



## Litch's Law Log

# Health Care is Different than Restaurants or Department Stores When it Comes to Clipping Coupons

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In a struggling economy, consumers are more apt than ever to look for coupons and discounts for products and services. However, health care professionals including dentists are governed by a different set of laws than other commercial establishments. Last fall, the ADA Legal Division issued an analysis on *Legal Issues in Marketing a Dental Practice: Referral Gifts and Groupon Discounts*.

This is available at: [https://www.ada.org/sections/dentalPracticeHub/members/111005\\_referral\\_gift\\_groupon\\_memo.pdf](https://www.ada.org/sections/dentalPracticeHub/members/111005_referral_gift_groupon_memo.pdf)

The specific legal concerns identified are:

- (a) Offering and awarding gifts to existing patients in exchange for new patient referrals;
- (b) Offering and awarding Groupon discounts to new or existing patients;
- (c) Advertising Groupon or other discounts in connection with dental services.

Here are a few key points from the ADA analysis:

### Referral Gifts

- “Many states have regulations that directly or indirectly prohibit or restrict the award of gifts as a means of soliciting dental patients.” For example, the prohibitions in Illinois and Texas are quite broad.
- Other states have narrower laws, and may permit gifts or credits below a certain dollar value.
- “A dentist should carefully consider and seek guidance as to the application of state laws before offering and rewarding referral gifts to patients.”
- The federal anti-kickback law is also applicable for those dentists who participate in federal health programs, which is obviously an issue for the many AAPD member pediatric dentists who participate in Medicaid and/or CHIP. Generally, this law prohibits any remuneration to induce a person to make a referral to the provider.

### Groupons

- “Offering and awarding Groupon discounts by a dentist to new or existing patients may be prohibited under state or federal law.”
- Groupons may run afoul of state regulations prohibiting fee splitting, if a portion of the revenue or fee from the service provided is shared with Groupon.
- Groupons may also be interpreted as a referral gifts, raising legal issues described above.
- The federal anti-kickback law can also be triggered as described above.

### Discount Advertising Regulations

- “Many states have regulations restricting the advertising of discounts in connection with dental services.”
- Some states may require that such discounts be provided to all patients regardless of third-party coverage.

The ADA analysis also reminds dentists to check their contracts with third-party payors, which may require that fees submitted to the insurer reflect any rebates or reductions in fees (or co-pays) charged to patients. Some contracts also have a “most-favored nation” clause that the dentist must grant the insurer the best price that the dentist charges for a particular service. Finally, it is noted that Sections 4.E. and 5.B. of the ADA Principles of Ethics and Code of Professional Conduct (concerning a prohibition of rebates and a prohibition against falsely representing fees being charged for care) may pose problems. This code is voluntary obligation of all ADA and AAPD members.

By all means keep using coupons at your favorite stores and restaurants, in person or online, but just be careful when applying such methods in your practice.

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