

00-079

**PROFESSIONS AND OCCUPATIONS: GENERAL PROVISIONS.**

**Dentists who provide free dental services to Mission of Mercy are liable for civil damages only for acts or omissions resulting from gross negligence or willful misconduct.**

The Honorable Terry G. Kilgore  
Member, House of Delegates  
November 13, 2000

You ask whether the civil liability exemption in § 54.1-106(A) of the *Code of Virginia* applies to dentists who provide voluntary dental care to individuals in underserved areas of the Commonwealth.

You advise that members of the Virginia Dental Association have provided dental services, free of charge, to over 700 patients for the Mission of Mercy project in Wise, Virginia. A nonprofit group, Remote Area Medical, has coordinated with the project for the provision of equipment, such as dental chairs, lamps, and sterilization machines. Dental companies provide supplies, such as gloves, gauze, and preventive care products. You state that many of the participating volunteer dentists donate supplies, products and machines from their dental offices.

The first paragraph of § 54.1-106(A) provides:

No person who is licensed or certified by the Board[] of[] ... Dentistry; ... who renders at any site any health care services within the limits of his license or certification, voluntarily and without compensation, to any patient of any clinic which is organized in whole or in part for the delivery of health care services without charge, shall be liable for any civil damages for any act or omission resulting from the rendering of such services unless the act or omission was the result of his gross negligence or willful misconduct.

The above statute limits the common law right of recovery in tort to instances involving the gross negligence or willful misconduct of a volunteer health care provider, including a dentist, in rendering, at any site, the health care services permitted by his license or certification. "Statutes in derogation of the common law are to be strictly construed and not to be enlarged in their operation by construction beyond their express terms."<sup>1</sup>

It is certainly the case that, "[where] the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."<sup>2</sup> It is, therefore, unnecessary in this situation to resort to any rules of statutory construction when the language of a statute is unambiguous.<sup>3</sup> In such situations, the statute's plain meaning and intent govern, and I believe the language of § 54.1-106 to be clear. Therefore, it is my opinion that dentists who provide free dental services for the Mission of Mercy project are only liable for civil damages when their acts or omissions result from gross negligence or willful misconduct.

<sup>1</sup>C. & O. Railway v. Kinzer, 206 Va. 175, 181, 142 S.E.2d 514, 518 (1965); *accord* Pump and Well Company v. Taylor, 201 Va. 311, 316, 110 S.E.2d 525, 529 (1959).

<sup>2</sup>Temple v. City of Petersburg, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944); *see also* 1993 Op. Va. Att'y Gen. 256, 257.

<sup>3</sup>*See* Ambrogi v. Koontz, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982); 1993 Op. Va. Att'y Gen. 99, 100.