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Dear Dental Quality Assurance Commission Members:

This letter is sent on behalf of the American Association of Orthodontists (“AAO”) and Washington State Society of Orthodontists (“WSSO”). The AAO is the world’s oldest and largest dental specialty organization. Founded in 1900, the AAO currently represents over 18,000 orthodontist members, including over 400 members in the state of Washington. The AAO is dedicated to improving the health of the public by promoting quality orthodontic care, the importance of overall oral healthcare, and advocating for the public interest. In addition, the AAO educates the public about the benefits of orthodontic treatment and the educational qualifications of orthodontic specialists. As I’m sure you are well aware, orthodontists are specialists focused on diagnosing, preventing, and treating facial irregularities to correctly align the teeth and jaws. To become an orthodontist, one must obtain a D.D.S. or D.M.D. degree and then complete a two- to three-year, full-time residency in a Commission on Dental Accreditation (“CODA”) accredited orthodontic residency program.

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Given this background, the AAO would like to comment on the options being considered as it concerns WAC 246-817-420.

Maintaining the CODA requirement

Under the current WAC 246-817-420, a Washington dentist can only represent him or herself as a “specialist” and/or advertise as a “specialist” in certain, recognized specialty areas if that dentist meets the “guidelines or requirements for specialties approved by the Commission on Dental Accreditation [CODA] and the Council on Dental Education of the ADA.” Since post-doctoral programs accredited by CODA must be two or more years in length, WAC 246-817-420’s current language guarantees extensive education and training by a Washington dentist wishing to advertise as a “specialist.” The AAO strongly believes that CODA’s educational requirements properly equip graduates of CODA accredited specialty programs to diagnose, treat, and ensure the health of Washington patients for

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each graduate's respective specialty.¹ CODA's educational requirements also provide a validated basis for the graduates to identify as "specialists" to the public, as it "is the only nationally-recognized accrediting body for dentistry and the related dental fields, receiving its accreditation authority from the acceptance of all stakeholders within the dental community and recognition by the United States Department of Education, a governmental agency."²

On the other hand, if any organization with a putative set of credentialing standards could certify "specialists" in dentistry or accredit specialty programs, it not only would be unwieldy for the public to navigate and research (assuming they would), but it would also be hard to regulate or police if fly-by-night organizations could simply issue their own standards and thereafter certify "specialists." In addition, if a dentist was able to advertise as a "specialist" without completing a multi-year, CODA accredited program, it would dilute the "specialty" designation and allow providers, who do not have years of supervised clinical and didactic training and/or who have not satisfied extensive criterion, to advertise on par with those providers who have long-term, comprehensive education and training through CODA accredited programs. Such dilution would threaten the health and safety of Washington patients by obscuring important distinctions between dental professionals as well as their respective educational and training backgrounds.

If Washington removed the CODA language from WAC 246-817-420, it would dilute its "specialty" law. Given such dilution, it would be easy to foresee a situation in which a Washington dentist completes a 500 hour course for a so-called "specialty" field, thereafter advertises as a "specialist" in that field, a patient relies upon that "specialist" designation when choosing that provider, the patient is injured, and then the patient claims he was not protected under Washington's laws because they allowed his doctor to advertise in the same manner as a doctor who completed a multi-year, CODA accredited program in the same specialty. That regrettable scenario should not be given the opportunity to play out, especially if it comes at the cost of the health and safety of Washington's citizens. Overall, the AAO believes that those Washington dentists who identify and advertise as "specialists" should have an advanced level of training and education, which is what Washington's WAC 246-817-420 currently requires. Thus, to the extent the Commission wants to revise WAC 246-817-420 to accommodate the American Board of Dental Specialty's ("ABDS") request that its members should also be able to advertise as "specialists," that accommodation should

¹ It should be noted that CODA has been around for decades and its mission statement is clear: "serv[ing] the public and profession by developing and implementing accreditation standards that promote and monitor the continuous quality and improvement of dental education programs." See <http://www.ada.org/en/coda> (last visited, July 10, 2017).

² http://www.ada.org/epubs/highroad/coda/140923_communicator.html (last visited, July 10, 2017).

not come at the cost of removing the requirement that specialists graduate from multi-year, CODA accredited programs.

Options Being Considered

Of the 4 options being considered by the Board, none of them explicitly preserve the CODA language. See Agenda for Committee on Regulatory Affairs, February 21, 2018, Item 10.1. Options 1, 2 and 4 seem to allow all the ABDS specialties to advertise as “specialists,” meaning implantologists (one of the ABDS groups) could advertise as specialists despite there being no CODA accredited specialty program for implantology. It is difficult to see how lowering the educational standard for “specialty” advertising would benefit Washington’s patients. As such, Options 1, 2 and 4 should not be considered viable options. The AAO definitely opposes Option 4 – of simply repealing the rule altogether – since such action would seem to run counter to the Commission’s mandate: “to protect the public’s health and safety and to promote the welfare of the state **by regulating the competency and quality of professional healthcare providers** under its jurisdiction.”³ (Emphasis added). It would also appear to be an extreme overreaction to the *American Academy of Implant Dentistry v. Parker*⁴ case, in which the court specifically stated:

We do not suggest that the Board may not impose appropriate restrictions in the area of dental specialist advertising. The plaintiffs agree that advertising as a specialist is potentially misleading and that **reasonable regulation is appropriate**. We hold only that the Board has not met its burden on the record before us to demonstrate that Section 108.54, as applied to these plaintiffs, satisfies Central Hudson’s test for regulation of commercial speech.

(Emphasis added). As for Option 3, the AAO might be agreeable to it if one of the requirements was that in order to be approved as a specialty board, that specialty area had to have CODA accredited specialty programs. The AAO also believes that any “specialty” standards/criteria, like those discussed in Option 3, should include requirements similar to those objective requirements that the ADA has for recognizing dental specialties and national certifying boards for dental specialties.⁵ For instance, any “specialty” law revisions should

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<https://www.doh.wa.gov/LicensesPermitsandCertificates/ProfessionsNewReneworUpdate/Dentist/CommissionInformation>

⁴ No. 16-50157 (5th Cir. 2017), U.S. Court of Appeals for the Fifth Circuit decision of June 19, 2017.

⁵ <http://www.ada.org/~media/ADA/Education%20and%20Careers/Files/requirements.pdf> (last visited, July 11, 2017).

only recognize one certifying board for each "specialty" area, which would prevent consumer confusion and avoid numerous certifying boards for each specialty area, all with varying certification requirements. Any "specialty" law revisions should also require that any proposed "specialty" be separate and distinct from any pre-existing and recognized dental specialty or combination of recognized dental specialties, and unable to be accommodated by pre-existing specialties, as that too could lead to consumer confusion.

Fifth Option

The AAO would like to suggest a potential 5th Option for the Commission to consider. This 5th Option would involve Washington following in the footsteps of Louisiana, who recently faced the same specialty advertising issue. Attached are Louisiana's recent amendments to its specialty laws (LAC 46:XXXIII.122 and LAC 46:XXXIII.301), which state, in pertinent part:

The board finds that terms implying that a dentist is a specialist in some field of dentistry are terms of art indicating that the dentist has completed an accredited post-doctoral educational program in that field of at least two years. Therefore, a licensed dentist seeking specialty recognition must have successfully completed a post-doctoral program in a specialty area of dentistry consisting of at least two full-time years and which is accredited by an accreditation agency that is recognized by the United States Department of Education.

Louisiana's revised regulation provides a uniform and minimum educational requirement, and leaves the accrediting function to an agency recognized by the US Department of Education, which is currently CODA. Using this example, Washington might consider revising WAC 246-817-420 as follows:

WAC 246-817-420

Specialty representation.

(1) DQAC finds that terms implying that a dentist is a specialist in some field of dentistry are terms of art indicating that the dentist has completed an accredited post-doctoral educational program in that field of at least two years. Therefore, it shall be misleading, deceptive or improper conduct for a dentist to represent or imply that he/she is a

specialist or use any of the terms to designate a dental specialty such as:

- (a) Endodontist
- (b) Oral or maxillofacial surgeon
- (c) Oral pathologist
- (d) Orthodontist
- (e) Pediatric dentist
- (f) Periodontist
- (g) Prosthodontist
- (h) Public health
- (i) Any other specialty area in which the licensed dentist seeking specialty recognition in that area must have successfully completed a post-doctoral program in that specialty area of dentistry consisting of at least two full-time years and which is accredited by an accreditation agency that is recognized by the United States Department of Education. Any new specialty area must first be explicitly recognized by the DQAC, in writing, before dentists meeting the foregoing requirement can advertise as a specialist in that area.

or any derivation of these recognized specialties unless he/she is entitled to such specialty designation under the guidelines or requirements for specialties approved by the Commission on Dental Accreditation and the Council on Dental Education of the American Dental Association, or such guidelines or requirements as subsequently amended and approved by the DQAC, or other such organization recognized by the DQAC.

(2) A dentist not currently entitled to such specialty designation shall not represent that his/her practice is limited to providing services in a specialty area without clearly disclosing in the representation that he/she is a general dentist. A specialist who represents services in areas other than his/her specialty is considered a general dentist.”

Under this 5th Option, CODA's rigorous education requirements are maintained unlike the other four Options, and a dentist completing only a few hundred hours of specialty training (e.g. 500 hours) cannot advertise on par with those providers who have long-term, comprehensive education and training. This Option would also allow Washington dentists from three of the four ABDS groups to advertise as specialist under WAC 246-817-420(1)(i), should that be this Commission's desire.

In closing, the AAO and WSSO request that the Commission consider these comments during its review. If the Commission needs any further information or has questions for the AAO, please feel free to contact our Associate General Counsel, Sean Murphy, at smurphy@aaortho.org and phone - 314-292-6523.

Thank you for your time, dedication, and attention to this important matter.

Sincerely,

Norm

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AAO Trustee for the Pacific Coast Society of Orthodontists