

Opinion No. 16-1740

February 10, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Dr. F. E. Gaines, Gallup, New Mexico.

In regard to the practice of dentistry.

OPINION

{*310} I have just received your letter of the 8th instant, together with accompanying papers. It seems quite clear from the letter from Dr. Moran to you, dated February 4, 1916, that there is some misunderstanding as to your having come to New Mexico before or after the last meeting of the Dental Board. I think that you would better immediately make the application for a license and send with it the sum of \$ 25.00 as required by Section 1829 of the Codification.

Upon referring to the statute, I find that it is a very meager one, but it does seem plain that no one can practice dentistry within the state until he has been examined by the board of Dental Examiners and licensed in accordance with the statute, presenting at the time of his examination a diploma from a reputable dental college. For the practice of law and medicine it is permissible to issue licenses without examination, to graduates of proper schools under certain conditions fixed by the law, but there does not seem to be any authority of that kind in our statute as to dentistry.

There is nothing in the statute to show what is meant by the "practice of dentistry." In Pennsylvania a statute in attempting to give a definition on this subject, uses the following language:

"Every person shall be understood as 'practicing dentistry' within the meaning of the act regulating the practice of dentistry, who shall, for fee, salary, or other reward, either to himself or another person, operate upon human teeth, furnish artificial substitutes or perform those acts, as assistant or principal, usually understood as and called 'dental operations.'

Under this definition a person who did the mechanical work of making artificial teeth, would be considered as practicing dentistry, {*311} but a somewhat better definition, in my opinion, is to be found in the statutes of Washington, where the following appears:

"All persons shall be said to be 'practicing dentistry' within the meaning of the chapter regulating the practice of dentistry, who shall, for a fee or salary, or other reward paid, either to himself or to another person, for operations, or parts of operations, of any kind, treat diseases or lesions of the human teeth or jaws, or correct mal-positions thereof."

I have referred to these statutory definitions only because in the letter from Ruiz and Overson to Dr. Moran, there was some statement about you only doing laboratory work and assisting your brother during his illness. If I understand correctly, what is meant by "laboratory work," that would not be included within the statutory definition last noted, and if you could confine yourself to that sort of work, leaving to your brother such operations as certainly are included within the practice of dentistry, it seems to me that you could lawfully do this.

Under the circumstances, as you write them to me, it would seem that no one would find any fault with the Board of Dental Examiners if its members ignored the fact that you were doing some dental work at the present time, especially if you have your application on file with the accompanying \$ 25.00. Too rigid an enforcement of statutes of this kind is likely to bring them into disfavor with a correspondingly bad effect upon later legislation. Personally, I approve of such statutes regulating the practice of law, medicine, surgery and dentistry, but the authorities charged with the enforcement of the law ought to exercise some discretion so that there will be no justification for the charge which has been frequently made in New Mexico, as to the medical profession, although very unjustly, that the attempt is to form a close association with the intent to exclude as many as possible.

If you wish to do so, you may send a copy of this letter to Dr. Moran, as I believe that he will, upon reflection, agree with me.

I return herewith the enclosures which came with your letter.