

January 5, 2023

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex B)
Washington, DC 20580

Re: Reviews and Endorsements ANPR, P214504.

To Whom It May Concern:

On behalf of the 162,000 members of the American Dental Association (ADA), we are writing to you regarding the Advance Notice of Proposed Rulemaking (ANPR) on deceptive or unfair uses of reviews and endorsements.

The ADA greatly appreciates the Federal Trade Commission's (FTC) work on this important issue. The ANPR is a critical step towards ensuring that the online reviews of dental practices are fair and honest. We are particularly concerned about reviews by people who are not actually patients of the dental practice, or who are misrepresenting their experiences with the dental office.

A common problem that dental offices face with these deceptive or unfair reviews is that, unlike businesses that can respond specifically to negative reviews, dentists, as health care providers, may be constrained by federal and state privacy laws from disclosing patient information even if the review is deceptive or misleading and even if the reviewer discloses their patient information in the review. For example, a recent survey by the ADA Health Policy Institute found that 88% of surveyed dentists reported ever receiving patient reviews online, but 39% responded 'yes' to the survey question "Have you ever been unable to respond to an online review due to HIPAA regulations?" The constraints on responding to these reviews cause injury to the business, to competition, and to consumers. Dishonest negative reviews are unfair to the dental practice, which could lose business to a competitor for false or misleading reasons. It can also be very upsetting to the dentist to see incorrect information about their hard work posted online for anyone to find. These types of dishonest and misleading negative reviews can even affect the valuation of a practice that is currently in the process of being sold. Such reviews are also unfair to potential patients of the practice who may decide to go elsewhere (or delay care) due to the review.

The ADA urges the FTC to create an exception to enforcement and regulations under the FTC Act that would permit health care providers, including dentists, to disclose patient information in response to a review without violating the prohibition against unreasonable and deceptive trade practices, provided the disclosure is limited to the scope of the topics addressed in the review. Additionally, the FTC should encourage the social media review sites to revise their Terms of Use to remove blanket prohibitions on responding to posts with health information, such as in the case outlined above where the reviewer has already shared that information. This would help dental practices respond to reviews to the extent permitted by other federal and state law.

The ADA also urges the FTC to include in its rulemaking a requirement that the reviewer self-identify, as well as a requirement for the social media site to verify that identity. If the reviewer does not self-identify in the review, then the dental practice should have an avenue to request that identification from the social media site. Not only would this help the dentist to determine if the review is fraudulent, but in the case of a legitimate review, it would also assist the dentist in responding to and addressing the patient's concerns by reaching out to the patient either on social media or directly, as appropriate. These regulatory provisions would protect the dental practice from misleading and deceptive reviews, ensure fair competition between dental practices, help consumers to choose the right dental practice for them, and assist dentists in addressing the questions and concerns of their patients.

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Thank you again for issuing the ANPR. The ADA stands ready to work with the FTC and the social media sites on these changes. Please contact Roxanne Yaghoubi at yaghoubir@ada.org if we can be of assistance.

Sincerely,

George R. Shepley, D.D.S.
President

Raymond A. Cohlma, D.D.S.
Executive Director

GRS:RAC:ry