



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Ohio State Dental Board

FROM: Common Sense Initiative Office

DATE: April 25, 2019

RE: R.C. §107.56 Referral—*Dental Specialties Recognition and Advertising Rules*

On October 31, 2018, the Ohio State Dental Board self-referred for review under Ohio Revised Code (R.C.) §107.56 proposed amendments to its administrative rules entitled “*Dental Specialties Recognition and Advertising Rules*.” This memo represents the Common Sense Initiative office’s (“CSI’s”) determination under that statute.

ANALYSIS

I. The action is consistent with a clearly articulated state policy.

The Dental Board’s proposed changes to the specialty recognition and advertising rules is consistent with clearly articulated state policy. The Ohio General Assembly’s stated purpose for the Dental Board as it relates to dentists is twofold: to regulate the practice of dentistry and to ensure that the practice of dentistry is safe. In order to accomplish those purposes, the legislature says that the Dental Board “shall make such reasonable rules as it determines necessary...to establish standards for the safe practice of dentistry...by qualified practitioners, and shall, through its policies and activities, promote such practice.”¹

Building on that foundation of ensuring and promoting the safe practice of dentistry by qualified practitioners, the legislature gives the Dental Board clear and specific authority to designate dental specialties and to prevent false and misleading advertising. Of the nine members of the Dental Board who practice of dentistry, the legislature mandated that “two shall be persons recognized as

¹ R.C. §4715.03(A).

specialists pursuant to rules adopted by the board.”² It also gives clear authority for the Dental Board to promulgate advertising rules by allowing the Dental Board to take disciplinary action against licensees for “[a]dvertising services in a false or misleading manner or violating the board’s rules governing time, place, and manner of advertising.”³

The Dental Board’s proposed rules limit official specialty recognition to dentists who have completed post-doctoral education or hospital residency in dental public health, endodontics, oral and maxillofacial pathology and oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, dental anesthesiology, oral medicine, implant dentistry, and orofacial pain.⁴ A licensed dentist who meets any of those requirements may claim a specialty designation when advertising. Nonetheless, a licensed general dentist who does not meet the requirements for official specialty designation is not prohibited from advertising specialty services, as long as the advertisement includes a disclaimer statement, clarifying that the licensee’s advertised specialty does not meet the specialty recognition requirements of the Ohio State Dental Board.⁵ Both the educational requirements and the required advertising disclaimer guarantee the safe and qualified practice of dentistry by ensuring that dentists holding themselves out as specialists have appropriate and sufficient training and that dental service advertisements are not false or misleading for consumers.

II. The state policy is not merely a pretext for anticompetitive conduct that could be subject to state or federal antitrust law.

The policy effectuated by the Dental Board’s proposed administrative rule changes is not a pretext for anticompetitive conduct because it stops short of preventing any licensed dentist from practicing a specialty. Under continuing provisions of OAC 4715-5-04, a licensed dentist who does not meet the requirements for specialty designation is a general dentist, and all licensed general dentists, regardless of education level, are permitted to render specialty services in Ohio. They do not require additional specialized education or credentials in order to do so.⁶ Additionally, a licensed general dentist who does not meet the requirements for specialty designation is not even prohibited from advertising specialty services so long as the advertisement includes a prescribed disclaimer statement.

² R.C. §4715.02.

³ R.C. §4715.30(A)(3).

⁴ See proposed amendments to O.A.C. §4715-5-04(B).

⁵ O.A.C. §4715-13-05(C): “a dentist who is not recognized as a specialist under paragraph (B) of rule 4715-5-04 of the Administrative Code may advertise truthful certification, diplomate status or other similar credentials from a bona fide national organization which grants credentials based upon the dentist’s postgraduate education, training, and experience, and an examination based upon psychometric principles, if the following disclaimer appears in a reasonably clear and visible manner compared to the announcement of the credential: “[insert name of the organization] does not meet the specialty recognition requirements of the Ohio State Dental Board.”

⁶ O.A.C. §4715-5-04(A).

Determination

Accordingly, CSI determines that the proposed rules from the Dental Board are supported by and consistent with a clearly articulated state policy and are not a pretext for anticompetitive conduct.