

N.D.A.G. Letter to Schmiess (Nov. 20, 1987)

November 20, 1987

Al Schmiess, D.D.S.
Administrative Assistant
State Board of Dental Examiners
P. O. Box 1175
Jamestown, North Dakota 58402-1175

Dear Dr. Schmiess:

Thank you for your letter of October 26, 1987, regarding your correspondence with U.S. West Direct in connection with an advertisement placed in the Grand Forks-East Grand Forks Regional telephone directory for the Minuk Denture Clinic located in Winnipeg, Manitoba, Canada. It is my understanding that you wrote U.S. West Direct stating the opinion of the North Dakota State Board of Dental Examiners that, because it is illegal to practice denturism in North Dakota, and such activity would constitute practice of dentistry by unlicensed personnel, it is also improper to advertise such illegal activity. You further stated that the Board was particularly disturbed by the fact that the Winnipeg denture clinic listed a Grand Forks telephone number.

U.S. West Direct responded to your letter in an October 12, 1987, letter from Sue Reece, Customer Service Manager, in Minneapolis. Ms. Reece stated the position of U.S. West Direct that the advertisement is proper because it is advertising a service which is legal in Canada, and also clearly lists the clinic's Canadian address and telephone number in addition to the Grand Forks telephone number.

Your letter requests an opinion on whether or not the Board would be justified in pursuing the matter regarding the legitimacy of the Minuk Denture Clinic ad.

In order to render an informed opinion on this matter, a member of my staff requested additional factual information on the practice of denturism and Minuk's actual activities in North Dakota. It is my understanding that, based upon the Board's information, North Dakota residents who call the Grand Forks telephone number are given information on the cost of dentures and are scheduled for appointments in Winnipeg if they are interested. The person then travels to Winnipeg, and all dental work, such as the taking of impressions and fitting of dentures, occurs in Canada. It is my further understanding that it is legal in Canada for a licensed denturist, who is not a dentist, to construct and fit dentures.

The main question appears to be whether the activities of Minuk constitute the illegal practice of dentistry in violation of N.D.C.C. ch. 43-28 or merely constitute the advertising within North Dakota of denture work to be performed in Canada where such practice is apparently lawful. We must, therefore, review relevant sections of N.D.C.C. ch. 43-28.

N.D.C.C. § 43-28-01 provides, in part:

43-28-01. Definitions.-

1. For the purposes of this chapter, the term "practice of dentistry" shall mean and include examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae and soft tissues, and the diagnosis, the surgical and adjunctive treatment of the diseases, injuries, and defects of the human jaw and associated structures.

....

4. "Advertising" means to invite the attention of or give notice to the public, by any means, medium or manner whatsoever of any fact, information or data pertaining to or being conducive of the practice of dentistry in this state.

N.D.C.C. § 43-28-10 provides:

43-28-10. License and certificate required. --No person shall practice dentistry in this state unless:

1. He first obtains a license to practice in this state; and
2. He holds a valid annual certificate of registration.

This statute clearly limits enforcement of licensure requirements to those persons who actually practice dentistry within the borders of the state of North Dakota.

Based upon the facts as we understand them, it does not appear that either Joseph Minuk or the Minuk Denture Clinic is practicing dentistry within the state of North Dakota. Although the fitting of dentures would constitute the practice of dentistry if the activity took place within the state, all such dental work is apparently being conducted in Canada. The placement of the clinic's ad in the Grand Forks telephone book, establishment of a Grand Forks telephone number for scheduling appointments, and providing information on services provided by the clinic, including costs, appear to constitute advertising of the practice of denturism in a foreign country. Because the practice of denturism is apparently legal in Manitoba, no dentistry is actually being practiced in North Dakota, and there is no evidence that the advertisement is misleading or that Joseph Minuk is not properly licensed as a denturist, there appears to be no basis for taking action against Minuk for placing the ad in the Grand Forks telephone book and obtaining a Grand Forks telephone

number for scheduling appointments. Consequently, there appears to be no basis for taking action against U.S. West Direct for publishing the advertisement in the Grand Forks telephone directory.

If the Board receives any additional information which indicates that Minuk is illegally practicing dentistry within the state of North Dakota, a complaint should be made to the state's attorney of the county where such activity is taking place. If any advertisements are found to be fraudulent or misleading in violation of N.D.C.C. chs. 51-12 (False Advertising Law) or 51-15 (Consumer Fraud Law), that information should be referred to the Consumer Fraud and Antitrust Division of my office and the local state's attorney.

I hope that this information will be useful to you.

Sincerely,

Nicholas J. Spaeth

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