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The **Dos** and **Don'ts** of Dental Advertising

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As an educational benefit for members and an outreach to non-members, the Florida Dental Association (FDA) wants Florida dentists to know about advertising restrictions under Florida law and the aspirational goals established by organized dentistry. Many doctors are unaware of the advertising prohibitions. Even unintentional violations of the advertising rules may subject a dentist to discipline from the Florida Board of Dentistry (BOD). This article includes updates to the American Dental Association (ADA) "Principles of Ethics and Code of Professional Conduct" that were made in November 2016.

The regulations that apply to advertising by health care professionals are quite different than those that apply to businesses. For example, Florida law generally prohibits advertising by a dentist that holds himself or herself out as a specialist unless: the dentist has completed a specialty education program approved by the ADA and the Commission on Dental Accreditation (CODA) and is eligible for examination by a national specialty board recognized by the ADA; or, is a diplomate of a national specialty board recognized by the ADA. *See*, section 466.0282(1), Florida Statutes. To help you understand how Florida law regulates advertising by dentists, the FDA is providing the "Dos and Don'ts of Dental Advertising" as an educational resource available to members of organized dentistry.

The severity of BOD sanctions for advertising violations varies based on underlying factual circumstances. The most serious violations usually are penalized by a reprimand, an administrative fine not to exceed $10,000 for each violation and a period of probation. *See*, Rule 64B5-13.005, Fla. Admin. Code.

To guard against potential violations of the BOD rules, the FDA encourages you to consult the BOD or an attorney familiar with health law matters before you publish advertisements. It is far easier to comply with the regulations than it is to defend against them after the advertisement has been published. Also, the FDA Council on Ethics, Bylaws and Judicial Affairs is available — at no cost — to assist FDA members with ethical obligations under the ADA/FDA Principles of Ethics and Code of Professional Conduct. The general rules to follow under Florida law, which is probably different than other states, and the ADA "Principles of Ethics and Code of Professional Conduct" are summarized below, followed by a list of specific dos and don'ts.

Dentists lawfully may advertise to the public, but doing so in an improper manner can place your license in jeopardy. Florida BOD discipline is a serious matter and some of the rules are quite technical, so please be aware of the requirements in order to avoid unintentional violations.

First, advertising is defined to include websites, social media, billboards, television, radio, yellow pages, telephone listings, newspaper display or classified advertising, "advertorials" (advertisements that look like editorials or news reports), signage, business cards and letterhead. The rules apply to any statement — oral or written — that directly or indirectly offers to perform dental services. The rules apply to media exposure of any nature, regardless of whether it is in the form of paid advertising or not.

Second, if you are the Florida-licensed dentist offering the services, you have assumed total responsibility for the advertisement should the BOD receive a complaint. Even if you hire someone else to run the ad, publish the website, use a referral service, etc., you will be the party held responsible by the BOD. Just because a practice management consultant or a publisher trying to sell you advertising space says it is OK does not alleviate you of your responsibility as a licensee to ensure the rules are followed. Think of advertising violations as "strict liability" offenses, meaning that if an improper ad gets published, then you are responsible for it whether it was done intentionally or negligently — and there are few, if any, defenses to excuse or mitigate the offense. The advertisment is self-proving and the only remaining issue is whether it complies with the rules or not.

Third, dentists may not disseminate advertising that is in any way fraudulent, false, deceptive or misleading. This includes: misrepresentations of fact; making partial disclosure of relevant facts; making self-laudatory statements; creating unjustified expectations of favorable results; comparing the quality of your dental services against other available dental services; and, making any other representation or implication that in reasonable probability will cause an ordinary prudent person to misunderstand or to be deceived.

DOS:

- Identify the Florida-licensed dentist. List your license number or your name, current address and telephone number on record with the BOD.
- If you advertise fees, include:
  - a disclaimer that the advertised fee is a minimum fee only.
  - a specified period during which the fee is in effect or that the fee will remain available for at least 90 days following the final advertisement.
  - a description of the service using the exact narrative description or the specific code number used in the ADA's Code of Dental Terminology (CDT).
- If you advertise free or discounted services:
  - include verbatim the following statement in a manner clearly distinguishable from the rest of the advertisement:

THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT OR BE REIMBURSED FOR ANY OTHER SERVICE, EXAMINATION OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE OR REDUCED-FEE SERVICE, EXAMINATION OR TREATMENT.

  - state the dates when free or discounted services will be available.
  - realize that advertising a free or discounted fee also may be a fee advertisement, in which case the rule immediately above this one also would apply.
- If you advertise specialty services (e.g., endodontic, orthodontic, oral surgery and periodontal procedures) or use terms that generally describe specialty services (e.g., children's dentistry, pediatric dentistry or similar phrases):
  - state whether the services will be performed by a general dentist or a specialist.



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- if you are not recognized by the BOD as a specialist, state "general dentist, practice limited to (name of particular specialty area)."

▶ If you advertise yourself as "general dentist, practice limited to" an area of dentistry that is not recognized as a specialty by the ADA (e.g. cosmetic dentistry or implantology), then Florida legislation says you also must include verbatim the following statement in a manner clearly distinguishable from the rest of the advertisement:

(NAME OF ANNOUNCED AREA OF DENTAL PRACTICE) IS NOT RECOGNIZED AS A SPECIALTY AREA BY THE AMERICAN DENTAL ASSOCIATION OR THE FLORIDA BOARD OF DENTISTRY.

▶ If you refer to, or advertise recognition by, a specialty accrediting organization other than one which has been recognized as bona fide by the ADA or the BOD, then Florida legislation says you also must include verbatim the following statement in a manner clearly distinguishable from the rest of the advertisement:

(NAME OF REFERENCED ORGANIZATION) IS NOT RECOGNIZED AS A BONA FIDE SPECIALTY ACCREDITING ORGANIZATION BY THE AMERICAN DENTAL ASSOCIATION OR THE FLORIDA BOARD OF DENTISTRY.

▶ If you use a referral service, then you also must state in a manner clearly distinguishable from the rest of the advertisement that:

- the advertisement is for a dental referral service and is on behalf of the dentist members of the referral service.
- the service refers only to those dentists who have paid or been otherwise selected for membership.
- membership in the referral service is limited by the referral agency.
- dentists who receive referrals from the referral service charge no more than their usual and customary professional fees for service.

DON'TS:

▶ **Don't** advertise that the use of lasers is painless, heals faster or provides better results than other dental procedures.

▶ **Don't** solicit patients for dental services in person or via telephone. You may, however, communicate with current and former patients to schedule appointments or offer follow-up care without violating the BOD rules.

▶ **Don't** advertise your use of Sargenti paste, because it falls below the standard of care in the state of Florida.

▶ **Don't** include the name of a person who actually isn't involved in the practice of dentistry at the advertised location or an owner of the practice being advertised. You may, however, identify the previous owner for a reasonable period of time not to exceed two years (the ADA Code says one year) if you have written permission from that dentist to do so.

▶ **Don't** use an ADA CDT number that ends in 00 to describe a service for which a fee is advertised. The advertisement must specify by use of exact nomenclature or exact code number what procedure within the sub-category is being offered.

▶ **Don't** advertise yourself as a specialist in an area of dentistry not recognized by the BOD as a specialty. The BOD recognizes only those specialties recognized by the ADA. Cosmetic dentistry, facial pain therapy and implantology are not ADA-recognized specialties. The only specialty areas recognized by the ADA are:

- dental public health.
- endodontics.
- oral and maxillofacial pathology.
- oral and maxillofacial radiology.
- oral and maxillofacial surgery.
- orthodontics and dentofacial orthopedics
- pediatric dentistry.
- periodontics.
- prosthodontics.

▶ **Don't** advertise yourself as a specialist unless you have completed a specialty educational program approved by the ADA CODA and fall into one of the following scenarios:

- you are eligible for examination by an ADA-recognized national specialty board
- you are a diplomate of an ADA-recognized national specialty board
- you have continuously held yourself out as a specialist in an ADA-recognized specialty since Dec. 31, 1964.

▶ **Don't** advertise "general dentist, practice limited to" an area of dentistry that is not recognized as a specialty by the ADA or the BOD unless you also include verbatim the following statement as set forth in statute in a manner clearly distinguishable from the rest of the advertisement:

(NAME OF ANNOUNCED AREA OF DENTAL PRACTICE) IS NOT RECOGNIZED AS A SPECIALTY AREA BY THE AMERICAN DENTAL ASSOCIATION OR THE FLORIDA BOARD OF DENTISTRY.

▶ **Don't** refer to, or advertise recognition by, a specialty accrediting organization other than one that has been recognized as "bona fide" by the ADA or the BOD unless you also include verbatim the following statement as set forth in statute in a manner clearly distinguishable from the rest of the advertisement:

(NAME OF REFERENCED ORGANIZATION) IS NOT RECOGNIZED AS A BONA FIDE SPECIALTY ACCREDITING ORGANIZATION BY THE AMERICAN DENTAL ASSOCIATION OR THE FLORIDA BOARD OF DENTISTRY.

▶ **Don't** advertise an unearned academic degree (e.g., honorary degrees or those awarded by educational institutions not accredited by a generally recognized accrediting body).

▶ **Don't** advertise a non-health academic degree if the public is likely to assume that is related to your qualifications as a practitioner.

▶ **Don't** advertise yourself as a member of the ADA, FDA, component or affiliate dental societies unless you are, in fact, a member. If false, this representation may result in both disciplinary and civil liability (for violating organized dentistry's intellectual property rights).