

AAO Advocacy and AAOPAC Update January 2023

The AAO had much success in Federal Advocacy in 2022 as we worked for you, our members. I can only touch on a few of these many accomplishments here, but please go to OrthoFacts.org for further details. AAO worked to pass the Resident Education Deferred Interest Act and the Oral Health Literacy and Awareness Act. The AAO enabled 200 messages to be sent to Congress from residents and orthodontists to support policies to ease the burden of student loan debt.

The AAO spearheaded the process where 21 legislators signed a letter asking for the Government Accountability Office (GAO) to conduct a study of the federal regulations of Direct-to-Consumer advertising practices for prescription medical products.

The AAO, considered an expert in the field of dentistry, was able to encourage the FDA to avoid unnecessary regulations on 3D printing done in house in medical and dental offices.

Federal legislative relationships built through the AAOPAC opened doors for the AAO to share concerns relating to mail order orthodontic treatment and changes to the standard of care in Texas with key members of Congress. The AAO urged US Congressmen Brian Babin and Lloyd Doggett to speak with decision makers in Texas and help advocate for patient's health and safety. In May of 2022 the Texas State Board of Dental Examiners took final action to enact ***strong*** new teledentistry regulations for the state. ***The new rules required that anyone providing treatment through teledentistry must perform and review a limited physical examination when a reasonable and prudent dentist would do so under the same circumstances. Furthermore, at a minimum a limited physical exam should be performed and reviewed annually.***

As part of the rulemaking the Texas Governor confirmed that the new language gives the Texas Dental Board the ***authority to enforce a standard of care requiring an in-person exam*** prior to beginning any teledentistry treatment. Other states will use this rule wording for future efforts.

AAO assisted as the North Dakota Dental Board passed teledentistry rules supported by the AAO. Smile Direct Club and the American Teledentistry Association opposed the rules. The rules require ***any entity utilizing teledentistry to provide the patient the name of the dentist, phone number, practice address and state license number of any dentist who was involved in the treatment.*** Another North Dakota Dentistry rule required that a ***dental assistant***, acting under the ***direct supervision of a dentist*** may among other duties ***take dental photographs including the use of intraoral cameras on a patient of record.*** An individual who is not at least a dental assistant acting under direct supervision would not be permitted to take an oral scan. An American Teledentistry Association agent testified that the taking of an intraoral scan is as ***"simple as the selfies"*** taken by a 10 year old and thus does not require any specific level of qualifications or doctor supervision. ***AAO General Counsel Trey Lawrence pointed out that a digital scan is the final impression used to create active appliances for orthodontic treatment. Moreover, an individual untrained in infection control who is taking intraoral scans could risk patient infection by not properly sterilizing the scanning device or other equipment.***

Following AAO advocacy efforts, on Monday, December 5, 2022, the Office of Attorney General for the District of Columbia [announced that it has filed suit on behalf of the District against SmileDirectClub, Inc.](#), bringing the consumer protection enforcement action against the mail-order orthodontics company due to its allegedly “deceptive and unfair” business practices involving non-disclosure agreements (“NDAs”) it allegedly has patients sign to receive a refund.

Filed by Attorney General Karl Racine, the District’s Complaint (copy available on the Office’s website [here](#)) claims that SmileDirectClub (SDC) has violated provisions of the District of Columbia Consumer Protection Procedures Act (CPPA). The CPPA “prohibits a broad range of deceptive and unfair business practices, including misleading consumers, making misrepresentations, and failing to disclose important information about products or services.” The District’s Complaint alleges that the following conduct allegedly engaged in by SDC is prohibited by the CPPA:

- Having consumers sign NDAs to receive refunds
- Suppressing negative reviews and information about harm allegedly caused by SDC aligners
- Distorting online reviews
- Stopping consumers who claim they have been harmed by SDC from reporting problems to government regulators and law enforcement

The Office of the Attorney General stated that, by filing this suit, it is “seeking a court order invalidating these unlawful NDAs and barring SmileDirectClub from engaging in unfair and deceptive business practices in the future . . . [and] seeking restitution for consumers and civil penalties, fees, and costs.”

Patient protection, including protection from potentially deceptive contract practices, has long been a focus of the advocacy efforts of the American Association of Orthodontists (AAO). The AAO has raised concerns with many Attorneys General, including AG Racine, regarding certain business practices sometimes found in mail-order orthodontic treatment models. Notably, the AAO has met with AG Racine on multiple occasions since 2019 to discuss the AAO’s concerns over the practice of having patients sign an NDA that could prevent them from filing a dental board complaint or other complaints with government agencies that possess oversight and enforcement jurisdiction over dentistry.

“The AAO commends Attorney General Racine and his Office for recognizing potentially deceptive and unfair business practices, and for taking action to ensure that such practices do not harm unsuspecting orthodontic patients,” stated Dr. Norman Nagel, AAO president. “The AAO is also proud of, and extends its sincerest gratitude toward, all those orthodontist members who have participated in advocacy efforts seeking to protect patients, as their work on this important issue continues to yield results.”

The AAO’s Legal and Advocacy team will continue to monitor this lawsuit, and other cases arising from mail-order orthodontics treatment models, and will update AAO membership of major developments.

Our AAO members have placed advocacy as a top priority on survey after survey. We need to start showing this and fulfilling this priority through better giving. We cannot make significant impacts federally or at the state level unless we support our AAOPAC. ***The reality is that less than 400 contributors currently shoulder the giving responsibility for nearly 15,000 AAO members eligible to contribute to AAOPAC. That is only 2.5 percent of AAO members making a difference through advocacy for 100% of our specialty. We can all do more... and the stakes have never been higher.***

The AAOPAC has recently been tasked by the AAO to review goals, bylaws and policy of AAOPAC to make us more effective and efficient. As part of this, we amended our bylaws in September so that our contributions could be used at the state level also. Until now we could only use the funds we collected for support to federal legislative candidates. ***Because the focus will now include state funding, I am asking for volunteers for the newly formed state AAOPAC Captain position and the Component Advocacy Liaison (CAL) position. AAOPAC Captains*** would be responsible for raising AAOPAC dollars in your state and you would also assist me as your MSO Representative to the AAOPAC. These AAOPAC Captains will be thoroughly trained, provided presentation materials plus all the literature they need to raise funds. Working closely with COGA and the AAO Advocacy Team, ***Founding Component Advocacy Liaisons*** will serve as their state's chief point of contact for the National Advocacy Network (NAN). This role can include monitoring state regulation and legislation; recruitment of additional NAN leadership; representing AAO at key policy events; and working with counterparts throughout the nation to share lessons learned and insights to benefit Advocacy influence on AAO Member priorities.

Our AAO leadership have been generous in their contributions for many years, but it is time that each of us and each individual state takes responsibility for funding advocacy. Our wonderful ***MSO Trustee Dr. Mike Durbin*** from Illinois has accepted the challenge of matching up to his maximum yearly contribution of \$5000 to what we as members donate. We want to make sure he meets his maximum as Southwest Society and Southern Association Trustees are also facing the challenge. ***We wouldn't want our MSO Doc to lose the challenge!!***

Giving is fast and easy! You can give me your completed donation cards after our meeting today; you can scan the code on the pledge card; you can go to AAOPAC.org to donate or you can mail your card with your donation information to the AAOPAC office, Attn: Kathy DiPrimo, 401 N Lindbergh Boulevard, St. Louis, MO 63141-7816.

Thank you for your support on behalf of all AAO members, our patients, our practices and our staff. The positive course of our orthodontic practices can be detrimentally affected just by a stroke of the pen either in Washington D.C. or in our home state legislation. We need to be at the table to prevent this.

Respectfully Submitted,
Dr. Deborah Lien
Midwestern Society of Orthodontists Representative to AAOPAC