

## WEBSITE CLAIMS AND LEGAL CAVEATS

Orofacial myofunctional therapy has been recommended on member websites and in articles as being appropriate for patients with a variety of specific medical problems. To list specific medical conditions is not advised. In compiling a list, where does one stop in listing the medical conditions for which you may have provided successful treatment? The implication from such claims of success with specific patient groups is that therapy will help to resolve the oral conditions and behaviors that characterize these patient samples, and by implication, may resolve the medical or dental condition itself. Offering such unintended hope to parents of affected children results in the orofacial myologist accepting an unintended responsibility; or, in legal terms, assuming a duty for such patients that may not be achievable. While you may have successfully treated several patients with a common diagnosis, it is advised that you do not identify any specific medical diagnosis in your advertising.

The examples portrayed here represent some selected procedures and links that may presume and assume a greater duty by the orofacial myologist. The members of the IAOM need to be mindful of such potential situations where a different role than intended may be assumed.

Some offers of therapy support for physicians, dentists, and patients are appropriate to include in website or brochure advertising. Such offers may include: pre-surgical preparation of patients who will undergo orthognathic surgery; orofacial myofunctional adjustments that will be required following surgery; monitoring and stabilizing oral adaptations following orthognathic surgery; maximizing oral functions following lingual frenum or TMJ surgery; and aiding patients of dentists and physicians in adapting their oral behaviors to structural changes they may experience as part of orthodontic treatment, airway surgery, or other medical and dental procedures. Such advertising clearly describes the role of the orofacial myologist with such patients while also informing physicians, dentists, and patients that OMT can contribute an effective component to many dental and medical treatment plans.

**LEGAL CAVEATS:** As expressed in legal terminology, the general theory of recovery against an orofacial myologist in a professional liability action is **negligence**. To recover in negligence, the plaintiff must prove four things: 1) the existence of a duty; 2) a breach of that duty; 3) damages, and 4) that the breach of duty caused those damages (also known as causation). Therefore, if an orofacial myologist elects to interpose an opinion or a specific treatment into a situation where there is a medical or dental condition, he/she will have accepted a greater duty to the patient than that to which they would otherwise be obligated.

In other words, if any condition or issue other than an OMD is reflected in a discourse or treatment of a patient, the orofacial myologist will have assumed the duty to accurately identify it. The failure to properly detect and address such an issue will result in a breach of the greater duty that has been assumed. The overall message from these legal admonitions is that when orofacial myologists participate in the treatment of medical and dental problems, and even though such participations may be directed to specific behaviors, OMTs may unknowingly be assuming an unintended responsibility (duty) for the medical or dental condition of that patient. The warning to orofacial myologists is to avoid the implication in advertising that orofacial myofunctional therapy offers hope to resolve the underlying medical or dental condition(s) involved.

**RECOMMENDATION:** It is recommended that members of the IAOM remove from website ads any links between OMDs and various medical and dental conditions or problems for which they may have assumed a greater duty by including such items on websites.

IAOM members are advised to consider the possible legal consequences that may follow from linking swallowing disorders and tongue thrusting with a variety of medical and dental conditions and problems. Links to OMDs that have no evidential support in the literature place orofacial myologists in an untenable legal position if other unforeseen problems develop that are associated with such conditions.

Unfortunately, orofacial myology is not the magic pill that we would like it to be that can cure many of the ills currently being claimed by some. Any over-inflation of claims in advertising will neither advance the field of orofacial myology nor enhance its acceptance among other professionals. Without adequate research to support claims made, any OMTs making unsupported claims of success are exposing themselves to legal liability.

\*\*\*\*\*

(Note: The information in this document and the legal caveats included have been modified from a Risk Management Review article by James Bowlin, General Counsel for the AAO and the AAO Insurance Company, as published in Volume 28, Number 5, pages 24-25, August, 2010, of **The Bulletin**, of the American Association of Orthodontists.

This document was originally shared with IAOM members as a Memorandum during the time that I served as Medical Advisor for the IAOM).