

# **ALABAMA DENTAL PRACTICE ACT**

## **Sections relating to advertising by dentists**

### **§ 34-9-19. Advertising; generally.**

(a) For the purpose of this section, the following terms shall have the respective meanings:

(1) DENTIST. Any person licensed to practice dentistry in this state pursuant to this chapter.

(2) ADVERTISEMENT. An advertisement is information communicated in a manner designed to attract public attention to the practice of a dentist as heretofore defined.

(3) FALSE, FRAUDULENT, MISLEADING, OR DECE

PTIVE. A false, fraudulent, misleading, or deceptive statement or claims is one which:

a. Contains a misrepresentation of facts.

b. Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts.

c. Is intended or is likely to create false or unjustified expectations of favorable results.

d. Implies unusual or superior dental ability.

e. Contains other representations or implications that in reasonable probability will cause an ordinary and prudent person to misunderstand or be deceived.

(b) A dentist shall have ultimate responsibility for all advertisements which are approved by him or her or his or her agents or associates and the dentist shall be responsible for the following:

(1) Broadcast advertisements shall be recorded, approved by the dentist, and a recording of the actual transmission shall be retained by the dentist for one year following the final appearance or use of the advertisement. The dentist is responsible for making copies of the advertisement available to the board within 10 days following a request by the board.

(2) Written or printed advertisements shall be approved by the dentist and a copy of the publication in which the advertisement is displayed shall be retained by the dentist for one year following the final appearance or use of the advertisement. The dentist is responsible for making copies of the advertisement available to the board within 10 days following a request by the board.

(3) Other forms of advertisement shall be approved by the dentist and the contents and specifications, where applicable, shall be retained by the dentist for one year following the final appearance or use of the advertisement and the dentist is responsible for making copies of the advertisement available to the board within 10 days following a request by the board.

(c) A dentist may not hold himself or herself out as a specialist or advertise specialty status unless the specialty is approved by the American Dental Association.

(d) Dentists who are not specialists in specialties approved by the American Dental Association may nevertheless advertise that their practice is limited to a specific area of dentistry only if the dentist has obtained membership in or otherwise has been credentialized by an accrediting organization which is recognized by the board as a bona fide organization for such an area of practice.

(e) Notwithstanding any provision of this section to the contrary, a dentist licensed pursuant to this chapter may not hold himself or herself out as a specialist or advertise

membership in a specialty recognized by an accrediting organization, unless the dentist has continuously held himself or herself out as a specialist since December 31, 1964, in a specialty recognized by the American Dental Association or has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation and meets either of the following qualifications:

(1) Is eligible for examination by a national specialty board recognized by the American Dental Association.

(2) Is a diplomate of a national specialty board recognized by the American Dental Association.

(f) A dentist licensed under this chapter may not represent to the public without appropriate disclosure that his or her practice is limited to a specific area of dentistry other than a specialty area of dentistry authorized under subsection (e) unless the dentist has attained membership in or has otherwise been credentialed by an accrediting organization which is recognized by the board as a bona fide organization for such an area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under subsection (c), the organization must condition membership or credentialing of its members upon all of the following:

(1) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university-based dental school that is beyond the dental degree, is at the graduate or postgraduate level, and is of at least 12 months in duration.

(2) Prior didactic training and clinical experience in the specific area of dentistry which is greater than that of other dentists

(3) Successful completion of oral and written examinations based on psychometric principles.

(g) Notwithstanding the requirements of subsections (e) and (f), a dentist who lacks membership in or certification, diplomate status, or other similar credentials from an accrediting organization approved as bona fide by either the American Dental Association or the board may announce a practice emphasis in any other area of dental practice if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement the following statement:

“ \_\_\_\_\_ (NAME OF ANNOUNCED AREA OF DENTAL PRACTICE) IS NOT RECOGNIZED AS A SPECIALTY AREA BY THE AMERICAN DENTAL ASSOCIATION OR THE BOARD OF DENTAL EXAMINERS OF ALABAMA.”

If such an area of dental practice is officially recognized by an organization which the dentist desires to acknowledge or otherwise reference in the dentist’s announcement, solicitation, or advertisement, the same announcement, solicitation, or advertisement shall also state prominently:

“ \_\_\_\_\_ (NAME OF REFERENCED ORGANIZATION) IS NOT RECOGNIZED AS A BONA FIDE SPECIALTY ACCREDITING ORGANIZATION BY THE AMERICAN DENTAL ASSOCIATION OR THE BOARD OF DENTAL EXAMINERS OF ALABAMA.”

(h) The purpose of this section is to prevent a dentist from advertising without appropriate disclosure membership in an organization which may be perceived by the public as recognizing or accrediting specialization or other unique competencies in an area of

dentistry that is not recognized or accredited by the American Dental Association or the Board of Dental Examiners of Alabama in accordance with this section. The purpose of this section is also to prohibit a dentist from advertising a specialty or other area of dental practice without appropriate disclosure unless the special competencies held by the dentist satisfy the requirements of subsections (d) and (f). The Legislature finds that dental consumers can reasonably rely on these requirements as satisfactory evidence of a dentist's attainment of meaningful competencies in the specialty or other bona fide area of dental practice advertised. The Legislature also finds that this process for the recognition of dental specialties and other bona fide areas of dental practice is the least restrictive means available to ensure that consumers are not misled about a dentist's unique credentials.

(i) A dentist who lacks membership in or certification, diplomate status, or similar credentials from an accrediting organization approved as bona fide by either the American Dental Association or the Board of Dental Examiners of Alabama may announce a practice emphasis in any other area of dental practice if the dentist incorporates the disclaimer set forth in subsection (g).

(j) The board shall promulgate rules and regulations delineating examples of advertising which would be considered false, fraudulent, misleading, or deceptive.

#### **§ Section 34-9-19.1 Dental referral services**

(a) For the purpose of this section, the following words shall have the following meanings:

(1) ADVERTISEMENT. Information communicated in a manner designed to attract public attention to a referral service, participating dentist, or a practice of dentistry.

(2) DENTAL REFERRAL SERVICE. A person, firm, partnership, association, corporation, agent, or employee of any of the foregoing that engages in any business or service for profit that in whole or in part includes the referral or recommendation of persons to a dentist for any form of dental care or treatment.

DENTIST. Any person licensed to practice dentistry, or any entity authorized by law which is formed for the purpose of practicing dentistry.

(3) FALSE, FRAUDULENT, MISLEADING, OR DECEPTIVE STATEMENT. A statement or claim having one or more of the following characteristics:

a. One that contains a misrepresentation of fact.

b. One that is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts.

c. One that is intended or is likely to create a false or unjustified expectation of favorable results.

d. One that implies unusual superior dental ability.

e. One that contains other representations or implications that in reasonable probability will cause an ordinary and prudent person to misunderstand or be deceived.

(4) PARTICIPATING DENTIST. A dentist who has paid a fee to the dental referral service in order to be included on its referral service.

b) A dental referral service shall not participate in the advertising of or operate a dental referral service unless all of the following conditions are met:

- (1) The patient referrals by the dental referral service result from patient-initiated responses to the service's advertising.
- (2) The dental referral service discloses to any prospective patient who makes contact with the service that the participating dentists have paid a fee for participation in the service.
- (3) The dental referral service does not impose a fee on the participating dentists dependent on the number of referrals or amount of professional fees paid by the patient to the dentist.
- (4) Participating dentists charge no more than their usual and customary fees to any patient referred.
- (5) The dental referral service registers with the Board of Dental Examiners of Alabama providing all the following information:
  - a. Name.
  - b. Street address.
  - c. Mailing address.
  - d. Telephone number.
  - e. Name of registered agent or persons responsible for the operation of the dental referral service.
  - f. Listing of other states where the dental referral service is registered.
  - g. A copy of the standard form contract that regulates its relationship with participating dentist.
- c) Participating dentists shall not enter into a contract or other form or agreement to accept for dental care or treatment a person referred or recommended for the care or treatment by a dental referral service unless the dental referral service meets all the requirements of this Section.
- d) A dental referral service that advertises shall include in each advertisement in legible or audible language, or both, a disclaimer containing all the following statements or information that:
  - (1) The participating dentist of the dental referral service is a dentist who has paid a fee to participate in the service.
  - (2) The advertisement is paid for by participating dentists.
  - (3) No representation is made about the quality of the dental service to be performed or the expertise of the participating dentists.
  - (4) Participating dentists are not more or less qualified than dentists who are not participating in the service.
- e) Dental referral service advertisements shall not do any of the following:
  - (1) Advertise or solicit patients in a manner that contains a false, fraudulent, misleading, or deceptive statement in any material respect.
  - (2) Publish or circulate, directly or indirectly, any false, fraudulent, misleading, or deceptive statement as to the skill or methods or practice of any participating dentist.
  - (3) Contain a statement or make a recommendation that the dental referral service provides referrals to the most qualified dentists or dental practices.
  - (4) Contain a review process or a screening.

(5) Contain qualifications or information verification that misleads the public into thinking a participating dentist has obtained special recognition or joined a selective group of licensed dentists by being a participating dentist in the dental referral service.

(f) A violation of sections 34-9-15, 34-9-19, 34-9-28 or this section, including, but not limited to, advertising in any manner which is false, fraudulent, misleading, or deceptive, shall subject a participating dentist to possible administrative disciplinary actions outlined in Section 34-9-18, after notice and hearing by the Board of Dental Examiners of Alabama and the opportunity for judicial review as provided in this Article.

**§ 34-9-20. Advertising; dentures, bridges, etc.**

Any person, which word when used in this section shall include all legal entities not licensed to practice dentistry in this state, who shall advertise in any manner to the general public that he can or will sell, supply, furnish, construct, reproduce or repair prosthetic dentures, bridges, plates or other appliances to be used or worn as substitutes for natural teeth, or for the natural teeth, or for the regulation thereof, shall be guilty of a misdemeanor, and the Circuit Court shall have jurisdiction to enjoin such person from so doing.

**§ 34-9-85. Advertisements**

The availability of oral conscious sedation, if advertised, shall be done without referring to sleep, snooze, or any other expression indicating a total or partial loss of consciousness.