



November 16, 2017

Via email to JEiferman@GOULSTONSTORRS.com

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Boston, Massachusetts 02110-3333

Dear Mr. Eiferman:

We have reviewed your letter dated November 7, 2017 and appreciate the opportunity to respond.

We understand and take seriously the concerns that you have expressed on behalf of the Massachusetts Dental Society (the "Society"). While the advertisements cited in your letter will cease airing at the end of 2017 as the annual campaign winds to its conclusion, we thought it would be helpful to provide some context and insight into the motivation for the campaign itself before addressing the specific concerns you raised.

The Campaign

As you may know, we have publicly responded to general complaints about the content of these satirical television commercials (See enclosed response). While we do not think it is productive to restate our position entirely, we think it important to highlight some key aspects of our prior responses.

In an ideal world, educating consumers about the importance of taking care of one's teeth would be sufficient to motivate every patient to seek regular, preventative dental care. And yet, according to research published by the American Dental Association, an estimated 150 million Americans did not visit a dentist last year. Moreover, our research shows that 25 percent of new patients who visit an Aspen Dental practice have not seen a dentist in more than five years, and one in 10 patients have not seen a dentist in a decade or more.

Our extensive market research shows myriad reasons for why patients delay dental care, including fear, financial barriers, shame and embarrassment. Our research also indicates that for many people, an approach that uses humor to humanize the dentist combined with a clear acknowledgement of real-life barriers to care is compelling and often results in a patient taking the step to make an appointment.

Based on those patient insights, we recommended to ADMI-supported practices a campaign that would confront these perceived barriers head on. The campaign, which began running in early 2017 and is scheduled to conclude at the end of the year, is clearly satire and seeks to humanize the profession while addressing public misperceptions about dentists and dentistry.

Despite concerns raised by some in the profession, the response from patients has been overwhelmingly positive. We fully expect that sometimes they choose to make an appointment with an Aspen Dental dentist, and sometimes they call a private practice that is not supported by a dental support organization. Either way, this message is compelling patients to take a very important first step towards getting the care they need.

The Specific Advertisements

Market “specific” television advertisements run throughout the Commonwealth of Massachusetts and are approved by the practice owners in each market.

These advertisements, as discussed in more detail below, contain certain disclosures that ensure compliance with the applicable laws, rules and regulations governing the profession of dentistry, several of which are referenced in your letter.

For the purposes of our response, I have enclosed PDF versions of the actual end cards for each of the applicable advertisements (note that we selected one market’s advertisements for convenience). Also, in some cases, disclosures necessary to meet the legal requirements are included in the voice over.

(1) Elevator

You allege that the elevator commercial violates Massachusetts General Laws Chapter 112, section 52A(5). Specifically, your argument is that the 20% discount offer fails to comply with the aforementioned statute because it fails to disclose the total fee to which the discount will apply. Significantly, there is no limitation to the value of this discount nor does the statute specifically require inclusion of a dollar value to which the discount applies. The end card of the advertisement includes a disclaimer that specifies that the discount will be applied to usual and customary fees. Since there is no limitation on the value of the discount and each patient’s treatment will be different, there simply is no way to disclose the total fee to which the discount will apply. This approach clearly and conspicuously explains the discount offered and is advantageous to consumers, the most likely class of individuals that the legislature sought to protect with this statute.

Similarly, the advertisements comply with the Massachusetts Board of Registration and Dentistry regulation that you reference (234 CMR § 5.18 (2)(C)). All market-specific advertisements contain disclaimers that clearly and conspicuously disclose the expiration date for the applicable offer. In this case, the disclaimer specified that the offer expired on December 31, 2017. The elevator advertisement complied with the referenced board regulation.

(2) Pool

With respect to the “Pool” advertisement, you allege a violation of Massachusetts General Laws Chapter 112 § 52C. Specifically, you contend that Aspen Dental practices are prohibited from advertising the sale of dentures. The practices are general dentistry offices. The dentists, while responsible for prescribing and selling dentures to their patients, are not “supplying, constructing, reproducing, relining, repairing, adding or directing the application of any substance of a permanent nature to dentures”. These tasks are undertaken by commercial dental

laboratories and dental laboratories located within each office, which are not owned by and are distinct from the general dentistry practices. Section 52C explicitly applies to “person[s] engaged in the business of...” activities related to the manufacture of dentures. In contrast, Section 52A provides restrictions on advertisements by dentists, and by its terms applies to any “registered dentist, person practicing dentistry, or dental hygienist”. In short, the statute that you cite is meant to prohibit laboratories, not dentists, from advertising their services (See, e.g. *Perlow v. Board of Dental Examiners*, 332 Mass. 682 (1955)).

If we assume that your argument is valid, any dentist – perhaps even members of the Society – who advertise denture services as a component of their practice would be in violation of the statute. We are confident that the owners of Aspen Dental practices are not alone in advertising dentures and denture related services that are produced by laboratories. A simple scan through internet advertising, television commercials and print advertising reveals that many dentists in Massachusetts advertise in a similar (if not identical) manner to Aspen Dental practices.

(3) Additional Allegation

As shown on the enclosed end cards for the three television advertisements you cite (Pool, Elevator and Bank), practice owners are listed clearly and conspicuously in the advertisements that aired on television in local markets. Therefore, the advertisements complied with 234 CMR § 5.18(3).

(4) ADA Code

A point by point rebuttal to your allegations related to the ADA Code would be unproductive. However, as mentioned above, we have concrete consumer data that was collected using commercially reasonable techniques that shows pricing, trust and other similar factors are preventing people from going to the dentist. Nothing in the commercials you reference lends credence to these perceptions or directly assails any other member of the dental community. The perceptions are highlighted and responded to in a satirical manner while referencing only dentists at Aspen Dental practices.

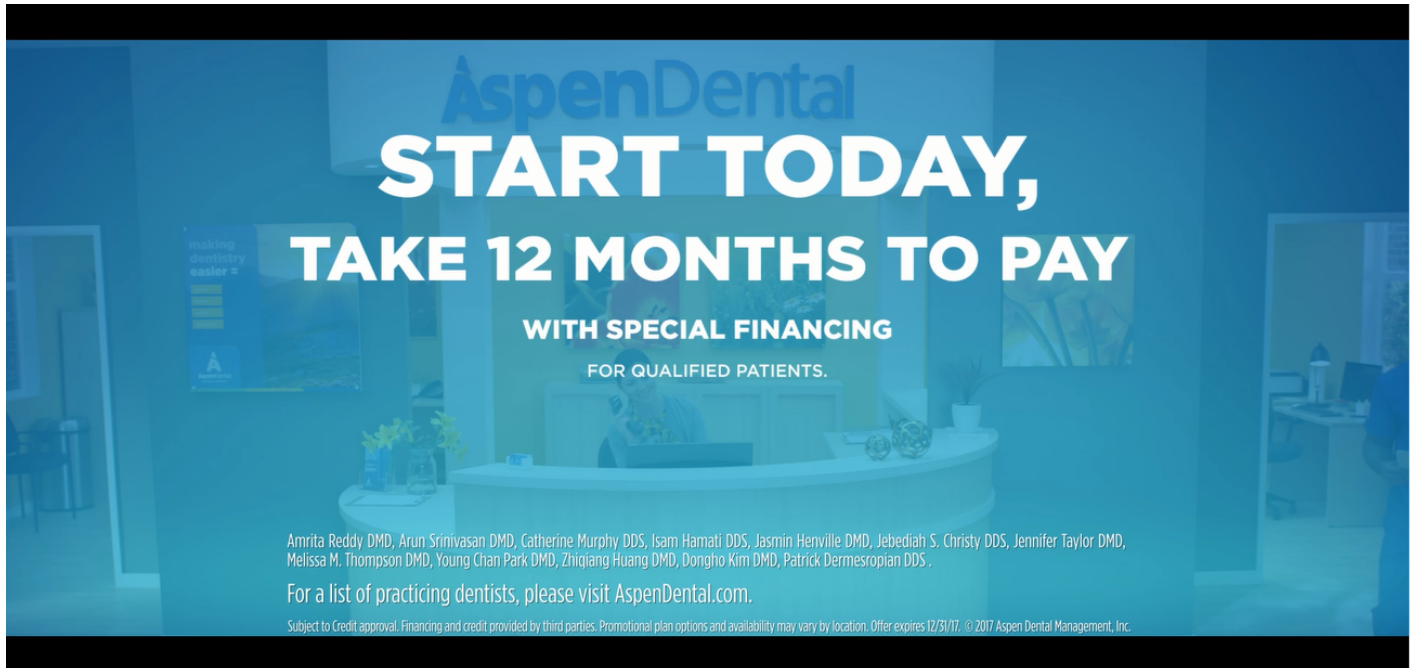
The consumer insights we identified from our research have broad implications for the dental industry as a whole. By correcting misperceptions and, where necessary, addressing patients’ reasonable concerns about the barriers to care that cause them to delay treatment until it is a medical necessity, we believe our supported dentists are providing a service to their patients and to the dental community.

Again, we thank you for giving us an opportunity to address the Society’s concerns and would welcome the opportunity to meet with the Society on how we might work together to break down barriers for patients in need of care.

Very truly yours,



Steven C. Judge
Vice President, Associate General Counsel



AspenDental

START TODAY, TAKE 12 MONTHS TO PAY

**WITH SPECIAL FINANCING
FOR QUALIFIED PATIENTS.**

Amrita Reddy DMD, Arun Srinivasan DMD, Catherine Murphy DDS, Isam Hamati DDS, Jasmin Henville DMD, Jebediah S. Christy DDS, Jennifer Taylor DMD, Melissa M. Thompson DMD, Young Chan Park DMD, Zhiqiang Huang DMD, Dongho Kim DMD, Patrick Dermesropian DDS.

For a list of practicing dentists, please visit AspenDental.com.

Subject to Credit approval. Financing and credit provided by third parties. Promotional plan options and availability may vary by location. Offer expires 12/31/17. © 2017 Aspen Dental Management, Inc.

Bank- MA



AspenDental

20% OFF DENTURES

Amrita Reddy DMD, Arun Srinivasan DMD, Catherine Murphy DDS, Isam Hamati DDS, Jasmin Henville DMD, Jebediah S. Christy DDS, Jennifer Taylor DMD, Melissa M. Thompson DMD, Young Chan Park DMD, Zhiqiang Huang DMD.

For a list of practicing dentists, please visit AspenDental.com.

Discount applies to the denture only and not to related dentistry services, if any. Not valid for previous or ongoing work and cannot be combined with other discounts or dental discount programs. Discount taken off usual and customary fees for dentures and does not apply to services rendered by a specialist. Patients with insurance will receive either the 20% discount or insurance plan pricing, whichever discount is greater. Offer must be presented at first visit. Offer expires 12/31/17. © 2017 Aspen Dental Management, Inc.

Elevator- MA

The background of the advertisement is a blue-tinted photograph of a modern dental office. In the center, a reception desk is visible with a staff member behind the counter. To the left, a poster on the wall reads "making dentistry easier". To the right, another staff member is partially visible near a desk with a computer monitor. The overall atmosphere is clean and professional.

AspenDental

DENTURES
NOW STARTING AT
\$299
UPPER OR LOWER DENTURE
OFFER EXPIRES 9/10/17

Amrita Reddy DMD, Arun Srinivasan DMD, Catherine Murphy DDS, Isam Hamati DDS, Jasmin Henville DMD, Jebediah S. Christy DDS, Jennifer Taylor DMD, Melissa M. Thompson DMD, Young Chan Park DMD, Zhiqiang Huang DMD.

For a list of practicing dentists, please visit AspenDental.com.

Starting price is based on a current denture wearer selecting a Basic single arch replacement denture. Price does not include relines. Offer must be presented at first visit. Offer expires 9/10/17. © 2017 Aspen Dental Management, Inc.

Pool- MA

ADANews

Current Issue

Letters: Aspen Dental response

October 02, 2017

Thank you for the opportunity to respond to the Aug. 21 ADA News My View, "[They Should Know Better.](#)" by Dr. Matthew J. Messina.

While I can understand that the new Aspen Dental advertising campaign has caught the attention of many in the dental profession, I'd like to provide some additional insight to my fellow ADA members into how and why this TV campaign was created.

The patient perception that dentistry is expensive is not a new one. This shows up in pop culture, social media and traditional media with regular frequency. In fact, just this past summer alone, several high-profile articles and reports have been published in widely read and widely shared news outlets about the cost of dentistry being a major barrier to everyday Americans getting the care they need, even when those everyday Americans have stable employment. 1-4 These news stories detail the lengths to which these hard-working patients must go to find care they can afford, including waiting in long lines to be seen at free community dental clinics and, incredibly, leaving the country to seek care. These are simply small snapshots of a widespread need for patients to have more flexible and affordable dentistry options. Like it or not, our profession must acknowledge this reality for many, many Americans overtly if we are to help improve care in this country. To suggest this reality is a mere public perception issue inflamed by a TV advertising campaign demonstrates how far we as a profession still have to go.

The ADA's own research shows that 150 million Americans did not visit a dentist last year, and our research shows that 25 percent of Aspen Dental patients have not seen the dentist in more than five years, and one in 10 patients have not seen a dentist in a decade or more.

Knowing this, our team spoke with real consumers from across the nation to gain an even better understanding of why they have avoided the dentist even when their need for care was great. This deep consumer research illustrates that for this cohort, many barriers to care exist including lack of trust, cost, fear, physical pain and shame. We also learned that the best way to break down those barriers and shift these potential patients to a place of even considering making an appointment is to acknowledge these truths, their truths, head-on in advertising. While emphasizing traditional dentistry messages of taking good care of teeth and investing in good oral health has benefits for many people including children who are just forming their oral health habits and those groups of patients who traditionally have fewer barriers to care, this particular cohort of hard-working Americans is not persuaded by these messages. For this group, traditional dentistry messages are another example of dental professionals and the industry at large being yet again tone-deaf to their needs, emotions and life situation. And, for many, the state of their oral health is too far gone, and the physical pain is too great for traditional messages to be even remotely helpful.

The new Aspen Dental advertising campaign was born from this deep, real-person, consumer understanding and research. And when viewed objectively, rather than intensifying negative perceptions of dentists, the campaign aims to do the exact opposite. The dentist in the TV spots is portrayed as calm, approachable, helpful, caring, knowledgeable and resourceful. Our testing shows that for many people, this helps to humanize dentists overall rather than keeping dentists on a pedestal, elevated and apart from the patients they serve. Most importantly, this humanization of dentists, when combined with a clear acknowledgement of real-life barriers to care, is a compelling message to this group of potential patients — and often results in a patient taking the step to make an appointment. We fully expect that sometimes they choose to make an appointment with an Aspen Dental dentist, and sometimes they call a traditional private practice. Either way, this message is compelling patients to take a very important first step towards getting the care they need.

The new TV advertising is just one way Aspen Dental dentists are reaching patients who have major barriers to care. Aspen Dental dentists know that for some patients, any financial cost for care is too much of a burden to bear. This is why the Aspen Dental Health Mouth Movement was created in 2014. Since this program's inception, Aspen Dental dentists and dental professional teams across the country have donated more than \$10 million in free dentistry to thousands of our nation's veterans who are not covered by dental insurance. These numbers grow each and every week as the Aspen Dental Mouth Mobile criss-crosses our country, enabling local Aspen Dental dentists and teams to see and treat the heroes who live and work in their communities. And June 24 marked the fourth year of Aspen Dental's Day of Service — with the vast majority of Aspen Dental offices across the nation closing for regular business and instead opening for a full day of free dental care and treatment for U.S. veteran patients.

As a longtime member of the ADA, I believe that the ADA can and should play a role in breaking down barriers to care for patients. I believe a strong ADA is in the best interest of both the dental profession and the patients we serve. But there are headwinds for the organization that are cause for concern, perhaps the largest of which is the declining percentage of dentists who are ADA members. This may be due in part to whether or not dental service organization-supported dentists feel welcome, supported or even relevant to the ADA — despite the fact that we have all been through the same training and hold the same credentials from the same institutions as nondental service organization-affiliated colleagues. Again, as a longtime ADA member, I believe that a strong ADA is in the best long-term interests of our profession. But knowing that an ever-increasing percentage of new dental school graduates are selecting a dental service organization-affiliated career path, the frequently expressed sentiment that the ADA is not relevant is troubling to me, and it should be to the ADA and its membership as well.

There is much work to do — together — to address our nation's oral health crisis.

*Arwinder Judge, D.D.S.
Chief clinical officer
Aspen Dental Management, Inc.*

REFERENCES

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