

APA-1
11/96

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control _____ Department of Agency: Board of Dental Examiners of Alabama
Rule No. 270-X-4.08
Rule Title: ADVERTISING

 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? YES

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect or directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule. NO

Are all facets of the rule making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Mary Ann Wilkerson

Date 4/14/09

REC'D & FILED
(DATE FILED)
(STAMP)

APR 17 2009

LEGISLATIVE REF SERVICE

APA-2
11/96

**BOARD OF DENTAL EXAMINERS OF ALABAMA
NOTICE OF INTENDED ACTION**

AGENCY NAME: BOARD OF DENTAL EXAMINERS OF ALABAMA
RULE NO. AND TITLE: 270-X-4.08 ADVERTISING
INTENDED ACTION: Amend the above referenced rule.

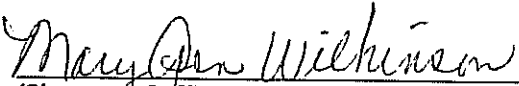
SUBSTANCE OF PROPOSED ACTION: The Alabama Dental Practice Act was amended during the 2009 Regular Session of the Alabama Legislature. One amendment involved the advertising guidelines found at Code of Alabama 1975 §34-9-19. Therefore, it is necessary to amend this rule in order to comply with Code of Alabama 1975 §34-9-19, as amended.

TIME, PLACE, MANNER OR PRESENTING VIEW: Interested persons may present their view in writing to the Administrative Secretary of the Board of Dental Examiners of Alabama at any time during a thirty five (35) days period following April 30, 2009 concluding on July 6, 2009, or if requested in advance, by personally appearing at a public hearing to be held beginning at 7:30 PM on July 9, 2009 at:
Board of Dental Examiners of Alabama
5346 Stadium Trace Parkway, Suite 110
Hoover, Alabama 35244

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: July 6, 2009

CONTACT PERSON AT AGENCY:

Ms. Mary Ann Wilkinson
BOARD OF DENTAL EXAMINERS OF ALABAMA
5346 Stadium Trace Parkway, Suite 112
Birmingham, Alabama 35244


(Signature of officer authorized to promulgate and
adopt rule or his or her deputy)

BOARD OF DENTAL EXAMINERS OF ALABAMA

NOTICE OF INTENDED ACTION

RULE NUMBER: 270-X-4.08

TITLE OF RULE: ADVERTISING

270-X-4.08 ADVERTISING

~~1. Code of Alabama, (1975) § 34-9-19 prohibits advertising which is false, fraudulent, misleading or deceptive. Those terms are defined in the statute as follows:~~

~~A. FALSE, FRAUDULENT, MISLEADING, OR DECEPTIVE. A false, fraudulent, misleading, or deceptive statement or claims is one which:~~

- ~~1. contains a misrepresentation of facts;~~
- ~~2. is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts;~~
- ~~3. is intended or is likely to create false or unjustified expectations of favorable results;~~
- ~~4. implies unusual or superior dental ability; and~~
- ~~5. contains other representations or implications that in reasonable probability will cause an ordinary and prudent person to misunderstand or be deceived. A dentist shall not make or cause to be made a false communication about the dentist or the dentist's services. A communication is false if it contains a material misrepresentation of fact or law.~~

~~2. Code of Alabama, (1975) § 34-9-19 also defines advertising as follows:~~

~~A. ADVERTISEMENT. An advertisement is information communicated in a manner designed to attract public attention to the practice of a dentist as heretofore defined. A communication is defined as information in any manner or medium designed or intended to attract public attention to the dentist or his/her practice and shall include any "advertisement" as that term is defined in Code of Alabama, 1975 §34-9-19.~~

~~3. The following shall be considered false, fraudulent, misleading or deceptive advertising; however, the following should not be interpreted as an all-inclusive listing of what may constitute prohibited advertising: A. Any advertising or portion of any advertising which:~~

- ~~1. makes a claim or conveys the impression of professional superiority or other superior attributes which cannot be substantiated by the dentist, who shall have the burden of proof;~~
- ~~2. contain laudatory or flamboyant claims or statements about any individual dentist, group or groups of dentists or any particular dental office, clinic, etc.;~~
- ~~3. has the capacity or tendency to create false or unjustified expectations of successful treatment;~~
- ~~4. guarantees the results of any treatment, painless treatment, or the performance of any treatment or procedure painlessly;~~
- ~~5. appeals to an individual's fears, ignorance or anxieties regarding his or her state of health or his or her physical or emotional well-being;~~
- ~~6. constitutes an invasion into the field of practice of any other health practitioner unless the dentist is licensed in that particular profession and so discloses that fact in the advertising;~~
- ~~7. contain or includes celebrity endorsements;~~
- ~~8. contain testimonials unless the following conditions are met:
 - ~~(a) The person's name, address and telephone number must be maintained by the dentist and shall be made available to the Board within ten (10) days of any request for that information;~~
 - ~~b. The services which are the subject of the testimonial must have actually been provided to the patient;~~
 - ~~c. No compensation, remuneration, fee or benefit of any kind shall be provided to the person in exchange for or consideration of the testimonial;~~
 - ~~d. The dentist must obtain an appropriate release and consent from the patient which shall be made available to the Board within ten (10) days of a request for that information; or~~
 - ~~e. The following statement must precede any testimonial; "Results may vary in individual cases.";~~~~
- ~~9. contain pictures or photographs unless the advertisement clearly identifies the individual as either actual patients or models as the case may be. Additionally, any such advertisement must contain the following statement: "Results may vary in individual cases.";~~
- ~~10. advertises results, whether general or specific in nature, the following statement must be included:~~

~~“Results may vary in individual cases.”;~~

~~11. advertises any dental service for a specific fee or as “Free”, “No Charge”, “Without Charge” or the like, the service must be made available for the quoted fee or at no cost for a minimum of 60 days following the date of the last publication or broadcast unless a shorter period of time is clearly specified in the advertisement. When a patient accepts the advertised service, any subsequent dental service which is reasonable and foreseeably related to the advertised service must be provided without additional charge unless the advertisement also contains the following statement: “Additional charges may be incurred for related services which may be required in individual cases.”;~~

~~12. does not include the name(s) of the dentist(s) who is employed or working at the location advertised;~~

~~13. includes statements that a dentist(s) or dental entity is affiliated with a nonprofit or charitable organization; or~~

~~14. solicits patients in a manner that is false, fraudulent, misleading or deceptive.~~

~~4. For the purposes of these Rules, any statement required to be included in any advertisement shall be clearly legible in the case of published advertisements or clearly audible in the case of broadcast advertisements.~~

~~5. The following terms or similar terms shall be considered, false, fraudulent, misleading or deceptive and should not be interpreted as an all-inclusive listing of what may constitute prohibited advertising: A. State of the Art; B. Only available here; C. Instant orthodontic veneer; D. Stress free veneer; E. Life changing; F. Quality dentistry; or G. Painless or pain free dentistry.~~

~~Statutory Rulemaking Authority: Code of Alabama, (1975) §34-9-19(j), § 34-9-43(1) Adopted August 6, 2004
Authority: Code of Alabama, (1975) §34-9-2, 34-9-4, 34-9-16 and 34-9-43.
Adopted as revised: September 25, 1982.~~