



C. Scott Litch

Chief Operating Officer and General Counsel

Litch's Law Log

Fax Foul-up Fixed

While you might rightfully consider fax machines an older and possibly dying technology, that doesn't mean they cannot be the cause of some trouble in the office. AAPD members received the following e-mail from AAPD headquarters on March 13, 2017:

UNAUTHORIZED FAX OF AAPD MEMBERSHIP LIST (3/13/17)

Dear AAPD members:

It has been brought to our attention by some members that recently a 159 page fax was sent to their offices containing a listing of AAPD members. Specifically, each member is listed by last name, first name, membership type, city, state, and zip code with four digit extension. (NOTE: subsequent review also revealed phone and fax numbers were included)

First of all, for those affected we apologize for the inconvenience.

Second, please note that this fax was NOT sent or authorized by the AAPD. It is an illegal use of our membership data. The AAPD takes precautions to protect our membership data, making it available in print format in the annual membership directory with a "shrink-wrap" license that restricts reproduction or dissemination in bulk, and detailed online membership information on the AAPD website is available to members-only via a log-in. The "Find a Pediatric Dentist" feature in the public section of the AAPD website has a disclaimer and acceptance terms concerning its use: <http://www.aapd.org/finddentist/>.

The AAPD is working with our information technology and network support vendor, Digerati Group to determine the sender of these faxes. This is challenging because no sender fax number or other identifying information is included on the fax.

You may assist us by notifying AAPD if a fax as described above is received by your office. If possible please scan the fax and e-mail to slitch@aapd.org. If you have any questions about this matter please contact CEO Dr. John Rutkauskas at (312) 337-2169 or jrutkauskas@aapd.org.

This long fax was also sent to the AAPD headquarters fax machine, so we did indeed feel our members' pain. We suspected this may have been an unintentional computer-generated fax because the material contained no advertisement or solicitation of services. The "junk fax" law has specific prohibitions against such faxes.¹

Fortunately prompt responses from AAPD members helped us to identify the sender. This in turn led to the following e-mail to AAPD members on March 28, 2017. Given that the company in question acted quickly and cooperatively with the AAPD to fix the situation, and given their past services provided to many AAPD members, the AAPD is satisfied the situation is resolved and is taking no further action at this time.

¹The federal Junk Fax Prevention Act of 2005 prohibits sending any "unsolicited advertisement" to the fax machine of a recipient unless the sender has an established business relationship with the recipient. An "unsolicited advertisement" means "any material advertising the commercial availability or quality of any property, goods or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise." For more information in case your practice receives such faxes in the future see the federal regulations: <https://www.gpo.gov/fdsys/pkg/FR-2006-05-03/pdf/06-4169.pdf>; and this recent update on federal regulatory guidance: <https://www.venable.com/updates-on-fax-laws-opt-out-notices-required-for-all-fax-advertisements-retroactive-waivers-recommended-for-previous-noncompliant-faxes-12-31-2014/>.

UNAUTHORIZED FAX SITUATION UPDATE (3/28/17)

On March 13, the AAPD alerted members via e-mail about unauthorized faxing of an AAPD membership list. Thanks to prompt responses from our members to that e-mail, we were able to identify the company responsible for sending these faxes. After discussion with their president, he forwarded the comments below to share with all AAPD members. Please note that the AAPD membership database was not hacked. If you have further questions please contact AAPD COO and General Counsel C. Scott Litch at slitch@aapd.org.



STATEMENT FROM THE PRESIDENT OF OMS EXCLUSIVELY AND PEDS EXCLUSIVELY DR. LARRY JACOBSEN

Good day. My name is Larry Jacobson and I am president of OMS Exclusively and PEDS Exclusively, a company that provides recruiting and practice sale consulting services to oral surgeons and pediatric dentists. On March 17, we were first informed that a number of pediatric dentists who were supposed to receive one or two page fax ads from us instead received faxes of over 100 pages of spreadsheets which contained information regarding AAPD members around the country. On March 20, we were in contact with the leadership at AAPD discussing the problems caused by our fax program. Over the course of the next 48 hours, we spent countless hours trying to find out the problem and fixing it to make sure that this will never, ever happen again.

We now know that our fax program had a major glitch and inappropriately sent out information in terms of mailing out parts of our internal spreadsheet rather than our short ads. Needless to say, we are no longer using that fax system for any reason. Furthermore, we have no intentions of sending out ads via any fax system to anyone, including members of AAPD.

We are so, so terribly sorry for the problems our fax glitch caused for many of your fax machines. Words cannot describe my anger in finding out about the problem and the total inconvenience many of you suffered. You have my word that you will not be receiving any unwanted faxes from OMS Exclusively or PEDS Exclusively in the future. I want to thank Scott Litch and his team at AAPD in working with us in helping root out the problem and allowing us to apologize to you about this major problem caused by us. I hope you can accept our expression of deepest regret and if any of you want to discuss this with me further, you can reach me at (844) 339-5160.

Best regards,

Dr. Larry Jacobson

President of OMS Exclusively and PEDS Exclusively

Again, I want to remind members that no sensitive member information was breached (the data is publicly available on *Find a Pediatric Dentist* as previously noted). We believe the company's explanation to be truthful and their apology sincere.

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. Litch does not provide legal representation to individual AAPD members.