

Opinion No. 55-6246

August 2, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Dr. John W. Farley, President, New Mexico Board of Dental Examiners, Medical Arts Square, N.E., Albuquerque, N.M.

Receipt is acknowledged of your letter dated July 18 in which you request an opinion as to whether or not a dental hygienist, who is employed at Los Alamos, but who appears not to be under the supervision of any dentist, although some of the dentists send or refer work to her, must be under the supervision of one of the dentists, or whether she can be under the supervision of all the dentists.

Section 67-4-31, N.M.S.A., 1953, reads as follows:

"The holder of a license certificate for the year in which the same is issued, or of a renewal certificate for the current year, shall have the right to be employed to practice dental hygiene in this state in the following places only: (a) In the office of any duly licensed dentist; (b) in a clinic or in clinics in the public schools of this state as an employee of the state board of health; (c) in a clinic or in clinics in a state institution as an employee of the institution; (d) in a clinic established by a hospital approved by the board as an employee of the hospital where service is rendered only to patients of such hospital. A dental hygienist in private practice shall practice only under the direct supervision and in the office of a dentist licensed in the state of New Mexico. No dentist in private practice shall employ more than one (1) dental hygienist at one and the same time: '(e) as an employee of a board of education."

The above quoted statute specifically provides that a dental hygienist has a right to be employed in the office of any duly licensed dentist, or in clinics in the public schools of this State as an employee of the State Board of Health, in a clinic or clinics of a State institution as an employee of the institution, or in a clinic established by a hospital approved by the board as an employee of the hospital where service is rendered only to patients of such hospital, then it specifically states that a dental hygienist in private practice shall practice only under the direct supervision and in the office of a dentist licensed in the State of New Mexico. Therefore, it rules out that she can be employed by all the dentists.

It is, therefore, the opinion of this office that under the above quoted statute a dental hygienist in private practice can only practice under the direct supervision and in the office of a dentist licensed in the State of New Mexico.

You also request advice as to whether a dental hygienist is bound under the Social Security Law.

I have been advised by the Social Security Office here in Santa Fe that if a dental hygienist is working under the supervision of a dentist, then the dentist is responsible for the payment of her social security. If she is not practicing under the supervision of any dentist, she is not covered by social security.

The question of civil liability for malpractice cannot be answered as each fact situation will be different and each dentist must satisfy himself as to his own liability.

Trusting that this fully answers your inquiries, we remain

By Hilario Rubio

Assistant Attorney General