

ODA UPDATE

LEGAL & REGULATORY COMPLIANCE

Corydon Palmer Dental Society
April 25, 2018

Dr. Steve Moore
President

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Who is the ODA?

- Formed in 1866
 - Need for collective statewide voice for the dental profession
- Today: 5,300 member dentists
 - 70% of practicing dentists in Ohio



Member Benefits

- Legislative and regulatory advocacy
- Answers to legal and regulatory compliance questions
- Third-party payer assistance
- Information on current dental issues
- Public service programs
- CE
- Insurance products and discounts
- Leadership development
- ODA Foundation



Government's Impact on Your Practice

Ohio State Dental Board
Joint Committee on Agency Rule Review (JCARR)
Department of Health
Auditor of State
Bureau of Workers' Compensation
Ohio Supreme Court
Congress
Department of Taxation
Ohio EPA
Division of Emergency Medical Services
FTC
Department of Health and Human Services
Department of Job and Family Services
DEA
NLRB

Medical Board
Office of Health Transformation
Board of Pharmacy
Department of Insurance
Board of Regents
Controlling Board
Ohio General Assembly
Small Business Advisory Council
Small Business Administration
Local Water and Sewer Districts
Radiation Advisory Council
Dentist Loan Repayment Advisory Committee
Public Utilities Commission of Ohio
Attorney General
Bureau of Indian Affairs
FDA
IRS
Industrial Commission
Agency for Healthcare Research and Quality
Office of Budget and Management
Commerce Department



Dental Specialty Advertising

- Kiser vs. Kamder – Ohio Case
- Ohio Dentist – endodontist
- Advertise as endodontist – but not limit practice
- Ohio State Dental Board rules – advertise as specialist – must limit practice to specialty services
- Kiser filed suit challenging OSDB rules – 1st and 14th Amendments
- District Court dismissed Kiser’s claims.
- 6th Circuit Court of Appeals reversed the District Court – August 5, 2016



Dental Specialty Advertising

- Sixth Circuit:
 - Reversed District Court and Remanded
 - Truthful non-misleading information – Kiser is a general dentist and endodontist
 - Not false, misleading, or deceptive
 - Kiser properly alleged a violation of his commercial speech rights
- Ohio State Dental Board
 - November 2016 – filed amended rules allowing a specialist who advertises specialty status to practice outside scope of specialty
- ADA
 - October 2016 – HOD amended Principles of Ethics and Code of Professional Conduct
- Bottom-line: specialists no longer must limit their practice



Dental Specialty Advertising

- Texas Case
- US Court of Appeals for Fifth Circuit
- Plaintiffs – AAID, American Society of Dentists Anesthesiologists, American Academy of Oral Medicine, American Academy of Orofacial Pain and 5 Texas licensed dentists
- Defendants – Texas State Board of Dental Examiners (Texas Society of Oral and Maxillofacial Surgeons as intervenor-defendant)



Dental Specialty Advertising

- Texas law prohibits "false, misleading, or deceptive advertising in connection with the practice of dentistry"
- Texas State Dental Board enacted Rule 108.54:
 - A "dentist may advertise as a specialist or use the terms `specialty' or `specialist' to describe professional services in recognized specialty areas that are:
 - (1) recognized by a board that certifies specialists in the area of specialty; and
 - (2) accredited by the CODA
- The Rule then lists the nine specialty areas recognized by the State Dental Board, which track those specialty areas recognized by the ADA.



Dental Specialty Advertising

- Trial court invalidated Texas rules
- US Court of Appeals for the Fifth Circuit – June 2017
- Upheld trial court's decision
- 5th Circuit said Texas Dental Board failed to show that consumers would be harmed by Plaintiffs advertising as specialists



Dental Specialty Advertising

- What does it all mean?
- Bottom-line
 - Specialists who hold themselves out as specialists – no longer must limit practice – OSDB rules & ADA
 - Concerns – referrals Marketplace
 - Specialists may still advertise “practice limited to”
 - For now, OSDB rules still recognize only the nine ADA specialties
 - dental public health; endodontics; oral and maxillofacial pathology; oral and maxillofacial radiology; oral and maxillofacial surgery; orthodontics and dentofacial orthopedics; pediatric dentistry; periodontics; and prosthodontics.
 - Board now considering alternatives



Dental Specialty Advertising

- Future of Specialty advertising and recognition?
 - Ohio State Dental Board is considering alternatives:
 1. 9 ADA recognized specialties only
 - ADA – gold standard – reformed specialty process – 2017-18
 2. American Board of Dental Specialties – 2014 - American Board of Oral Implantology, American Board of Oral Medicine, American Board of Orofacial Pain, and American Dental Board of Anesthesiology.
 3. Completion of CODA-accredited post-doctoral education program (CODA-accredited dental residency)
 4. No regulation of dental specialties or advertising (Wild West)



Dental Specialty Advertising

- Fifth Circuit

- “We do not suggest that the [Texas Dental] 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.”
- “The Board may satisfy its burden with empirical data, studies, anecdotal evidence, or history, consensus, and simply common sense.”



Advocacy

- No Increased Taxes
 - ODA stopped proposals to impose additional taxes onto dentists
 - Stopped proposed provider tax
 - Stopped proposal to extend sales tax to certain dental services
 - Clear Tray Aligners
 - State budget bill – FY 2018-19



Non-Covered Services

- Dental insurers setting fees for non-covered services
- NCOIL Model Legislation
 - Senate Bill 87 – Introduced March 2017
 - House Bill 367 – Introduced in October 2017



Dental Therapists

- Access to Care
 - Kellogg Foundation – \$16 million
 - Universal Health Care Action Network – Ohio (UHCAN-Ohio)
 - Ohio Legislation – Senate Bill 98 (Sen. Peggy Lehner)
 - ODA Response:
 - Inadequate training for irreversible, surgical procedures
 - Diversion of resources
 - Stopped – continued vigilance



Dental Therapists

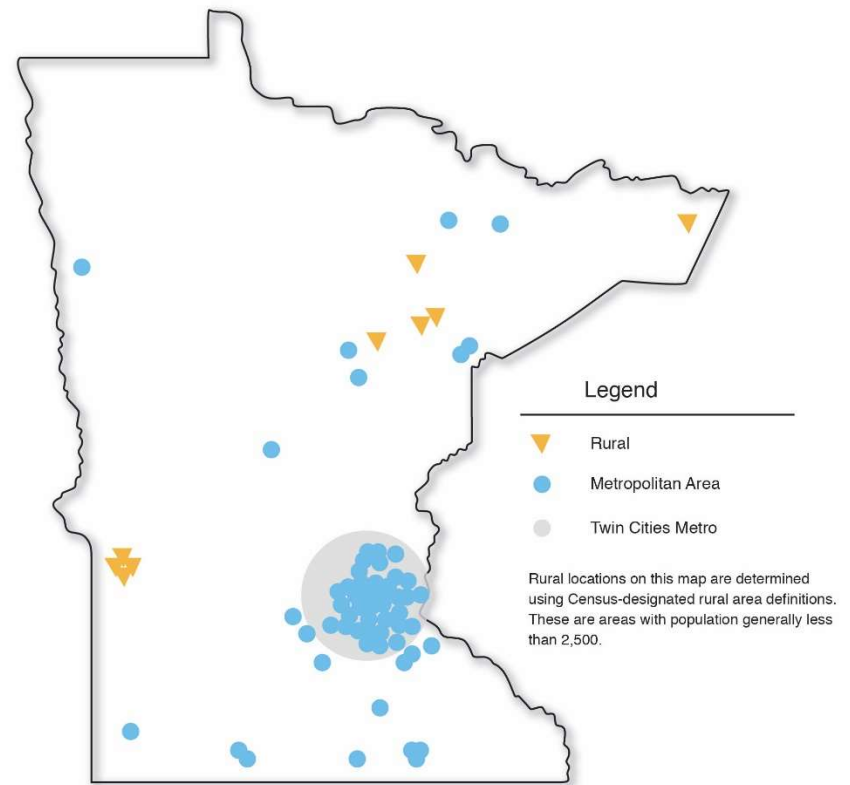
- UHCAN-Ohio
 - Dental Therapists
 - CODA accredited dental therapy program (3 years post high school)
 - Diagnosis
 - Treatment planning
 - Restorative procedures
 - Local anesthesia
 - Simple extractions
 - Supervise RDHs and DAs



Dental Therapists

- Experience in Minnesota
 - Therapists practice in metropolitan areas

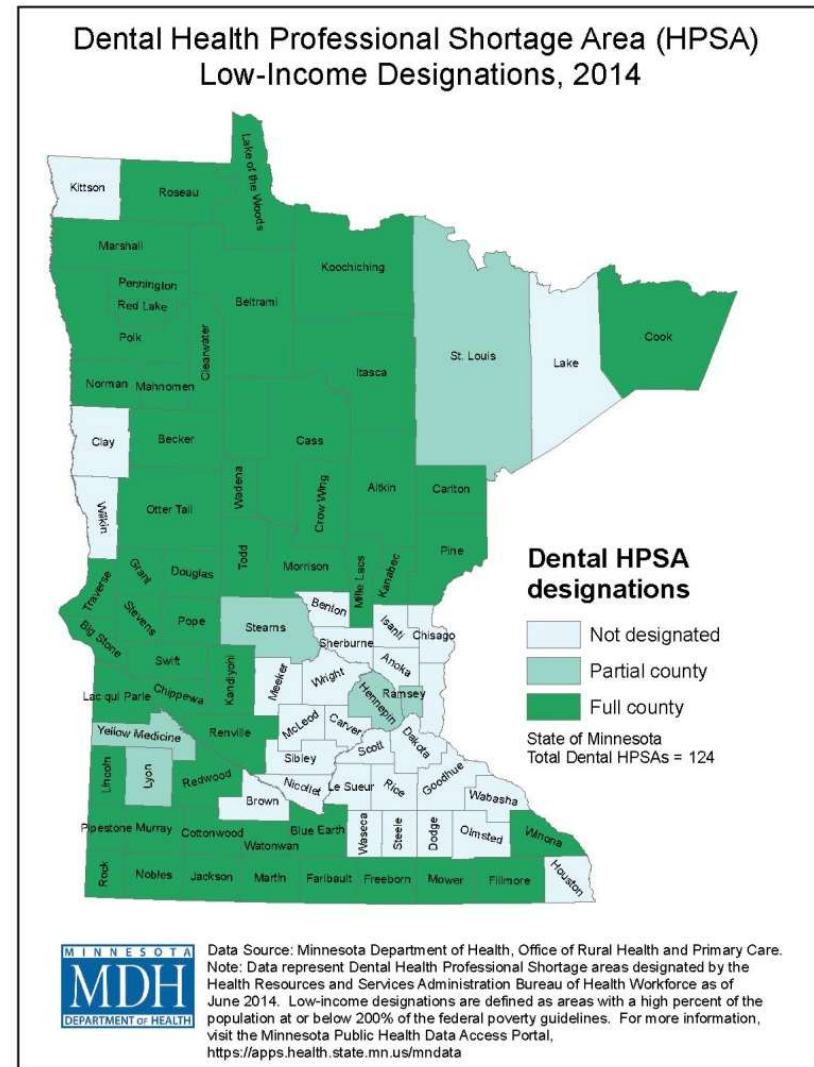
2017 Practice Locations of Licensed Dental Therapists in Minnesota



Source: Active licensees as of 8/1/2017, from the Minnesota Board of Dentistry

Dental Therapists

- Experience in Minnesota
 - Dental health professional shortage areas



Access to Care

- Ohio Department of Health
 - Oral health as the number one unmet health care need in Ohio
- ODA and Dentistry
 - Long history of addressing access to care issues
 - Medicaid
 - OPTIONS, GKAS & Volunteerism
 - Use of auxiliary personnel – EFDAs
 - Prevention
 - Education and awareness
- ODA Task Force on Access to Care and Auxiliary Utilization



Access to Care

- House Bill 184

- Introduced by Reps. Theresa Gavarone (R-Bowling Green) and Tony DeVitis (R-Green)
- Passed the House of Representatives with overwhelming bipartisan support in October
 - Allows use of technology to extend care into underserved areas of Ohio
 - Creates the Primary Care Dental Student Scholarship component of the Choose Ohio First Program
 - Enhances the ability of dental auxiliaries to provide preventive dental services
 - Promotes licensure portability
- ODA Supports



Access to Care

- Adult Dental Medicaid Program
 - Ohio is one of 12 states with dental coverage for adults
- Medicaid Dental Reimbursements
 - Ohio 41st out of 50 states
- Medicaid Dental Reforms
 - \$16.5 million – increased reimbursements – denture repairs, extractions statewide, 5% increase across the board in rural counties – 2016-2017
 - Received the 5% increase: Columbiana County



Access to Care

- Ohio Dentist Loan Repayment Program – Expansion 2017
- Medicaid Reform
- Delegable Duties – Existing Dental Team
- Tele-dentistry
- Volunteer Programs – GKAS, OPTIONS, etc.
- OSU College of Dentistry
 - OHIO Project
 - Expansion of class size



Upcoming ODA Events

- ODA Annual Session
 - September 13-16, 2018
 - CE discounted pricing *only* available to ODA members



ODPAC

- ODPAC (Ohio Dental Political Action Committee)
 - Dentistry's voice at the Statehouse
 - Protecting dentistry from unnecessary government intervention and bureaucratic control
 - Helps dentists gain political leverage against the big dollar contributors, such as insurance companies and trial lawyers
 - Give today! If you won't, who will?



ODA Foundation

- ODA Foundation

- ODA's philanthropic body committed to dental education
- Provides scholarships to highest caliber of Ohio dental students
- Awards grants to Ohio programs that help address access to dental care
- Since 1995, more than \$1 million in scholarships and grants have been awarded
- Give today! Contributions are tax deductible



ODA Mission

- The ODA mission is to improve oral health and strengthen dentistry in Ohio
- Recent successes show ODA's organizational health and vitality and commitment to achieving its mission
- Success depends on dedicated volunteers like you
- With your help, dentistry's tomorrow is being shaped today



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