

Summary of AAPD Efforts to Protect Specialty Advertising

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Overview

Over the past decade, despite the Federal Trade Commission's (**FTC**) legal challenge to state dental boards' regulatory authority, the AAPD has been proactive in supporting state dental board enforcement of specialty advertising standards. The AAPD also continues to remind members of our process for handling advertising complaints against AAPD Affiliate (general dentist) members, as well as the process for non-members that was developed in collaboration with the ADA's Council on Ethics, Bylaws, and Judicial Affairs (**CEBJA**). A key point is that Affiliate member cases nearly always have a successful outcome in terms of modification in advertising, but the first step is that you must alert AAPD to any applicable situations in your geographic area.

State Dental Board Regulations

Recognizing growing concerns over the legal authority of state dental boards to regulate dentist advertising, the AAPD wrote a letter to every state dental boards in 2012, providing legal arguments for valid enforcement of specialty advertising regulations.¹ More recently, in 2019 the AAPD and the Washington State Academy of Pediatric Dentistry wrote the Washington state dental board to urge their rejection of proposed regulatory language that would have permitted advertising of specialty status for disciplines that do not require CODA-accredited residency training.² The AAPD Board of Trustees is also on record in supporting two years of residency training as the minimum standard for any dental specialty status.

The AAPD has also worked with the American Association of Orthodontists (**AAO**) and other dental specialty associations on similar issues with other state dental boards. We have coordinated efforts with each applicable state chapter's Public Policy Advocate. Below is an excerpt from the 2019 CEO's report to AAPD membership:

"Specialty Advertising

AAPD continued working closely with PPAs and their state chapters to promote reasonable state dental board regulation of specialty advertising announcements. The Iowa Dental Board stepped back from a proposal to eliminate all specialty advertising regulations, and is proposing to retain regulations with broader criteria (requiring certain minimum training hours) that would allow implant dentists and dentist anesthesiologists to announce as specialists (PPA Matt Geneser). The North Carolina Academy sent a comment letter to their board in early June 2018 and the board seems to have listened to concerns raised in that letter (PPA Beau Meyer). The Ohio dental board has proposed limiting specialty announcements to CODA-accredited programs (PPA Homa Amini). Oregon is considering legislation to bolster criteria for dental specialty advertising (PPA Natasha Bramley).

Unfortunately, the Virginia State Dental Board voted to drop all specialty advertising regulations, despite receiving over 200 comments in opposition including a joint letter from the VSPD and AAPD (PPA Patrice Wunsch). Additional actions are being considered. The underlying Virginia dental practice act statutory language does provide some protection, but having a regulation filling in additional details and accuracy is much more preferable.

A legal brief developed by the ADA via the law firm of Sidley and Austin in Chicago was supported financially by several dental specialties including the AAPD. This brief makes strong legal arguments for effective state dental board regulation of specialty advertising, and has been disseminated to PPAs for use in their state efforts.³

This issue has not gone away, although naturally in 2020 and 2021 state dental boards were rather preoccupied with focusing on the COVID pandemic.

It is worth reminding our members that the AAPD joined the ADA and North Carolina's state dental board fight against the FTC's regulatory overreach against state dental boards, financially supporting several amici (friends of the court) briefs as the case wound its way through the federal court system. Ultimately, the U.S. Supreme Court disagreed with our arguments in a decision issued in 2015.⁴ Unfortunately, this decision has made dental boards more reluctant to enforce their advertising regulations. However, this remains an AAPD priority per our 2021 legislative and regulatory priorities under state issues, and will continue to be a priority in 2022 and beyond:

"Ensure that state dental boards maintain and enforce regulations concerning appropriate advertising of specialty status and advertising guidance for general dentists treating children consistent with AAPD policies concerning Affiliate members."⁵

The AAPD has supported our state chapters seeking legislative changes, as occurred with Oregon in 2019:

"OREGON LEGISLATURE APPROVES DENTAL SPECIALTY ADVERTISING BILL

(from Oregon Public Policy Advocate Dr. Natasha Bramley)

In early June, the Oregon legislature approved SB 835, legislation supported by the state chapters of AAOMS, AAPD, and other dental specialties that would specify the requirements necessary to advertise as a dental specialist. The bill was signed into law by the Governor on June 13, 2019. The key provision of SB 835 is as follows:

"SECTION 2. (1) A dentist licensed by the Oregon Board of Dentistry may advertise that the dentist is a specialist in one or more areas of dentistry if the dentist:

(a) Has completed a post-doctoral residency program that is at least two years in length and is accredited by the Commission on Dental Accreditation, or its successor organization, and approved by the board by rule;

(b) Is a specialist as defined by the National Commission on Recognition of Dental Specialties and Certifying Boards, or its successor organization, and adopted by the board by rule; or

(c) Has completed an advanced dental education program that is at least two years in length and is recognized by the United States Department of Education, and approved by the board by rule."⁶

While there is a process for reporting to the AAPD as described below, we want to keep open the option of filing a complaint with a state dental board. They obviously have far more legal authority in terms of regulating dentist licensing, whereas the worst sanction the AAPD can impose would be a loss of membership.

Alerting AAPD

The AAPD has provided guidance on how to file a complaint with AAPD against an Affiliate (general dentist) member, where after review and confirmation by the Credentials and Ethics Committee the AAPD will send a letter to the Affiliate member requesting a modification in advertising. A different approach must be taken for a non-AAPD member; in such cases the AAPD contacts ADA CEBJA who, after appropriate review, may correspond with the applicable state dental association raising the ethical issue that could impact tripartite membership.⁷ This paragraph from the November 2018 *Litch's Law Log* in particular is critical:

"AAPD members should continue to alert us to situations where a general dentist is advertising using a term or phrase that would imply specialty status and is false and misleading in a material respect."

As noted above, in almost all cases of AAPD Affiliate members, they are resolved successfully and amicably per AAPD's request. Also, note that under the AAPD's Bylaws Affiliate members have the following requirement:

"Affiliate or Affiliate Life members may not use the Academy name, membership status or logo, or imply special expertise or training in pediatric dentistry."⁸

Further, the AAPD Policy and Procedure Manual⁹ has the following criteria for advertising by affiliate (general dentist) members:

"Advertising by Affiliate members

The AAPD Credentials and Ethics committee considers the follow phrases to be acceptable and consistent with membership obligations of the Affiliate (general dentist) category:

- Family Dentistry
- General Dentistry for Children
- General Dentistry for Children and Families"

Conversely, the Credentials and Ethics Committee considers the following phrases to be contrary to the membership obligations of the Affiliate category, and subject to disciplinary actions as provided in Chapter XIV of the Bylaws:

- Child Dentistry
- Children’s Dentistry
- Dentistry for Children
- Dentistry for Kids
- Pediatric Dentistry”

For further information contact Chief Operating Officer and General Counsel C. Scott Litch at (312) 337-2169 ext. 29 or slitch@aapd.org.

This column presents a general informational overview of legal issues. It is intended as general guidance rather than legal advice. It is not a substitute for consultation with your own attorney concerning specific circumstances in your dental practice. Mr. Litch does not provide legal representation to individual AAPD members.

¹<https://www.aapd.org/assets/1/7/AdvertisingLetter.pdf>

²https://www.aapd.org/assets/1/7/Litch_Law_Log.pdf

³This brief is available at: <https://www.aapd.org/globalassets/statement-on-specialty-advertising-final-2018.pdf>

⁴<https://www.aapd.org/assets/1/7/LLL.March.2015.pdf>

⁵<https://www.aapd.org/globalassets/2021-legislative-priorities-for-website-final.pdf>

⁶<https://www.pediatricdentistrytoday.org/2019/September/LIV/5/news/article/1052/>

⁷<https://www.aapd.org/assets/1/7/2941.pdf> <https://www.aapd.org/globalassets/media/advocacy/III/III4.pdf>

⁸Chapter I, Section 3, i.

⁹https://www.aapd.org/globalassets/policy-and-procedure-manual-october_21.pdf

Reference Committee Hearing and Reports & General Assembly Meeting

Constitution and Bylaws amendments and proposed changes/additions to oral health policies and best practices of the American Academy of Pediatric Dentistry will be the subject matter for Reference Committee hearings at the AAPD 2022 Annual Session. Recommendations from the Council on Clinical Affairs concerning oral health policies and best practices will be posted as a Members-only document on the AAPD website (www.aapd.org) no later than sixty (60) days prior to the General Assembly. All members will be alerted to this availability via AAPD E-News.

Reference Committee hearings will take place on Saturday May 28, 2022, from 10 to 11 a.m., in room 14AB of the San Diego Convention Center. The hearings are open to all AAPD members, as well as non-members who are registered for the meeting. Non-members will be polled and asked to identify themselves by the chair, who also has the authority to determine whether a non-member may comment. These hearings are intended to be the venue for member discussion on any formal resolutions that will be proposed before the General Assembly. This is an opportunity for members to present testimony on proposed oral health policies and best practices, and other business to come before the General Assembly.

Reference Committee Reports will be available in the back of room 6CF of the San Diego Convention Center beginning at 8:30 a.m., on Sunday morning May 29, 2022, prior to the beginning of the General Assembly and Awards Recognition at 9:30 a.m. If available in time, copies will also be provided at District Caucuses on Saturday, May 28, 2022, from 1 to 2 p.m.

The General Assembly and Awards Recognition will take place on Sunday, May 29, 2021, from 9:30 to 11:30 a.m., in room 6CF of the San Diego Convention Center. The General Assembly is a meeting of Active and Life members for the purposes of conducting the business of the AAPD. Any AAPD member is welcome to attend, although only Active and Life members may vote. Final action on recommendations from Reference Committees takes place at the General Assembly.

This notice is being provided at least thirty (30) days prior to the General Assembly, as required by the AAPD’s Bylaws. An agenda for the General Assembly meeting will be posted under “Latest News” in the Members-Only section of the AAPD website (www.aapd.org) approximately one month prior to the meeting. All members will be alerted to this availability via AAPD E-News.

Rooms subject to change