



California State Board of Optometry Committee Meeting

Friday, February 18, 2022

Enforcement Presentation – Advertising Violations



Enforcement Program

A Presentation to the Board about Advertising Violations

Presented by Brad Garding, Enforcement Analyst



What is Advertising?

- Advertising is any form of public communication used to bring the practice of optometry or opticianry to the attention of the public. Advertisements may be found in:
 - Store signs, radio, television, etc.
 - Any representation on the Internet



Culture of Enforcement

- Protect the public
- Educate licensees
- The Board attempts to gain compliance before anything else
- Advertising violations can lead to deceived or defrauded consumers, therefore, gaining compliance is more important than citations or other actions



Advertising Laws - Optometry

- Practicing under a false or assumed name (FNP)
- All O.D.'s listed on an FNP must be included in any advertising
- Use of Dr. requires use of "O.D."
- Holding oneself out as a specialist in eye disease
- Claiming special knowledge of optometry
- Advertising without certificates
- Free exams / price advertisements
- An optometrist is not a "physician"
- False or misleading statements generally
- Notice of practice locations (SOL)
- Registered name only



1. False Advertising

False or misleading advertising:

- Any public communication that contains a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed.



2. Fictitious Names

Fictitious Names require a Fictitious Name Permit (FNP) when:

- The word “Optometry” or “Optometric” is used
- Advertising the use of the name as it is issued on the FNP
- Any advertisement or public representation of the practice must include all O.D.’s listed on the FNP application



3. Practice Name Violations

- Registered Names Only (CCR title 16 §1513)
 - Signs, cards, stationery or other advertising must clearly and prominently identify the individual optometrist or optometrists.



Optician Advertising Laws

Registered Dispensing Opticians (RDO's) cannot link their advertising to an Optometry practice.

- In a sublease arrangement, an RDO may only state there is an independent doctor of optometry located in the leased space
- Price advertisements must disclose any fees associated

Advertising eye exams

- RDO's are not allowed to advertise or collect fees for eye exams
- RDO's are not allowed to furnish eye exams
- Spectacle Lens Dispensers and Contact Lens Dispensers may not advertise, nor provide optician services, apart from an RDO



How does the Board address advertising violations?

- An enforcement case is opened
- An enforcement analyst sends an educational letter to the licensee alerting them to the violations
- A due date is provided for compliance
- Follow up letters or emails are sent leading to a final warning, or the licensee fully complies with the law
- If compliance is obtained the case is closed
- If compliance is not obtained, an administrative citation may be issued



If a Citation is issued:

- Compliance has yet to be obtained
- Citations are not intended to punish the licensee; they are a tool for compliance
- Enforcement continues efforts to gain compliance
- Licenses are not able to be renewed until compliance is obtained
- Depending on the case, if compliance cannot be obtained, the case may be referred to the Attorney General's Office for formal discipline



Required reporting of Citations

- The citation is public information for five years and will be provided to anyone who requests it
- The citation is posted on the licensee's public license profile for five years (www.search.dca.ca.gov)
- The citation is available through the Board's website (<https://www.optometry.ca.gov/consumers/disciplinary.shtml>)
- The citation is reported to the National Practitioner's Data Bank (www.npdb.hrsa.gov)



Potential Consequences of Citations

- De-paneled from Insurance panels
 - Makes it more difficult to obtain SBA loans
 - Makes it more difficult to obtain optometric equipment from sellers
- *These consequences are outside of the Board's control.



Conclusion

- Thank you for your time. More trainings will be provided at future meetings.
- Feedback to improve these trainings is helpful and encouraged.

