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OPINION	:	
	:	No. 81-304
of	:	
	:	OCTOBER 16, 1981
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THE HONORABLE KENNETH L. MADDY, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on matters we have rephrased as the following questions:

1. Where a dental insurance plan provides that the insurance company will pay a fixed percentage of a dentist's "usual fee" would a dentist who claims a "usual fee" that does not account for the fact that he has waived the patient's copayment violate certain California laws against misrepresentation and fraud?

2. Does a dentist's advertising that he will waive patient copayment under such a plan, in an effort to attract patients, violate certain California laws against false or misleading advertising?

CONCLUSIONS

1. Where a dental insurance plan provides that the insurance company will pay a fixed percentage of a dentist's "usual fee," a dentist who claims a "usual fee" that does not account for the fact that he has waived the patient's copayment does not violate California laws against misrepresentation and fraud.

2. A dentist who advertises that he will waive his patient's copayment under such a plan in an effort to attract patients does not violate the California laws against false or misleading advertising.

ANALYSIS

This opinion deals with certain aspects of the legality of what we are told is the practice of an increasing number of dentists of waiving that portion of their fee for professional services which is known as the patient's (percentage) copayment under policies of dental insurance which provide that the insurance company will pay a certain portion of a dentist's "usual fee," the remainder (that copayment) being paid by the patient

It has been estimated that roughly one-third of the nation presently have part or all of their annual dental bills paid through some form of dental insurance, in the amount of about 54 billion a year. (P.S. Elliott, *Delta*, *Blues Most Complex of All Plans*, Dental Economics (April '81) p. 68.) "[A]pproximately 43 million persons are covered by commercial insurance carriers, roughly 17 million are covered by Delta Dental Plans, some seven million people are covered by Blue Cross, Blue Shield Plans and another seven million are covered by other types of dental plans." (*Ibid*.) We are told by the requester: (a) that most dental insurance plans in California are of the first type and provide that the insurance company will pay a fixed percentage, such as 80 percent, of the dentist's "*usual fee*" for a service rendered, the patient paying the remainder (e.g., 20%) commonly called the copayment; (b) that the term "usual fee" for this dental insurance purpose is defined as "that fee regularly charged and received for a given service by an individual dentist" and which "is neither inflated nor deflated to accommodate an individual patient or group,"[1]

[1]The fee actually submitted is a "usual, customary and reasonable" or UCR fee. The latter factors temper the amount of the fee as does the practice of limiting it to one within the range of those submitted by 90 percent of the dentists in a given geographical area (e.g., a particular zip code) for like services. (See *Manasen* v. *California Dental Services* (N.D. Cal. 1976) 424 F. Supp. 657, 661.) Control over the amount of the fee can also be maintained by requiring dentists to submit an annual schedule of their fees (*ibid*.) as well as by requiring a predetermination of need to be made for the rendering of particular services, i.e., by having the treating dentist submit his pretreatment diagnosis and supporting radiographs for review and a preauthorization for the services being rendered.

and (c) that an increasing number of dentists are now routinely waiving the patient's copayment in an effort to attract patients, and are openly communicating that willingness through advertising, through letters to individuals and groups, or through simple agreement with the patient. We are also told that many dentists who waive the patient copayment for a particular service nonetheless claim an amount of a "usual fee" for insurance purposes which does not take that waiver into account. For example, under the policy of dental insurance just described, if a dentist's "usual fee" for a particular service is $100, the insurance company would be responsible for payment of $80 and the patient for the copayment of $20. The dentist will waive the $20 patient's copayment and only expect to receive the $80 in payment for his work but will still claim that his "usual" fee for it was $100.

We are asked whether that practice violates various California laws relating to the making of false and fraudulent statements to obtain advantage (i.e., laws against fraud and misrepresentation). We are also asked whether a dentist advertising that practice of waiver violates the various California laws against false or misleading advertising. Our answers to both questions are negative.

I

We are first asked whether a dentist who claims a "usual fee" in an amount that does not take into account that he has waived the patient's copayment under a policy of dental insurance which provides that the insurance company will pay a fixed percentage of his "usual fee," the balance or copayment being paid by the patient, violates certain California laws against fraud and misrepresentation. In this regard we are referred specifically to Business and Professions Code sections 1680(a) (unprofessional conduct for a dentist to obtain a fee by fraud and misrepresentation), 810(a) (1) (unprofessional conduct for a health care professional to knowingly present any false or fraudulent claim for the payment of loss under a contract of insurance), and 810(a) (2), (unprofessional conduct for a health care professional to knowingly prepare, make or subscribe any writing with the intent to use it to support an insurance loss claim); Insurance Code sections 556 (a) (1) (unlawful to present a false or fraudulent claim for the payment of loss under a contract of insurance) and 556(a) (3) (unlawful to prepare or subscribe a writing to use in support of such a false and fraudulent insurance claim), and support of such a false and fraudulent insurance claim), and section 532 of the Penal Code (knowingly and designedly defrauding another of money by any false and fraudulent representations or pretense).[2] In connection

[2]We were also asked whether the practice described would constitute a violation of section 330 of the Insurance Code (concealment, "neglect to communicate that which a party knows and ought to be communicated") by the dentist and/or the patient. That section, however, deals with the concealment of material facts in applying for a policy of insurance (*Newman* v. *Fireman's Ins Co.* (1944) 67 Cal. App. 2d

therewith it is suggested that the certification by a dentist to an insurance company for payment that his "usual fee" for a service is $100 when in fact he only expects to be paid the $80 that the company will pay as its 80 percent share of that amount (the $20 or 20 percent patient copayment being waived) is false and fraudulent in that under those circumstances the dentist's "usual fee" is really the $80 expected and not the $100 claimed. Thus it is contended the insurance company's liability is $64 (20% of $80) and not $80 (20% of $100) and the dentist's claim of a "usual fee" in the amount of $100 thus defrauds it of the $16 difference.[3] We do not agree with the suggested premise or the extrapolated conclusion.

The laws to which we are directed in connection with the first question have as a common denominator (1) the intentional making (2) of a false or fraudulent statement. Our focus, as that of the requester, is on the second factor or element, i.e., that of the statement's being false or fraudulent, and *unless* we are ready to say absolutely that the dentist's "usual" fee is not the $100 as claimed but rather the $80 received because of the waiver, his claim is not falsely or fraudulently stated and the law not violated.

The problem of course is with the term "usual fee" as used by the insurance plan in question and its providing for the company's payment to be based thereon. Needless to say, the term "usual" as used is ambiguous at best.[4] (*Cf. Anonymous* v. *Monarch Life Insurance Co.* (1964) 247 N.Y.S. 2d 894, 896 ("usual" and customary charges).) In our

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386, 392) and is not pertinent to the scenario presented in the request.

[3]It has also been suggested that the insurance company is damaged by the submission of fee statements which do not take account of the patient waiver by the havoc that that works on its actuarial and premium structure. We understand however that dental insurance carriers do not rely on submission of UCR fee schedules for calculating the premiums to be charged but that those premiums are calculated instead on the basis of *past experience*, i.e., on past experience of dental costs incurred by the insureds plus a percentage to cover the cost of administrative expenses, and for profit. The premium rate is adjusted from year to year depending upon actual experience. If the actual experience factor proves less than what was anticipated, the premium rate would be lowered, if the experience rate is higher than anticipated, the premium rate would be adjusted upward. Thus, to the extent that copayments might have not been collected in the past, that would be reflected in the "actual experience factor" and the premium rates would be adjusted accordingly. We must note that this does not mean the movement would necessarily be in an upward direction. Even accepting the premise that persons would be more apt to utilize dental services when they will be paying nothing rather than 20 percent for them, experience has shown that the type of dental work so performed is often *preventative* and of a type that would not be sought or performed otherwise, and that its performance then avoids the necessity of more major and costly work at a later time. (M.I. Roemer, M.D., et al., *Copayments for Ambulatory Care Penny-wise and Pound-foolish*, Medical Care Vol. XIII, No. 6 (June 1975) pp. 457–464.)

[4]The definition of "usual" provided by the requester—i.e., that fee *regularly charged and received* for a given service by an individual dentist . . . [that] is neither inflated nor *deflated to accommodate an individual* patient or *group*"—compounds the ambiguity.

context it can be interpreted to require that the patient copayment or other discount be taken into consideration in determining one's "usual" fee, and it also can be interpreted to not require consideration of that factor. Faced with that ambiguity we are constrained to resolve it in favor of the latter interpretive possibility, for the eases are "legion" which hold that "ambiguities in an insurance policy must be resolved against the insurer who drafted the document." (*Atlantic Nat. Ins. Co.* v. *Armstrong* (1966) 65 Cal. 2d 100, 110, and cases cited, *Gray* v. *Zurich Insurance Co.* (1966) 65 Cal. 2d 263, 269, & 269, fn. 3.) As our Supreme Court said in *Gray* v. *Zurich Insurance Co.*, *supra*, at page 269, footnote 3:

> "Typical of the legion of cases so holding is *Continental Gas Co.* v. *Phoenix Constr. Co.* (1956) 46 Cal. 2d 423, 437–438, which states: 'It is elementary in insurance law that *any ambiguity or uncertainty in an insurance policy is to be resolved against the insurer*. [Citations.] If semantically permissible, the contract will be given such construction as will fairly achieve its object of securing indemnity to the insured for the losses to which the insurance relates. [Citations.] *If the insurer uses language which is uncertain any reasonable doubt will be resolved against it; if the doubt relates to extent or facet of coverage, whether as to peril against* [citations], *the amount of liability* [citations], or the persons protected [citations], *the language will be understood in its most inclusive sense*, for the benefit of the insured.' See the numerous cases to the same effect collected in 13 Appleman, Insurance Law and Practice, § 7401 *et seq*.; 1 Couch, Insurance, § 155:73 *et seq*.; 1 Witkin, Summary of Cal. Law (7th ed. 1960). Contracts, § 224, pp. 252–253, supplemented in 1965 Supp. pp. 68–70." (Emphasis added.)

Returning to the situation presented, that which constitutes a "false or fraudulent" statement is not the subject of "a definite or invariable rule, but it may . . . be said that included therein are the elements of trick, cunning, dissembling and unfair ways by which another is deceived." (*People* v. *Massey* (1957) 151 Cal. App. 2d 623, 659 (fraud and false pretenses).) Generally, falsity has been defined as "such a fraudulent representation of an existing . . . or past fact, by one who knows it not to be true, as is adapted to induce the person to whom it is made to part with something of value (*People* v. *Wasservogle* (1888) 77 Cal. 173, 175, *People* v. *Staver* (1953) 115 Cal. App. 2d 711, 716, *People* v. *Gale* (1930) 106 Cal. App. 777, 780 (false pretenses)), as well as a representation of some fact calculated to mislead which is not true. (*People* v. *Wasservogle*, *supra*; *People* v. Martin (1957) 153 Cal. App. 2d 275, 285; *People* v. *Schmitt* (1957) 155 Cal. App. 2d 87, 107; *cf. People* v. *Staver*, *supra*, at p. 717.) (Compare, Civ. Code, § 1709, 1710 (deceit); *Roberts* v. *Ball, Hunt, Hart & Baerwitz* (1976) 57 Cal. App. 3d 104, 109, *Benning* v. *Safeco Ins. Co.* (1977) 74 Cal. App. 3d 615, 619.) As with the issue of "intent,"

the matter of falsity or fraudulent representation may be inferred from all the circumstances of a particular case. (*People* v. *Staver*, *supra*; *People* v. *Perrin* (1924) 67 Cal. App. 612, 616.)

In determining whether a dentist's claim of the value of his services is false or fraudulent we are again faced with the elusive term "usual fee" which at best is ambiguous and is incongruously used in the scenario presented. We have been told by the requester that the practice of waiving patient copayments under insurance plans such as the one described herein has become an increasingly prevalent practice by dentists. We are also told in connection therewith that a dual pricing structure has arisen for dental care, differentiating between those who are insured and those who are not.[5] (*Cf.* fn. 9, *post*.) The term "usual fee," however, presupposes a unitary fee structure for particular services and it therefore has become both an outmoded and unsatisfactory guide by which to fix a dentist's fee as well as an ineffectual vehicle to achieve the purposes for which it was originally designed and employed. Given that condition, the term "usual fee" standing alone without further restrictive definition certainly cannot provide the predicate for a charge of fraud or falsity.

In our case, since the term "usual fee" as used can admit the possibility of a fee amount which does not take a waived portion into account, and since we must so construe it here, the assertion by a dentist that such a fee is his "usual" one does not amount to a false or fraudulent statement. Accordingly we conclude that the claim by a dentist of an amount to be his "usual fee" which does not take into consideration the fact that he has, is, or will be waiving the patient's copayment under an insurance plan which provides that the insurance company will pay a fixed percentage of his "usual fee," the patient paying the remainder, does not violate the aforementioned California laws relating to the making of false and fraudulent statements.

II

We have also been asked whether a dentist who advertises that he will waive patient copayments under the insurance plan described herein, in an effort to attract patients, violates various California laws against false or misleading advertising. We are specifically directed to Business and Professions Code sections 17200 (unfair competition

[5]A dual pricing structure exists for dental services for other reasons as well. It is commonly accepted that a dentist might accord a discount to senior citizens, to friends and to other professionals as a matter of courtesy or good will and it has not been seriously contended that that offering makes his regular fee any less "usual." Similarly it has not been suggested that the dentist who does *pro bono* work, or who accepts less of a fee for MediCal patients, or who decides not to pursue collection of a billing, compromises the regularity or "usualness" of the fee he ordinarily would charge.

through unfair or fraudulent business practices or a false, deceptive or misleading advertising): *1680, subdivision (h)* (unprofessional conduct for a dentist to make advertising statements of a character tending to deceive or mislead the public); and *651* (unlawful for licentiate to disseminate false, fraudulent, misleading or deceptive statement or claim to induce business).

Unlike the set of laws to which we were directed in connection with the first question, which all had falsity as a common element necessary for their violation, the laws to which we are now directed do not require a false statement to be made. They prohibit not only statements which are untrue, but also those which, although true, tend to or have the capacity to deceive or mislead. Thus, section 1680, subdivision (h) of the Business and Professions Code provides that it is unprofessional conduct for a dentist to make use of "any advertising statements of a character tending to deceive or mislead the public." The section has been held to prohibit not only statements which are untrue but also those which, although true, tend to deceive or mislead. (*Webster* v. *Board of Dental Examiners* (1941) 17 Cal. 2d 534, 541–542.)[6] With similar purport, section 17200 of that code defines "unfair competition" as including "unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising." The section has been interpreted broadly to embrace both advertising which is actually false as well as that which although true, is either actually misleading or is such as to have *a capacity likelihood, or tendency, to deceive or confuse*. (*Chern* v. *Bank of America* (1975) 15 Cal. 3d 866, 876, *Payne* v. *United California Bank* (1972) 23 Cal. App. 3d 850, 856, *People ex rel. Mosk* v. *Lynam* (1967) 253 Cal. App. 2d 959, 966; *cf. Ball* v. *American Trial Lawyers Assn.* (1971) 14 Cal. App. 3d 289, 310; *Audio Fidelity, Inc.* v. *High Fidelity Recordings. Inc.* (9th Cir. 1960) 283 F.2d 551, 555; see also Bus. & Prof. Code, § 17500 ("untrue *or* misleading" advertising, unlawful).) Again, as with section 1680, subdivision (h). Section 17200 may be violated even where there is no specific intent to deceive or mislead (*Audio Fidelity, Inc.* v. *High Fidelity Recordings, Inc.*, *supra*; *People* v. *Wahl* (1941)) 39 Cal. App. 2d Supp. 771, 773), there being no qualifications such as "knowingly," "intentionally" or "fraudulently" present in the statute. (*In re Marley* (1946) 29 Cal. 2d 525, 529; *People* v. *Travers* (1975) 52 Cal. App. 3d 111, 115; *Brodsky* v. *Cal. State Bd. of Pharmacy* (1959) 173 Cal. App. 2d 680, 688.)

[6]In *Webster* our Supreme Court observed that this construction is consistent with the conclusion reached under similar federal statutes regulating ordinary commercial advertising and that "it would be unthinkable to accord a more stringent construction to a statute regulating one of the learned professions so intimately connected with public health and safety." 17 Cal. 2d at p. 541.) (Accord, *Va. Pharmacy Bd.* v. *Va. Consumer Council* (1976) 425 U.S. 748, 771–772; *Bates* v. *State Bar of Arizona* (1977) 433 U.S. 350, 383; *Oharlik* v. *Ohio State Bar Assn.* (1978) 436, 447, 455–456; *Friedman* v. *Rogers* (1979) 440 U.S. 1, 9, 10–11, fn.9.)

Lastly we are presented with Business and Professions Code section 651 which provides that:

> "(a) It is unlawful for any person licensed under this division . . . to disseminate or cause to be disseminated, any form of public communication containing a *false, fraudulent, misleading, or deceptive statement or claim*, for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he is licensed. . . .
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> "(b) A false, fraudulent, misleading, or deceptive statement or claim includes a statement or claim which does any of the following:
>
> "(1) Contains a misrepresentation of fact.
>
> "(2) Is *likely to mislead or deceive* because of a failure to disclose material facts.
>
> ". . . . . .
>
> "(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.
>
> "(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.
>
> "(c) . . . *Price advertising shall not be fraudulent, deceitful, or misleading, including statements* or advertisements of bait, *discount*, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. . . ."[7] (Emphases added.)

[7]This section formerly prohibited advertising or an offer to render professional Services under a representation that the fee to be charged was at a discount, constituted a percentage, or was otherwise less than the "average fee than regularly charged" under like conditions "for those professional services." (Stats. 1955, ch. 1050, p. 2001, § 1, *Cozad* v. *Board of Chiropractic Examiners* (1957) 153 Cal. App. 2d 249, 258–259; *Garvai* v. *Board f Chiropractic Exmrs.* (1963) 216 Cal. App. 2d 374, 378–379; *Anderson* v. *State Bd. of Chiropractic Examiners* (1970) 11 Cal. App. 3d 963, 967–968.) Its purpose was to prevent the securing of prospective patients upon the representation that they would receive professional services at less cost to

We therefore see that the three statutes in this grouping thus prohibit advertising which has a *tendency to deceive* the public and that, unlike the laws we dealt with before, neither the actual truth of a particular advertisement nor the intent with which it was made is relevant in determining whether these sections are violated if the advertising statement is misleading or has a tendency to mislead. In this regard it is suggested that a dentist who advertises that he will waive the patient's copayment and accept payment by an insurance company as payment in full for a particular dental service rendered violates these statutes because such a statement will perforce, mislead or deceive prospective patients into believing that they are getting a special "deal" by going to that particular dentist, when in fact the value of the professional services is no more than the amount paid by the insurance company and thus the patients obtain no particular benefit. Stripped of all embellishments[8] the suggestion thus posited is that the dual pricing structure that results from a dentist's waiver of patient copayment somehow taints any dental advertising associated therewith making it misleading, deceptive and so forth.[9] We do not agree that such deception results.

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them than was regularly charged. (*Anderson* v. *State Bd. of Chiropractic Examiners*, *supra*, at p. 968; 27 Ops. Cal. Atty. Gen. 288, 289–290 (1956).) The section was substantially revised in 1979 to delete the former prohibitions against the advertising of services at a discount and in its stead to prohibit the dissemination of false, fraudulent, misleading or deceptive statements or claims for the purpose of inducing or likely to induce the rendering of professional services. (Stats. 1979, ch. 653, p. 2006, § 2; 1979 Summary Digest, p. 183, *cf.* Bus. & Prof. Code, § 17501.1; *Va. Pharmacy Bd.* v. *Va. Consumer Council*, *supra*, 425 U.S. 748; *Bates* v. *State Bar of Arizona*, *supra*, 433 U.S. 350; *Ohralik* v. *Ohio State Bar Assn.*, *supra*, 436 U.S. 447; *Friedman* v. *Rogers*, *supra*, 440 U.S. 1.)

[8]It has also been suggested for example that such advertising is misleading because (a) it does not fully disclose all variables, or (b) because it does not disclose the fact that a patient may be called upon to pay certain surcharges, or (c) because it may be used as an opening to "bait and switch" (*cf*. Bus. & Prof. Code. § 17500; *cf.* Civ. Code, § 1770, subd. (c)), or as "loss leader" (*cf. id.*, §§ 17044, 17030). These and other factual situations may very well exist, but they are not necessarily inherent in the mere advertising itself about which we were asked. To the extent that they or yet other imaginable schemes may be present in a particular case, a violation or violations of law may well occur. (See, e.g., *People* v. *Columbia Research Corp.* (1977) 71 Cal. App. 3d 607, 610–612; cert. den. (1977, 434 U.S. 904.) In any event any analysis of whether a statement made in a particular advertisement is or is not misleading will perforce depend upon the actual statement itself and the situation in which it is cast.

[9]The argument also posits that the dual pricing structure itself constitutes an act of unfair competition under section 17200. Whether such obtains however is a factual matter to be determined on the various factors that attend each individual case (*Motors, Inc.* v. *Times-Mirror Co.* (19800 102 Cal. App. 3d 735, 740–741), which is not a function of our opinions. (62 Ops. Cal. Atty. Gen. 150, 163 (1979).) Thus we cannot say as a general matter that the charging of a lesser fee to one's insured patients is unfair per se. A justifiable functional predicate for the pricing differential (*cf.* Bus. & Prof. Code, § 17042) may well be as present in that situation as where a discount is permissibly given to customers who pay cash as opposed to those who buy on credit and time. (*Cf.* Civ. Code. § 18106, subd. (a); *Verbeck* v. *Clymer* (1927) 202 Cal, 557, 563.)

The dentist who advertises that he will waive patient copayment and will accept payment by the insurance company as payment in full for his work does not make a *false* statement, since that is exactly what will occur. Further, the advertising of a discount is not improper in itself, as it is permitted if it is not fraudulent. (See fn. 6, *ante*.) The question therefore is whether such advertising is misleading, i.e., whether it has a capacity to deceive, a determination which "depends in the last analysis on the impression which [it] makes on the minds of the consuming public." (*Benrus Watch Company* v. F.T.C. (8th Cir. 1965) 352 F. 2d 313, 319.)

In the field of commercial advertising, courts have scrupulously scrutinized assertions of discount and have assiduously demanded that valid bases exist for such claims to be predicated. (See, e.g., *F.T.C.* v. *Colgate-Palmolive Co.* (1965) 380 U.S. 374, 387; *Benrus Watch Company* v. *F.T.C.*, *supra*, 352 F.2d 313 at pp. 318–320; *Helbros Watch Company* v. *F.T.C.* (D.C. Cir. 1962) 310 F.2d 868, 869–870, n. 4; *Baltimore Luggage Company* v. *F.T.C.* (4th Cir. 1961) 296 F.2d 608, 611; *People* v. Columbia Research Corp. (1977) 71 Cal. App. 3d 607, 611.) The California Legislature has made like demands. (Bus. & Prof. Code, § 17501.) The reason is obvious. False or spurious assertions of savings would "have the tendency of deceiving the public as to the savings afforded by the purchase of a product . . . as well as to the value of the product acquired." (*Clinton Watch Company* v. *F.T.C.* (7th Cir. 1961) 291 F.2d 838, 840; accord, *Benrus Watch Company* v. *F.T.C.*, *supra*, 352 F.2d 313 at pp. 318–319.) Thus the vice perceived in such advertising assertions, "is its deception and the understandable inability of the price conscious consumer to control his urge to make a good buy." (*Helbros Watch Company* v. *F.T.C.*, *supra*, 310 F.2d 868 at p. 869.)

But these considerations do not nearly attend the situation presented by question two. Where a dentist advertises that he will waive patient copayment and accept the payment by the insurance company's payment in full for his services, the concern in the minds of the public to whom the advertising is directed is not their ability to have particular dental procedures performed at a *savings*, but rather their ability to have them performed without any uncovered cost to them. In other words, the concern of a prospective patient to whom the advertising is directed is *not* with the value of the dental work contemplated (i.e., whether it is $80 or $100) but instead whether he or she will have to pay anything for it (i.e., whether $0 or the $20 copayment will be required). Viewed against this, the advertising cannot be considered misleading or deceptive. It accurately informs the persons to whom it is directed, without engendering confusion, that unlike what may happen were they to choose another dentist, if they should come to this particular dentist, they will not have to pay anything for the work performed. The advertising in

question therefore is neither false nor misleading.[10]

Accordingly we conclude that a dentist who advertises, in an effort to attract patients, that he will waive their copayment under the plan of dental insurance described herein does not violate the California laws against false or misleading advertising.

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[10]We note that Business and Professions Code Section 651 specifically provides that professional advertising may validly include a statement of practitioner's fees or charges as well as a statement that he provides services under a specified private or public insurance plan or health care plan (*id*., subd. (h)(6), (11)).