



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLIE CONDON  
 ATTORNEY GENERAL

February 5, 2001

Lisa Manini Sox, Director of Research  
 Senate Medical Affairs Committee  
 213 Gressette Building  
 Columbia, South Carolina 29202

**RE: Informal Opinion**

Dear Ms. Sox,

By your letter of January 25, 2001, you have requested an opinion of this Office concerning Act No. 298, which was passed by the General Assembly in May of 2000. The Act permits licensed dental hygienists to perform certain procedures without the presence of a dentist in school settings. You have asked if the Act's requirement that dental hygienists work under the "general supervision" of a dentist who has "authorized the procedures to be performed" means that the dentist must provide specific authorization on a case by case basis.

Act No. 298, 2000 Acts and Joint Resolutions, amended South Carolina Code of Laws Section 40-15-80 to read, in part:

In school settings, licensed dental hygienists may apply topical fluoride and may perform the application of sealants and oral prophylaxis under general supervision, with written permission of the student's parent or guardian.

Section 2 of Act No. 298 amended South Carolina Code of Laws Section 40-15-85 to define "general supervision" by the following:

The term 'general supervision' means that a licensed dentist or the South Carolina Department of Health and Environmental Control's public health dentist has authorized the procedures to be performed but does not require that a dentist be present when the procedures are performed. General supervision is not applicable to the practice of dental hygiene in a private dental office.

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The question turns on whether the phrase "authorized the procedures to be performed" in the above definition requires a dentist's authorization for procedures on each specific child or, read broadly, requires a single blanket authorization for procedures to be performed on numerous children.

This question has been addressed by both South Carolina's Board of Dentistry and Department of Labor, Licensing, and Regulation (LLR). We are informed that the Board of Dentistry's position, as related to the Deputy General Counsel at LLR in a letter dated September 21, 2000, is that the language in the statute implies the issuance of an authorization form specifically identifying the patient for whom the work is authorized. In a memorandum dated November 28, 2000, the General Counsel for LLR concluded that the Dentistry Board's interpretation is a "reasonable construction of the statute under the circumstances," stating:

Work authorization forms have been required in the practice of dentistry in the past to authorize the performance of certain tasks by auxiliary dental practitioners, such as dental technicians or orthodontics technicians. (See e.g. Sections 40-15-290, -300, -310, -330, -340, and Regulation 39-8) The Board of Dentistry has expected in all these contexts that such authorizations include specific identification of the patient by name, among other things. Their position appears reasonable given the fact that authorized procedures, including many of those performed by dental hygienists, require an examination of the patient by the dentist in order to determine the appropriateness of the authorized work.

As a matter of policy this Office typically defers to the administrative interpretation by the agency charged with enforcement of the statute in question. As was emphasized in an earlier opinion of our Office: "construction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons." Op. Atty. Gen., October 20, 1997, quoting Logan v. Leatherman, 290 S. C. 400, 351 S.E.2d 146, 148 (1986). The courts have stated that it is not necessary that the administrative agency's construction be the only reasonable one or even the reading the court would have reached if the question initially had arisen in a judicial proceeding. Ill. Commerce Comm. v. Interstate Commerce Commission, 749 F.2d 825 (D. C. Cir. 1984).

Given the precedence by the Board of Dentistry requiring authorization for work performed on a specific patient, the protective nature of the interpretation by seeking to ensure that the procedures should, in fact, be performed on a particular patient, and the lack of clear legislative intent to the contrary, we are constrained to defer to the Board of Dentistry and LLR in their interpretation that authorization should be given for each patient for dental procedures performed in school settings pursuant to Section 40-15-80 (B).

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the

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manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole  
Assistant Attorney General