, Ohio 43266-0306

SYLLABUS: 95-045

1. The existence of a management agreement between a licensed dentist and an unlicensed entity, which is not wholly owned by licensed dentists, pursuant to which the unlicensed entity provides business or management services to the licensed dentist, does not, per se, violate R.C. 4715.01.

2. The existence of a management agreement between a professional corporation, general corporation, limited liability company, or partnership, which is wholly owned by licensed dentists engaged in the practice of dentistry, and an unlicensed entity, which is not wholly owned by licensed dentists, pursuant to which the unlicensed entity provides business or management services to the professional corporation, general corporation, limited liability company, or partnership, does not, per se, violate R.C. 4715.01.

3. The single fact that a management company furnishes business or management services to a licensed dentist or to a professional corporation or other entity that employs licensed dentists does not compel the conclusion that the management company is a "manager, proprietor, operator, or conductor of a place for performing dental operations" under R.C. 4715.01.

4. R.C. 4715.01's language of "manager, proprietor, operator, or conductor of a place for performing dental operations" denotes a person that retains and exercises the authority or responsibilities of a manager, proprietor, operator, or conductor, in accordance with the common understanding of those terms, with respect to any matter that affects or relates directly to the health and welfare of a dental patient that receives care or treatment from a dentist, dental hygienist, dental x-ray machine operator, or any other individual subject to licensure or regulation by the State Dental Board.

5.A person that retains and exercises the authority to decide whether particular treatment will be provided to a dental patient or to direct the mode or manner of particular treatment procedures qualifies as a "manager, proprietor, operator, or conductor of a place for performing dental operations" under R.C. 4715.01.

6.A person that retains and exercises the authority to set and enforce quotas that require a licensed dentist to examine and treat a certain number of patients or to perform a certain number of treatment procedures qualifies as a "manager, proprietor, operator, or conductor of a place for performing dental operations" under R.C. 4715.01.