

## FINAL ORDER

The Commission has heard this matter on the appeal of respondent California Dental Association from the Initial Decision, and on briefs and oral argument in support of and in opposition to the appeal. For the reasons stated in the accompanying Opinion of the Commission, the Commission has determined to affirm the Initial Decision, and to issue this Final Order. Accordingly, the Commission enters the following order.

## I.

*It is ordered*, That, as used in this order, the following definitions shall apply:

A. "*Respondent*" or "*CDA*" means the California Dental Association, its directors, trustees, councils, committees, boards, divisions, officers, representatives, delegates, agents, employees, successors and assigns.

B. "*Component societies*" means those dental societies or dental associations defined as component societies in the June 1986 edition of CDA's Bylaws. In the event that CDA's Bylaws are amended to denominate component societies differently or to define or describe a new category of dental societies or associations that replace or are substantially similar to the component societies defined in the June 1986 edition of CDA's Bylaws, "component societies" means those dental societies or dental associations as well.

C. "*Person*" means any natural person, corporation, partnership, unincorporated association, or other entity.

D. "*Restricting*" includes taking any action against a dentist based on the advertising practices of the dentist's employer.

## II.

*It is further ordered,* That respondent, directly or indirectly, or through any corporate or other device, in or in connection with its activities as a professional association in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Prohibiting, restricting, regulating, impeding, declaring unethical, or interfering with the advertising or publishing by any person of the prices, terms or conditions of sale of dentists' services, or of information about dentists' services, facilities or equipment which are offered for sale or made available by dentists or by any organization with which dentists are affiliated, including, but not limited to, advertising or publishing:

1. Superiority claims;
2. Comparative claims;
3. Quality claims;
4. Subjective claims and puffery;
5. Prices, including discounted prices;
6. Promises to refund money to dissatisfied customers;
7. Claims that include the use of adjectives or superlatives to describe any offered service; and
8. Exclusive methods or techniques.

B. Prohibiting, restricting, regulating, impeding, declaring unethical, or interfering with the solicitation of patients, patronage, or contracts to supply dentists' services by any dentist or by any organization with which dentists are affiliated, through advertising or by any other means, including, but not limited to, the distribution of business cards and forms containing a dentist's name, business address, or telephone number in connection with dental screenings of children at public and private schools.

C. For a period of ten (10) years after the date this order becomes final, inducing, requesting, suggesting, urging, encouraging, or assisting any non-governmental person or organization to take any action that if taken by respondent would violate Part II.A. or II.B. of this order.

Provided, however, that nothing contained in this order shall prohibit respondent from formulating, adopting, disseminating to its component societies and to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations that respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, or with respect to uninvited, in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence.

Provided further, that nothing in this order shall prohibit respondent from encouraging its members to obey state law or from disciplining any member as a result of that member's reprimand, discipline, or sentence by any court or any state authority of competent jurisdiction.

### III.

*It is further ordered*, That respondent shall:

A. Within sixty (60) days after the date this order becomes final, remove from respondent's Code of Ethics and from its Bylaws and any other policy statement or guideline of respondent, any provision, interpretation, or policy statement that is inconsistent with the provisions of Part II of this order, including but not limited to:

1. Sections 10 and 22 of respondent's Code of Ethics; and
2. Advisory Opinions 2(c), 2(d), 3, 4, and 8 to Section 10 of respondent's Code of Ethics.

B. Terminate for a period of one (1) year respondent's affiliation with any component society within one hundred and twenty (120) days after respondent learns or obtains information that would lead a reasonable person to conclude that said component society has, after the date this order becomes final, engaged in any act or practice that if committed by respondent would be prohibited by Part II of this order; unless prior to the expiration of the one hundred twenty (120) day period, said component society informs respondent by a verified written statement of an officer of the society that the component society has eliminated and will not reimpose the restraint(s) in question, and respondent has no grounds to believe otherwise.

## IV.

*It is further ordered,* That respondent shall:

A. Within ninety (90) days after the date this order becomes final, publish in the "journal of the California Dental Association" ("CDA Journal"), or any successor publication, with such prominence and in the same size type as feature articles are regularly published in the "CDA Journal," or any successor publication, and with customary form and scope of distribution of the "CDA Journal," or any successor publication, and separately distribute by first class mail to each of its component societies and to each of its members:

1. This order, the accompanying complaint, and an announcement in the form shown in Appendix A to this order; and
2. Any documents revised pursuant to Part III.A. of this order.

B. For each person who, because of the advertising or solicitation practices of the person or the person's employer, currently is subject to a CDA disciplinary order, or currently is suspended from membership in CDA:

1. Within thirty (30) days after this order becomes final, distribute by first class mail a copy of this order, the accompanying complaint, and an announcement in the form shown in Appendix B to this order;
2. Within one hundred and twenty (120) days after the date this order becomes final, (a) review the person's file, and (b) determine whether the suspension or disciplinary order is consistent with Part II of this order; and
3. Within one hundred and twenty (120) days after the date this order becomes final, send by first class mail a letter notifying the person whether CDA has lifted the suspension and or vacated the disciplinary order, and, if not, detailing the reasons for maintaining the suspension or retaining the disciplinary order.

C. For each person currently not a member of CDA who, because of the advertising or solicitation practices of the person, or of the person's employer:

1. Has been expelled from CDA during the ten (10) year period preceding the date this order becomes final; or
2. Has been denied membership in CDA, or any CDA component, during the ten (10) year period preceding the date this order becomes final; or
3. Was contacted by CDA, or any CDA component, during the ten (10) year period preceding the date this order becomes final, and who subsequently resigned from CDA;

Take the following steps:

Within one hundred and twenty (120) days after this order becomes final, distribute by first class mail a copy of this order, the accompanying complaint, an announcement in the form shown in Appendix C to this order, and an application form for membership in CDA; and

Within forty-five (45) days after the date an application from such person for membership is received, (i) review the application, and (ii) send by first class mail a letter notifying the person whether membership has been granted, and, if not, detailing the reasons for the denial.

D. For five (5) years after the date this order becomes final, distribute by first class mail a copy of this order, the accompanying complaint, and an announcement in the form shown in Appendix A to this order to each person who applies for membership in CDA within thirty (30) days after CDA receives an application from such person.

V.

*It is further ordered,* That respondent shall:

A. For a period of three (3) years after the date this order becomes final, create and maintain a written record in each instance in which respondent or one of its component societies takes action with respect to advertising for the sale of dental services. The record required by this paragraph shall, at a minimum, clearly specify the particular representation that is alleged to be false or deceptive, and the basis for concluding that the particular advertisement is false or deceptive

within the meaning of Section 5 of the Federal Trade Commission Act.

B. Within six (6) months after the date that this order becomes final, and every six (6) months thereafter for a period of three (3) years, file with the Federal Trade Commission, Bureau of Competition, Division of Compliance, copies of each and every record created pursuant to Part V.A. of this order.

## VI.

*It is further ordered,* That respondent shall:

A. Establish, within sixty (60) days after the date this order becomes final, and maintain for a period of five (5) years thereafter, a compliance program to aid in ensuring that respondent and its component societies act in conformance with the requirements of Parts II through V of this order. Said compliance program shall include, at a minimum:

1. Establishing a compliance officer or committee that shall supervise review of the activities of respondent and its component societies with respect to advertising; and

2. Establishing procedures to ensure that respondent receives written notice of all action, whether formal or informal, taken by respondent's component societies with respect to advertising.

B. Within one hundred and twenty (120) days after the date this order becomes final, file with the Federal Trade Commission a verified report in writing setting forth in detail the manner and form in which respondent has complied and is complying with this order.

C. Within one (1) year after the date this order becomes final, annually thereafter for a period of five (5) years, and at such other times as the Federal Trade Commission may by written notice to respondent request, file a verified report in writing with the Federal Trade Commission setting forth in detail the manner and form in which respondent has complied and is complying with this order, and setting forth in detail any action taken in connection with the activities covered by this order, including, but not limited to, any advice or interpretation rendered with respect to advertising or solicitation, and all written communications, all summaries of oral

communications, and all disciplinary actions taken with respect to advertising or solicitation.

D. For a period of five (5) years after the date this order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts II, III, IV, and V of this order, including but not limited to any advice or interpretation rendered with respect to advertising or solicitation, and all written communications, all summaries of oral communications, and all disciplinary actions taken with respect to advertising or solicitation.

E. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed changes in respondent, such as dissolution or reorganization resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this order.

## VII.

*It is further ordered,* That this order will terminate twenty (20) years from the date it becomes final, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later;

Provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate

between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Commissioner Azcuenaga dissenting.