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Litch's Law Log

CEBJA to Assist AAPD with Specialty Advertising Issues

Long-time readers of this column may recall the issue of what constitutes inappropriate advertising by general dentists who treat children was discussed in the September 2006 *PDT*¹ and more recently in the May 2018 *PDT* related to comments submitted by the AAPD and our Washington State chapter to the state's Dental Quality Assurance Commission (their board of dentistry).²

The AAPD has continued to urge state dental boards to maintain and enforce specialty advertising regulations, namely that only those trained in a dental specialty shall be permitted to advertise as a specialist.

When AAPD members bring advertising issues to our attention, we explain that the AAPD only has direct purview over Affiliate member general dentists. To maintain AAPD membership, adherence to this policy is required:

"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 XIII of the Bylaws:

- Child Dentistry
- Children's Dentistry
- Dentistry for Children
- Dentistry for Kids
- Pediatric Dentistry"³

We are pleased to report that with AAPD Affiliate members usually advertising issues are resolved amicably upon notification by the AAPD of this policy. However, the AAPD has no jurisdiction over non-members, and unfortunately state dental boards seem to place a low priority on investigating advertising complaints against dentists.

Since many general dentists are ADA members, the AAPD recently raised issues of concern with the ADA's Council on Ethics, Bylaws,

and Judicial Affairs (CEBJA). We explained some of the unique advertising issues related to children's dental services, since pediatric dentistry is the only age-defined dental specialty. While CEBJA was reluctant to add language to Section 5.I of the *Principles of Ethics and Code of Professional Conduct* at this time, CEBJA agreed that when the AAPD passes along instances of potentially misleading advertising by ADA members, they will review the case and if appropriate send a letter to the executive director of the constituent (state) dental association indicating that:

"The AAPD is concerned that the advertisement in question may constitute a violation of Section 5.H. and 5.I of the ADA's *Principles of Ethics and Code of Professional Conduct*, and otherwise may be considered to be false and misleading in a material respect, in that the AAPD believes that the advertisement may be viewed by the public as an announcement of services by a specialist when, in fact, the dentist in question is a general dentist.

This matter is being forwarded . . . for review and possible action. Pursuant to Chapter XI, Section B of the *Governance and Organizational Manual of the American Dental Association*, constituent and component associations have the preliminary responsibility within the ADA's tripartite system for investigating and handling questions about the ethical propriety of a member's professional conduct. I would appreciate it if you would forward this matter on to the appropriate agency within your Association for its consideration.

The Council would urge that if the advertisement in question is considered to be potentially misleading and in violation of the ADA Code, that the matter be informally addressed with the member so that an amicable resolution can be discussed before any formal enforcement action is instituted. [CEBJA] will appreciate being informed of the result of that review, any discussion held with the member dentist and whether any remedial action is being contemplated by the agency."

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.

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.

¹Legal Parameters for Advertisements by General Dentists Who Treat Children. <http://www.aapd.org/assets/1/7/2941.pdf>

²Washington State Academy and AAPD Weigh in on State Dental Board Specialty Advertising Regulations. http://www.aapd.org/assets/1/7/Litch_Law_Log.pdf

³AAPD Administrative Policy and Procedure Manual (June 2018 edition), Section 13. F. Advertising by Affiliate Members.