

HB

23

HOUSE COMMITTEE REPORT

(9)

Date Referred: January 16, 1995

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 2/7/95

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 23

HOUSE BILL NO. 23

REFERRALS INVOLVING DENTAL SERVICES

"An Act relating to referrals involving dental services."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) C + E D zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

CHAIR'S SIGNATURE *[Signature]*

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 23

Revision Date: February 6, 1995 Department: Commerce and Economic Development
 Title: An Act relating to referrals involving dental services. BRU: Occupational Licensing
 Component: Operations
 Sponsor: Representative G. Davis
 Requestor: Representative G. Davis COMPONENT SERIAL #: 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

HB 23 amends the dental statutes providing grounds for discipline, suspension, or revocation of a license if a dentist receives compensation for referring a person to another dentist or dental practice. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Admin. Officer Phone: 465-2144
 Division: Occupational Licensing Date: 2/6/95
 Approved by Commissioner: William L. Hensley Date: 2/6/95
 Agency: Commerce and Economic Development

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Representative Gary L. Davis

MEMORANDUM

January 24, 1995

TO: Representative Con Bunde, Co-Chair
House HESS Committee
Representative Cynthia Toohey, Co-Chair
House HESS Committee

FROM: Representative Gary Davis 

RE: House Bill 23, "An Act relating to referrals involving dental services."

I respectfully request that House Bill 23 be scheduled for a hearing in the HESS Committee at your earliest convenience.

House Bill 23 will prohibit the receipt of compensation by a dentist for referring a person to another dentist or dental practice. The American Dental Association Code of Ethics forbids dentists from profiting from referrals. This legislation codifies the ethical concern relating to referrals.

In Section 2, the receipt of compensation by a person or advertisement referring a dental service is prohibited unless the compensation for referral is disclosed at the time of referral. This legislation will help ensure that patients are being referred to a dentist or dental practice as a result of their quality service.

The Alaska Dental Society has had several breaches of their ethics code and their board has requested this legislation. I feel this is an appropriate legislative function of the Board of Dental Examiners under AS 08.36.315.

Thank you for considering this legislation.

SPONSOR REQUEST FOR HEARING/SPONSOR STATEMENT

Representing House District 8 - Soldotna to Seward

Alaska State Legislature

Interim:
P.O. Box 1287
Soldotna, AK 99669
(907) 262-8414



Session:
State Capitol
Juneau, AK 99801
(907) 465-2693

Representative Gary L. Davis

SECTIONAL ANALYSIS

HOUSE BILL 23

"An Act relating to referrals involving dental services."

Section 1 - Amends AS 08.36.315. Grounds for discipline, suspension or revocation of license. Adds a new subsection relating to the grounds for discipline, suspension, or revocation of a license for the receipt of compensation for referring a person to another dentist or dental practice.

Section 2 - Amends AS 45.50.471 (b). Unlawful acts and practices. Adds two new paragraphs relating to the receipt of compensation by a dentist or advertiser for referring a person to a dentist or dental practice.

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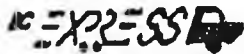
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Back-up for HB 23

American Dental Association

Back-up for HB 23

~~Back-up~~

E

ADA
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AND CODE OF

C
PROFESSIONAL
CONDUCT

American Dental Association
Council on Ethics, Bylaws and Judicial Affairs
211 East Chicago Avenue
Chicago, Illinois 60611
With official advisory opinions
revised to January, 1993

With official advisory opinions
revised to January, 1993.

ADA.

Back-up for HB 23

Principle - Section 5

PROFESSIONAL ANNOUNCEMENT.

In order to properly serve the public, dentists should represent themselves in a manner that contributes to the esteem of the profession. Dentists should not misrepresent their training and competence in any way that would be false or misleading in any material respect.*

Code of Professional Conduct

5-A. ADVERTISING.

Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect.*

Advisory Opinions

1. If a dental health article, message, or newsletter is published under a dentist's byline to the public without making truthful disclosure of the source and authorship or is designed to give rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dentist, the dentist is engaged in making a false or misleading representation to the public in a material respect.
2. The Council on Ethics, Bylaws and Judicial Affairs believes it would be of service to the members to provide some insight into the meaning of the term "false or misleading in a material respect." Therefore, the following examples are set forth. These examples are not meant to be all-inclusive. Rather by restating the concept in alternative language and giving general examples, it is hoped that the membership will gain a better understanding of the term. With this in mind, statements shall be avoided which would: a) contain a material misrepresentation of fact, b) omit a fact necessary to make the statement considered as a whole not materially misleading, c) contain a representation or implication regarding the quality of dental services which would suggest unique or general superiority to other practitioners which are not susceptible to reasonable verification by the public, and d) be intended or be likely to create an unjustified expectation about results the dentist can achieve.
3. The use of an unearned or nonhealth degree in any general announcements to the public by a dentist may be a representation to the public which is false or misleading in a material respect. A dentist may use the

of unearned or nonhealth degrees could be misleading because of the likelihood that it will indicate to the public the attainment of a specialty or diplomate status. It may also suggest that the dentist using such is claiming superior dental skills.

For purposes of this advisory opinion, an unearned academic degree is one which is awarded by an educational institution not accredited by a generally recognized accrediting body or is an honorary degree. Generally, the use of honorary degrees or nonhealth degrees should be limited to scientific papers and curriculum vitae. In all instances state law should be consulted. In any review by the council of the use of nonhealth degrees or honorary degrees, the council will apply the standard of whether the use of such is false or misleading in a material respect.

4. A dentist using the attainment of a fellowship in a direct advertisement to the general public may be making a representation to the public which is false or misleading in a material respect. Such use of a fellowship status may be misleading because of the likelihood that it will indicate to the dental consumer the attainment of a specialty status. It may also suggest that the dentist using such is claiming superior dental skills. However, when such use does not conflict with state law, the attainment of fellowship status may be indicated in scientific papers, curriculum vitae, third party payment forms, and letterhead and stationery which is not used for the direct solicitation of patients. In any review by the council of the use of the attainment of fellowship status, the council will apply the standard of whether the use of such is false or misleading in a material respect.

5. There are two basic types of referral services for dental care: not-for-profit and the commercial.

The not-for-profit is commonly organized by dental societies or community services. It is open to all qualified practitioners in the area served. A fee is sometimes charged the practitioner to be listed with the service. A fee for such referral services is for the purpose of covering the expenses of the service and has no relation to the number of patients referred.

In contrast, experience has shown that commercial referral services generally limit access to the referral service to one dentist in a particular geographic area. Prospective patients calling the service are referred to the single subscribing dentist in the area.

the referral fee paid by the dentist. There is a connotation to such advertisements that the referral that is being made is in the nature of a public service.

A dentist is allowed to pay for any advertising permitted by the Code, but is generally not permitted to make payments to another person or entity for the referral of a patient for professional services. While the particular facts and circumstances relating to an individual commercial referral service will vary, the council believes that the aspects outlined above for commercial referral services violate the Code in that it constitutes advertising which is false or misleading in a material respect and violate the prohibitions in the Code against fee splitting.

6. An advertisement which omits a material fact or facts necessary to put the information conveyed in the advertisement in a proper context can be misleading in a material respect. An advertisement to the public of HIV negative test results, without conveying additional information that will clarify the scientific significance of this fact, is an example of a misleading omission. A dental practice should not seek to attract patients on the basis of partial truths which create a false impression.

5-B. NAME OF PRACTICE.

Since the name under which a dentist conducts his or her practice may be a factor in the selection process of the patient, the use of a trade name or an assumed name that is false or misleading in any material respect is unethical.

Use of the name of a dentist no longer actively associated with the practice may be continued for a period not to exceed one year.*

Opinion

1. Dentists leaving a practice who authorize continued use of their names should receive competent advice on the legal implications of this action. With permission of a departing dentist, his or her name may be used for more than one year, if, after the one year grace period has expired, prominent notice is provided to the public through such mediums as a sign at the office and a short statement on stationery and business cards that the departing dentist has retired from the practice.

5-C. ANNOUNCEMENT OF

Back-up for HB 23

February 25, 1994

Dr. Pitts -

These are the incidents that I know of that pertain to the dental referral service. Is this what you want?

In Fairbanks, a dentist called the dental referral service and was told that the service only referred to dentists:
who were in good standing with the dental society, and
who did high quality work

The dentist replied that this company must refer to most of the dentists in the Fairbanks area if that was the criteria which was used. The referral service then admitted that they refer to the dentists who pay them to refer.

In Anchorage a dentist expressed concern that one of his patients had called the dental referral service listed in the yellow pages for a referral to an orthodontist and made an appointment with the dentist to whom he was referred. During the initial evaluation the dentist related that because the nature of the case he would have to consult with an orthodontist.

The patient then questioned the dentist as to his qualifications because he was led to believe that he had come to an orthodontist, when in fact he had been referred to a general dentist.

Following this call to our office concerning the dental referral service, several people called the number listed in the telephone book, giving various names and home addresses in various parts of town, and requesting various specialists. No matter what zip code was given, no matter what specialist was requested, the referral service only referred to 2 practices in Anchorage. Neither office was a specialty practice. One was a member of the dental society, another was not. There are 150 dentists in the Anchorage area who are members of the dental society.

The dental referral service has never asked the dental society which dentists are in good standing.

Betty

Letter of Support - Betty Prentice
Director of Operations - AK Dental Society



Alaska Dental Society

3400 Spenard Road, Suite 10
Anchorage, Alaska 99503
(907) 277-4675 • FAX: 274-2860

February 6, 1995

Representative Gary Davis
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Representative Davis:

The Alaska Dental Society sincerely thanks you for agreeing to sponsor HB 23 "An Act relating to referrals involving dental services." We feel this action is necessary for two main reasons - the public's protection and to comply with dentistry's national code of ethics.

We came upon this matter when the dental society office was queried by a citizen as to why the referral made to her was incorrect. After investigation, it was discovered that even though the yellow page listing said"our caring receptionist will tell you about the dentist nearest you who best meets your needs"....all callers were referred to the same practitioner and unbeknownst to the caller, this particular dentist was chosen because he had paid the referring company for referrals. The caller had asked for an orthodontist and was surprised to discover after receiving treatment by the dentist seen (and paid) that she next needed to see a "real orthodontist" to properly finish her treatment.... Upon checking in other cities where the directory ad was placed, the same scenario was apparent as was the fact that in all instances, the caller was never informed that the dentist referred had paid for the referral.

The American Dental Association's Principles of Ethics and Code of Professional Conduct clearly states the following: "A dentist is generally not permitted to make payments to another person or entity for the referral of a patient for professional services.....it constitutes advertising which is false or misleading in a material respect and violates the prohibitions in the Code against fee splitting."

HB 23 will help in two ways. First - through the dental statutes, it says that receiving compensation for referring patients is a disciplinary offense. Second - through the unfair trade practices statute it says that any referral accompanied by pay back compensation must be disclosed in the advertising and by the referral source to the individual seeking the referral at the time the referral is made.

Again, we appreciate your assistance.

Sincerely,

Arne R. Pihl, DMD
President
Alaska Dental Society