

Shreveport Medical Society

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Since 1855



LEGISLATIVE ALERT

The Shreveport Medical Society opposes Senate Bill 36 by Senator Ryan Gatti.

Senate Bill 36 by Senator Ryan Gatti would make significant changes to the Medical Malpractice Act, which would be problematic for physicians and hospitals.

Senate Bill 36 would create an intentional tort, which would not be covered by the Medical Malpractice Act, for a physician to hold himself out as a specialist in an area of medicine for which he is not board certified or credentialed.

SB 36 would create a new definition of "specialist": a physician who is qualified by having completed advanced clinical training and education in a specific area of medicine to obtain certification by a specialty examining board.

SB 36 is unnecessary

Current law already authorizes the Louisiana State Board of Medical Examiners to deal with the problem of misleading communication or advertising:

Louisiana Revised Statutes Title 37

§1285. Causes for nonissuance; suspension; revocation; or the imposition of restrictions; fines; reinstatement; publication of action; stays

* * *

(7) Solicitation of patients or self-promotion through advertising or communication, public or private, which is fraudulent, false, deceptive, or misleading;

SB 36 unfairly links Board Certification and specialization

One licensed physician in five in good standing is not Board Certified. Board Certification is not necessary to be a credentialed specialist.

SB 36 discriminates against young physicians

30% of physicians ages 30 to 39 years are not Board Certified.

SB 36 *de facto* mandates Maintenance of Certification

American Medical Association policy states that maintenance of Board Certification should not be a mandated requirement for licensure or credentialing.

SB 36 is vague and ill-defined

Critical terms such as "holding himself out" and "advanced clinical training and education" are not defined. Many physicians will have questions as to whether their practices are at risk under this poorly written law.

SB 36 is not how the Lawyers handle these concerns

Lawyers handle misrepresentation of specialty status as a disciplinary matter, not an intentional tort

Louisiana Rules of Professional Conduct Rule 7.2. Communications Concerning a Lawyer's Services

Rule 7.2(c)(5) Communication of Fields of Practice. A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is “certified,” “board certified,” an “expert” or a “specialist” except as follows....

Lawyers use the term *specialize* freely

“The purpose of Louisiana Rule 7.2(c)(5) is to prohibit false claims of official certification. Most lawyers who state that they “specialize” in certain a practice area don’t intend to suggest that the Louisiana Board of Legal Specialization, or any other organization, has formally certified them as an “expert” or a “specialist” in a field of practice. On the contrary, most simply use the term “specialize” in its nontechnical sense: “to concentrate one’s efforts in a special activity, field, or practice.” *See* Merriam-Webster Dictionary (def. “specialized”)”

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