

The State of South Carolina



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December 17, 1986

The Honorable Jackson V. Gregory
Member, House of Representatives
and State Reorganization Commission
Post Office Box 11488
Columbia, South Carolina 29211

Dear Representative Gregory:

By your letter of October 29, 1986, you have referenced Opinion No. 84-59 of this Office, which construed Section 40-15-130, Code of Laws of South Carolina (1976), and concluded that the prohibition against the use of trade names in the practice of dentistry is lawful. You have raised several additional questions about such use of trade names, including whether this prohibition could be construed as a restraint on trade.

At the outset, it must be noted that Section 40-15-130 was amended in 1986 by Act No. 363; that Code section now provides:

Dentists may advertise their services so long as these public communications are not false, deceptive, or misleading and do not attempt to create any impression, unsupported by fact, of superior skills or qualifications of those who practice thereunder. Licensed dental specialists may announce their specialization and may advertise their services so long as the public communications are not false, deceptive, or misleading.

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Every dentist practicing dentistry under a trade name and every dentist practicing as an employee of another licensed dentist or a partnership or of a professional association shall cause his name and licensed area of practice to be conspicuously displayed and kept so displayed in a conspicuous place at the entrance of the place where the practice is conducted.

Dentists may practice or continue to practice under trade names so long as the names are not false, deceptive, or misleading and do not attempt to create any impression of superior skills or qualifications of those who practice thereunder.

This amendment to Section 40-15-130 thus necessitates our review of Opinion No. 84-59.

The version of Section 40-15-130 upon which the opinion was based, on its face, prohibited the use of trade names. The amended version now permits the practice of dentistry under a trade name and commercial advertising by dentists and dental specialists as long as such practice or advertising are not false, deceptive, and so forth. While our previous opinion still reflects the courts' views as to use of trade names, the dental profession is not now subject to the same advertising and trade name use restrictions as the professional groups in the cases cited in Opinion No. 84-59. Thus, it must be concluded that the opinion has been superseded by the amended law.

We are aware of a decision by a Federal Trade Commission administrative law judge that the Massachusetts Optometry Board illegally restricted truthful advertising by optometrists, which decision is on appeal. This decision may be representative of the recent efforts of the Federal Trade Commission, noted in your letter, to eliminate restraints on use of trade names in various professions. It would appear that the General Assembly's amending Section 40-15-130 comports with those efforts of the Federal Trade Commission to permit truthful advertising and use of trade names.

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Due to the amended law and the fact that Opinion No. 84-59 has been superseded by it, the prohibitions and reasons therefor of your first two questions no longer exist. Your third question has been answered by the amended version of Section 40-15-130 of the code. If you have additional questions or need clarification, please do not hesitate to ask.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

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