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### Litch's Law Log

# Consumer Review Fairness Act Means Don't Delete Negative Online Reviews

Dealing with negative online/internet reviews of your dental practice is not a new issue. In fact it was discussed in this column back in the November, 2010 PDT.<sup>1</sup> The AAPD's *Social Media 101 Toolkit for AAPD Members* also provides a number of proactive strategies to promote and highlight positive online reviews in order to counteract negative reviews.<sup>2</sup> I also discussed this matter at the joint AAPD-AAO symposium in February, 2018. There are number of companies, some of whom exhibit at AAPD's Annual Session, offering services to improve your online presence and protect your reputation.

However, one thing not in the arsenal of defense due to legal reasons is removal of negative reviews either from your website or 3<sup>rd</sup> party sites (such as Yelp). This is thanks to the Consumer Review Fairness Act (CRFA).<sup>3</sup> Passed by Congress in 2016, this law seeks to protect the ability to share honest opinions about products, services, or conduct in any forum including social media. Hence, a company's form contracts cannot prohibit or restrict reviews of a company's products, services, or conduct; impose fees or penalties on reviewers; or assign to the company a consumer's copyright of their reviews or comments.

CRFA applies to any type of communications. Clearly a dental practice cannot include standardized language on a patient intake form that would prohibit posting of a negative review of dental treatment received. It does not matter if complaints about such practices have never been filed against a company. A violation can also be challenged as a false and deceptive practice under section 5 of the Federal Trade Commission (FTC) Act.

Postings can be removed from your website in the following circumstances:

- Private and confidential information;
- Comments unrelated to dental services or conduct of dentists or staff;
- Information that is clearly false and misleading. But keep in mind it must be a clear falsehood, not merely an opinion. For example, saying that Dr. Smith was rude is an opinion, whereas stating that Dr. Smith had his dental license revoked (if not true) is a falsehood.
- Statements that are libelous, harassing, vulgar, obscene, sexually explicit or that inappropriately related to gender, ethnicity, sexuality, etc. Obviously there can be differing opinions as to what crosses the line into these categories, so proceed with caution.

Recently, the FTC undertook its first enforcement actions under the CRFA, and the targets were not just large corporations. These cases all resulted in Consent Orders with the FTC.

- *In re A Waldron HVAC, LLC.* There was a CRFA violation due to a form agreement prohibiting filing of complaints with the Better Business Bureau and agreeing to pay damages and legal fees if this provision is breached.
- *In re National Floors Direct, Inc.* There was a CRFA violation due to a form contract stating that a consumer would not defame or disparage the company, with a threat of civil litigation for doing so.
- *In re LVTR LLC, doing business as Las Vegas Trail Riding.* There was a CRFA violation due to form contract prohibiting:
  - contact with Animal Control or any government agency to report mistreatment of horses (with a \$5000 penalty for breach);
  - negative reviews (\$5000 penalty); and
  - initiating arbitration proceedings or litigation (\$60,000 penalty).

It is important to review not only standardized documents such as a patient intake form, but also policies and terms on your practice website. While you may not have drafted a problematic provision, a website vendor may have included such language as standard verbiage for their clients' websites, without being aware that it is no longer acceptable under the CRFA.

Special thanks goes to **Thomas C. Elliott Jr.**, ADA Deputy General Counsel and Director, Council on Ethics, Bylaws and Judicial Affairs, for his assistance on this topic. For further information contact Chief Operating Officer and General Counsel C. Scott Litch at (312) 337-2169 ext. 29 or [slitch@aapd.org](mailto: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.*

<sup>1</sup><https://www.aapd.org/assets/1/7/4302.pdf>

<sup>2</sup><https://www.aapd.org/assets/1/7/SocialMedia101.web.pdf>

<sup>3</sup>Public Law 114-258.