

Virginia Board of Dentistry

Policy on Sanctioning for Failure to Comply with Advertising Guidelines

Excerpts of Applicable Law, Regulation and Guidance on 18VAC60-21-80 et seq.

- The Board may sanction any licensee for advertisements that are false, deceptive or misleading; contain a claim of superiority or violate regulations, §54.1-2706(7).
- A general dentist who limits his practice shall advertise that he is a general dentist providing only certain services, 18VAC60-21-80.A.
- Any statement specifying a fee for a dental service which does not include the cost of all related procedures, services, and products shall be deemed to be deceptive or misleading, 18VAC60-21-80.B.
- Discount offers for dental services shall include the non-discounted fee, the discounted fee and the time period for the discount, 18VAC60-20-21.80.C.
- A prerecorded or archived copy of all advertisements shall be retained for two years following the final appearance of the advertisement, 18VAC60-21-80.D.
- Advertising of fees is limited to only routine dental services as set forth in the American Dental Association's "Dental Procedures Codes," 18VAC60-21-80.E.
- Advertisements, including but not limited to signage, containing descriptions of the type of dentistry practiced or a specific geographic locator are permissible so long as the requirements of §§54.1-2718 and 54.1-2720 of the Code of Virginia are met, 18VAC60-21-80.F.

§54.1-2706 of the Code of Virginia authorizes the Board to sanction a licensee for “publishing or causing to be published in any manner an advertisement relating to his professional practice which (i) is false, deceptive or misleading, (ii) contains a claim of superiority, or (iii) violates regulations promulgated by the Board governing advertising.”

The Board interprets the following practices to constitute false, deceptive, or misleading advertising:

- Publishing an advertisement which contains a material misrepresentation or omission of facts that is likely to cause an ordinarily prudent person to be deceived, 18VAC60-21-80-G.1.
- Publishing an advertisement which fails to include the information and disclaimers required by this section, 18VAC60-21-80.G.2.
- Publishing an advertisement which contains a false claim of professional superiority, or uses any term to designate a dental specialty to which he is not entitled, 18VAC60-21-80.G.3.
- A dentist not entitled to a specialty designation shall not represent that his practice is limited to providing services in a specialty area without disclosing that he is a general dentist, 18VAC60-21-80. G.4.

Making a Probable Cause Decision

1. In regards to allegations of false, deceptive and misleading advertisements, the reviewing Board member or staff (the dental reviewer coordinator) may consider whether evidence exists that the source of the complaint was actually deceived, misled, etc.
2. In regards to allegations of claims of superiority and the failure to disclose required information, the reviewer may not only consider the content of the advertisement but the evidence collected about the development and publication of the advertisement in deciding if there is clear and convincing evidence that the licensee is the responsible party and there is probable cause to believe a violation occurred.

Guidelines for sending an Advisory Letter

1. The reviewing Board member or designated staff may only request an Advisory Letter when there is not clear and convincing evidence to support a finding that a violation of law or regulation has occurred.
2. Advisory letters may be used to close cases when the reviewer decides that the presenting information indicates that the licensee may be acting in ignorance of the applicable law and regulations.

Guidelines for Offering a Confidential Consent Agreement

1. The reviewing Board member or designated staff may offer a CCA for a first advertising offense and may offer a CCA for subsequent advertising violations, if no other violations exist.
2. In cases where there are findings of probable cause for violations in addition to advertising, the reviewer may offer a CCA consistent with Guidance Document 60-1.
3. The offered CCA may include a finding that a violation occurred and shall request the licensee's agreement to cease and desist advertising in violation of law and regulations.
4. The offered CCA may also include completion of a continuing education course in ethics.

Guidelines for Imposing Disciplinary Sanctions

- a. The reviewing Board member or designated staff may offer a Pre-Hearing Consent Order (PHCO) or request an informal fact finding conference when probable cause is found that the licensee has subsequent advertising violations.
- b. The following sanctioning guidelines may be included in the PHCO:
 - a. A \$1,000 monetary penalty per violation, a reprimand and successful completion of the Virginia Dental Law Exam for a second offense.
 - b. A \$5,000 monetary penalty per violation, a reprimand and continuing education in ethics for a third and subsequent offenses.
- c. In cases where there are findings of probable cause for violations in addition to advertising the reviewer may offer a PHCO or request an informal fact finding conference.