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## BOARD OF DENTAL EXAMINERS

October 3, 1991

RQ - 234

Dan Morales, Attorney General  
Office of the Attorney General  
State of Texas  
P. O. Box 12548  
Austin, Texas 78711-2548

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Opinion Committee

Dear Mr. Morales:

The State Board of Dental Examiners requests your formal opinion regarding Article 4551b V.T.C.S. The provision with which the Board is concerned states:

The definition of dentistry as contained in Chapter 9, of Title 71, of the Revised Civil Statutes of Texas as amended, shall not apply to (1) members of the faculty of a reputable dental college or school where such faculty members perform their services for the sole benefit of such school or college;...Tex. Rev. Civ. Stat. Ann. art. 4551b (Vernon Supp. 1991).

The Board is aware of one previous Attorney General Opinion concerning this statute: Tex Att'y Gen. Op. No. H-983 (1977). Situations have arisen requiring the Board to determine whether certain activities are "services for the sole benefit" of a dental school. The Board requests your opinion as to whether the following situation is within the exception set out above.

The situation involves faculty members not licensed to practice dentistry in Texas, pursuant to the exception noted above. A faculty member performs dental procedures in a dental school affiliated hospital on paying patients. Such procedures are strictly the rendition of services and do not involve teaching. The patient pays the hospital for the dental treatment. The patient's fee is divided among the hospital, the health science center and the dental school. The dental school uses its portion of the funds to augment its faculty members' salaries, including that of the member who actually performed the service.

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Further, how much a faculty member's salary is augmented is based in part on how much money that member has brought in for such purposes as a result of procedures the member has performed. In other words, while all salaries may be augmented, the more money a faculty member brings in, the greater the proportional share of the salary augmentation fund.

Several related issues may be determinative in this situation. Though the arrangement described above may provide some benefit to the dental school and the public, the exception stated in Article 4551b(1) appears to permit some dentists to practice without being subject to public oversight regarding minimum standards of care. Should a patient be harmed in either situation, there appears to be no procedure or mechanism by which the Board may exercise its jurisdiction to discipline an "excepted" faculty member. If no harm has resulted to a patient, but a dangerous, questionable, or otherwise below the standard of care procedure is being employed by the dentist practicing under the exception, the statute also does not appear to provide sanctions.

Dental faculty members who are "excepted" under the statute are treating indigent or otherwise charitable patients at dental school hospitals where those patients may not seek or receive public hospital treatment. The dental school hospital is entitled to reimbursement for some of its costs under certain insurance policies and programs. TSBDE certification of an "exception" to the hospital and school is a necessary condition for the hospital to be reimbursed for its costs. While this is "pro bono publico" work, the faculty member may receive some salary augmentation as a result of third party partial reimbursement.

One sub-issue may provide guidance in this matter. While the dental school is a part of a larger context, i.e., the Health Science Center or a larger university, "sole benefit of the school" appears to require clarification as to what constitutes the "school". Discussion of each of these issues would be very helpful to the Board.

The primary question on which the Board requires an opinion is whether these situations fall within the "services performed for the sole benefit of the school" exception of Article 4551b. A patient is presumably benefited by treatment. Does patient benefit factor into the analysis at all? Also, does the "for profit" character versus the "pro bono publico"

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character constitute a valid distinction in determining whether the licensing requirements of the Dental Practice Act are applicable? Further, as referenced is there any mechanism by which the Board can provide regulatory oversight in compliance with the minimum standards of dental care should the statutory licensing exception apply in these situations.

In summary, the following questions are posed:

1. Do hospitals and inter-institutional services performed by an "excepted" faculty constitute "services performed for the sole benefit of the school" under Article 4551b?
2. What is the definition of "sole benefit" within the context of the statute?
3. What constitutes the "dental school" within the context of Article 4551b? (i.e., Is the dental school a separate entity from the health science center and/or the larger university of which it is a component?)
4. Does the "fee for service" versus the "pro bono" character constitute a valid distinction in determining whether the exception provisions of the Dental Practice Act are applicable? (i.e., Is charitable or partially reimbursed work at a hospital within the "exception" even though some augmentation may be prorated?)
5. Is there any mechanism by which the Board can provide regulatory oversight in compliance with the minimum standards of dental care should the "excepted" dentist violate the statute?
6. Is it proper for "excepted" faculty members, practicing under the statutory exception, to receive a disproportionate salary augmentation paid out of funds resulting from such practice? A proportionate amount?

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We would appreciate your opinion on these subjects at your earliest convenience.  
Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "C. Thomas Camp". The signature is written in a cursive style with a long, sweeping tail on the "p".

C. Thomas Camp  
Executive Director

CTC:mlc

cc: Roger Byrne, D.D.S., M.D., President  
Jennifer Riggs, Assistant Attorney General, Chief Administrator, Law Section  
William (Bill) Conover, Assistant Attorney General