

SENATE BILL NO. 167

BY SENATOR MARTINY

1 AN ACT

2 To amend and reenact R.S. 37:751(A), 775(A)(2) and (9) and (B), and 776(A)(14) and to
3 enact R.S. 37:780(B)(5), relative to the Louisiana State Board of Dentistry; to
4 provide for definitions; to provide for dental advertisements; to provide relative to
5 unprofessional conduct; to provide for fines; to provide for terms, procedures, and
6 conditions; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 37:751(A), 775(A)(2) and (9) and (B), and 776(A)(14) are hereby
9 amended and reenacted and R.S. 37:780(B)(5) is hereby enacted to read as follows:

10 §751. Definitions; licensure; presumption; short title

11 A. As used in this Chapter:

12 (1) "Advertisement" and "advertising" means any statement, oral or
13 written, requested and approved by a licensed dentist, disseminated to or
14 displayed before the public or any portion thereof with the intent of selling
15 professional dental services, offering to perform professional dental services, or
16 inducing members of the public to enter into any obligation relating to such
17 professional dental services. This shall apply to an approved statement of any
18 nature regardless of whether it is in the form of paid advertising.
19 "Advertisement" and "advertising" shall not include any communication, oral
20 or written, by a nonprofit entity that meets the statutory, regulatory, and
21 program requirements for grantees supported under Section 330 of the Public
22 Health Service Act, 42 U.S.C. §254b, or its successor. In addition, listing,
23 identifying, or grouping of dentists by an insurance company on a website or by
24 any other means of disseminating information involving a dentist participating
25 with an insurance company and an associated affiliate , including but not
26 limited to a third party payor including, without limitation, a dental health

1 maintenance organization, a dental preferred provider organization, Medicaid,
2 or a dental discount entity, shall not be deemed an advertisement or advertising
3 by the dentist. For the purposes of this Chapter, neither the insurance company
4 nor the associated affiliate shall be deemed a referral company and a listed
5 dentist shall not be considered to be advertising through a referral service by
6 participating with such company or affiliate.

7 (2) "Another state" means each of the several states, other than Louisiana,
8 and includes the District of Columbia, and the Commonwealth of Puerto Rico and
9 the Virgin Islands.

10 ~~(2)~~(3) "Board" means the Louisiana State Board of Dentistry.

11 ~~(3)~~(4) "Dental assistant" means a person who is employed by a licensed
12 practicing dentist and performs the duties authorized by the Louisiana State Board
13 of Dentistry only under his direct on-premises supervision, direction, and
14 responsibility.

15 ~~(4)~~(5) "Dental hygienist" means a person licensed under the provision of this
16 Chapter to perform those duties authorized by the Louisiana State Board of Dentistry
17 as set forth in rules and regulations promulgated by the board in accordance with the
18 Administrative Procedure Act.

19 ~~(5)~~(6) "Dentistry" means the evaluation, diagnosis, prevention, or treatment,
20 including nonsurgical, surgical, or related procedures, of diseases, disorders, or
21 conditions of the oral cavity, maxillofacial areas or the adjacent and associated
22 structures and their impact on the human body provided by a dentist within the scope
23 of his education, training, and experience, in accordance with the ethics of the
24 profession and applicable law.

25 ~~(6)~~(7) "Expanded duty dental assistant" means a person who is employed by
26 a licensed practicing dentist and has passed an expanded function for dental
27 assistants course approved by the Louisiana State Board of Dentistry that shall not
28 consist of less than thirty classroom hours, or who has graduated from a dental
29 assisting program accredited by the Commission on Dental Accreditation of the
30 American Dental Association provided the program teaches functions as provided

1 for in LAC 46:XXXIII.502 and .503. An expanded duty dental assistant may perform
2 any functions authorized by the Louisiana State Board of Dentistry for an expanded
3 duty dental assistant under the direct, on-premises supervision, direction, and
4 responsibility of the dentist.

5 ~~(7)~~**(8)** "Licensure by credentials" means issuing of a license using a
6 performance record in place of examinations to evaluate theoretical knowledge and
7 clinical skill when an applicant for licensure has been awarded a D.D.S. or D.M.D.
8 degree from a dental school accredited by the Commission on Dental Accreditation
9 of the American Dental Association and holds a dental license or has received a
10 degree or certificate in a dental hygiene education program accredited by the
11 Commission on Dental Accreditation of the American Dental Association and holds
12 a dental hygiene license.

13 ~~(8)~~**(9)** "Reciprocity" means formal reciprocal agreement between two state
14 boards under which a dentist licensed in one state may apply for and receive a
15 license in another state without examination and without fulfilling any other
16 requirements except the usual state license fees.

17 ~~(9)~~**(10)** "Reputable dental school" means one that is recognized as such by
18 the Louisiana State Board of Dentistry according to its rules and regulations.

19 ~~(10)~~**(11)** "Unlicensed person" means a person who is not licensed by the
20 board who illegally practices dentistry or dental hygiene.

21 * * *

22 §775. Unprofessional conduct defined

23 A. As used in this Chapter, "unprofessional conduct" means:

24 * * *

25 (2) Not including in advertisements the name which appears on the license
26 or renewal certificate of the dentist, **the dentist's commonly used name,** or **the**
27 **name** which is authorized under Chapter 11 of Title 12 of the Louisiana Revised
28 Statutes of 1950, as amended, relative to professional dental corporations or the use
29 in advertisements of any name other than that which appears on the license or
30 renewal certificate of the dentist, **the dentist's commonly used name,** or **the name**

1 which is authorized under Chapter 11 of Title 12 of the Louisiana Revised Statutes
 2 of 1950, as amended, relative to professional dental corporations.

3 * * *

4 (9)(a) Advertising of dental services in any medium ~~which has not been~~
 5 ~~approved by the licensed dentist and~~ which does not contain the dentist's full name
 6 **as it appears on the license or renewal certificate issued by the board or the**
 7 **dentist's commonly used name**, address, and telephone number.

8 **(b)(i) Intentionally releasing inaccurate or misleading information by a**
 9 **dentist to any source that promotes dissemination of inaccurate or misleading**
 10 **information about the dentist by, from, or through such source.**

11 **(ii) Failing to take immediate steps to request the correction of**
 12 **inaccurate or misleading information that has been released by a source**
 13 **pursuant to the source's relationship with the dentist.**

14 **(iii) For the purposes of this Subparagraph, "source" includes but is not**
 15 **limited to an insurance company, dental health maintenance organization, a**
 16 **dental preferred provider organization, Medicaid, dental discount company, or**
 17 **any other thirty party.**

18 **(c) Engaging or hiring an advertising agency or any other agency or**
 19 **person to prepare material to promote the dentist's professional dental services,**
 20 **and thereafter failing to review and approve the material before publication or**
 21 **release, unless the dentist can show the failure to review and approve the**
 22 **material was caused by the failure of the agency or person and not his own.**

23 * * *

24 B.(1) Notwithstanding any provision of this Section, when it is required by
 25 this Section that an advertisement include the name of the advertising dentist, **either**
 26 **as it appears on the license or renewal certificate of the dentist or the dentist's**
 27 **commonly used name**, or the specialties of all dentists practicing within or under
 28 the name of a corporation, company, association, limited liability company, or trade
 29 name be disclosed in the advertisement, **and address and telephone number of the**
 30 **dentist**, such ~~requirement~~ **requirements** shall be deemed to be sufficiently satisfied

1 if the names and specialties of all dentists practicing in, with or under the ~~said~~
2 corporation, company, association, limited liability company, or trade name **and the**
3 **address and the telephone number** are made available on an Internet website fully
4 disclosed in the advertisement, or are provided without delay to any individual
5 requesting such information by contacting the advertiser at a telephone number also
6 disclosed in the advertisement. ~~Whether the advertisement is run by the corporation,~~
7 ~~company, association, limited liability company, or trade name, or any individual~~
8 ~~member practicing therein, all dentists practicing in, with or under the corporation,~~
9 ~~company, association, limited liability company, or trade name shall be responsible~~
10 ~~for the content of the advertisement.~~ **Whenever any advertisement is run by or**
11 **on behalf of a corporation, company, association, limited liability company, or**
12 **trade name, each dentist practicing in, with or under the corporation, company,**
13 **association, limited liability company, or trade name shall be responsible for the**
14 **content of the advertisement unless an individual dentist practicing in, with or**
15 **under the corporation, company, association, limited liability company, or trade**
16 **name, advises the board in writing prior to the time the board takes any action**
17 **regarding the advertisement that he assumes sole responsibility for the**
18 **advertisement. If an individual dentist assumes sole responsibility for the**
19 **advertisement pursuant to the provisions of this Paragraph, no other dentist**
20 **shall be responsible for such advertisement.**

21 **(2) Whenever the board determines that an advertisement constitutes**
22 **unprofessional conduct under Paragraphs (A)(3), (4), or (5) of this Section,**
23 **before taking any further action, the board shall notify the advertising dentist**
24 **by mail of its determination and the specific portion of the advertisement that**
25 **constitutes unprofessional conduct. The dentist shall have thirty days from the**
26 **date of receipt of the notice by the dentist to correct the portions of the**
27 **advertisement in violation and submit to the board proof of such correction. If**
28 **the advertisement is corrected to remove the violation within thirty days of**
29 **receipt of notice, the board shall take no further action against the advertising**
30 **dentist for unprofessional conduct with regard to such advertisement. In the**

1 event an advertisement cannot be corrected within the thirty days, it shall be
 2 deemed sufficient if the dentist submits proof to the board within thirty days of
 3 receipt of notice that he has directed that the correction be made at the next
 4 publication date. Pursuant to the provisions of this Paragraph, a dentist shall
 5 have this right to correct an advertisement deemed by the board to be
 6 unprofessional conduct under Paragraphs (A)(3), (4), or (5) of this Section only
 7 the first two times notified of such violation; there shall be no right to correct
 8 a third or any subsequent violation, whether for the same advertisement or for
 9 a subsequent advertisement. If an advertisement is run by or on behalf of a
 10 corporation, company, association, limited liability company, or trade name, the
 11 forementioned right to correct shall be limited to two times, regardless of the
 12 number of dentists in or associated with the corporation, association, limited
 13 liability company, or trade name.

14 §776. Causes for nonissuance, suspension, revocation, or imposition of restrictions
 15 of dental hygienist license

16 A. The board may refuse to issue or may suspend or revoke any license or
 17 permit or impose probationary or other limits or restrictions on any dental license or
 18 permit issued under this Chapter for any of the following reasons:

19 * * *

20 (14) Practicing under any name other than that which appears on the license
 21 or renewal certificate, **the dentist's commonly used name**, or **the name** which is
 22 authorized under Chapter 11 of Title 12 of the Louisiana Revised Statutes of 1950,
 23 relating to professional dental corporations.

24 * * *

25 §780. Hearing; notice; penalty; interest

26 * * *

27 B. * * *

28 **(5) Regardless of medium, each advertisement found by the committee**
 29 **to be in violation of the provisions of this Chapter shall be considered a single**
 30 **violation, regardless of the actual number of violations occurring in the**

1 advertisement or the number of dentists included in the advertisement.
 2 Notwithstanding any other provision of this Section, any fine imposed pursuant
 3 to this Section for an advertising violation shall be not less than five hundred
 4 dollars nor more than five thousand dollars for the first offense, and the
 5 maximum allowable amount of such fine shall increase incrementally by five
 6 thousand dollars for each subsequent offense.

* * *

8 Section 2. This Act shall become effective upon signature by the governor or, if not
 9 signed by the governor, upon expiration of the time for bills to become law without signature
 10 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 11 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 12 effective on the day following such approval.

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____