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SUMMARY: AAID v. PARKER

Plaintiffs: AAID (American Academy of Implant Dentistry), American Society of Dentist Anesthesiology, American Academy of Oral Medicine and the American Academy of Orofacial Pain.

- In 2013, these same four organizations formed the American Board of Dental Specialties. The catalyst for this, and the lawsuit, was the 2012 ADA House of Delegates “no” vote on the ADA Council on Dental Education and Licensure’s recommendation that ASDA be recognized as a dental specialty, having met CDEL’s requirements.

Defendant: Glen Parker, Executive Director, Texas State Dental Board

Intervenor Defendant: Texas Society of Oral and Maxillofacial Surgeons

Issue: Does the following provision from Texas Code suppress commercial speech, and therefore violate the Constitution, by limiting specialty recognition to the nine specialties accredited by ADA CODA and listed in the law?

- **“A licensed 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 CODA. “ The rule then lists the nine specialties recognized by the state dental board, which track those specialty areas recognized by the ADA.**

Holding: Yes. The provision is unconstitutional.

Key Language:

- *Defendants have failed to explain why blind reliance on the ADA is not more stifling of commercial speech than is necessary. It does not account for the risk that a non-ADA recognized specialty board or credentialing organization could meet the standards of integrity set by the ADA but still not be recognized as a specialty for political or economic reasons. Wholesale deference to the ADA risks suppressing the truthful speech of dentists who have achieved high levels of training education or experience but have not successfully petitioned for specialty recognition.*

Immediate Result:

- Members of the four plaintiff-organizations practicing in Texas can now advertise as specialists in the same manner as ADA-recognized specialty members (i.e., they have to limit their practice to the specialty).

What happens if the case is not appealed or is upheld on appeal?

National

- Nothing happens “automatically.” The decision still only applies to the Texas Dental Board.
- However, the plaintiffs can cite the decision as “precedent” to bring Federal suits challenge similarly worded advertising statutes in other states.
- Plaintiffs could also use the decision to challenge the ADA Code of Ethics advertising provisions, which also limit specialist advertising to the nine dental specialties recognized by the ADA.
- State dental boards with advertising provisions that similarly reference ADA-recognized specialties may proactively revise those provisions.

Texas Dental Board

The Board will have to amend the law to comply with the decision. Stakeholders, including the ADA-recognized dental specialties and the plaintiff-specialties, will be part of the process.

The opinion is repeatedly critical of the fact that the board adopted ADA’s list of recognized specialties, *“without regard to whether the non-ADA recognized fields are bonafide and meet standards of minimal competency,”* Therefore, the board must draft language that indicates how those standards are determined. When the ADA-recognized specialties requirement is eliminated from the law, there is no standard other than a board self-designating. That would not satisfy the dental board’s responsibility to protect the public health.

It is likely that ADA requirements for specialty recognition will be used as a baseline. Attachment 1 outlines what the ADA recognition requirements would look like with the deletion of all references to ADA specialties.

Helen Jameson, J.D.

Assistant Executive Director for Professional Affairs

Attachment 1

Requirements for Recognition of Dental Specialties A sponsoring organization seeking specialty recognition for an area must document that the discipline satisfies all the requirements specified in this section. (1) In order for an area to become and/or remain recognized as a dental specialty, it must be represented by a sponsoring organization: (a) whose membership is reflective of that proposed or recognized dental specialty and (c) that demonstrates the ability to establish a certifying board. (2) A proposed specialty must be a distinct and well-defined field which requires unique knowledge and skills beyond those commonly possessed by dental school graduates as defined by the predoctoral accreditation standards. (3) The scope of the proposed specialty requires advanced knowledge and skills that: (a) are separate and distinct from any recognized dental specialty or combination of recognized dental specialties; and (4) The specialty applicant must document scientifically, by valid and reliable statistical evidence/studies, that it: (a) actively contributes to new knowledge in the field; (b) actively contributes to professional education; (c) actively contributes to research needs of the profession; and (5) A proposed specialty must directly benefit some aspect of clinical patient care.

The following provisions were deleted

1b) in which the privileges to hold office and to vote on any issue related to the specialty are reserved for dentists who either have completed a CODA-accredited advanced education program in that proposed or recognized specialty or have sufficient experience in that specialty as deemed appropriate by the sponsoring organization and its certifying board

3b) cannot be accommodated through minimal modification of a recognized dental specialty or combination of recognized dental specialties. .

4d) provides oral health services for the public; all of which are currently not being met by general practitioners or dental specialists