

**JAMES HONORE**

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**NO. 2000-CA-2302**

**VERSUS**

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**COURT OF APPEAL**

**EUGENE J. GOMES, D.D.S.,  
ET AL.**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**PLOTKIN, J. CONCURS WITH WRITTEN REASONS:**

I disagree with the reasoning of the majority that the trial court judgment should be affirmed because Dr. Harkins fraudulently misrepresented himself as a licensed dentist. The majority holds that this fraudulent concealment prevented the defendant from attacking Dr. Harkins' credibility. "Credibility" is defined as "that quality in a witness which renders his evidence worthy of belief." Black's Law Dictionary 366 (6<sup>th</sup> ed. 1990). The defendant may have been able to impeach Dr. Harkins' expert opinion because of his lack of a license. However, I disagree with the majority's analysis because under the La. Code of Evid. art. 702, a witness may be deemed an expert based on "knowledge, skill, experience, training, or education." The absence of a license would not have affected Harkins' credibility as to his expert knowledge of the dental standard of care.

Instead, the correct reason for affirming the judgment is based in La. R. S. 37:1284. The Louisiana Legislature and the jurisprudence have created

a *sui generis* body of laws and cases in the area of medical malpractice. The legislature has created a standard for these types of cases, requiring that expert witnesses are must prove the standard and/or breach of care and that those experts must be properly licensed. Although the statute doesn't specifically refer to dentists, it is clear that the legislature, by analogy, would include dentists. The majority reasons that the statute would be a materially relevant consideration for a jury when weighing an unlicensed expert's testimony. I, however, consider the statute controlling.

Thus, Dr. Harkins' failure to comply with La. R. S. 37:1284 disqualifies him from qualifying as an expert dental witness *per se*, thereby entitling Dr. Gomes to a new trial. Accordingly, I concur in the majority result.