

Greetings,

Lori and I discussed George's request and it is OK to use the information below and the attached case as well for informational purposes in whatever manner you wish. The Board of Dentistry has no position on SB 835. Please let me know if you have any questions.

Thanks,

Stephen

The proposal to take the American Dental Association out of the specialty advertising law was done due to a recent court case from Texas.

In the case of the American Academy of Implant Dentistry v. Kelly Parker, 860 F. 3d 300, 2017, in the fifth circuit case from Texas, several plaintiffs including implant organizations sued the Board of Dentistry in Texas (the executive director and members of the board in their official capacities) claiming that the dentists certified as a "diplomate" by a credentialing board had obtained the highest honor which allowed them to be able to advertise as a specialist under the Texas rules. The court held the language of their advertising was not misleading. Note the Texas rule completely prohibited someone from advertising their specialists in their field solely because the ADA had not recognized their practice areas as specialties. The implant organizations were not recognized by the ADA but had other accreditation processes in place to signify the specialty. The court held the Boards' rules inappropriately limited commercial speech based on the record the court had. (See opinion attached)

This law change will make clear that the specialties are not specifically tied to the ADA, but are tied to the United States Department of Education. The changes also give additional discretion to the Board of approving the specialties.

Currently the Dental Practice Act statutes are silent as to specialty advertising. (They do have rules regarding this matter) This law would allow anyone with a specialty who qualifies under the new wording and with appropriate credentialing to advertise their specialties.

Lori H. Lindley

Assistant Attorney General | Business Activities Section | General Counsel Division

Oregon Department of Justice

1162 Court St. NE, Salem, OR 97301-4096

503.947.4520