Dental advertising
Is your practice using false or misleading advertising?

By Stuart Oberman, Esq.

Dentists have a right to promote their practices through various forms of advertising. However, ethical guidelines regarding advertising must be followed. Section 5 of the American Dental Association’s (ADA) Principles of Ethics and Code of Professional Conduct sets forth certain standards in part by stating that no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any “material” respect.

This standard has been implemented in order to protect the public from false and misleading advertising that may induce a patient to seek dental services from a particular office.

Although some states may not have adopted Section 5 of the ADA’s Principles of Ethics and Code of Professional Conduct, Section 5 sets forth a good guideline that all dentists should follow.

The fundamental issue in dental advertising is whether the advertisement is false or misleading in any material aspect.

The first step to ensuring compliance with ethical advertising is to understand advertising regulations, standards and the law. With a proper understanding, dentists will be able to market their practices and avoid legal problems associated with perceived false or misleading advertising.

Rules that govern the marketing of businesses (including dental practices) are generally enacted by the Federal Trade Commission. There are various forms of marketing, such as advertising in magazines, newspapers, billboards, on the Internet, radio or even television. The Federal Trade Commission is constantly monitoring advertisements, which includes dental advertising.

Truth and clarity
Dental advertisements must be truthful and non-deceptive. For an advertisement to be completely truthful, it must have evidence to back up each assertion of fact.

An advertisement is non-deceptive if it is not likely to mislead a reasonable consumer and does not omit any necessary information for the consumer to make an informed decision regarding whether to obtain services at a specified dental practice.

Regardless of the claim, all material information must be disclosed in a manner that a reasonable consumer could understand. Disclosures, if typed, should be in a size large enough for a consumer to clearly read, and failure to comply with this requirement may result in the disclosure being deemed inadequate.

Furthermore, an asterisk or other symbol should be used to call attention to the disclosure, especially if the disclosure is placed at the bottom of the advertisement.

In order to determine if an advertisement may be of a concern to the Federal Trade Commission, the advertisement must be considered in its entirety. Even if all of the statements in the advertisement are true, but the pictures are deceptive, then the advertisement may violate the Federal Trade Commission’s advertising standards (and the advertisement may also violate the guidelines set forth by a particular state dental board or state law). In addition, the advertisement should not imply something other than what the advertisement is intending to communicate.

Statistics
Advertisements that incorporate statistics must be accurate. If a dental advertisement is using statistics, then there must be accurate data to back up the advertising assertion.

The Federal Trade Commission requires dental claims regarding consumer health to be supported by reliable scientific evidence and medical data. This evidence may include research, studies, tests and analysis, which are conducted by dental experts and professionals in an objective manner.

Obviously, non-factual, silly claims or jokes contained in a dental advertisement, which no reasonable person could possibly regard as harmful, will not be considered false and misleading.

Prices
The Federal Trade Commission has extensively regulated claims such as price reductions. Dentists should be aware of the relevant standards for this type of advertising.

First, if a former price is specified in an advertisement, the price must be the actual price of the goods or services offered for a reasonably substantial amount of time and on a regular basis.

If a former price is not specified and a sale price is announced, the sale price must be such that a reasonable person with knowledge of the former price would regard the goods or services as a legitimate savings.

Next, if a specific dental advertisement compares the prices of one dental practice to another (yes, this actually does occur), then the competitor’s prices that are listed in the advertisement must be the actual prices charged by the competing dental practice.

Falsely stating the price of services for a competing dental practice in an advertisement is considered misleading and deception advertising.

Obviously, truthful advertising is important to both the American Dental Association and the Federal Trade Commission. All states have laws that prohibit false, deceptive or misleading dental advertising.

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