

February 8, 2016

TO: Deans of U.S. Dental Schools
Directors of Advanced Dental Education Programs
Directors of Allied Dental Education Programs
ADEA Board of Directors
ADEA Legislative Advisory Committee

FROM: Richard W. Valachovic, ADEA President and CEO
Yvonne Knight, ADEA Chief Advocacy Officer

RE: American Academy of Implant Dentistry, et al v. Texas State Board of
Dental Examiners, et al

The United States District Court for the Western District of Texas (Court), on Jan. 21, 2016 ruled in *American Academy of Implant Dentistry, et al v. Texas State Board of Dental Examiners, et al*. The court held that a Texas regulation, which only acknowledges specialties in Texas that are recognized by the American Dental Association (ADA), was unconstitutional. Also, the Court enjoined the Texas State Board of Dental Examiners (Board) from enforcing [Section 108.54 of the Texas Administrative Code \(TAC\)](#), which stipulates that Texas only recognizes specialties designated by the ADA. The following provides background information and a summary of the court's ruling in this case.

Background

On March 5, 2014, the American Academy of Implant Dentistry (AAID), filed suit in Federal District Court in Austin, Texas. The AAID was joined by three other organizations that issue bona fide credentials, the American Society of Dentist Anesthesiologists, the American Academy of Oral Medicine and the American Academy of Orofacial Pain. They challenged the constitutionality of a regulation, TAC, Sec. 108.54, promulgated by the Texas State Board of Dental Examiners that restricts dentists from advertising to the public certain specialties unless those specialties are recognized by the ADA.

The Board was empowered by the Texas Legislature to promulgate rules to govern dentistry in Texas. Pursuant to the Board's authority, the Board enacted TAC Sec. 108.54 which states "a dentist may advertise as a specialist or use the terms 'specialty' or 'specialist' to describe professional services in recognized specialty areas that are: (1) recognized by a board that certifies specialists in the area of specialty; and (2) accredited by the Commission on Dental Accreditation of the American Dental Association." The restrictive language contained in TAC Sec. 108.54 was the focus of the lawsuit.

Plaintiffs asserted that rule, TAC Sec. 108.54, infringed on their First Amendment right to engage in “truthful, non-misleading commercial speech and violates their Fourteenth Amendment due process and equal protection rights by impermissibly delegating power over who may advertise as a specialist to the ADA, a private organization comprised of members in competition with [them] and with a direct financial stake. . .” Furthermore, the Plaintiffs complained that even when dentists have received training and certification in areas of dentistry represented by the organizational Plaintiffs, Texas rules restrict them from “expressing or implying a specialization in these disciplines because they are not ADA-recognized specialties.”

Ruling

On Jan. 21, 2016 the Court held that dentists in the State of Texas had the right to let patients know their practice specialty. Furthermore, the Court enjoined the Texas State Board of Dental Examiners from enforcing Sec. 108.54 of the TAC. The Court stated, “the State Dental Board has not delegated any legislative or rulemaking power to the ADA to determine the state’s position vis-à-vis which dental advertisements are misleading.” Furthermore, “When the ADA votes to recognize a dental specialty, it is not exercising Texas’ rule-making authority to limit the scope of a dental licensee’s rights delegated to it by the State Dental Board.”

Agreeing with Plaintiffs that advertising a dentist’s expertise was protected free speech under the First Amendment of the U.S. Constitution, Judge Sparks, writing for the Court, stated, “the public would hardly feel misled if a licensed AAID diplomate advertised as a ‘specialist’ in implant dentistry and then later discovered the AAID was technically not a ‘specialty’ under Texas law because it had not achieved specialty status according to the ADA.” The Court concluded that licensed dentists may lawfully provide care to their patients in any area of dentistry, including “dental implants, dental anesthesiology, oral medicine and orofacial pain, and the State Dental Board has no authority to specify specializations.”

Take Away

Going forward, dentists in Texas have the right to let patients know their practice specialty as a result of the ruling in this case. Dentists who have earned board certification from the certifying board sponsored by the American Academy of Implant Dentistry or those of the Plaintiff’s organizations may now advertise that they are specialists in the State of Texas.

If we can be of further assistance in this regard, please do not hesitate to let us know; contact Yvonne Knight, J.D., ADEA Chief Advocacy Office at KnightY@adea.org.