

1982 WL 189185 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 23, 1982

*1 John R. Hubbard, D.D.S.
SC State Board of Dentistry
221 West Robinson Street
Gaffney, South Carolina 29340

Dear Dr. Hubbard:

You have requested an opinion from this Office regarding the legality of a practice engaged in by some dentists, which practice is often described as 'over-billing.' The practice involves a dentist who bills an insurance carrier a full fee for procedures he performs and at the same time agrees with the patient to accept the carrier payment as payment in full, cancelling out the patient's co-payment portion. For example, in an 80 percent coverage program, the dentist has misrepresented his true bill and has overbilled the carrier by 20 percent.

After reviewing the statutes that regulate the practice of dentistry in South Carolina, including the principles of ethics included in [Regulation No. 39-11](#) of the State Board of Dentistry, I can find no provision that is violated by this practice. It does not constitute 'practicing fraud or deceit upon his patients' in violation of [Section 40-15-190\(3\)\(b\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, nor does it constitute a rebate arrangement prohibited by Principle 1-H of the Principles of Ethics contained in [Regulation No. 39-11](#) of the State Board of Dentistry. [Regulation No. 39-11, Vol. 23, CODE OF LAWS OF SOUTH CAROLINA](#), 1976 (Cum.Supp.).

Nevertheless, in my opinion, the practice is unlawful under [Section 39-9-30, CODE OF LAWS OF SOUTH CAROLINA](#), 1975, as amended, which provides as follows:

Any agent, collector, physician or other person who shall cause to be presented to any insurance company licensed to do business in this State a false claim for payment, knowing the same to be false shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned, in the discretion of the court.

A dentist who submits a claim for payment to an insurance carrier, stating as 'total fee actually charged' an amount only a percentage of which is actually charged, is knowingly presenting a false claim for payment in violation of [Section 38-9-310 of the Code](#). If a conviction is obtained, a prison term of up to ten years can be imposed. [§ 17-25-30, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended; [State v. Fogle](#), 256 S.C. 149, 181 S.E.2d 483 (1971).

Finally, it may well be that the practice also constitutes mail fraud; such an offense, however, is a federal one which only the United States Attorney's office can investigate and prosecute.

With kind regards,

Karen LeCraft Henderson
Deputy Attorney General

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