

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>December 28, 2005</p>	<p>No. I05-008 (R05-013)</p> <p>Re: Affiliated practice relationships between dental hygienists and dentists</p>
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To: Julie Chapko, Executive Director
Arizona State Board of Dental Examiners

You requested an Attorney General Opinion regarding affiliated practice relationships between dental hygienists and dentists, both of whom are licensed and regulated by the Arizona State Board of Dental Examiners (“Board”).

Questions Presented

1. Do the supervision requirements in Arizona Revised Statutes § 32-1281 apply to affiliated practice relationships authorized by A.R.S. § 32-1289?
2. Do the supervision limitations in Arizona Administrative Code R4-11-603 apply to affiliated practice relationships?
3. Does A.R.S. § 32-1289(G) authorize the Board to adopt a rule limiting the number of affiliated practice relationships in which dentists and/or dental hygienists may participate?

Summary Answers

1. The general and direct supervision requirements in Arizona Revised Statutes (“A.R.S.”) §32-1281 do not apply to affiliated practice relationships. Instead, A.R.S. § 32-1289(H) requires a dentist in an affiliated practice relationship to “be available to provide an appropriate level of contact, communication, and consultation with the affiliated dental hygienist.”

2. The supervision limitation in Arizona Administrative Code (“A.A.C.”) R4-11-603 does not apply to affiliated practice relationships which are governed by A.R.S. § 32-1289.

3. Section 32-1289(G)(2) authorizes the Board to adopt a rule limiting the number of affiliated practice relationships in which dentists and hygienists may participate.

Background

A. Regulation of Dental Hygienists

Dental hygienists are licensed oral health care providers who provide preventive and therapeutic oral health care. Dental hygienists are licensed and regulated by the Arizona State Board of Dental Examiners (“Board”). The qualifications and requirements for licensure and practice governing dental hygienists, including supervision requirements, are set forth in statute (A.R.S. § 32-1281 to -1292.01) and regulation (A.A.C. R4-11-601 to -608). Prior to 2004, dental hygienists could practice only under the general or direct supervision of a licensed dentist. *See* A.R.S. § 32-1281(E) (2003).¹ The level of supervision required depended upon the nature of the dental procedure performed. A.R.S. § 32-1281(B), (E), and (F) (2003). Pursuant to regulation, a dentist is limited to supervising no more than three hygienists at one time. A.A.C. R4-11-603.

¹ “Direct supervision” is defined as “the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which he is responsible.” A.R.S. § 32-1281(I)(1). “General supervision” is defined as “the dentist is available for consultation, whether or not

B. Affiliated Practice Relationships

In 2004, the Legislature authorized dental hygienists to enter into affiliated practice relationships with dentists. 2004 Ariz. Sess. Laws, Ch. 6, §§ 1, 3. Pursuant to this legislation, a qualified dental hygienist may “provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section A.R.S. § 32-1289.” A.R.S. § 32-1281 (H). Section 32-1289, A.R.S., allows a public health agency or institution or a public or private school authority to employ dental hygienists to perform dental hygiene procedures under either general or direct supervision, or to enter into a contract for dental hygiene services with licensees who have entered into an affiliated practice relationship with a licensed dentist. A.R.S. § 32-1289(A) and (C). A dental hygienist in an affiliated practice relationship may perform dental hygiene procedures within the scope of a dental hygiene license, with three exceptions. A.R.S. § 32-1289(J).² The procedures must be performed in specified practice setting(s) pursuant to a written agreement, written procedures and standing orders established by the affiliated dentist. A.R.S. § 32-1289(F).

Analysis

A. The General and Direct Supervision Requirements in A.R.S. § 32-1281 Do Not Apply to Affiliated Practice Relationships.

The primary goal in interpreting a statute is to ascertain and give effect to the Legislature’s intent. *State v. Thompson*, 204 Ariz. 471, 474, 65 P.3d 420, 423 (2003). To determine legislative intent, courts look first to the language of a statute. *Matter of Maricopa County Juv. Action* No. JA 33794, 171 Ariz. 90, 93, 828 P.2d 1231, 1234 (App. 1992). In construing a

the dentist is in his office, over procedures which the dentist has authorized and for which the dentist remains responsible.” A.R.S. § 32-1281(I)(2).

² Hygienists in affiliated practice relationships are prohibited from performing root planing, administering local anesthetics and nitrous oxide, and placing periodontal sutures.

statute, the individual provision at issue must be considered *in pari materia* -- in the context of the entire statute of which it is a part. *State v. Wood*, 198 Ariz. 275, 277, 8 P.3d 1189, 1191 (App. 2000). Thus, in construing the meaning of A.R.S. § 32-1289, we also must consider the entire statutory scheme relating to the licensing and regulation of dental hygienists, A.R.S. §§ 32-1281 through 32-1292.01, but particularly the 2004 amendments to A.R.S. § 32-1281 and -1289. The language of these amendments establish that the supervision requirements of A.R.S. § 32-1281(E) and (F) do not apply to dental hygienists in affiliated relationships.

Section § 32-1281(E) provides that all dental hygienists shall practice under the general supervision of a licensed dentist, “[e]xcept as provided in subsections F and H of this section.”³ Subsection H provides that “[a] dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in § 32-1289.” Section § 32-1289(C), which authorizes public health agencies and institutions, school authorities and government sponsored programs to contract with dental hygienists who have entered into an affiliated practice relationship, does not require the hygienist to work under general or direct supervision. A.R.S. §32-1289(C). Instead, the affiliated dentist must be “available to provide an appropriate level of contact, communication and consultation with the affiliated dental hygienist.” A.R.S. § 32-1289(H). Similarly, a dental hygienist in an affiliated practice relationship is required to “maintain an appropriate level of contact, communication and consultation with the affiliated dentist.” A.R.S. § 32-1289(I)(2). The absence of the terms, or any reference to the terms, “general” and “direct” supervision in § 32-1289 (C), (H) and (I) indicates that the Legislature did

³ Subsection F requires dental hygienists who perform certain enumerated procedures to practice under the direct supervision of a licensed dentist. Hygienists in affiliated relationships are prohibited from performing the procedures enumerated in subsection F. *See* A.R.S. § 32-1289(J) and -1281(B).

not intend them to apply to affiliated practice relationships.⁴

Moreover, an affiliated practice hygienist is “responsible and liable for all services rendered by the dental hygienist under the affiliated practice relationship.” A.R.S. § 32-1289(I)(3). Conversely, A.R.S. § 32-1281(I), which defines “direct” and “general” supervision, makes the supervising dentist responsible for authorized procedures a hygienist performs under supervision. The differences in the two provisions also indicate that the Legislature intended a different level of oversight and responsibility to apply to a dental hygienist in an affiliated practice relationship.

B. A.A.C. R4-11-603 Does Not Apply to Affiliated Practice Relationships.

Arizona Administrative Code R4-11-603 states: “A dentist shall not supervise more than three dental hygienists at one time.” The Board adopted this rule pursuant to its mandate to adopt rules regulating the practice of dentists and supervised personnel. A.R.S. § 32-1207(A)(1). This rule applies to the supervision requirements of A.R.S. §32-1281. Because affiliated practice relationships are not subject to the general and direct supervision requirements, it follows that the supervisory limitations in R4-11-603 also do not apply to affiliated practice relationships.

C. The Board May Adopt a Rule Limiting the Number of Affiliated Practice Relationships.

The Board is mandated to adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists. A.R.S. § 32-1289(G). The rules must specify additional standards and conditions that may apply to affiliated practice relationships. A.R.S. § 32-1289(G) (2). The Legislature, however, did not define the terms “standards” or “conditions.”

⁴ This conclusion is reinforced by the legislative history, which indicates that the affiliated practice relationship legislation was intended to create a new degree of supervision and was intended to allow dental hygienists to perform dental hygiene procedures without general supervision on children 18 years and younger in public health settings. *Arizona State Senate Staff, Fact Sheet* for H.B. 2194; *Dental Hygienists: Meeting on H.B. 2194 Before the H. Comm. On Health*, 46th leg., 2nd Reg. Sess. 7 (2004). 46th Leg., Second Reg. Sess. at 1 (2004), Committee on Health, March 4, 2004.

Undefined words in a statute may be interpreted according to their ordinary meaning. *Circle K Stores, Inc. v. Apache County*, 199 Ariz. 402, 406, 18 P.3d 713, 717 (App. 2001). A “condition” is defined as something that “restricts.” *Webster’s II New Riverside University Dictionary* 295 (1994). “Restrict” means to “hold within limits.” *Id.* at 1002. Accordingly, A.R.S. § 32-1289(G) (2) allows the Board to restrict by rule the number of affiliated practice relationships in which dentists and hygienists may participate. The nature of any restriction would be a policy decision of the Board, subject to the statutory rulemaking process.

Conclusion

Dental hygienists may practice without general or direct supervision in public health settings, if they have written affiliated practice agreements with affiliated dentists that identify the procedures and standing orders the hygienist must follow. Dentists and hygienists in affiliated practice relationships are not subject to the supervision limitation in A.A.C. R4-11-603. The Board, however, has rulemaking authority to limit the number of affiliated practice relationships in which dentists or hygienists may participate.

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