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STATE OF ALABAMA
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Dental Examiners, Board of – Dentists – Corrections Department – Health Care – Contracts – Private Corporations

A private corporation that has contracted with the Department of Corrections to provide comprehensive medical care to state inmates, including dental services, is subject to the restrictions set forth in section 34-9-9 of the Code of Alabama.

Dear Ms. Wilhelm:

This opinion of the Attorney General is issued in response to your request on behalf of the Board of Dental Examiners of Alabama.

QUESTION

Is a private corporation that has contracted with the Department of Corrections ("DOC") to provide comprehensive medical care to state inmates, including dental services, exempt from the provisions of section 34-9-9(a) of the Code of Alabama?

FACTS AND ANALYSIS

According to your request, DOC contracts with Corizon, Inc., to provide comprehensive medical care, including dental services, to state inmates. The Board of Dentistry ("Board"), pursuant to the Alabama Dental Practice Act, regulates the practice of dentistry in Alabama. ALA. CODE §§ 34-9-1 to 34-9-90 (2010 & Supp. 2012). Recently, Corizon, Inc., has determined that it desires to begin employing, rather than independently contracting, dentists to fulfill its

responsibilities to DOC under its contract. In anticipation thereof, DOC requested that the Board grant an exemption from the provisions of section 34-9-9(a) of the Code. The Board, however, has taken the position that Corizon may not employ dentists or dental hygienists to provide dental care to DOC inmates. By letter dated January 28, 2013, the Board notified DOC of its concerns. Contemporaneously therewith, the Board sought the guidance of this Office on this subject.

Section 34-9-9(a) of the Code states as follows:

> ***No person other than a dentist licensed pursuant to this chapter*** or a 501(c)(3) entity registered under Section 34-9-7.2 ***may do any of the following:***
>
> (1) ***Employ a dentist, dental hygienist, or both in the operation of a dental office.***
>
> (2) Place in the possession of a dentist, dental hygienist, or other agent such dental material or equipment as may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation for the use of such material, equipment, or offices.
>
> (3) Retain the ownership or control of dental equipment, material, or office and make the same available in any manner for the use of a dentist, dental hygienist, or other agent.
>
> (4) ***The term "person" as used in this section, shall not in any way pertain to state, county, municipal, or city institutions but shall be deemed to include any individual, firm, partnership, corporation, or other entity not licensed to practice dentistry in the State of Alabama.***
>
> (5) Nothing in this subsection shall apply to bona fide sales of dental equipment, material, or office secured by a chattel mortgage or retention title agreement, or to an agreement for the rental of the equipment or office by bona fide lease at a reasonable amount, and under which agreement the licensee under this chapter maintains complete care, custody, and control of the equipment and the practice. Further,

> nothing in this subsection shall prohibit or restrict persons, firms, or corporations from employing or retaining licensed dentists to furnish dental treatment for their employees or dependents of their employees.

ALA. CODE § 34-9-9(a) (Supp. 2012) (emphasis added).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997); *State Dep't of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994); *IMED Corp. v. Sys. Eng'g Assoc. Corp.*, 602 So. 2d 344, 346 (Ala. 1992); *Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County*, 589 So. 2d 687, 689 (Ala. 1991); *Coastal States Gas Transmission Co. v. Ala. Pub. Serv. Comm'n*, 524 So. 2d 357, 360 (Ala. 1988); opinion to Honorable Ned W. McHenry, Department of Public Safety, dated October 7, 1992, A.G. No. 93-00018 at 4.

Section 34-9-9 leaves little room for interpretation. Although the term "person," as used in the statute, does not include "state, county, municipal, or city institutions," the term does include "corporation[s] . . . not licensed to practice dentistry in the State of Alabama." *Id.* Corizon, Inc., is a corporation. Furthermore, Corizon is not licensed to practice dentistry in the State of Alabama. Accordingly, Corizon may not employ dentists or dental hygienists in the operation of a dental office.

DOC contends that it has a constitutional duty to provide health and dental care to inmates and that, by virtue of its contract, Corizon is an agent of the State that also enjoys the exempt status of "state, county, municipal, or city institutions." ALA. CODE § 34-9-9(a)(4) (Supp. 2012). This Office, however, has previously determined that a mere contract with the State does not entitle a private company to exemption from licensing requirements. Opinion to Honorable James E. Turnbach, Attorney, Etowah County Commission, dated March 17, 2008, A.G. No. 2008-061; opinion to Honorable R. G. Britton, Commissioner, Board of Corrections, dated January 6, 1981, A.G. No. 81-00165.

Even if Corizon should be determined to be an agent of the State, section 34-9-9 of the Code makes no provision for the exclusion of corporations contracting with the State or agents of the State. *Compare* ALA. CODE § 34-9-9 *with* ALA. CODE § 22-21-333 (2006) and opinion to Honorable Charles E. Nabors, CEO/Administrator, Tombigbee Healthcare Authority, dated May 1, 1996, A.G. No. 96-00201 (determining healthcare authority, contractor, and agents thereof are exempt from license and permit fees). Accordingly, it is the

opinion of this Office that Corizon, Inc., is a "person" as contemplated by section 34-9-9 of the Code and is therefore subject to the restrictions contained therein.

CONCLUSION

Corizon, Inc., a private corporation contracted with the Department of Corrections to provide comprehensive medical care to state inmates, including dental services, is subject to the restrictions set forth in section 34-9-9 of the Code of Alabama.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
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