of any theoretical subjects and who does not perform any clinical operation is not required to be licensed to practice dentistry in New Jersey.

You further request our opinion as to whether or not the taking and diagnosing of X-rays can be considered clinical and should require a license. R.S. 45:6-19 provides, under subsection 4, that whoever "uses himself or by any employee, uses a Roentgen or X-ray machine for dental treatment, dental radiograms, or for dental diagnostic purposes; * * *" is regarded as practicing dentistry within the meaning of this statute and would, therefore, be required to be licensed in the State of New Jersey by R.S. 45:6-13, as cited above. In this regard, there may be an exception under subsection 6 of the practices excepted by 45:6-19 where, "The use of Roentgen or other rays for making radiograms or similar records of dental or oral tissues under the supervision of a licensed dentist or physician; provided, however, that such services shall not be advertised, by any name whatsoever, as an aid or inducement to secure dental patronage; and provided, further, that no corporation shall advertise that it has, leases, owns or operates a Roentgen or X-ray machine for the purpose of making dental radiograms of the human teeth or tissues of the oral cavity, or administering treatment thereto for any disease thereof; * * *".

Therefore, it is our opinion that the taking and diagnosing of X-rays by an unlicensed teacher in a dental school is not permitted unless he is under the supervision of a dentist licensed in the State of New Jersey or a licensed physician and surgeon of this State.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: ANDREW A. SALVEST
Deputy Attorney General

APRIL 1, 1959

HON. JOHN W. TRAMBURG, *Commissioner*
Department of Institutions and Agencies
State Office Building
Trenton, New Jersey

MEMORANDUM OPINION 1959—P-4

DEAR COMMISSIONER TRAMBURG:

Responsive to your inquiry of February 25, 1959, it appears that the State Parole Board desires advices concerning the proper handling of sentences imposed upon inmates in confinement wherein said sentences are concurrent in part and consecutive in part.

The Parole Board suggested an example case to highlight the legal points involved as follows:

> Inmate John Smith received a sentence of 5 to 7 years on January 1, 1957, the maximum expiring on January 1, 1964, without regard to commutation time for good behavior or reduction of the sentence for the work performed. After serving two years of the sentence, the inmate, on January 1, 1959, received an additional sentence of 5 to 7 years and the court did not specify that said sentence should be consecutive to the first sentence being served.

Since a sentence commences upon the day of imposition thereof, the second sentence commenced on January 1, 1959, at which time five years remained to be served on the first sentence. The second sentence, imposed on January 1, 1959, having a 7-year maximum, would expire on January 1, 1966, again without regard to commutation time for good behavior or work credits. Thus, the two sentences, being concurrent in part and consecutive in part, commenced on January 1, 1957, the date of imposition of the first sentence, and will terminate on January 1, 1966, the date of expiration of the second sentence which extends for 2 years beyond the expiration date of the first sentence. It is apparent from the foregoing that the aggregated sentence is of 9 years duration.

The State Parole Board desires to be informed whether commutation time for good behavior as prescribed in *R.S.* 30:4-140 should be calculated upon these two sentences on an individual basis or whether they should be considered as a single sentence, the maximum being the aggregate of the maxima of the two sentences, as explained in the example case.

It is our opinion and we advise you that commutation time for good behavior as described in *R.S.* 30:4-140 should be calculated on the period of 9 years which is the aggregate maximum of the combined maxima of the sentences described, assuming the inmate consents to the aggregation.

The manner in which sentences imposed by different courts at different times shall be considered by the State Parole Board for purposes of fixing the date upon which a prisoner shall be eligible for consideration for release on parole is found in *R.S.* 30:4-123.10 which reads:

> "With regard to consecutive sentences imposed upon prisoners * * * by different courts at different times, all such consecutive sentences, with the consent of the prisoner, may be aggregated by the board to produce a single sentence, the minimum and maximum of which shall consist of the total of the minima and maxima of such consecutive sentences. Such aggregation shall be for the purpose of establishing the date upon which such prisoner shall be eligible for consideration for release on parole."

An examination of *R.S.* 30:4-140 discloses a schedule of the number of days commutation time for good behavior that may be allowed by the board of managers of the institution on sentences of varying duration. Immediately, it is apparent that there is opportunity for gaining accelerated good behavior credits on longer sentences for, by way of example, the number of days allowed on a sentence of one year is 72 days; whereas, on a 5-year sentence it is 444 days which is 84 days in excess of the amount allowed for one year multiplied by the factor of five for the 5-year sentence. These credits accelerate additionally for sentences of longer duration.

Our courts first dealt with the question of accelerated credits for good behavior in the case of *In re Fitzpatrick*, 9 N.J. Super. 511 (Cty. Ct. 1950); aff., per curiam, 14 N.J. Super. 213 (App. Div. 1951). There the court observed that the combining of consecutive sentences to produce a single sentence, without statutory authorization for such combining, was illegal. The view was adopted *In the Matter of Clover*, 34 N.J. Super. 181 (App. Div. 1955). Both *Fitzpatrick* and *Clover, supra,* recognized the desirable advantages to the inmate to have consecutive sentences aggregated because of the acceleration of the credits on sentences of longer duration. In *Lipschitz v. State*, 43 N.J. Super. 522, 524 (App. Div. 1957) the court said:

> "R.S. 30:4-140 provides for certain credits against the maximum and minimum terms of a State Prison sentence. These credits are awarded for

'faithful performance of assigned labor, * * * continuous orderly deportment, * * * and * * * manifest effort of self-improvement and control * * *.' They are allowed on a progressive or accelerated basis, increasing in direct ratio to the length of sentence."

However, in *Fitzpatrick, supra*, the court said:

"But authority to lump such sentences, if such authority is desirable, must be obtained from the Legislature."

R.S. 30:4-123.10, the Parole Law, was first amended by *Chap.* 292, *P.L.* 1950, to accommodate *Fitzpatrick, supra*, and the amendment provided that when two or more consecutive sentences were imposed at the same time by the same court upon the same inmate, there shall be deemed to be imposed upon him a single sentence the minimum and maximum limits of which is the combined minima and maxima of the consecutive sentences. However, this amendment made no provision for consecutive sentences imposed prior to the effective date thereof, to wit: July 3, 1950, and, thus, the amendment of *Chap.* 277, *P.L.* 1953 was enacted to provide that such consecutive sentences could be aggregated, with the consent of the prisoner, since, if no such consent was forthcoming, aggregation was illegal as determined by *Fitzpatrick, supra.*

It is apparent that neither of these amendments would accommodate consecutive sentences imposed upon the same inmate by different courts at different times but the most recent amendment of *Chap.* 102, *P.L.* 1956, made such provision, and here again, consent of the prisoner was essential.

These amendments are indicative of a legislative scheme or policy to make available to the prisoner, assuming his consent, the maximum accelerated credits for long term sentences which are produced by the aggregation of consecutive sentences, whether they be consecutive in whole or in part, such as those described in the example above. Since these amendments made no distinction between sentences consecutive in their entirety and those which are consecutive in part, we cannot supply such an interpretive distinction and "consecutive sentences" must encompass those which are consecutive either in whole or in part.

Superimposed thereon are the decisions of this jurisdiction which lead to the conclusion that penal statutes must be strictly construed and most favorably to the individual in confinement. The principle is so well grounded in our law that a recitation of the numerous decisions seems superfluous.

Because the Legislature by a series of amendments to the Parole Law evidenced a clear intent to make available to the inmate in confinement the maximum accelerated credits for good behavior on aggregated sentences, and because the rules of statutory exposition on penal statutes requires a liberal view thereof, we must find that the sentences referred to in the example submitted by the State Parole Board must be deemed "consecutive" in contemplation of the foregoing amendments since they are consecutive in part and the maximum credits for good behavior should be made available thereon to the prisoner, to the extent that such sentences are consecutive, as provided in *R.S.* 30:4-140, assuming the prisoner consents to the aggregation.

Very truly yours,

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