

Opinion No. 60-88

May 17, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: G. D. Hastain, Secretary New Mexico Board of Dental Examiners Box 1007 Clovis, New Mexico

QUESTION

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May a group of dentists who have formed a corporation known as the Sandia Dental Group practice dentistry in a building built by them under the name of 'Sandia Dental Group'?

CONCLUSION

No.

OPINION

{*451} ANALYSIS

Section 67-4-10, N.M.S.A., 1953 Compilation provides that the license issued a dentist by the Board of Dental Examiners may be suspended or revoked upon a showing that the holder thereof has been convicted of practicing dentistry under a corporate or firm or trade name in violation of the provisions of the Act.

Section 67-4-15, N.M.S.A., 1953 Compilation provides as follows:

"It shall be unlawful for any person or persons 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 practice under his or her own respective name or names only."

The statute is clear in its holding that a licensed dentist must practice under his own name. It has been held that there is no necessity for legislation to prohibit corporations, as such, from practicing medicine. The reason given is that it is impossible to conceive of any impersonal entity judging the nature, character and symptoms of a disease or determining the proper remedy, or giving or prescribing the application of the remedy for a disease. **State Electro Medical Institute v. State**, 74 Neb. 40, 103 N. W. 1078. The reasoning is simply that a corporation or other legal entity cannot qualify for a license and since no one may practice medicine without a license, a corporation could not do so.

In **Winberry v. Hallihan**, 361 I11. 121, 197 N.E. 552, a statute providing that no corporation should practice dentistry, assume the title of dentist, furnish dental service through itself, or its employees, was held not invalid as depriving a corporation engaged in operating dental offices of property without due process of law.

Painless Parker v. Dental Examiners, 216 Cal. 285, 14 P. 2d, 67 held that:

"A corporation or an unlicensed person could not manage, conduct or control the business side of the practice of dentistry."

State Dental Examiners v. Savelle, 90 Colo. 177, 8 P. 2d 693, held that all practice of dentistry under the name of a corporation not licensed and not entitled to a license for such purposes was unlawful.

Owning a dental office, that is, the physical plant itself, and owning, {**452*} managing or running the actual practice of dentistry are distinguishable. We do not hold that a corporation cannot own and manage the physical plant used to house the dental offices. We do hold that the learned profession of dentistry must be managed, conducted and practiced by the individual licensed dentist under his own name or names and he may not utilize a corporation or trade name in any form whatsoever in such practice including the use of a corporation name on signs, letterheads, cards, etc.

Nor may the actual affairs of the office practice be conducted by other than the licensed dentist or an agent directly responsible to him and for whose acts the dentist is primarily responsible. This delegation to an agent may be only for those duties specifically authorized by law.

The control of the profession is exercised under the police powers of the state and it would be unreal to allow a licensed and qualified person to escape his responsibility to his patients on the grounds that he is a mere employee of his group, corporation, or association and the group, corporation, or association could then escape responsibility on the grounds that they are not licensed as an entity and are charged with no special duty in connection with the patients of their employees.

This opinion expressly upholds your ruling as Secretary of the State Board of Dental Examiners that the group in question can legally form a corporation for the purpose of owning and managing the physical plant constructed by the corporation. However, all forms of the actual practice and conduct of the office affairs must be under the name of the individual dentist and he may not utilize a corporation or trade name.

By: B. J. Baggett

Assistant Attorney General