

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN**

SMILEDIRECTCLUB, LLC,)	
)	
Plaintiff,)	
)	
v.)	No. _____
)	
MICHIGAN DENTAL ASSOCIATION)	
)	
Defendant.)	

COMPLAINT

Plaintiff, SmileDirectClub, LLC states for its Complaint as follows:

PARTIES

1. Plaintiff SmileDirectClub, LLC (“SDC”) is a Tennessee limited liability company with its principal place of business in Nashville, Davidson County, Tennessee.

2. Defendant Michigan Dental Association (“MDA) is a Michigan nonprofit corporation with its principal place of business located at 3657 Okemos Rd., Ste. 200, Okemos, Michigan 48864. MDA is an association of dental professionals licensed to practice dentistry in the State of Michigan.

JURISDICTION AND VENUE

3. The causes of action set forth herein are solely between citizens of different states and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest or costs. Accordingly, this Court also has original jurisdiction of this action pursuant to 28 U.S.C. § 1332.

4. This Court has jurisdiction and venue over the Defendant and the claims asserted in the Complaint pursuant to 28 U.S.C. § 1391(b)(1), as the Defendant is a resident of this District.

Furthermore, venue is proper under 28 U.S.C. § 1391(b)(2) as the events giving rise to the claim occurred in this District.

FACTUAL ALLEGATIONS

5. SDC offers licensed dentists and dental practices access to its web-based teledentistry platform and a comprehensive package of related non-clinical business and administrative services that permit those dentists to offer a more affordable option for orthodontic treatment of minor to mild cases of malocclusion with “invisible” corrective aligners.

6. Patients have the option to use an at-home impression kit to provide SDC with a 3D image of their smile, or they can visit one of SDC’s SmileShop locations for a laser scan of their mouth.

7. All impression kits provided to Michigan patients are sent at the direction of a Michigan-licensed dentist. SDC’s SmileShops located in Michigan are likewise under the supervision of a Michigan-licensed dentist.

8. At the core of SDC’s business model is its innovative web-based teledentistry platform, which is designed around the “SmileCheck” system. SmileCheck is a proprietary system that connects patients with their treating dentist through a web-based portal.

9. Following the receipt of an impression or scan, a Michigan-licensed dental provider uses the SmileCheck system to view images and dental impressions of his or her patients, review and develop treatment plans, prescribe treatment, track the performance of the case through retention, and document communications with patients.

10. Utilizing the SmileCheck system, the Michigan-licensed dental professional determines the appropriate treatment option designed to achieve maximum cosmetic and functional improvement.

11. The patient is then provided with a detailed explanation of the treatment plan, including a digital image of the anticipated movement in the teeth.

12. The patient subsequently receives the number of aligners designated by the Michigan-licensed dental professional and detailed instructions on use and care of the aligners.

13. Following the use of all aligners, the patient's progress is again reviewed by the Michigan-licensed dental professional, who determines whether treatment is complete. Once complete, a patient may order a set of retainers to ensure no further shifting of teeth.

14. SDC's involvement in the treatment of patients is limited to providing management services and production of aligners per a licensed dentist's orders. The treating dentist maintains sole responsibility for all aspects of his or her patient's care, including evaluating, diagnosing, and, if appropriate in the dentist's independent professional judgment, treating the patient's condition with SmileDirectClub aligners.

15. Upon information and belief, the MDA is an association of licensed dental professionals licensed in Michigan.

16. Membership in the MDA is by application only, and requires payment of dues of approximately \$840 per year.

17. Upon information and belief, the MDA has over 5,800 members across the state of Michigan.

18. The MDA publishes a monthly "newsletter" called the *Journal of the Michigan Dental Association* (the "Journal"), which purports to "bring[] news, information, and features about Michigan dentistry to the MDA's 5,800 members across the state. No publications reaches more Michigan dentists!"

19. The Journal is also accessible to the general public through the MDA's journal website.¹

20. The August 2017 issue of the Journal included an article entitled "MDA Probes SmileDirectClub," (the "Article") which is attached hereto as Exhibit A and incorporated herein by reference.

21. The Article states, without reference or explanation, that "mail-ordered, self-administered impression kits and retainers ... raise[] numerous legal and patient safety concerns."

22. The Article then adds that "One of the companies that has been brought to the MDA's attention is SmileDirectClub..." and that SDC's website does not "identify a Michigan dentist(s) who diagnoses, prepares a treatment plan, or issues, restrains and prepares the work authorizations that are required of dentists practicing in accordance with Michigan law."

23. The Article acknowledges that the MDA sent a letter to SDC "to determine whether it was complying with Michigan law."

24. The Article then states that SDC's responses to those questions were "unsupported" and failed to "provide substantiation of any kind."

25. The Article concludes by seeking out unsatisfied SDC patients who would be willing to speak to MDA representatives.

26. The statements in the Article were reckless and made with a conscious indifference to the truth. The Article inexplicably insinuates that SDC is practicing dentistry without a license and without regard to patient safety, despite clear representations in SDC's advertising material, including its website, that a licensed dental professional makes all treatment decisions for each patient.

27. MDA intentionally and recklessly impugned the competence and maligned the reputation of SDC, and the Michigan-licensed dentists who treat their patients with aligners provided by

¹ See <https://www.michigandental.org/Digital-Journal>

SDC, in order to steer prospective patients to use the services of its association members, rather than seek alternative treatment methods through SDC.

28. The Article was published to at least 5,800 dental professionals in Michigan and, upon information and belief, has been accessed by countless members of the public through the MDA's website.

CAUSES OF ACTION

1. False Light

29. SDC hereby incorporates paragraphs 5 through 28 as if set forth herein.

30. The Article, written and published by the Defendant, placed SDC before the public in a false light that would be highly offensive to a reasonable person.

31. In this instance, the false light is that SDC provides alignment and retention services to patients without regard to patient safety and in violation of Michigan law. The tenor of the Article suggests that SDC patients should not expect to receive treatment by a licensed Michigan dental professional, and that the treatment received could be harmful to their health and or safety.

32. The statements in the article, and the overall tenor of the article, are untrue.

33. MDA had actual knowledge of, or acted with reckless disregard to the facts, that SDC utilizes licensed dental professionals to oversee the planning and treatment of each patient.

34. SDC has been damaged as a result of the Article, including loss of services of certain Michigan-licensed dental professionals, and SDC expects significant difficulty in associating new Michigan-licensed dental professionals should the Article not be retracted.

2. Trade Libel

35. SDC hereby incorporates paragraphs 5 through 34 as if set forth herein.

36. The Article, published by the Defendant, promoted false and defamatory statements concerning SDC.

37. The Article prejudices SDC in the conduct of its business and deters patients, potential patients, and licensed Michigan dental professionals from dealing with SDC, as the tenor of the article is that SDC operates its business in violation of Michigan law and without regard for patient safety.

38. The statements in the Article are untrue.

39. MDA had actual knowledge of, or acted with reckless disregard to the facts, that SDC utilizes licensed dental professionals to oversee the planning and treatment of each patient. Moreover, MDA intentionally and recklessly impugned the competence and maligned the reputation of SDC in order to steer prospective patients to use the services of its association members, rather than seek alternative treatment methods through SDC.

40. SDC has been damaged as a result of the Article, including loss of services of certain Michigan-licensed dental professionals, and SDC expects significant difficulty in associating new Michigan-licensed dental professionals should the Article not be retracted.

PRAYER FOR RELIEF

WHEREFORE, SDC asks that the Court grant the following relief:

1. A finding a liability against MDA for false light and trade libel associated with the Article;
2. A judgment in an amount to be proven at trial;
3. All other relief the Court deems appropriate.

/s/Randall A. Juip

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Defendant.)

JURY DEMAND

Plaintiff, SmileDirectClub, LLC respectfully demands a jury trial on all issues so triable.

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EXHIBIT

A

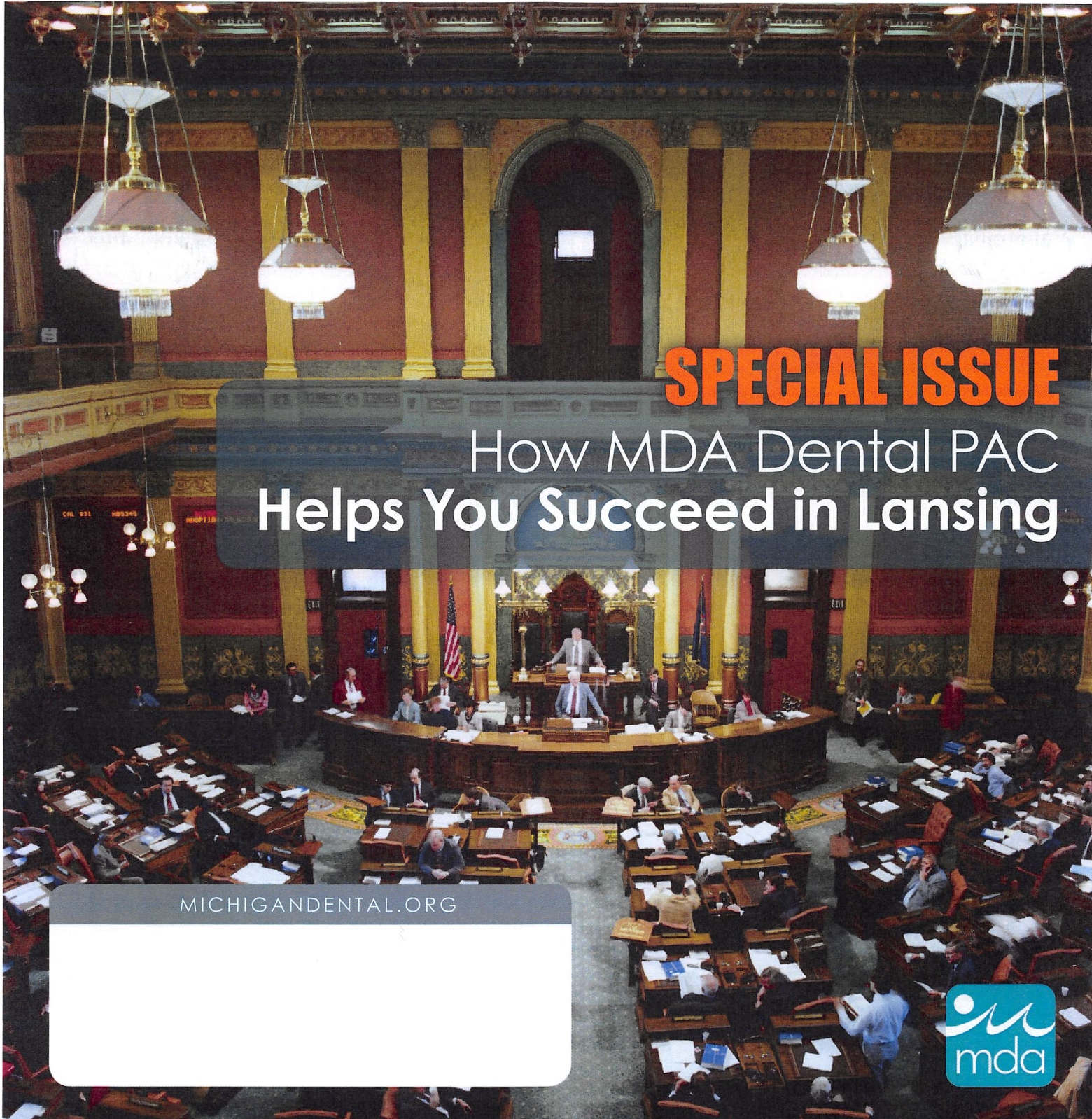
How to Create Happiness as a
Practice Protocol

Dealing with Opioid Abuse in
Your Practice: Part II

Clinicopathologic Review:
Oral Radiographic Features of
Systemic Conditions

Journal

OF THE MICHIGAN DENTAL ASSOCIATION AUGUST 2017



SPECIAL ISSUE

How MDA Dental PAC
Helps You Succeed in Lansing

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August Journal eNews mails Aug. 11 — watch for it!



COVER STORY . . . 28 How MDA Dental PAC Helps You Succeed in Lansing

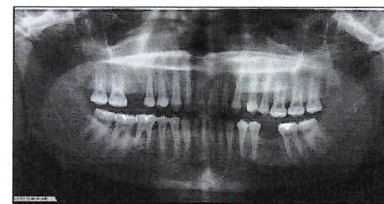
MDA Dental PAC is the engine that drives the MDA's successful legislative advocacy program in Lansing. But that success can't happen without your support. Read how MDA Dental PAC watches out for you, and see how involvement by Michigan dentists from all over the state helps make MDA Dental PAC a winner at the state Capitol.

By James Cantwil, DDS

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By Tessie Buraczewski, DMD; Elizabeth Bilodeau, DMD, MD; and Anitha Potluri, DMD



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Creating Happiness as a Practice Protocol 48

Happy practices lead to happy patients, who are more likely to accept your treatment plan, says this noted practice management expert.

By Olivia McLeod Straine

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Your September 2017 MDA Journal will be mailed Aug. 31, 2017
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NEWS FROM THE ADA

ADA Patient Education Brochures Available in Money-Saving Bundle

Great news! The ADA has selected its most essential patient education materials and combined them into one convenient kit for MDA/ADA member dental offices. The ADA Patient Education Kit brings you 12 of the ADA's most popular patient education items at a savings of \$140 compared to purchasing the products separately.

Included are a chairside instructor book, a sturdy brochure rack, and 50 each of the ADA brochures, including *Root Canal Treatment; Tooth Extraction; Periodontal Disease: Don't Wait 'til It Hurts; Why Do I Need a Crown?; Your Child's Teeth; Periodontal Maintenance; Why Doesn't My Insurance Pay for This?; Dental Sealants; Three Tooth Replacement Options; and Your Smile: An Owner's Manual.*

The member price is \$274.95 (non-members pay \$412.45). Order the ADA Patient Education Kit by calling 800-947-4746, or visit adacatalog.org to order your ADA Patient Education Kit online.

ADA American Dental Association®

America's leading advocate for oral health

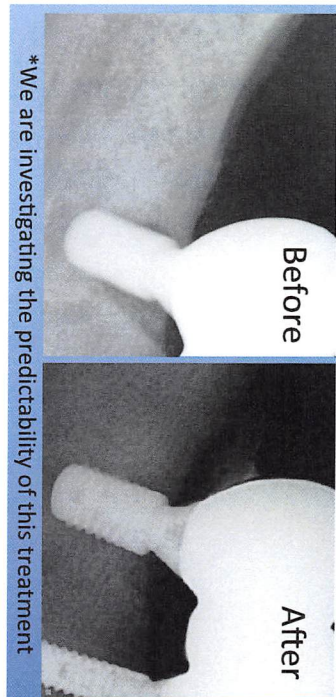
MDA Probes SmileDirectClub

As previously reported, the MDA is aware of out-of-state companies performing orthodontia-type services through mail-ordered, self-administered impression kits and retainers. This method of providing diagnosis and treatment raises numerous legal and patient safety concerns. The MDA is making efforts to assure that the citizens of Michigan are receiving care that meets the required standard of dental practice.

One of the companies that has been brought to the MDA's attention is SmileDirectClub — you may have seen its advertisements on television or social media. According to its website, this company mails customers a self-administered impression kit followed by a series of teeth-straightening retainers. It does not appear from the website that a dentist ever sees the patient. Nor does the website identify a Michigan dentist(s) who diagnoses, prepares a treatment plan, or issues, retrains and prepares the work authorizations that are required of dentists practicing in accordance with Michigan law.

To address these concerns the MDA has sent a letter to SmileDirectClub asking it to respond to questions to determine whether it is complying with Michigan law. The company responded with unsupported representations that it was in compliance, but refused to identify Michigan dentists involved or to provide substantiation of any kind.

If you know of any patients who have been harmed by or who are dissatisfied with their experience with SmileDirectClub or similar companies and who are willing to speak to a representative of the MDA, please contact Josh Kluzak, manager of government and insurance affairs, at jkluzak@michigandental.org, or call him at 800-589-2632, ext. 422.



*We are investigating the predictability of this treatment

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- The implants are in function for at least 6 months
- Healthy or well controlled systemic diseases
- No current smoker and uncontrollable local factors

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UNIVERSITY OF MICHIGAN



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