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The original instrument was prepared by Christopher D. Adams. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle Ducharme.

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## DIGEST

Martiny (SB 167)

Proposed law defines "advertisement" and "advertising" to mean any statement, oral or written, requested and approved by a licensed dentist, disseminated to or displayed before the public or any portion thereof with the intent of selling professional dental services, offering to perform professional dental services, or inducing members of the public to enter into any obligation relating to such professional dental services. This shall apply to an approved statement of any nature regardless of whether it is in the form of paid advertising. In addition, listing, identifying, or grouping of dentists by an insurance company on a website or by any other means of disseminating information involving a dentist participating with an insurance company and an associated affiliate shall not be deemed an advertisement or advertising by the dentist. Neither the insurance company nor the associated affiliate shall be deemed a referral company and a listed dentist shall not be considered to be advertising through a referral service by participating with such company or affiliate.

Present law defines "unprofessional conduct" to include not including in advertisements the name which appears on the license or renewal certificate of the dentist or which is authorized by law, relative to professional dental corporations or the use in advertisements of any name other than that which appears on the license or renewal certificate of the dentist or which is authorized under Chapter 11 of Title 12 of the Louisiana Revised Statutes of 1950, as amended, relative to professional dental corporations.

Proposed law retains present law and provides that not including the dentist's commonly used name may constitute unprofessional conduct.

Present law further defines "unprofessional conduct" to mean advertising of dental services in any medium which has not been approved by the licensed dentist and which does not contain the dentist's full name, address, and telephone number.

Proposed law amends present law to define "unprofessional conduct" to mean advertising of dental services in any medium that does not contain the dentist's full name as it appears on the license or renewal certificate issued by the board or the dentist's commonly used name, address, and telephone number.

Proposed law adds that "unprofessional conduct" shall mean:

- (1) Intentionally releasing inaccurate or misleading information by a dentist to any source that promotes dissemination of inaccurate or misleading information about the dentist by, from, or through such source and failing to take immediate steps to request the correction

of the inaccurate or misleading information that has been released by the source pursuant to its relationship with the dentist.

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

Present law provides when it is required that an advertisement include the name of the advertising dentist as it appears on the license or renewal certificate of the dentist or the specialties of all dentists practicing within or under the name of a corporation, company, association, limited liability company, or trade name be disclosed in the advertisement, such requirement shall be deemed to be sufficiently satisfied if the names and specialties of all dentists practicing in, with or under the said corporation, company, association, limited liability company, or trade name are made available on an Internet website fully disclosed in the advertisement, or are provided without delay to any individual requesting such information by contacting the advertiser at a telephone number also disclosed in the advertisement.

Proposed law amends present law to provide when it is required that an advertisement include the name of the advertising dentist, either as it appears on the license or renewal certificate of the dentist or the dentist's commonly used name, or the specialties of all dentists practicing within or under the name of a corporation, company, association, limited liability company, or trade name be disclosed in the advertisement, and address and telephone number of the dentist, such requirement shall be deemed to be sufficiently satisfied if the names and specialties of all dentists practicing in, with or under the said corporation, company, association, limited liability company, or trade name and the address and the telephone number are made available on an Internet website fully disclosed in the advertisement, or are provided without delay to any individual requesting such information by contacting the advertiser at a telephone number also disclosed in the advertisement.

Present law provides that whether the advertisement is run by the corporation, company, association, limited liability company, or trade name, or any individual member practicing therein, all dentists practicing in, with or under the corporation, company, association, limited liability company, or trade name shall be responsible for the content of the advertisement.

Proposed law removes present law and provides that whenever any advertisement is run by or on behalf of a corporation, company, association, limited liability company, or trade name, all dentists practicing in, with or under the corporation, company, association, limited liability company, or trade name shall be responsible for the content of the advertisement unless an individual dentist practicing in, with or under the corporation, company, association, limited liability company, or trade name, advises the board in writing prior to the time the board takes any action regarding the advertisement that he assumes sole responsibility for the advertisement. If an individual dentist assumes sole responsibility for the advertisement, no other dentist shall be responsible for such advertisement.

Proposed law provides that whenever the board determines that an advertisement constitutes a violation of certain provisions of law, before taking any further action, the board shall notify the advertising dentist by mail of its determination and the specific portion of the advertisement that constitutes a violation. The dentist shall have 30 days from the date of receipt of the notice by the dentist to correct the portions of the advertisement in violation and submit to the board proof of such correction. If the advertisement is corrected to remove the violation within 30 days, the board shall take no further action against the advertising dentist for unprofessional conduct with regard to such advertisement. In the event an advertisement cannot be corrected within the 30 days, it shall be deemed sufficient if the dentist submits proof to the board within 30 days that he has directed that the correction be made at the next publication date.

Proposed law further provides that a dentist shall have this right to correct an advertisement deemed by the board to be in violation of certain provisions of law only the first two times notified of such violation; there shall be no right to correct a third or any subsequent violation, whether for the same advertisement or for subsequent advertisements. If an advertisement is run by or on behalf of a corporation, company, association, limited liability company, or trade name, the aforementioned right to correct shall be limited to two times, regardless of the number of dentists in or associated with the corporation, association, limited liability company, or trade name.

Present law provides for penalties.

Proposed law provides that each advertisement found by the committee to be in violation of law shall be considered a single violation, regardless of the actual number of violations occurring in the advertisement or the number of dentists included in the advertisement.

Proposed law further provides that any fine imposed for an advertising violation shall be not less than \$500 nor more than \$5,000 for the first offense, and the maximum allowable amount of such fine shall increase incrementally by \$5,000 for each subsequent offense.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 37:751(A), 775(A)(2) and (9) and (B), and 776(A)(14); adds R.S. 37:780(B)(5))

### Summary of Amendments Adopted by Senate

#### Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Revises the definition of "advertisement".
2. Revises the definition of "unprofessional conduct".
3. Provides fines for advertisement violations.

4. Provides for the procedures relative to advertisement violations.