

AMENDED IN SENATE APRIL 1, 2002
AMENDED IN ASSEMBLY JANUARY 10, 2002
AMENDED IN ASSEMBLY JANUARY 7, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1026

**Introduced by Assembly Member Oropeza
(Coauthor: Assembly Member Aanestad)**

February 23, 2001

An act to amend Section 651 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1026, as amended, Oropeza. Healing arts: dentists.

Existing law provides that it is unlawful for healing arts licensees, as specified, to provide, publish, or advertise false, fraudulent, misleading, or deceptive statements, photographs, or other images, in order to induce the provision of services or the rendering of products relating to a professional practice or business for which he or she is licensed and makes the violation of these provisions punishable as a misdemeanor. Existing law provides that this includes the statement that the licensee is certified by a private or public board or agency or a statement that the licensee only practices in specific fields.

This bill would provide that a licensed dentist shall not advertise as a specialist or as specializing in an area of practice unless certified or eligible for certification by a dental specialty board recognized by the American Dental Association or another dental specialty board in the area in which specialization is advertised with equivalent requirements

approved by the Dental Board of California. The bill would also require a dentist who is not certified or eligible for certification by these boards to state that he or she is a general dentist in any advertisement describing his or her practice as limited to a specific field.

Because the bill would specify additional provisions regarding the advertising practices of dentists, the violation of which is punishable as a misdemeanor, it would expand the scope of an existing crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 651 of the Business and Professions
- 2 Code is amended to read:
- 3 651. (a) It is unlawful for any person licensed under this
- 4 division or under any initiative act referred to in this division to
- 5 disseminate or cause to be disseminated any form of public
- 6 communication containing a false, fraudulent, misleading, or
- 7 deceptive statement, claim, or image for the purpose of or likely
- 8 to induce, directly or indirectly, the rendering of professional
- 9 services or furnishing of products in connection with the
- 10 professional practice or business for which he or she is licensed.
- 11 A “public communication” as used in this section includes, but is
- 12 not limited to, communication by means of mail, television, radio,
- 13 motion picture, newspaper, book, list or directory of healing arts
- 14 practitioners, Internet, or other electronic communication.
- 15 (b) A false, fraudulent, misleading, or deceptive statement,
- 16 claim, or image includes a statement or claim that does any of the
- 17 following:
- 18 (1) Contains a misrepresentation of fact.
- 19 (2) Is likely to mislead or deceive because of a failure to
- 20 disclose material facts.



1 (3) (A) Is intended or is likely to create false or unjustified
2 expectations of favorable results, including the use of any
3 photograph or other image that does not accurately depict the
4 results of the procedure being advertised or that has been altered
5 in any manner from the image of the actual subject depicted in the
6 photograph or image.

7 (B) Use of any photograph or other image of a model without
8 clearly stating in a prominent location in easily readable type the
9 fact that the photograph or image is of a model is a violation of
10 subdivision (a). For purposes of this paragraph, a model is anyone
11 other than an actual patient, who has undergone the procedure
12 being advertised, of the licensee who is advertising for his or her
13 services.

14 (C) Use of any photograph or other image of an actual patient
15 that depicts or purports to depict the results of any procedure, or
16 presents “before” and “after” views of a patient, without
17 specifying in a prominent location in easily readable type size what
18 procedures were performed on that patient is a violation of
19 subdivision (a). Any “before” and “after” views (i) shall be
20 comparable in presentation so that the results are not distorted by
21 favorable poses, lighting, or other features of presentation, and (ii)
22 shall contain a statement that the same “before” and “after”
23 results may not occur for all patients.

24 (4) Relates to fees, other than a standard consultation fee or a
25 range of fees for specific types of services, without fully and
26 specifically disclosing all variables and other material factors.

27 (5) Contains other representations or implications that in
28 reasonable probability will cause an ordinarily prudent person to
29 misunderstand or be deceived.

30 (6) Makes a claim either of professional superiority or of
31 performing services in a superior manner, unless that claim is
32 relevant to the service being performed and can be substantiated
33 with objective scientific evidence.

34 (7) Makes a scientific claim that cannot be substantiated by
35 reliable, peer reviewed, published scientific studies.

36 (8) Includes any statement, endorsement, or testimonial that is
37 likely to mislead or deceive because of a failure to disclose
38 material facts.

39 (c) Any price advertisement shall be exact, without the use of
40 phrases, including, but not limited to, “as low as,” “and up,”



1 “lowest prices,” or words or phrases of similar import. Any
2 advertisement that refers to services, or costs for services, and that
3 uses words of comparison shall be based on verifiable data
4 substantiating the comparison. Any person so advertising shall be
5 prepared to provide information sufficient to establish the
6 accuracy of that comparison. Price advertising shall not be
7 fraudulent, deceitful, or misleading, including statements or
8 advertisements of bait, discount, premiums, gifts, or any
9 statements of a similar nature. In connection with price
10 advertising, the price for each product or service shall be clearly
11 identifiable. The price advertised for products shall include
12 charges for any related professional services, including dispensing
13 and fitting services, unless the advertisement specifically and
14 clearly indicates otherwise.

15 (d) Any person so licensed shall not compensate or give
16 anything of value to a representative of the press, radio, television,
17 or other communication medium in anticipation of, or in return for,
18 professional publicity unless the fact of compensation is made
19 known in that publicity.

20 (e) Any person so licensed may not use any professional card,
21 professional announcement card, office sign, letterhead, telephone
22 directory listing, medical list, medical directory listing, or a
23 similar professional notice or device if it includes a statement or
24 claim that is false, fraudulent, misleading, or deceptive within the
25 meaning of subdivision (b).

26 (f) Any person so licensed who violates this section is guilty of
27 a misdemeanor. A bona fide mistake of fact shall be a defense to
28 this subdivision, but only to this subdivision.

29 (g) Any violation of this section by a person so licensed shall
30 constitute good cause for revocation or suspension of his or her
31 license or other disciplinary action.

32 (h) Advertising by any person so licensed may include the
33 following:

34 (1) A statement of the name of the practitioner.

35 (2) A statement of addresses and telephone numbers of the
36 offices maintained by the practitioner.

37 (3) A statement of office hours regularly maintained by the
38 practitioner.

39 (4) A statement of languages, other than English, fluently
40 spoken by the practitioner or a person in the practitioner’s office.



1 (5) (A) A statement that the practitioner is certified by a
2 private or public board or agency or a statement that the
3 practitioner limits his or her practice to specific fields.

4 (i) For the purposes of this section, the statement of a
5 practitioner licensed under Chapter 4 (commencing with Section
6 1600) who limits his or her practice to a specific field or fields shall
7 only include a statement that he or she is certified or is eligible for
8 certification by a private or public board or parent association
9 recognized by that practitioner’s licensing board. A practitioner
10 who includes a statement that he or she limits his or her practice
11 to a specific field or fields, but who is not certified or eligible for
12 certification in that field or fields by a board recognized by the
13 American Dental Association or by a dental specialty board with
14 equivalent requirements approved by the Dental Board of
15 California, shall include a statement that he or she is a general
16 dentist.

17 (ii) A dentist licensed under Chapter 4 shall not advertise that
18 he or she is a “specialist” or “specializes” in an area of practice
19 unless he or she is certified or eligible for certification by a dental
20 specialty board recognized by the American Dental Association in
21 the area in which specialization is advertised, or is certified or
22 eligible for certification by a dental specialty board in the area in
23 which specialization is advertised with equivalent requirements
24 approved by the Dental Board of California. *A dental specialty*
25 *board approved by the Dental Board of California shall provide*
26 *both a didactic and a clinical curriculum to practitioners seeking*
27 *certification.*

28 (iii) A statement of certification by a practitioner licensed
29 under Chapter 7 (commencing with Section 3000) shall only
30 include a statement that he or she is certified or eligible for
31 certification by a private or public board or parent association
32 recognized by that practitioner’s licensing board.

33 (B) A physician and surgeon licensed under Chapter 5
34 (commencing with Section 2000) by the Medical Board of
35 California may include a statement that he or she limits his or her
36 practice to specific fields, but shall not include a statement that he
37 or she is certified or eligible for certification by a private or public
38 board or parent association, including, but not limited to, a
39 multidisciplinary board or association, unless that board or
40 association is (i) an American Board of Medical Specialties



1 member board, (ii) a board or association with equivalent
2 requirements approved by that physician and surgeon’s licensing
3 board, or (iii) a board or association with an Accreditation Council
4 for Graduate Medical Education approved postgraduate training
5 program that provides complete training in that specialty or
6 subspecialty. A physician and surgeon licensed under Chapter 5
7 (commencing with Section 2000) by the Medical Board of
8 California who is certified by an organization other than a board
9 or association referred to in clause (i), (ii), or (iii) shall not use the
10 term “board certified” in reference to that certification, unless the
11 physician and surgeon is also licensed under Chapter 4
12 (commencing with Section 1600) and the use of the term “board
13 certified” in reference to that certification is in accordance with
14 subparagraph (A). A physician and surgeon licensed under
15 Chapter 5 (commencing with Section 2000) by the Medical Board
16 of California who is certified by a board or association referred to
17 in clause (i), (ii), or (iii) shall not use the term “board certified”
18 unless the full name of the certifying board is also used and given
19 comparable prominence with the term “board certified” in the
20 statement.

21 For purposes of this subparagraph, a “multidisciplinary board
22 or association” means an educational certifying body that has a
23 psychometrically valid testing process, as determined by the
24 Medical Board of California, for certifying medical doctors and
25 other health care professionals that is based on the applicant’s
26 education, training, and experience.

27 For purposes of the term “board certified,” as used in this
28 subparagraph, the terms “board” and “association” mean an
29 organization that is an American Board of Medical Specialties
30 member board, an organization with equivalent requirements
31 approved by a physician and surgeon’s licensing board, or an
32 organization with an Accreditation Council for Graduate Medical
33 Education approved postgraduate training program that provides
34 complete training in a specialty or subspecialty.

35 The Medical Board of California shall adopt regulations to
36 establish and collect a reasonable fee from each board or
37 association applying for recognition pursuant to this
38 subparagraph. The fee shall not exceed the cost of administering
39 this subparagraph. Notwithstanding Section 2 of Chapter 1660 of
40 the Statutes of 1990, this subparagraph shall become operative



1 July 1, 1993. However, an administrative agency or accrediting
2 organization may take any action contemplated by this
3 subparagraph relating to the establishment or approval of
4 specialist requirements on and after January 1, 1991.

5 (C) A doctor of podiatric medicine licensed under Chapter 5
6 (commencing with Section 2000) by the Medical Board of
7 California may include a statement that he or she is certified or
8 eligible or qualified for certification by a private or public board
9 or parent association, including, but not limited to, a
10 multidisciplinary board or association, if that board or association
11 meets one of the following requirements: (i) is approved by the
12 Council on Podiatric Medical Education, (ii) is a board or
13 association with equivalent requirements approved by the
14 California Board of Podiatric Medicine, or (iii) is a board or
15 association with the Council on Podiatric Medical Education
16 approved postgraduate training programs that provide training in
17 podiatric medicine and podiatric surgery. A doctor of podiatric
18 medicine licensed under Chapter 5 (commencing with Section
19 2000) by the Medical Board of California who is certified by a
20 board or association referred to in clause (i), (ii), or (iii) shall not
21 use the term “board certified” unless the full name of the
22 certifying board is also used and given comparable prominence
23 with the term “board certified” in the statement. A doctor of
24 podiatric medicine licensed under Chapter 5 (commencing with
25 Section 2000) by the Medical Board of California who is certified
26 by an organization other than a board or association referred to in
27 clause (i), (ii), or (iii) shall not use the term “board certified” in
28 reference to that certification.

29 For purposes of this subparagraph, a “multidisciplinary board
30 or association” means an educational certifying body that has a
31 psychometrically valid testing process, as determined by the
32 California Board of Podiatric Medicine, for certifying doctors of
33 podiatric medicine that is based on the applicant’s education,
34 training, and experience. For purposes of the term “board
35 certified,” as used in this subparagraph, the terms “board” and
36 “association” mean an organization that is a Council on Podiatric
37 Medical Education approved board, an organization with
38 equivalent requirements approved by the California Board of
39 Podiatric Medicine, or an organization with a Council on Podiatric



1 Medical Education approved postgraduate training program that
2 provides training in podiatric medicine and podiatric surgery.

3 The California Board of Podiatric Medicine shall adopt
4 regulations to establish and collect a reasonable fee from each
5 board or association applying for recognition pursuant to this
6 subparagraph, to be deposited in the State Treasury in the Podiatry
7 Fund, pursuant to Section 2499. The fee shall not exceed the cost
8 of administering this subparagraph.

9 (6) A statement that the practitioner provides services under a
10 specified private or public insurance plan or health care plan.

11 (7) A statement of names of schools and postgraduate clinical
12 training programs from which the practitioner has graduated,
13 together with the degrees received.

14 (8) A statement of publications authored by the practitioner.

15 (9) A statement of teaching positions currently or formerly
16 held by the practitioner, together with pertinent dates.

17 (10) A statement of his or her affiliations with hospitals or
18 clinics.

19 (11) A statement of the charges or fees for services or
20 commodities offered by the practitioner.

21 (12) A statement that the practitioner regularly accepts
22 installment payments of fees.

23 (13) Otherwise lawful images of a practitioner, his or her
24 physical facilities, or of a commodity to be advertised.

25 (14) A statement of the manufacturer, designer, style, make,
26 trade name, brand name, color, size, or type of commodities
27 advertised.

28 (15) An advertisement of a registered dispensing optician may
29 include statements in addition to those specified in paragraphs (1)
30 to (14), inclusive, provided that any statement shall not violate
31 subdivision (a), (b), (c), or (e) or any other section of this code.

32 (16) A statement, or statements, providing public health
33 information encouraging preventative or corrective care.

34 (17) Any other item of factual information that is not false,
35 fraudulent, misleading, or likely to deceive.

36 (i) Each of the healing arts boards and examining committees
37 within Division 2 shall adopt appropriate regulations to enforce
38 this section in accordance with Chapter 3.5 (commencing with
39 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
40 Code.



1 Each of the healing arts boards and committees and examining
2 committees within Division 2 shall, by regulation, define those
3 efficacious services to be advertised by businesses or professions
4 under their jurisdiction for the purpose of determining whether
5 advertisements are false or misleading. Until a definition for that
6 service has been issued, no advertisement for that service shall be
7 disseminated. However, if a definition of a service has not been
8 issued by a board or committee within 120 days of receipt of a
9 request from a licensee, all those holding the license may advertise
10 the service. Those boards and committees shall adopt or modify
11 regulations defining what services may be advertised, the manner
12 in which defined services may be advertised, and restricting
13 advertising that would promote the inappropriate or excessive use
14 of health services or commodities. A board or committee shall not,
15 by regulation, unreasonably prevent truthful, nondeceptive price
16 or otherwise lawful forms of advertising of services or
17 commodities, by either outright prohibition or imposition of
18 onerous disclosure requirements. However, any member of a
19 board or committee acting in good faith in the adoption or
20 enforcement of any regulation shall be deemed to be acting as an
21 agent of the state.

22 (j) The Attorney General shall commence legal proceedings in
23 the appropriate forum to enjoin advertisements disseminated or
24 about to be disseminated in violation of this section and seek other
25 appropriate relief to enforce this section. Notwithstanding any
26 other provision of law, the costs of enforcing this section to the
27 respective licensing boards or committees may be awarded against
28 any licensee found to be in violation of any provision of this
29 section. This shall not diminish the power of district attorneys,
30 county counsels, or city attorneys pursuant to existing law to seek
31 appropriate relief.

32 (k) A physician and surgeon or doctor of podiatric medicine
33 licensed pursuant to Chapter 5 (commencing with Section 2000)
34 by the Medical Board of California who knowingly and
35 intentionally violates this section may be cited and assessed an
36 administrative fine not to exceed ten thousand dollars (\$10,000)
37 per event. Section 125.9 shall govern the issuance of this citation
38 and fine except that the fine limitations prescribed in paragraph (3)
39 of subdivision (b) of Section 125.9 shall not apply to a fine under
40 this subdivision.



1 SEC. 2. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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