

Dental Advertising Can Be Risky Business

January 2026

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The dental marketplace in New York State is increasingly competitive, with many practices relying on websites, social media, and third-party marketing vendors to attract patients. While advertising can be an effective growth strategy, it also presents significant professional, statutory, and regulatory risks. Dentists in New York have a non-delegable duty to ensure compliant content in their advertising, including material published by marketing companies, website developers, and social media managers.

Professional Liability Risk: Words Can Hurt You

Statements made in advertisements, websites, and social media posts may be used by plaintiffs to establish an elevated standard of care. Superlative claims such as “*the highest quality dentistry*,” “*superior outcomes*,” or “*expert-level care*” may be construed as violating NYS Education Law and/or alleged to create enforceable expectations. If outcomes do not meet these claims, such statements may be cited in malpractice litigation or disciplinary proceedings.

Contractual Liability Risk: Guarantees and Warranties

Advertising language may also give rise to contractual or warranty-based claims. Allegations that advertising created a guarantee or promise of results may fall outside professional liability insurance coverage. Dentists should avoid language implying certainty of outcome and use clear disclaimers stating that results are not guaranteed.

Statutory and Regulatory Advertising Risks

Federal Trade Commission Act (15 U.S.C. § 45): The FTC regulates advertising across websites, search engine marketing, social media, print, and video platforms. Advertisements must not contain false or misleading statements, omit material facts, or make claims that cannot be substantiated.

New York Education Law § 6530(27): Dentist advertising may constitute professional misconduct if it is false, deceptive, misleading, sensational, guarantees services, uses testimonials, or includes claims that cannot be substantiated.

New York General Business Law §§ 349 and 350: These statutes prohibit deceptive acts and false advertising. Violations may result in enforcement actions by the New York State Attorney General, civil penalties, and use as evidence in malpractice litigation.

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HIPAA and New York Privacy Laws

The use of patient photographs, testimonials, or online reviews without valid written authorization may violate HIPAA and New York Public Health Law Article 27-F. Responding to online reviews, even positive ones, may improperly disclose protected health information. Dentists should adopt policies prohibiting individualized responses to patient reviews.

Best Practices for Compliance

- Review all advertising content prior to publication
- Avoid superlative or comparative claims
- Substantiate any factual claims with objective data
- Use disclaimers stating no guarantee of results
- Obtain written HIPAA-compliant authorizations for images or testimonials
- Train staff and marketing vendors on NYS compliance requirements
- Maintain records of all advertising materials along with publication dates and locations

Conclusion

Advertising offers substantial benefits but also carries legal risk. Dentists should ensure that all advertising complies with federal and New York law and does not unintentionally elevate the standard of care or create contractual liability. Periodic legal review of marketing materials is a best practice to mitigate exposure.

Feldman Kieffer, LLP has been representing dentists throughout New York and providing legal counsel on risk management questions and defending professional misconduct actions for over thirty years. Feel free to contact us at (716) 852-5875 with any questions.

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