

Dental Specialties: Yesterday, Today & Tomorrow

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NEW JERSEY DENTAL SOCIETY OF
ANESTHESIOLOGY
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Disclosures

- President, American Board of Dental Specialties
- President Elect, Tri-County Dental Society
- Past President, American Society of Dentist Anesthesiologists

- I am not representing or speaking on behalf of any of these past/present positions

ADA Specialty Recognition

- 7 specialties initially recognized between 1947 and 1950
- 1 specialty, endodontics recognized 1963
- 1 specialty, oral and maxillofacial radiology recognized 1999

ADA Specialty Recognition Process

- Application submitted to Council on Dental Education and Licensure (CDEL)
- Committee on Specialty Recognition and Interest Areas of General Dentistry
- Board of Trustees
- Reference Committee
- House of Delegates

Specialty Recognition

Specialty	Date of Recognition	Certifying Board Recognition
Oral and Maxillofacial Surgery	1947	1948
Orthodontics	1947	1950
Pediatric Dentistry	1947	1948
Periodontics	1947	1948
Prosthodontics	1947	1948
Oral and Maxillofacial Pathology	1949	1950
Public Health Dentistry	1950	1951
Endodontics	1963	1964
Oral and Maxillofacial Radiology	1999	2000

Specialty Denials

Specialty	Voted	Committee	CDEL	BOT	HOD
Implant	1986, 1988, 1993	Deny	Deny		Deny
Oral and Max Radiology	1994	Deny	Deny		Deny
	1996	Deny	Deny		Refer
	1997	Approve	Approve	Approve	Deny
Anesthesia	1994	Approve	Approve	Approve	Deny
	1997	Approve	Approve	Approve	Deny
	1999	Approve	Approve	Deny	Deny
	2012	Approve	Approve	Approve	Deny
Oral Medicine	1996, 1999	Deny	Deny	Deny	Deny
Orofacial Pain Craniofacial Pain	1997, 2002, 2004, 2006	Deny	Deny	Withdrawn	
	2000	Deny	Deny	Deny	Deny

2012 Question

- What authority does the American Dental Association have to say 'who is' and 'who is not' a specialist?

States

- Advertising/Announcing as a specialist is limited by:
 - State Dental Boards
 - Rules
 - Regulations
 - State Laws

Application to Recognize

- It is important to understand each application was not to ESTABLISH a specialty in anesthesia.
- The application was for the ADA to RECOGNIZE anesthesia as a specialty.
- Anesthesia is a specialty

Prior Lawsuits

- AAID vs Florida
- AAID vs California
- AAID vs Texas

AAID v Parker et al

- March 5, 2014 four organizations and five individual plaintiffs filed a lawsuit in FEDERAL Court against the Texas State Board of Dental Examiners
- Alleging it was unconstitutional for TSBDE to restrict our right to advertise as a specialist
- Texas Society of Oral and Maxillofacial Surgeons filed a motion to intervene as defendants

AAID v Parker et al

- Summary Judgment
 - "THE RIGHT TO ADVERTISE AS A SPECIALIST IN TEXAS IS UNDOUBTEDLY A FINANCIAL BOON TO DENTISTS IN THE STATE. WHILE OSTENSIBLY PROMULGATED TO PROTECT CONSUMERS FROM MISLEADING SPEECH, IT APPEARS FROM THE DEARTH OF EVIDENCE THAT RULE 108.54'S TRUE PURPOSE IS TO PROTECT THE ENTRENCHED ECONOMIC INTERESTS OF ORGANIZATIONS AND DENTISTS IN ADA-RECOGNIZED SPECIALTY AREAS. INDEED, DEFENDANTS HAVE PRODUCED LITTLE MORE THAN INDUSTRY BIAS IN FAVOR OF THE ADA TO SUPPORT THE ARGUMENT PLAINTIFFS' DESIRED SPEECH IS DECEPTIVE, FALSE OR MISLEADING OR THAT THE STATE DENTAL BOARD CAN TRUST THE ADA TO CARVE OUT SPECIALTY AREAS WITHOUT THE NEED TO MAKE ANY SUBSTANTIVE DETERMINATION OF WHETHER THE PLAINTIFFS' DENTAL ORGANIZATIONS ARE ACTUALLY BONA FIDE. THE FIRST AMENDMENT DEMANDS MORE."

AAID v Parker et al

- Decision for plaintiffs January 21, 2016
- Appealed to 5th Circuit Court of Appeals in Louisiana
- Upheld by Circuit Court June 19, 2017
- Not appealed to SCOTUS
- Binding in TX, LA, MS

What Does The Verdict Mean?

- The court didn't declare anesthesia, implantology, oral medicine and orofacial pain are specialists
- The court declared the regulation is unconstitutional and unenforceable
- This leaves the door open for other specialties

Medicine

- How does medicine determine specialties?
- American Board of Medical Specialties
- American Board of Physician Specialties
- American Osteopathic Associations Bureau of Osteopathic Specialties

ABDS

- **American Board of Dental Specialties incorporated in early 2013**
 - Direct result of the 2012 ADA House of Delegates rejection of anesthesiology as a specialty
- **4 Founding member boards**
 - American Board of Oral Implantology/Implant Dentistry
 - American Board of Oral Medicine
 - American Board of Orofacial Pain
 - American Dental Board of Anesthesiology

Specialist???

- What makes you a specialist?
- Give me criteria

Specialist???

- What makes you a specialist?
- **Training**
 - How long?
 - FT/PT?
 - CE?
- **Education**
 - University?
 - Hospital?
- **Experience**
 - Is experience alone enough?

Legal Challenges

- The more legal challenges, the more doors open
- Burden is on the State to limit our rights to advertise

Legal Specialization

- What is the “legal” baseline for specialty status?
- Texas Board of Legal Specialization

Central Hudson v Public Services Commission

- FOUR STEP ANALYSIS DEVELOPED:
- SPEECH AT ISSUE MUST CONCERN LAWFUL ACTIVITY AND NOT BE MISLEADING
- ASSERTED GOVERNMENTAL INTEREST MUST BE SUBSTANTIAL
- DOES REGULATION DIRECTLY ADVANCE GOVERNMENTAL INTEREST ASSERTED?
- IS REGULATION MORE EXTENSIVE THAN NECESSARY TO SERVE THAT INTEREST?

Frank Becker DDS, JD

Considerations

- Federal Trade Commission
- Future legal battles

ADA Resolution 65H-2016

- Permits dentists to announce as specialists recognized in their jurisdictions even if it is not one of the dental specialties recognized by the American Dental Association.

ADA Resolution 30H-2017

- Amends ADA bylaws
- Creates the American Dental Association’s National Commission on Recognition for Dental Specialties and Certifying Boards
- 1 Representative from each specialty
- 1 Matching general dentist
- 1 Public member

Future of Dental Specialties???

- What does the future hold for us?

Future

- Is there a legal difference between ADA and the New Commission from a legal standpoint?

Possibilities

- ADA specialties
 - New commission will be recognized by all 50 States
 - May see more competition from foreign trained specialists
- American Board of Dental Specialties
 - Pursue recognition on a State by State basis
- States can recognize specialties on an individual basis
- Another recognition board could be created
 - Medicine has ABMS, ABPS, AOABOS

Possibilities

- Forward looking statements not guaranteed...anything could happen
- General dentistry
- X
- Y
- Z

Related Lawsuits

- DuCoin v Florida
 - State deferral to the ADA ruled unconstitutional
- NC v FTC
 - Supreme Court ruling puts individual board members at risk
 - May not be covered by State immunity of the Sherman Antitrust Act
- Bingham (1 & 2) v California
- Potts v California

Florida

- Statute declared unconstitutional
- Still on the books (last time I checked)
- Paid approximately \$900,000 in legal fees to AAID

California

- Paid just under \$1,000,000 in legal fees to AAID
- Removed all specialty regulations

Cooper v Indiana

- Lawsuit filed in Federal Court April 7, 2017
- State requested a Stay to rewrite the regulations, willing to suspend enforcement
- AAID objected but Judge allowed
- After regulations changed, lawsuit ordered to proceed
- Still pending

AAID & O'Grady v Ohio

- Lawsuit filed in Federal Court January 5, 2018
- AAID agreed to suspend lawsuit while Ohio rewrites the rules

AAID & O'Grady v Ohio

- **Update Specialty Rules Temporarily Suspended**
 - "Please be advised that the Ohio State Dental Board passed a motion at the March 7th, 2018 meeting to temporarily suspend the enforcement of the Board's specialty designation (4715-5-04) and advertising (4715-13-05) rules until such time that the Board has amended said rules. Please note that not any dentist may claim to be a specialist and advertise as such. Until the Board revises said rules and the revisions become effective, a dentist may advertise as a specialist if he/she has completed an accredited program in a specialty currently recognized by the American Dental Association (ADA) or is a diplomate of a national certifying board of a specialty currently recognized by the ADA or is a diplomate of a certifying board of a specialty currently recognized by the American Board of Dental Specialties (ABDS). It is anticipated that the Board will vote to amend said rules in the near future."

Minnesota

- Have recognized individuals, not ABDS
- Orofacial Pain
- Dentist anesthesiologist

New Jersey

- Reported: Suspended enforcement of advertising specialty

Future

- Many States are looking at specialty advertising