

November 20, 2015

OFFICIAL OPINION 2015-6

The Honorable Tim Brown
Indiana House of Representatives
200 W. Washington St.
Indianapolis, IN 46204

RE: Section 501(c)(3) organizations practicing dentistry

Dear Representative Brown:

You requested our opinion on the following question:

May a dental clinic operated by a 501(c)(3)¹ operate in Indiana provided that the dental services are rendered by a dentist licensed in Indiana?

BRIEF ANSWER

It is our opinion that a 501(c)(3) organization may provide dental services in Indiana as long as the organization fits within the list found in Indiana Code § 25-14-1-1 or the provisions of Indiana Code § 25-13-1-10.

ANALYSIS

You inquired whether a 501(c)(3) organization may provide dental services in Indiana. Indiana Code § 25-14-1-1 reads as follows:

(a) Except as permitted under this chapter, it is unlawful for any person to practice dentistry in Indiana who is not licensed under this chapter.

(b) This chapter does not prohibit:

- (1) a hospital;
- (2) a public health clinic;
- (3) a federally qualified health center;
- (4) a rural health center;
- (5) a charitable health clinic;

¹ “501(c)(3)” is the informal means of referring to 26 U.S.C. § 501(c)(3) of the Internal Revenue Code and refers to a non-profit organization whose tax-exempt activities are, *inter alia*, charitable, religious, educational, scientific, or literary. The term “charitable,” according to the Internal Revenue Service (IRS), “is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil right secured by law; and combating community deterioration and juvenile delinquency.” *Exempt Purposes—Internal Revenue Code Section 501 (c)(3)*, www.irs.gov/charities-non-profits/charitable-organizations/exempt-purposes-internal-revenue-code-section-501c3 (last visited November 14, 2016).

- (6) a governmental entity;
- (7) a contractor or subcontractor of a governmental entity; or
- (8) another entity specified by a rule of the board;²

from providing dental health services if the dental health services are provided by dentists (licensed under this chapter) or dental hygienists (licensed under IC 25-13).

Although the language cited above does not specifically reference 501(c)(3), it is clear that many of the types of organizations specified in subsection (b) would be 501(c)(3) organizations. To the extent that a 501(c)(3) organization fits within the list in subsection (b), it may provide dental services as long as the services are provided by Indiana licensed dentists or Indiana licensed dental hygienists within the scope of their practice. However, a 501(c)(3) organization that does not fall within the list in subsection (b) is not allowed to provide dental services.

Also relevant to your inquiry is Ind. Code § 25-13-1-10 which addresses dental hygienists and reads in pertinent part as follows:

- (a) A licensed dental hygienist may practice dental hygiene in Indiana in the following:
 - (1) A dental office, clinical setting, or health facility where the dental hygienist is practicing under the direct supervision or prescriptive supervision of a licensed dentist.
 - ...
 - (3) The dental clinic of any public, parochial, or private school or other institution supported by public or private funds in which the licensee is employed by the state department of health or any county or city board of health or board of education or school trustee or parochial authority or the governing body of any private school where the dental hygienist is practicing under the direct or prescriptive supervision of a licensed dentist.
 - (4) The dental clinic of a bona fide hospital, sanitarium, or charitable institution duly established and being operated under the laws of Indiana in which the licensee is employed by the directors or governing board of such hospital, sanitarium, or institution. However, such practice must be under the direct or prescriptive supervision at all times of a licensed dentist who is a staff member of the hospital or sanitarium or a member of the governing board of the institution.
 - (5) A:
 - (A) fixed charitable dental care clinic;
 - (B) public health setting;
 - (C) correctional institution; or
 - (D) location other than one described in clauses (A) through (C);that has been approved by the board and where the dental hygienist is under the direct or prescriptive supervision of a licensed dentist.

² At present, there are no other entities “specified by rule of the board.”

(b) A licensed dental hygienist may provide without supervision the following:

(1) Dental hygiene instruction and in-service training without restriction on location.

(2) Screening and referrals for any person in a public health setting.

...

(d) The board may adopt rules under IC 4-22-2 concerning subsection (a)(5)(D).

(e) If a dental hygienist practices under the prescriptive supervision of a licensed dentist, the dentist's written order must be recorded, signed, and dated in the patient's records.

...

Similar to the application of Ind. Code § 25-14-1-1, some of the entities listed in Ind. Code § 25-13-1-10 may be 501(c)(3) organizations in which case they are locations in which a dental hygienist may practice as stated in that section. Again this would not allow such dental hygiene practice at 501(c)(3) organizations that are not described in this Indiana Code section.

The term “charitable dental care clinic” is used in Indiana Code § 25-13-1-10(a)(5)(A) and has been defined by the State Board of Dentistry in rule. 828 IAC 0.5-1-6.3 states:

"Charitable dental care clinic" means a fixed dental clinic operated by a charitable organization within the meaning of Section 501(c)(3) of the Internal Revenue Code that:

(1) has as its primary purpose the sponsorship or support of programs designed to improve the quality, awareness, and availability of health care, including dental services; and

(2) serves as a funding mechanism for providing those services.

This language provides guidance as to what the Board considers a charitable dental care clinic to be.³

³ The definition does not technically apply because 828 IAC 0.5-1-1 states that “the definitions in [828 IAC 0.5-1] apply throughout [828 IAC],” therefore not purporting to address terms in the statute. However, the term “charitable dental care clinic” is not used anywhere in Title 828 of the Indiana Administrative Code (IAC) and the definition was added to the rules in 2010 only two years after the term was added to the statute.

CONCLUSION

For the foregoing reasons, it is our opinion that a 501(c)(3) organization may provide dental services in Indiana as long as the organization fits within the list found in Ind. Code § 25-14-1-1 or the provisions of Ind. Code § 25-13-1-10, as applicable.

We hope this addresses your questions and concerns.

Sincerely,

Gregory F. Zoeller
Attorney General

James F. Schmidt
Deputy Attorney General