

## Chapter 679

### Dentists

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CASE CITATIONS: Oregon Newspaper Publishers Assn. v. Peterson, (1966) 244 Or 116, 415 P2d 21.

ATTY. GEN. OPINIONS: Corporation providing dental services through licensed dentists at reduced rates, 1956-58, p 301; corporation organized to practice dentistry, 1960-62, p 141; investigation and prosecution of violations as between board and district attorney, 1960-62, p 368; applicability to dental hygienists, 1960-62, p 433; city license fee imposed on state licensed occupations, (1970) Vol 34, p 1089.

#### 679.020

##### NOTES OF DECISIONS

There is no constitutional objection to this statute. State v. State Bd. of Dental Examiners, (1920) 96 Or. 529, 188 P 960, 190 P 338.

A license to conduct a dental parlor did not entitle the licensee to engage in the practice of dentistry. Id.

One licensed to operate a dental parlor could employ dentists to attend his clients, but could not even advise as to the treatment of a tooth or assist in the manufacture of a false tooth. Id.

ATTY. GEN. OPINIONS: Necessity for licensing of members of corporation maintaining dental clinic, 1934-36, p 491; prosecution of corporation which fails to comply with statute, 1934-36, p 570.

#### 679.025

##### NOTES OF DECISIONS

There is a plain distinction between practicing dentistry and conducting a dental parlor. State v. State Bd. of Dental Examiners, (1920) 96 Or. 529, 188 P 960, 190 P 338.

ATTY. GEN. OPINIONS: Injections into tissue other than the mouth, 1948-50, p 384; construing "diagnose," 1962-64, p 324.

#### 679.040

LAW REVIEW CITATIONS: 36 OLR 154.

#### 679.060

ATTY. GEN. OPINIONS: Determination of weight attaching to affidavit of character, 1926-28, p 205; authority of board to decide whether applicant has graduated from a reputable dental school or college, 1936-38, p 37.

#### 679.070

ATTY. GEN. OPINIONS: Qualifying dental hygienist by certificate of national board, 1960-62, p 433.

#### 679.120

CASE CITATIONS: Cross of Malta Bldg. Corp. v. Straub, (1970) 257 Or 376, 476 P2d 921.

#### 679.140

##### NOTES OF DECISIONS

###### 1. In general

Decisions dealing with the regulation of a business or a trade have but slight application to statutes regulating the conduct of a learned profession. Semler v. Ore. Dental Examiners, (1934) 148 Or 50, 34 P2d 311, aff'd, 294 US 608, 55 S Ct 570, 79 L Ed 1086; Donohue v. Andrews, (1935) 150 Or 652, 47 P2d 940.

A license to conduct a dental parlor may be assumed to be revocable in the same manner as a license to practice dentistry. State v. State Bd. of Dental Examiners, (1920) 96 Or 529, 188 P 960, 190 P 338.

The public has an interest, not only in its own protection against imposition, but also in the protection of the profession against demoralizing practices. Semler v. Ore. State Dental Examiners, (1935) 294 US 608, 55 S Ct 570, 79 L Ed 1086, affirming 148 Or 50, 34 P2d 311.

###### 2. Constitutionality

Banning the advertising of prices for professional services is a proper exercise of the police power, and violates no constitutional rights of practitioners. Semler v. Ore. State Dental Examiners, (1935) 294 US 608, 55 S Ct 570, 79 L Ed 1086, affirming 148 Or 50, 34 P2d 311; Donohue v. Andrews, (1935) 150 Or 652, 47 P2d 940.

There is no such vagueness and uncertainty about the amendment of 1933 as will invalidate it, and the subject matter of the Act is sufficiently outlined in the title. Semler v. Ore. Dental Examiners, (1934) 148 Or 50, 34 P2d 311, aff'd on other grounds, 294 US 608, 55 S Ct 570, 79 L Ed 1086.

###### 3. Authority to regulate

The state may regulate the professional conduct of dentists whom it has licensed. Semler v. Ore. Dental Examiners, (1934) 148 Or 50, 34 P2d 311, aff'd, 294 US 608, 55 S Ct 570, 79 L Ed 1086.

The right of a dentist to practice his profession, while valuable, is subordinate to the duty of the state to protect the public health and safety. Id.

The contracts of a dentist are subject to any reasonable exercise of the protective power of the state. Semler v. Ore. State Dental Examiners, (1935) 294 US 608, 55 S Ct 570, 79 L Ed 1086, affirming 148 Or 50, 34 P2d 311.

###### 4. Improper advertising

The purpose of this section is elevation of the dental profession and prevention of advertising that may mislead the public. Semler v. Ore. State Dental Examiners, (1935) 294 US 608, 55 S Ct 570, 79 L Ed 1086, affirming 148 Or 50, 34 P2d 311; Donohue v. Andrews, (1935) 150 Or 652, 47 P2d 940.

A statute barring advertising of claims of professional

superiority is not invalidated by the possibility that in a particular case the claim may be true. *Semler v. Ore. State Dental Examiners*, (1935) 294 US 608, 55 S Ct 570, 79 L Ed 1086, affirming 148 Or 50, 34 P2d 311.

The legislative intent was to put a ban on all price advertising that might have a tendency to lure the credulous. *Donohue v. Andrews*, (1935) 150 Or 652, 47 P2d 940.

Fraud or misrepresentation is never presumed, and burden is on the person claiming it to establish its existence by clear, satisfactory and convincing evidence. *Bernard v. Board of Dental Examiners*, (1970) 2 Or App 22, 465 P2d 917.

To advertise "modern dentistry cheap" was to advertise prices for professional services within the prohibition of the statute. *Donohue v. Andrews*, (1935) 150 Or 652, 47 P2d 940.

The rule promulgated by the board was within the legislative grant of authority to the board. *Angelos v. State Bd. of Dental Examiners*, (1966) 244 Or 1, 414 P2d 335.

**FURTHER CITATIONS:** *Campbell v. Henderson*, (1965) 241 Or 75, 403 P2d 902; *Oregon Newspaper Publishers Assn. v. Peterson*, (1966) 244 Or 116, 415 P2d 21.

**ATTY. GEN. OPINIONS:** Authority of board relative to dimensions of signs and kinds of advertising used, 1934-36, p 14; use of certain phrases in advertising as constituting unprofessional conduct, 1934-36, p 117; proposed advertising plan as violation of statute, 1934-36, p 491; use of large electric display sign, glaring light signs, etc., contrary to statutes, 1936-38, p 326; use of term "credit dentistry" in advertising, 1936-38, p 326; nature of question whether the kind of advertising used affords a means of perpetrating fraud or deception, 1936-38, p 408; obtaining business through corporate capper or steerer, 1958-60, p 65; furnishing dental service by a hospital association, 1960-62, p 141.

**LAW REVIEW CITATIONS:** 36 OLR 154.

#### 679.150

**CASE CITATIONS:** *Angelos v. State Bd. of Dental Examiners*, (1966) 244 Or 1, 414 P2d 335.

**ATTY. GEN. OPINIONS:** Fees and mileage of witnesses, 1934-36, p 214.

#### 679.160

**ATTY. GEN. OPINIONS:** Appeal from order of temporary suspension of license, 1932-34, p 532; payment of expenses upon appeal from funds of board, 1934-36, p 218.

#### 679.170

#### NOTES OF DECISIONS

An indictment for practicing dentistry without recording

the certificate need not allege practice for hire or reward. *State v. Brown*, (1913) 64 Or 473, 130 P 985.

Acts of dentistry need not be set out in an indictment charging practicing of the profession without recordation of the certificate. *Id.*

**ATTY. GEN. OPINIONS:** Validity of licensed dentist dropping "Jr." from his name, 1952-54, p 113; operating a dental office under a corporate name, 1966-68, p 42.

#### 679.230

#### NOTES OF DECISIONS

The state may prescribe the qualifications of dentists, require that they be licensed, and set up a board to regulate their activities. *Semler v. Ore. State Dental Examiners*, (1935) 294 US 608, 55 S Ct 570, 79 L Ed 1086, affirming 148 Or 50, 34 P2d 311.

#### 679.250

#### NOTES OF DECISIONS

The rule promulgated by the board was within the legislative grant of authority to the board. *Angelos v. State Bd. of Dental Examiners*, (1966) 244 Or 1, 414 P2d 325.

**FURTHER CITATIONS:** *Campbell v. Henderson*, (1965) 241 Or 75, 403 P2d 902.

**ATTY. GEN. OPINIONS:** Employment of attorneys, 1960-62, p 368; qualifying dental hygienist by certificate of national board, 1960-62, p 433.

#### 679.260

**CASE CITATIONS:** *State Hwy. Comm. v. Burk*, (1954) 200 Or 211, 217, 265 P2d 783.

**ATTY. GEN. OPINIONS:** Authority of board to advance funds for educational purposes, 1924-26, p 579; use of funds for educational purposes, 1930-32, p 649; use of educational fund for defense of suits to restrain board from enforcing provisions of this chapter, 1932-34, p 309; authority of board to pay fees and mileage of witnesses, 1934-36, p 214; payment of expenses incurred upon appeal from order revoking dental license, 1934-36, p 218; authority of board to return part of fees paid by applicants for examinations, 1936-38 p 99; authority of board in handling checks of applicants paid for fees, 1964-66, p 454.

#### 679.991

**ATTY. GEN. OPINIONS:** 40 OLR 34.