



Advertising, referral incentive programs

Today's dental marketplace is increasingly competitive, driving dentists to seek out new ways to market their practices and attract new patients. However, there are several legal and regulatory restrictions on dental marketing that dentists must consider before engaging in a new advertising campaign.

State regulations and the profession's ethical code govern all types of dental advertisements. Television and radio spots, websites and all categories of print advertisements, including newspaper, magazines, yellow pages, signs, school or church bulletins, billboards and other mediums, are subject to regulation. There are several general rules that dentists should follow when engaged in advertising of any kind to avoid difficulties.

First and foremost, all advertising must be true and accurate. State and federal regulations as well as the ADA's Principles of Ethics and Code of Professional Conduct (Code) require dental advertisements to avoid statements that are false or misleading in nature. Advisory Opinion 5.F.2 of the Code sets out a few examples of what should be avoided:

- Statements that contain a material misrepresentation of fact
- Omitting facts that are necessary to make the statement as a whole not misleading
- Statements that are likely to create unjustified expectations about what the dentist can achieve
- Unsubstantiated statements that claim the services provided by the dentist are superior to those provided by other dentists.

The Ohio State Dental Board has also developed a regulatory scheme governing how a dentist may advertise in print, radio, TV, Internet and other mediums. Basic guidelines to comply with these rules include:

- Avoid making false or misleading statements
- Include the name of the owner dentist(s) and their degree conferred in all ads
- Avoid using the names of deceased or non-practicing dentists in ads
- Use the phrase "general dentist" in any advertisements that mention specific dental services that are offered to patients
- List your board approved specialty if applicable



- Avoid terms like “family dentist,” “cosmetic dentist” or other phrases that suggest a specialization in an unrecognized area.

However, questions regarding the advertising regulations are often fact specific so dentists are wise to work with legal counsel or contact the Ohio Dental Association prior to engaging in an advertising campaign in any of these formats.

A lesser-known restriction, but one that carries potentially stiffer penalties, is Ohio’s anti-kickback law. The law is intended to help protect patients and health care payers against fraud and abuse and to prevent financial incentives from influencing health care providers’ treatment recommendations and decisions. Though the focus of the law is seemingly meant to address provider-to-provider and agent/broker-to-provider referral corruption, the law is written broadly and actually applies to everyone. Therefore, dental offices that are considering establishing a referral incentive program for current and new patients must be familiar with this law in order to avoid pitfalls.

Ohio Revised Code section 3999.22 makes it illegal for anyone to “knowingly solicit, offer, pay, or receive any kickback, bribe, or rebate ... in cash or in-kind, in return for referring an individual for the furnishing of health care services ... for which whole or partial reimbursement ... may be made by a health care insurer.” Any violations of this section are considered felonies under the law.

Despite this broad prohibition against any kind of payments – gift cards, cash, gifts, etc. – in exchange for referrals, there are several important exceptions outlined in the law that may still allow dentists to pursue a patient referral program. First, the law excepts those referral payments that are authorized by a health insurance contract and does not apply to deductibles or copayments. The law also does not apply to a health care practitioner who provides services that are not covered by the patient’s health insurance plan.

Finally, and most importantly, the restriction does not apply to the offering of discounts or reductions in prices. This exception provides a simple avenue for dentists to offer incentives to patients who refer their friends and family into the practice. A discount off of future services, or new pricing structures for certain procedures can be offered in exchange for the referral of new patients under Ohio law.

While offering discounts on future services for patient referrals does not violate Ohio’s anti-kickback law, offering incentives (cash, gift card, contest prize, credit toward treatment, etc.) for positive online reviews violates the terms of service for many review sites and may elicit the attention of the Federal Trade Commission (FTC) for possible violation of federal truth-in-advertising standards. The FTC has issued guidelines with regard to offering incentives for reviews and testimonials, which require appropriate disclaimers to be included in order to avoid misleading the reader. Failure to include such disclaimers would likely also be a violation of the profession’s ethical code.



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Dentists seeking to step up their marketing campaign and attract new patients are strongly encouraged to seek advice from legal counsel prior to instituting a referral incentive program or an advertising campaign to discuss these issues and avoid any difficulties that may arise.

This article is intended to offer general guidance but should not be construed as legal advice and cannot be substituted for the advice of the dentist's own legal counsel. Dentists should always seek the advice of their own attorneys regarding specific circumstances.