TABLE OF CONTENTS

LIST OF AUTHORITIES

Cases

Treatises

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-316

JOHN R. BATES and VAN O'STEEN,
Appellants,

vs.

STATE BAR OF ARIZONA,
Appellee.

On Appeal from the Supreme Court of Arizona

BRIEF AMICUS CURIAE OF THE AMERICAN DENTAL ASSOCIATION

Statement Of Interest Of The American Dental Association

This Brief is being filed by consent of the parties to this appeal.*

The American Dental Association, an Illinois not-for-profit corporation, is a voluntary dental association with approximately 109,664 fully privileged members, all of whom are dentists licensed to practice in the various states of these United States, the District of Columbia, the Commonwealth of Puerto Rico or a dependency of the United

*Appendix (hereinafter App.) 1-2 contains the stipulations.

States. The object of the American Dental Association as set out in its Constitution is:

> "The object of this Association shall be to encourage the improvement of the health of the public, to promote the art and science of dentistry and to represent the interests of the members of the dental profession and the public which it serves." (Constitution of the American Dental Association, Article II)

Probable jurisdiction was noted upon a Jurisdictional Statement delineating two issues on the record before this Court: does a ban on lawyer advertising violate the First Amendment, and, secondly, does the ban violate the Sherman Act. A determination of these issues may have a profound effect not only on the activities of the American Dental Association, as a nationwide professional association, but also on the activities of its dentist members and on each state and local dental society which comprise the Association's constituent and component societies. This is true because most state legislatures* have enacted rather specific prohibitions of various forms of advertising and the American Dental Association and the local and state dental associations through the country have Principles of Ethics which regulate advertising by dentists.

As a result of the foregoing, it is respectfully suggested that this Court should take cognizance of the public policy considerations of a non-lawyer association which is vitally concerned with the maintenance of high professional health standards.

The American Dental Association respectfully submits this Brief Amicus Curiae in support of affirmance of the decision of the Arizona Supreme Court.

---

* App. 3-6 is a narrative description of the states which have specific statutory prohibitions of advertising. The statutory citations are found at 7-9.

ARGUMENT

I.

ADVERTISING RESTRICTIONS ON PROFESSIONALS SERVE A VALID PUBLIC INTEREST.

This Court has evolved two standards of review for First Amendment cases (a) the "as applied" standard and (b) the facial "overbreadth" doctrine. Both standards employ a balancing of interests. The facial "overbreadth" doctrine balances the interests of both those before and not before the court. The "as applied" standard concerns itself solely with the parties before the court.

The facial overbreadth doctrine was most recently defined as follows in *Broadrick* v. *Oklahoma,* 413 U.S. 601, 612-15 (1973):

> "Litigants, therefore, are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression. . . . The consequence of our departure from traditional rules of standing in the First Amendment area is that any enforcement of a statute thus placed at issue is totally forbidden until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression. *Application of the overbreadth doctrine in this manner is, manifestly, strong medicine. It has been employed by the Court sparingly and only as a last resort.* Facial overbreadth has not been invoked when a limiting construction has been or could be placed on the challenged statute. . . . Additionally,

> overbreadth scrutiny has generally been somewhat less rigid in the context of statutes regulating conduct in the shadow of the First Amendment, but doing so in a neutral, noncensorial manner." [Emphasis supplied; citing *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. 367 (1969), among others.]

The balancing test utilized in overbreadth and "as applied" cases is best described by *United States* v. *O'Brien,* 391 U.S. 367, 377 (1968):

> ". . . we think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. . . ."

A. Fourteenth Amendment Overbreadth Has Been Denied By This Court In A Similar Ban On Advertising.

Plaintiffs argue that the statutory ban on advertising at bar is overbroad. However, a similar statute in *Semler* v. *Oregon State Board of Dental Examiners,* 294 U.S. 608 (1935), withstood overbreadth attack on Fourteenth Amendment grounds. Since the overbreadth less-restrictive-alternative test in First Amendment cases is similar to the overbreadth less-restrictive-alternative test under the due process clause, the First Amendment overbreadth argument must fail. See, Comment, Less Drastic Means and The First Amendment, 78 Yale 464 (1968-69).

The due process less-restrictive-alternative principle was entrenched enough by 1927 to prompt a comment by Brown, Due Process of Law, Police Power and the Supreme Court, 40 Harv. L. Rev. 943, 954-56 (1927). Nevertheless, in 1935

this Court rejected that due process overbreadth attack on directly analogous facts in *Semler*.

The following observation from *Semler* is precisely applicable to the instant case:

> "The state court defined the policy of the statute. The court said that while, in itself, there was nothing harmful in merely advertising prices for dental work or in displaying glaring signs illustrating teeth and bridge work, it could not be doubted that practitioners who were not willing to abide by the ethics of their profession often resorted to such advertising methods to 'lure the credulous and ignorant members of the public to their offices for the purpose of fleecing them.' *The legislature was aiming at 'bait advertising.' 'Inducing patronage,' said the court, 'by representations of "painless dentistry," "professional superiority," "free examinations," and "guaranteed" dental work' was, as a general rule, 'the practice of the charlatan and the quack to entice the public.'*
>
> "We do not doubt the authority of the State to estimate the baleful effects of such methods and to put a stop to them. The legislature was not dealing with traders in commodities, but with the vital interest of public health, and with a profession treating bodily ills and demanding different standards of conduct from those which are traditional in the competition of the market place. The community is concerned with the maintenance of professional standards which will insure not only competency in individual practitioners, but protection against those who would prey upon a public peculiarly susceptible to imposition through alluring promises of physical relief. And the community is concerned in providing safeguards not only against deception, but against practices which would tend to demoralize the profession by forcing its members into an unseemly rivalry which would enlarge the opportunities of the least scrupulous. What is

generally called the 'ethics' of the profession is but the consensus of expert opinion as to the necessity of such standards.

> *"It is no answer to say, as regards appellant's claim of right to advertise his 'professional superiority' or his 'performance of professional services in a superior manner,' that he is telling the truth. In framing its policy the legislature was not bound to provide for determinations of the relative proficiency of particular practitioners. The legislature was entitled to consider the general effects of the practices which it described, and if these effects were injurious in facilitating unwarranted and misleading claims, to counteract them by a general rule even though in particular instances there might be no actual deception or misstatement"* (Emphasis supplied; 294 U.S. at 611-13).

B. The Overbreadth Test Should Not Be Applied To Professional Advertising.

The First Amendment overbreadth test was developed to prevent "chilling" of fragile First Amendment rights. *Broadrick* v. *Oklahoma,* 413 U.S. 601 (1973). Advertising is not such a fragile First Amendment right. As stated in footnote 24 of *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.,* 48 L.Ed.2d 346 at 364 (1976):

> "In concluding that commercial speech enjoys First Amendment protection, we have not held that it is wholly undifferentiable from other forms. There are common sense differences between speech that does 'no more than propose a commercial transaction' *Pittsburgh Press Co.* v. *Pittsburgh Comm'n on Human Relations,* 413 U.S., at 385, 37 L.Ed.2d 669, 93 S.Ct. 2553, and other varieties. *Even if the differences do not justify the conclusion that commercial speech is valueless, and thus subject to complete suppression by the State, they nonetheless suggest that a different degree of*

> *protection is necessary to insure that the flow of truthful and legitimate commercial information is unimpaired.* The truth of commercial speech, for example, may be more easily verifiable by its disseminator than, let us say, news reporting or political commentary, in that ordinarily the advertiser seeks to disseminate information about a specific product or service that he himself provides and presumably knows more about than anyone else. Also, commercial speech may be more durable than other kinds. Since advertising is the sine qua non of commercial profits, there is little likelihood of its being chilled by proper regulation and foregone entirely." [Emphasis supplied.]

Since advertising is not a First Amendment right requiring stringent protection, minimal incursions of the right cannot be deemed substantial when compared to the vital interest in preserving professional standards, *Semler* v. *Oregon State Board of Dental Examiners,* 294 U.S. 608 (1935); *Cf. Head* v. *New Mexico Board of Examiners,* 374 U.S. 424 (1963). See also *United States* v. *Hunter,* 459 F. 2d 205 (4th Cir. 1972), *cert. denied,* 409 U.S. 934 (1972). Since the hard, durable nature of advertising takes advertising out of the mainstream of the First Amendment and since a "right to know" justification has clearly been held to be on the periphery of the First Amendment, see *Broadrick* v. *Oklahoma,* 413 U.S. 601, 614 (1973), citing *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. 367 (1969); the First Amendment overbreadth review in the case of professional advertising is not a strict test at all, and should be comparable to the Fourteenth Amendment overbreadth review that occurred in *Semler.*

Dorothy Fahs Beck's dissertation, The Development of the Dental Profession in the United States, A Study in the Natural History of a Profession, submitted to the Univer-

sity of Chicago in December, 1932, and on file at the American Dental Association Library, Chicago, Illinois, states at pages 176-178:

> "The increasing number of dentists brought practitioners in more direct competition with each other for patients. With the increasing population density and complexity of dental practice, itinerant practice became a phenomenon of the past. Dentists settled down to resident practices, dependent upon clienteles drawn from immediately surrounding areas. Dental education and dental practice also became more standardized. Advertising, therefore, was no longer needed to impart information regarding the time and place where the dentist was available, the type of work he performed, and the character of his training. Its sole function became that of a tool of competition with other dentists within the same area. *As such, advertising rapidly degenerated into glaring misrepresentations and exaggerated statements.*
>
> "Those dentists practicing in residental sections found that their practice succeeded easily without advertising. Their reputations for highly skilled workmanship and their intimate daily contacts with the community life were sufficient to assure them an adequate clientele. *To them the custom of advertising in its then exaggerated and misleading form was not only an unnecessary and burdensome expense but also a serious hazard to the professional respect and trust which had been the key to their personal success.* It degraded in the eyes of the public the dignity of their jealously-guarded professional position into that of a grasping, self-seeking craft.
>
> "Dentists practicing in large urban areas, when forced to use advertising as a tool of competition, also came to hate the custom, for it threatened to consume the bulk of their profits. They also had opportunity to experience the injustice done to many dentists because

> of the fact that the public was unable to recognize exaggerated claims and distinguish between good and poor service in such a complex activity as dental service. Temporarily at least, he who most cleverly and enticingly presented claims of superiority and low fees drew the most patients, while better trained and more capable men sat idle in their offices as the price of their honesty and modesty.
>
> "It was these changed circumstances which reduced the function of advertising to a mere tool of competition that gradually forced the recognition of the inadequacy of advertising as a professional practice. *As the situation approached a critical point, steps were rapidly taken in the direction of definite institutional control of advertising, as well as of other phases of the conduct of dentists.* So strong was the sentiment in favor of such control by the time early dental societies were organized that from the outset control of professional conduct became one of the primary functions of dental societies." [Emphasis supplied.]

The dentists' experiences, historically documented by Ms. Beck in her dissertation, are quite similar to that of United States patent attorneys. See, *e.g.*, Hobbs, Lawyer Advertising: A Good Beginning But Not Enough, 62 A.B.A.J. 735, 737 (1976).

Plaintiffs rely heavily on the contention that some regulation of professional advertising is necessary to control fraudulent and misleading advertising, but that a total ban against advertising goes too far.

This argument is contrary to the considered judgment of numerous state courts which have enforced state regulation. The specific examples that follow parallel the experience of the patent attorneys that regulation by narrowly defined "fraudulent" advertising statutes invites too many abuses. Thus, in *In re Campbell,* 142 P.2d 492 (Wash., 1943), the court stated at 497:

> "To describe in express terms a faulty advertisement is practically to instruct the defendant how to evade it, and as to the limitless variations of language, symbols, and verbal or pictorial allurements, no human ingenuity could possibly anticipate and forestall them."

In holding the advertisement deceptive and fraudulent, the court emphasized that the advertiser promised his personal attention to readers of his ads but neglected to mention that the Seattle office was a clinic and that the advertiser's time was consumed by twelve other dental offices in California.

The rationale for broad advertising regulations advanced in *Laughney* v. *Maybury,* 259 Pac. 17 at 20 (Wash., 1927) demonstrates the difference between broad regulation of discretionary services and broad regulation of *prescribed* standardized products. There is only one variable in the case of prescribed standardized products. Therefore, there is no reason to protect the public from selecting a pharmacist for a *prescribed* drug solely on the basis of an advertised $ .50 per bottle difference in price, but the equities are different where there exist many variables. The cost of selecting unnecessary professional services on the basis of loss-leader advertising may be unnecessary surgery or the unnecessary or incompetent filling of teeth that promotes painful, expensive root canal work in later life. The *Laughney* court noted the tendency for those in good health to imagine ailments and for the physically ill to be unduly susceptible to persuasion and to grasp at shadows. A tangible object may be examined and approved before purchase, but treatment is comparable to an adhesion contract and must be paid for whether beneficial or not, the court said.

Modern System Dentists, Inc. v. *State Board of Dental Examiners of Wisconsin,* 256 N.W. 922 (Wis. 1934), holds

that "advertising particular services or appliances at a price from $——— up would offend the statute because it tends to deceive or mislead the public." Indeed, the practice seems quite analogous to "bait and switch" advertising.

The following cases lend support to the argument that allowing "good" professional advertising necessarily means allowing "borderline" advertising and that it is much too difficult to police the abuses of these borderline cases.

In *Kelley* v. *Texas State Board of Dental Examiners,* 530 S.W.2d 132 (Tex. Civ. App., 1975) the court was required to consider whether a pamphlet written by a dentist and entitled "One Answer to Cancer" was the use of advertising statements of a character tending to mislead or deceive the public. The court held that it was.

In *Levine* v. *State Board of Registration and Examination in Dentistry,* 1 A.2d 876, 877 (N.J. 1938) the court passed on the validity of a series of advertisements citing prices for plates, fillings, and anesthetic. The advertisement touted the dentist for doing work better and cheaper. The court noted that even if the advertisement in issue was not *per se* deceptive, that type of advertising gave the unscrupulous dentist an opportunity to deceive his patients.

So, also, in *Donohue* v. *Andrews,* 47 P.2d 940, (Ore., 1935) the facts illustrate that it is easy to drum up business without informing the public. There a dentist advertised "Modern Dentistry; Not Cheap Dentistry, but Modern Dentistry Cheap." The *Donohue* court held such advertising to be impermissible noting that when dealing with professional advertising, "the rules of the marketplace do not apply."

The plaintiffs, as well as all those who advocate advertising in the professions, rest their argument on the

contention that advertising will inform and reduce prices. Although plaintiffs argue that the reduction of prices is something that all economists agree upon, they do not explain the manner in which prices are reduced and whether that is short term or long term economic analysis. Indeed, one of plaintiffs' own authorities acknowledges that the allowance of full-scale advertising would result in increased advertising costs in order to neutralize the advertising of other lawyers with a probable result of an increase in the fees charged. See, *Monopolies and Mergers Commission, Services of Solicitors in England and Wales, a Report on the Supply of Services of Solicitors in England and Wales in Relation to Restrictions on Advertising,* Ch. 5, §121 (Her Majesty's Stationery Office, 1976, reprinted at Plaintiffs' Appendix 7a).

In addition, advertising may cause serious allocation problems in any profession in which it is introduced. Advertising generally will reduce prices only after there are economies of scale which result from increased concentration. In other words, advertising may well drive out of the professions the smaller, highly competent but less economically resourceful professionals, permitting the larger, more economically resourceful firms to increase their share of the market and, in turn, by taking advantage of the economies of scale the larger firms may reduce prices. Significantly, this may well lead to the large professional firms attaining monopoly power and increased prices in the long run. Thus, one commentator has observed:

> "Hence, after advertising has been generally adopted, and the trade settles down again with some sort of equilibrium, the pattern of the industry will have changed; sales will have been concentrated among a smaller number of firms, and the size of the 'representative firms' will have increased." (Kaldor, "The Economic Aspects of Advertising" in *Readings In Current Economics,* Irwin Ed. (1958).)

Especially in the case of non-price advertising, most economists agree that cost generally will escalate with advertising and, thus, prices would be lower in the absence of non-price advertising. Hamberg, *Principles of a Growing Economy* 668 (1961).

Another problem with advertising in the context of a profession is that there is always the possibility that advertising may do what it is designed to do, namely, sell unnecessary services. Thus, there is a substantial likelihood that the public may utilize professional services not out of necessity but because of the necessary puffing that good advertising causes. Samuelson, Economics 500-01 (6th ed. 1964).

Interestingly enough, the marketing correspondent of a large Chicago newspaper has written a series of articles in which he regards the discussions among proponents of advertising for lawyers on the subject of advertising as being especially naive. He states:

> "Some consumers reportedly have called for lawyer advertising, contending that legal costs would go down if lawyers competed. I think the opposite would happen. If lawyers advertised it would tend to cause more demand for legal services and prices would go up. Consumers also would have to pay for the cost of advertising, as they do for every product or service advertised." (App. 11)

In addition, this correspondent also has discussed the abuses in connection with advertising by banks, as well as abuses he anticipates if lawyer advertising is permitted. (App. 10, 11)

From the foregoing discussion, it would appear that there is sufficient controversy over the question of whether advertising is beneficial to the public when utilized by professionals so that it cannot be argued that those states

which have enacted legislation regulating advertising have violated the First Amendment.

This is an extremely sensitive area in which most of the focus has been on the short run and not enough attention has been directed to the entire impact on the professions. Economically it may well be that it may be to the disadvantage of the public if the professions become as highly concentrated as the rest of the American economy.

C. The Statute Is Constitutional "As Applied"

Historically and functionally the rationale for stringent controls of professional advertising enunciated in *Semler* v. *Oregon State Board of Dental Examiners,* 294 U.S. 608 (1935) has been time tested and is justified. That balance has not been tipped by any concededly weak First Amendment rights which advertising may have. The *Virginia Pharmacy* case only stands for the proposition that certain types of advertising are entitled to First Amendment consideration, not full blown absolute protection. Advertising is not overly sensitive to First Amendment chill. *Virginia Pharmacy* can easily be distinguished on its facts from advertising in a professional setting. Prescriptions for standardized drugs are not the same thing as discretionary professional services purchased from professionals of varying competence and ethics. Therefore, the statute should be declared constitutional "as applied" and on the strength of a facial "overbreadth test." The balance among government and advertising professionals and consumers is struck in favor of the government. Stringent advertising control, especially in the health area, is the only effective means of protecting the public. The *Virginia Pharmacy* argument that tipped the scales is not present

here. There consumers were already protected by a prescription, therefore, further government protection was unnecessary the Court said. Here, there is no prior protection. Accordingly, government protection is in order and stringent advertising controls have proven to be the most efficacious means of providing that protection.

In conclusion, there are substantial reasons why state governments have decided to regulate advertising among professionals. Even if the contention that advertising will lower prices and increase demand has short term justification, the long term economic analysis may be quite different. Clearly, the scale is not so overbalanced as to hold state regulation unconstitutional.

II.

ENFORCEMENT OF PROHIBITIONS AGAINST THE ADVERTISEMENT OF PROFESSIONAL SERVICES DOES NOT VIOLATE THE SHERMAN ACT.

Initially, it should be noted that this Court's consideration of this matter, for Sherman Act purposes, must be limited to the issue of whether disciplinary Rule 2-101(B) constitutes price fixing so as to be a *per se* violation of the Sherman Act under the authority of *United States* v. *Gasoline Retailers Association, Inc.*, 285 F.2d 688 (7th Cir. 1961), which held that an agreement between gasoline retailers not to advertise prices was a *per se* violation of the Sherman Act.

Such limitation on this Court is mandated by the record below because the Supreme Court of Arizona had no occasion to make a rule of reason analysis with respect to the effect of DR-2 101(B). Rather, the court held that this prohibition against the advertisement of the price of legal

services did not constitute a *per se* violation of the Sherman Act, relying upon *Goldfarb* v. *Virginia State Bar,* 421 U.S. 773 (1975) and *Parker* v. *Brown,* 317 U.S. 341 (1943), for its holding.

Consequently, plaintiffs' attempt, throughout their brief, to broaden the scope of the Court's inquiry to include a determination as to whether a ban on all lawyer advertising violates the Sherman Act is somewhat misleading. Thus, any determination by this Court with respect to whether the ban on advertising violates the Sherman Act should be expressly limited to price advertising. This also presumes that this Court will now hold that footnote 17 in *Goldfarb* does not require a rule of reason analysis for every alleged violation of the Sherman Act involving professionals. This footnote is the most persuasive argument opposing such a holding, and we urge it on the Court. The remand of *United States* v. *Nat'l Society of Professional Engineers,* 422 U.S. 1031 (1975) supports this conclusion.

The differences between the state action issue involved in the instant case and the many statutes affecting the dental profession are sufficient and, therefore, we make no argument with reference to state action.

CONCLUSION

The reason this brief amicus curiae is being filed is to demonstrate to the Court the vast network of regulation in the states on advertising in the dental profession and the reasons for such regulation.

The major economic justification given by plaintiffs, if valid at all, is not so overwhelming that this Court should in this decision sweep so broadly as to permit advertising in all the professions.

The consumers may well be the class of people who are most injured by a broad decision on advertising on the state of the record before this Court. Accordingly, the Supreme Court of Arizona should be affirmed.

Respectfully submitted,

PETER M. SFIKAS
MICHAEL P. TONE
PAT CHAPIN
Attorneys for the AMERICAN DENTAL ASSOCIATION

Of Counsel
PETERSON, ROSS, RALL, BARBER & SEIDEL
135 South LaSalle Street
Chicago, Illinois 60603
(312) 263-7300

APPENDIX

APPENDIX

IN THE
SUPREME COURT OF THE UNITED STATES

NO. 76-316

JOHN R. BATES and VAN O'STEEN,

Appellants,

v.

STATE BAR OF ARIZONA,

Appellee.

STIPULATION

William C. Canby, on behalf of John R. Bates and Van O'Steen, and Peter M. Sfikas, on behalf of the American Dental Association, do hereby stipulate that the American Dental Association may file an amicus brief with the Supreme Court of the United States in the above captioned matter.

/s/ *William C. Canby, Jr.*
William C. Canby, representing
John R. Bates and Van O'Steen

/s/ *Peter M. Sfikas*
Peter M. Sfikas, representing
the American Dental Association

IN THE
SUPREME COURT OF THE UNITED STATES

NO. 76-316

JOHN R. BATES and VAN O'STEEN,

Appellants,

v.

STATE BAR OF ARIZONA,

Appellee.

STIPULATION

John P. Frank, on behalf of the State Bar of Arizona, and Peter M. Sfikas, on behalf of the American Dental Association, do hereby stipulate that the American Dental Association may file an amicus brief with the Supreme Court of the United States in the above captioned matter.

/s/ *John P. Frank*
John P. Frank, representing
the State Bar of Arizona

/s/ *Peter M. Sfikas*
Peter M. Sfikas, representing the
American Dental Association

All state legislatures regulate dentists' advertising practices. Most states explicitly regulate advertising although three do so in general terms. *Arizona Revised Statutes,* Tit. 32, Ch. 11, §32-1263 (1976 Sup.) provides that a dentist's license may be suspended or revoked for unprofessional conduct. *Minnesota Statutes Annotated,* Ch. 150A.11 (1970) provides that public advertising by dentists may be controlled by reasonable rules and regulations of the board and *Vermont Statutes Annotated,* Tit. 26, Ch. 13, §809 (1975) provides that advertising not in conformity with the code of ethics of the American Dental Association is grounds for discipline.

Thirty-eight *states* prohibit the advertising of prices:

Alabama	Alaska	Arkansas
California	Colorado	Connecticut
Delaware	Dist. of Columbia	Florida
Hawaii	Idaho	Illinois
Kansas	Kentucky	Louisiana
Maine	Maryland	Massachusetts
Michigan	Mississippi	Missouri
Nebraska	Nevada	New Hampshire
New Jersey	North Dakota	Ohio
Oklahoma	Oregon	Pennsylvania
Rhode Island	Texas	Utah
Virginia	Washington	West Virginia
Wisconsin	Wyoming	

Thirty-nine states prohibit fraudulent, false or misleading advertising:

Alabama	California	Colorado
Connecticut	Delaware	Florida
Hawaii	Idaho	Illinois
Indiana	Kansas	Kentucky

Louisiana	Maine	Maryland
Massachusetts	Michigan	Missouri
Montana	Nebraska	Nevada
New Hampshire	New Mexico	New York
North Carolina	North Dakota	Ohio
Oklahoma	Oregon	Pennsylvania
Rhode Island	South Carolina	Texas
Utah	Virginia	Washington
West Virginia	Wisconsin	Wyoming

The advertisement of "painless dentistry" is prohibited by the following 35 states:

Alabama	Alaska	Arkansas
California	Colorado	Connecticut
Delaware	Dist. of Columbia	Hawaii
Idaho	Illinois	Indiana
Kansas	Kentucky	Louisiana
Maine	Maryland	Massachusetts
Michigan	Mississippi	Missouri
Montana	Nebraska	Nevada
New Hampshire	New Mexico	Ohio
Oregon	Pennsylvania	Rhode Island
Texas	Utah	Virginia
West Virginia	Wyoming	

Advertising professional superiority is prohibited by the following 39 states:

Alabama	Alaska	Arkansas
California	Colorado	Connecticut
Delaware	Dist. of Columbia	Florida
Hawaii	Idaho	Illinois
Indiana	Kansas	Kentucky
Louisiana	Maine	Maryland
Massachusetts	Michigan	Mississippi

Missouri	Montana	Nebraska
Nevada	New Hampshire	New Mexico
Ohio	Oklahoma	Oregon
Pennsylvania	Rhode Island	Texas
Utah	Virginia	Washington
West Virginia	Wisconsin	Wyoming

Sixteen state statutes refer to directory listings:

Alabama	Arkansas	Colorado
Connecticut	Florida	Illinois
Kentucky	Maine	Minnesota
New York	North Carolina	North Dakota
Oklahoma	South Dakota	Tennessee
Wyoming		

The following 45 states regulate dentists who advertise through utilization of signs:

Alabama	Alaska	Arkansas
Colorado	Connecticut	Delaware
Dist. of Columbia	Florida	Georgia
Hawaii	Illinois	Indiana
Iowa	Kansas	Kentucky
Louisiana	Maine	Maryland
Massachusetts	Michigan	Minnesota
Mississippi	Missouri	Montana
Nebraska	Nevada	New Hampshire
New Jersey	New Mexico	New York
North Carolina	North Dakota	Ohio
Oklahoma	Oregon	Pennsylvania
Rhode Island	South Dakota	Tennessee
Texas	Utah	Virginia
West Virginia	Wisconsin	Wyoming

Twenty-seven states either directly or indirectly regulate newspaper advertising by dentists:

Alabama	Alaska	Arkansas
Connecticut	Dist. of Columbia	Florida
Georgia	Hawaii	Illinois
Iowa	Kansas	Kentucky
Louisiana	Maine	Massachusetts
Michigan	Missouri	Montana
Nevada	North Dakota	Oklahoma
Rhode Island	South Carolina	Texas
Utah	West Virginia	Wyoming

Forty-three states prohibit the use of solicitors or press agents:

Alabama	Alaska	Arkansas
California	Colorado	Delaware
Dist. of Columbia	Florida	Georgia
Hawaii	Idaho	Illinois
Indiana	Iowa	Kansas
Kentucky	Louisiana	Maine
Maryland	Michigan	Mississippi
Missouri	Montana	Nebraska
New Jersey	New Mexico	New York
North Carolina	North Dakota	Ohio
Oklahoma	Oregon	Pennsylvania
Rhode Island	South Carolina	Tennessee
Texas	Utah	Virginia
Washington	West Virginia	Wisconsin
Wyoming		

The specific statutory references are as follows:

Code of Alabama, Tit. 46, §§120(22), 120(23) (1973 Cum. Sup.)

Alaska Statutes, Tit. 8, Ch. 36, §08.36.310 (July, 1973)

Arizona Revised Statutes, Tit. 32, Ch. 11, §32-1263 (1976-1977 Cum. Sup.)

Arkansas Statutes Annotated, Tit. 72, Ch. 5 §§72-544 and 72-560 (1975 Sup.)

California Code Annotated, Business and Professions, Ch. 4, §§1680 and 1701 (West Sup. 1976)

Colorado Revised Statutes, Tit. 12, Art. 35, §12-35-118 (1975 Cum. Sup.)

Connecticut General Statutes Annotated, Tit. 20, Ch. 379, §20-114 (1958)

Delaware Code Annotated, Tit. 24, Ch. 11, §§1131 and 1132 (1974)

District of Columbia Code Encyclopedia, Tit. 2, Ch. 3, §§2-311 (1966)

Florida Statutes Annotated, Tit. 30, Ch. 466, §§466.24, 466.27 (1965)

Code of Georgia Annotated, Ch. 84-7, §84-724 (1976 Cum. Pocket Part)

Hawaii Revised Statutes, Tit. 35, Ch. 448, §§448-4, 448-20 (1968)

Idaho Code, Tit. 54, Ch. 9, §54-924 (1975 Cum. Pocket Part)

Illinois Annotated Statutes, Ch. 91, §§62(17), 72b (1966)

Burns Indiana Statutes, Tit. 25, Ch. 1, §25-14-1-19 (1974)

Iowa Code Annotated, Tit. 8, Ch. 153, §153.25 (1972)

Kansas Statutes Annotated, Ch. 65, Art. 4, §§65-1436, 65-1437, 65-1439 (1972)

Kentucky Revised Statutes, Ch. 313, §§313.130, 313.140 (1972) §313.240 (1974 Cum. Sup.)

Louisiana Revised Statutes, Tit. 37, Ch. 9, §775 (1974)

Maine Revised Statutes Annotated, Tit. 32, Ch. 15, §§1009, 1014 (1964)

Annotated Code of Maryland, Art. 32, §§11, 12 (1957) and §16 (1976 Sup.)

Annotated Laws of Massachusetts, Ch. 112, §52A (1975)

Michigan Statutes Annotated, Vol. 10, Ch. 122, §§14.629(16) and 14.629(17) (1969) and §14.629(18) (April, 1976 Cum. Sup.)

Minnesota Statutes Annotated, Ch. 150, §150A .11 (1970)

Mississippi Code Annotated, Tit. 32, Ch. 4, §8773 (1972 Cum. Sup.)

Vernon's Annotated Missouri Statutes, Tit. 32, Ch. 332, §§332.068, 332.160, 332.380, 332.480 (1966)

Revised Codes of Montana, Tit. 66, Ch. 9, §66.917 (1947)

Revised Statutes of Nebraska, Ch. 71, Art. 1, §§71-147, 71-148 (1943)

Nevada Revised Statutes, Tit. 54, Ch. 631, §631.050 (1974)

New Hampshire Revised Statutes Annotated, Ch. 317, §317-A:17 (1975 Sup.)

New Jersey Statutes Annotated, Tit. 45, Ch. 6, §45:6-7 (1963)

New Mexico Statutes Annotated, Chs. 66 and 67, Art. 4, §§66-913, 67-914 (1961)

McKinney's Consolidated Laws of New York, 16 Education §6509 (1976-1977 Cum. Annual Pocket Part)

General Statutes of North Carolina, Ch. 90, Art. 2, §90-41 (1975)

North Dakota Century Code, Tit. 43, §§43-28-18, 43-28-25 (1960)

Baldwin's Ohio Revised Code, Tit. 47, Ch. 4715, §§ 4715.18, 4715.30 (1975 Cum. Issue)

Oklahoma Statutes Annotated, Tit. 59, Ch. 7, §§328.28, 328.31, 328.32, 328.50 (1971)

Oregon Revised Statutes, Tit. 52, Ch. 679, §679.140 (1975)
Purdon's Pennsylvania Statutes Annotated, Tit. 63, Ch. 4, §122(i) (1968)
General Laws of Rhode Island, Tit. 5, Ch. 31, §§5-31-8, 5-31-9 (1957)
Code of Laws of South Carolina, Tit. 56, Ch. 9, §56-636.19 (1975 Cum. Sup.)
South Dakota Compiled Laws, Tit. 36, §§36-6-28, 36-6-29, 36-6-29.1 (1969)
Tennessee Code Annotated, Tit. 63, Ch. 5, §63-554 (1976)
Vernon's Texas Civil Statutes, Tit. 71, Ch. 9, Art. 4548(f) and 4548(g) (1976)
Utah Code Annotated 1953, Tit. 58, Ch. 7, §58-7-7 (1963)
Vermont Statutes Annotated, Tit. 26, Ch. 13, §809 (1975)
Code of Virginia 1950, Tit. 54, Ch. 8, §54-187 (1976)
Revised Code of Washington, Tit. 18, Ch. 18.32, §18.32.290 (1961)
West Virginia Code, Ch. 30, Art. 4, §30-4-7 (1976)
Wisconsin Statutes Annotated, Tit. 40A, Ch. 447, §447.07 (1974)
Wyoming Statutes, Tit. 33, Ch. 15, §33.192.12 (1975 Cum. Sup.)

CHICAGO DAILY NEWS
June 3, 1975

Lawyers advertise?

Watch out, McBarrister

An article in a recent edition of the American Bar Assn. Journal proposed that ethical codes be changed so that lawyers can advertise.

The author of the article, Jerome Wilson, a New York lawyer, even went so far as to have Foote, Cone & Belding prepare some sample ads for an imaginary law firm called Littleford & Weekley.

I thought it was an entertaining article until I discovered that Wilson was serious about his proposal. Right in the middle of what could have been a humorous piece, he started citing landmark cases and such legal tra-la as the "right to know."

"It is time," Wilson wrote, "to amend the code and lift the ban on advertising. It is time the legal profession entered the nation's open marketplace.

I THINK THE LEGAL PROFESSION has enough image and reputation problems already without taking on the vulnerabilities of advertising.

If lawyers were allowed to advertise, I'll bet that Sears, Roebuck would take over the legal business in a couple of years. Sears would go out and recruit the best young lawyers in the country (from non-prestigious law schools). Every store would have its own lawyer sitting behind a desk, probably near the hardware section.

If a person wanted a will made out, he could have the paperwork completed while picking out the color of Sears paint he needs for his garage.

The same way it has its Kenmore appliances, Craftsman tools and Diehard batteries, Sears would pick a brand name for its legal service. It probably would be Legal Guardian.

("Hi, I'm Bob Griese. When I had to negotiate my last contract with the Miami Dolphins, I went to someone I know and trust, my Legal Guardian at Sears. . .")

There would be different level and prices for service. For a routine will, name change or traffic ticket, "Sears good quality" would do the job. But for a major bankruptcy or a murder case, "Sears best" would be recommended.

SEARS WOULD LEAD THE law field for a while, but then McDonald's would move swiftly into the business with a franchise operation. They probably would call it McBarrister.

McBarrister would stress speed, rather than quality. It would have franchised storefront law offices all over the country. Want a will? They're all made out. Just come in and fill out the blanks.

The only trouble McBarrister will have is if a person needs something a little different. Then it will take hours to have it taken care of.

Popular Mechanics would zoom into the area after that with a simple "sue-it-yourself" program of monthly installments. You could send in every month for your own kit on a special aspect of the law. ("Make a writ of habeas corpus in your own basement in less than two hours for only $2.37!")

And when that catches on, people finally will realize that they don't need lawyers. Advertising will have killed the legal business.

And that, Mr. Wilson, is what will happen if lawyers start to advertise. If you need more proof, call the head of your local ad agency. You will find that there is another category of service business that does not advertise: ad agencies.

CHICAGO DAILY NEWS
Feb. 5, 1975

Bank panel checking on industry's ad ethics

The Bank Marketing Assn. has formed a committee to determine whether there are abuses in bank advertising and, if so, to establish a program to correct them.

The formation of the committee apparently was nudged along by a speech made in September by Alan B. Eirinberg, first vice president of Exchange National Bank.

Eirinberg, who has been appointed to the BMA committee, has urged the group to establish guidelines and a code of ethics to regulate bank advertising.

Jack W. Whittle, vice president-marketing at Continental Bank here, is chairman of the seven-member committee.

About 25 per cent of the nation's 14,000 banks are members of the BMA. But the membership includes the vast majority of the larger banks.

A spokesman said that the committee's prime target is not fraudulent advertising as much as that which is unclear and sometimes misleading.

From this writer's standpoint, the establishment of such a committee is sorely needed. Banking is one of the most complicated "products" that is advertised on a mass scale. I think the regulation of this advertising should come from within the industry rather than from federal and state government bureaucracies.

AS ONE EXAMPLE OF questionable advertising, Eirinberg has pointed out the promotion of "free checking accounts" by many banks across the country. Some are "free" if the customer maintains a $100 or $200 balance. Some are "free" if the customer maintains a savings account. Some are "free" if the customer signs up for a bank credit card.

It seems that banks are being too free with the word "free."

And now that some of the banks are willing to take an objective (I hope) look at their advertising, it's time for the savings and loan associations to do the same thing.

CHICAGO DAILY NEWS
Dec. 9, 1975

Lawyers seem naive about advertising use

About 200 lawyers from all over the country gathered in Chicago last weekend to consider whether they should use 20th-Century methods to sell their 19th-Century product.

The event was a meeting of local and state officials of the American Bar Assn. The subject was a proposal that would allow lawyers to advertise their services.

I was invited to the meeting, but I did not attend because I have a loud laugh and I didn't want to interrupt the proceedings.

It's not that I think lawyers are funny. Usually they're not, but when they are considering advertising, I think the results can be hilarious.

CONSIDER FOR A MOMENT that a provision in the proposal would prohibit advertising if it contained "laudatory comments" about the lawyer. That, counselors, is what advertising is all about.

Don't get me wrong. I believe lawyers should have the right to advertise, but I think they should exercise discretion and not advertise.

That isn't hedging. I also think lawyers should have the right to hit themselves on the head with a hammer. But I don't think they should exercise that right . . . with a couple of exceptions.

The ABA and most state bar associations have prohibited their members from advertising. In many cases these rules were ridiculously picky because some of them even prohibited such practices as sending out holiday greeting cards, using boldface listings in the telephone book or pasting the lawyer's special field of practice on his shingle.

SEVERAL REASONS were offered at the ABA meeting, but I don't think any of them justify the practice of advertising.

Some consumers reportedly have called for lawyer advertising, contending that legal costs would go down if lawyers competed. I think the opposite would happen. If lawyers advertised, it would tend to create more demand for legal services, and prices would go up. Consumers also would have to pay for the cost of advertising, as they do for every product or service advertised.

Proponents of this proposal want lawyers to engage in a relatively sophisticated business technique — advertising — but they seem to be saying this this is being done for the good of the consumer.

Bullbleep!

Advertising is a selling tool. It is a pretty sophisticated technique, yet, some lawyers want to jump into it without a marketing plan, research or other such basics. Big law firms don't have sales forces calling on prospective clients. They use no other routine marketing tools, yet they want to advertise. It's like choosing Mt. Everest for your first mountain climb.

DEC 9 1975

LAWYERS REALLY ARE parity products. Bar associations do not acknowledge good lawyers and bad lawyers. Just lawyers. I don't think advertising would help the consumer at all. I feel that the first lawyers to advertise would be the ones who have not been able to make it on referrals and recommendations.

In all fairness, I should say that I think the ABA chieftains don't even know what they're talking about when they discuss advertising.

I think they are talking about having a lawyer state in a telephone book that he specializes in tax, divorce, etc. They want him to be able to send out greeting cards, or announcements when he opens for business. And maybe some of those desk calendars at the end of the year.

If a lawyer can do all of this without any "laudatory comments" about himself, let him do it. But don't call it advertising.

App. 11