

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

WEST VIRGINIA BOARD OF DENTISTRY,

Complainant,

v.

CASE NO. 2015-DB-0037D

R. SCOTT MURPHY, DDS, MD,

Respondent.

ORDER

By Final Order Following Hearing entered by the Board on July 23, 2016 (hereinafter “the Final Order”), the Respondent’s license to practice dentistry in the State of West Virginia and his anesthesia permit were suspended for a period of six (6) months, all but twenty (20) working days of which were stayed, and the Respondent was actually suspended for a period of twenty (20) working days beginning on Monday, August 1, 2016, and ending on Friday, August 26, 2016.

WHEREAS, during the course of his suspension, the Respondent was prohibited from practicing dentistry and administering anesthesia in any manner or form, and was required to undergo a mental health evaluation by a licensed professional selected and/or approved by the Board, to determine his fitness and competency to practice dentistry;

WHEREAS, the Respondent’s period of suspension was subject to being extended, and was in fact extended, beyond the twenty (20) working days, pending the completion and outcome of the mental evaluation;

WHEREAS, the Board has received no notice of any known violation by the Respondent of the terms of his suspension and the Respondent underwent the mental health evaluation on the date and at the location designated by the Board;

WHEREAS, based on the results of the mental health evaluation which the Board received on Tuesday, August 30, 2016, the Respondent's license to practice dentistry and his permit to administer anesthesia may be reinstated, effective upon the entry of this Order;

WHEREAS, in accordance with paragraph 5 of the Final Order, the Respondent shall be placed on a period of probation for one year, beginning on the day following the date of entry of this Order, subject to terms and conditions to be imposed by the Board. Although the Respondent's license and permit are being reinstated, certain findings made in the mental health evaluation necessitate that the Board impose specific terms and conditions during the Respondent's probation, for the protection and safety of his patients, staff and the public; and

WHEREAS, the primary purpose of this Order is to provide the Respondent with notice of the reinstatement of his license to practice dentistry and his permit to administer anesthesia, and of the terms and conditions of his one-year period of probation.

Based on the foregoing, IT IS HEREBY ORDERED that the Respondent's suspension is hereby lifted and the Respondent's license to practice dentistry and his permit to administer anesthesia in the State of West Virginia are hereby reinstated, effective upon the entry of this Order.

IT IS FURTHER ORDERED that the Respondent is hereby placed on a period of probation for one year beginning on the day following the date of entry of this Order.

IT IS FURTHER ORDERED that the Respondent shall follow and abide by the following terms and conditions during his period of probation:

(1) The Respondent shall become familiar with, and conduct himself professionally and in accordance with, the *American Dental Association's Principles of Ethics and Code of Professional Conduct* (hereinafter "the ADA Code") and any future amendments thereto, as well

as the ADA's commitment to the highest ethical standards including, but not limited to, maintaining the necessary levels of knowledge, skills and competence to perform his practice, being honest, and showing compassion, empathy and kindness to his patients and staff. A copy of the current *ADA Code* is attached to and incorporated into this Order for reference by the Respondent.

(2) The Respondent shall treat all patients with courtesy, respect and the highest professional, ethical and moral conduct in all circumstances including, but not limited to, any time a patient complains of pain and/or disagrees with or seeks clarification of the Respondent's method of treatment, and regardless of the patient's financial means.

(3) The Respondent shall ensure that both he and his staff fully apprise patients of their treatment and anesthesia options, and correct any misunderstandings that a patient may exhibit of such options, before any treatment is begun. This may necessitate verbally explaining the options to the patient, regardless if the patient signed a written consent, and documenting the patient's file that the options were verbally explained to the patient and the patient understood them;

(4) The Respondent shall use appropriate language and conduct when communicating and/or dealing with patients, his staff and the Board. For example, raising his voice to patients, getting down into a patient's face to discipline the patient, and referring to patients as "low-class trash" are not appropriate;

(5) The Respondent shall abide by all federal and state laws regarding the prescribing of pain medication including, but not limited to, utilizing the West Virginia Controlled Substance Monitoring Program to ascertain if any patients are or appear to be abusing prescription medication. Should the Respondent determine that a patient is or appears to be abusing

prescription medication, the Respondent shall exercise his professional judgment in determining whether or not to treat the patient;

(6) The Respondent shall undergo six (6) hours of continuing education in the area of anger management and patient relations, over and above the continuing education requirements necessary to retain his license, which must be pre-approved by the Board and shall be completed during his one-year of probation;

(7) The Respondent shall pay a fine of One Thousand Dollars (\$1,000.00), by Cashier's Check payable to the West Virginia Board of Dentistry, within sixty (60) days of the date of entry of this order;

(8) The Respondent shall reimburse the Board its costs in prosecuting this matter, totaling Six Thousand Twelve Dollars and Forty Cents (\$6,012.40).<sup>1</sup> Such expenses shall be paid by separate Cashier's Check payable to the West Virginia Board of Dentistry within sixty (60) days of the date of entry of this Order; and

(9) The Respondent, having been directed to remit payment for the mental evaluation at the time it was conducted and having failed to do so, shall remit payment of Two Thousand Five Hundred Dollars and No Cents (\$2,500.00) to the office which conducted the mental evaluation within Ten (10) days from the date of entry of this Order.

It is further ORDERED that the Respondent's failure to abide by any term or condition set forth in this Order shall constitute a violation of this Order and may subject the Respondent to further disciplinary action as authorized by W. Va. Code §§ 30-4-1, *et seq.*, and W. Va. Code R. §§ 5-1-1, *et seq.*

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<sup>1</sup>The Board costs of \$6,012.40 consisting of the following: \$5,200 Hearing Examiner fee; \$554.01 Board Investigator Expenses; \$75.00 Court Reporter Appearance Fee; \$83.50 Copies; \$23.89 Mailings; and \$76.00 Board Secretary Travel Expenses to the Hearing.


DATE ENTERED:

09/01/16



WEST VIRGINIA BOARD OF DENTISTRY

By:

  
STAN W. KACZKOWSKI, DDS  
President

# Principles *of Ethics* & Code *of Professional Conduct*

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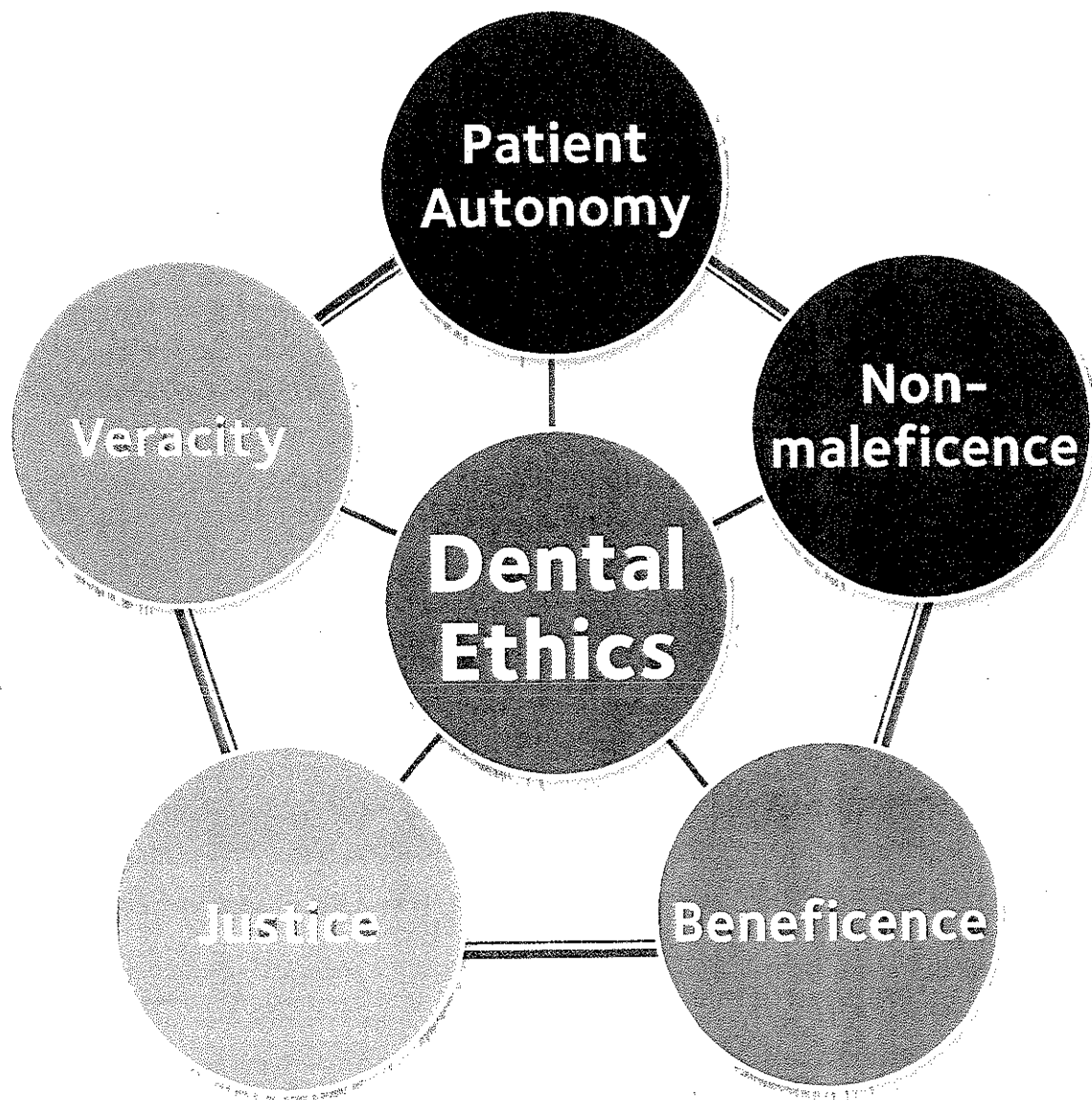
With official advisory opinions revised to September 2016.



ADA American Dental Association®

**Council on Ethics, Bylaws and Judicial Affairs**

# Principles of Ethics



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## I. INTRODUCTION

The dental profession holds a special position of trust within society. As a consequence, society affords the profession certain privileges that are not available to members of the public-at-large. In return, the profession makes a commitment to society that its members will adhere to high ethical standards of conduct. These standards are embodied in the *ADA Principles of Ethics and Code of Professional Conduct (ADA Code)*. The *ADA Code* is, in effect, a written expression of the obligations arising from the implied contract between the dental profession and society.

Members of the ADA voluntarily agree to abide by the *ADA Code* as a condition of membership in the Association. They recognize that continued public trust in the dental profession is based on the commitment of individual dentists to high ethical standards of conduct.

The *ADA Code* has three main components: The **Principles of Ethics**, the **Code of Professional Conduct** and the **Advisory Opinions**.

The **Principles of Ethics** are the aspirational goals of the profession. They provide guidance and offer justification for the *Code of Professional Conduct* and the *Advisory Opinions*. There are five fundamental principles that form the foundation of the *ADA Code*: patient autonomy, nonmaleficence, beneficence, justice and veracity. Principles can overlap each other as well as compete with each other for priority. More than one principle can justify a given element of the *Code of Professional Conduct*. Principles may at times need to be balanced against each other, but, otherwise, they are the profession's firm guideposts.

The **Code of Professional Conduct** is an expression of specific types of conduct that are either required or prohibited. The *Code of Professional Conduct* is a product of the ADA's legislative system. All elements of the *Code of Professional Conduct* result from resolutions that are adopted by the ADA's House of Delegates. The *Code of Professional Conduct* is binding on members of the ADA, and violations may result in disciplinary action.

The **Advisory Opinions** are interpretations that apply the *Code of Professional Conduct* to specific fact situations. They are adopted by the ADA's Council on Ethics, Bylaws and Judicial Affairs to provide guidance to the membership on how the Council might interpret the *Code of Professional Conduct* in a disciplinary proceeding.

The *ADA Code* is an evolving document and by its very nature cannot be a complete articulation of all ethical obligations. The *ADA Code* is the result of an on-going dialogue between the dental profession and society, and as such, is subject to continuous review.

Although ethics and the law are closely related, they are not the same. Ethical obligations may—and often do—exceed legal duties. In resolving any ethical problem not explicitly covered by the *ADA Code*, dentists should consider the ethical principles, the patient's needs and interests, and any applicable laws.

## II. PREAMBLE

The American Dental Association calls upon dentists to follow high ethical standards which have the benefit of the patient as their primary goal. In recognition of this goal, the education and training of a dentist has resulted in society affording to the profession the privilege and obligation of self-government. To fulfill this privilege, these high ethical standards should be adopted and practiced throughout the dental school educational process and subsequent professional career.

The Association believes that dentists should possess not only knowledge, skill and technical competence but also those traits of character that foster adherence to ethical principles. Qualities of honesty, compassion, kindness, integrity, fairness and charity are part of the ethical education of a dentist and practice of dentistry and help to define the true professional. As such, each dentist should share in providing advocacy to and care of the underserved. It is urged that the dentist meet this goal, subject to individual circumstances.

The ethical dentist strives to do that which is right and good. The *ADA Code* is an instrument to help the dentist in this quest.

### **III. PRINCIPLES, CODE OF PROFESSIONAL CONDUCT AND ADVISORY OPINIONS**

**Section 1 PRINCIPLE: PATIENT AUTONOMY** ("self-governance"). The dentist has a duty to respect the patient's rights to self-determination and confidentiality.

*This principle expresses the concept that professionals have a duty to treat the patient according to the patient's desires, within the bounds of accepted treatment, and to protect the patient's confidentiality. Under this principle, the dentist's primary obligations include involving patients in treatment decisions in a meaningful way, with due consideration being given to the patient's needs, desires and abilities, and safeguarding the patient's privacy.*

#### **CODE OF PROFESSIONAL CONDUCT**

##### **1.A. PATIENT INVOLVEMENT.**

The dentist should inform the patient of the proposed treatment, and any reasonable alternatives, in a manner that allows the patient to become involved in treatment decisions.

##### **1.B. PATIENT RECORDS.**

Dentists are obliged to safeguard the confidentiality of patient records. Dentists shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of a patient or another dental practitioner, dentists shall provide any information in accordance with applicable law that will be beneficial for the future treatment of that patient.

#### **ADVISORY OPINIONS**

##### **1.B.1. FURNISHING COPIES OF RECORDS.**

A dentist has the ethical obligation on request of either the patient or the patient's new dentist to furnish in accordance with applicable law, either gratuitously or for nominal cost, such dental records or copies or summaries of them, including dental X-rays or copies of them, as will be beneficial for the future treatment of that patient. This obligation exists whether or not the patient's account is paid in full.

##### **1.B.2. CONFIDENTIALITY OF PATIENT RECORDS.**

The dominant theme in Code Section 1.B is the protection of the confidentiality of a patient's records. The statement in this section that relevant information in the records should be released to another dental practitioner assumes that the dentist requesting the information is the patient's present dentist. There may be circumstances where the former dentist has an ethical obligation to inform the present dentist of certain facts. Code Section 1.B assumes that the dentist releasing relevant information is acting in accordance with applicable law. Dentists

should be aware that the laws of the various jurisdictions in the United States are not uniform and some confidentiality laws appear to prohibit the transfer of pertinent information, such as HIV seropositivity. Absent certain knowledge that the laws of the dentist's jurisdiction permit the forwarding of this information, a dentist should obtain the patient's written permission before forwarding health records which contain information of a sensitive nature, such as HIV seropositivity, chemical dependency or sexual preference. If it is necessary for a treating dentist to consult with another dentist or physician with respect to the patient, and the circumstances do not permit the patient to remain anonymous, the treating dentist should seek the permission of the patient prior to the release of data from the patient's records to the consulting practitioner. If the patient refuses, the treating dentist should then contemplate obtaining legal advice regarding the termination of the dentist-patient relationship.

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**Section 2 PRINCIPLE: NONMALEFICENCE** ("do no harm"). The dentist has a duty to refrain from harming the patient.

*This principle expresses the concept that professionals have a duty to protect the patient from harm. Under this principle, the dentist's primary obligations include keeping knowledge and skills current, knowing one's own limitations and when to refer to a specialist or other professional, and knowing when and under what circumstances delegation of patient care to auxiliaries is appropriate.*

## **CODE OF PROFESSIONAL CONDUCT**

### **2.A. EDUCATION.**

The privilege of dentists to be accorded professional status rests primarily in the knowledge, skill and experience with which they serve their patients and society. All dentists, therefore, have the obligation of keeping their knowledge and skill current.

### **2.B. CONSULTATION AND REFERRAL.**

Dentists shall be obliged to seek consultation, if possible, whenever the welfare of patients will be safeguarded or advanced by utilizing those who have special skills, knowledge, and experience. When patients visit or are referred to specialists or consulting dentists for consultation:

1. The specialists or consulting dentists upon completion of their care shall return the patient, unless the patient expressly reveals a different preference, to the referring dentist, or, if none, to the dentist of record for future care.
2. The specialists shall be obliged when there is no referring dentist and upon a completion of their treatment to inform patients when there is a need for further dental care.

## **ADVISORY OPINION**

### **2.B.1. SECOND OPINIONS.**

A dentist who has a patient referred by a third party<sup>1</sup> for a "second opinion" regarding a diagnosis or treatment plan recommended by the patient's treating dentist should render the requested second opinion in accordance with this *Code of Ethics*. In the interest of the patient being afforded quality care, the dentist rendering the second opinion should not have a vested interest in the ensuing recommendation.

## **2.C. USE OF AUXILIARY PERSONNEL.**

Dentists shall be obliged to protect the health of their patients by only assigning to qualified auxiliaries those duties which can be legally delegated. Dentists shall be further obliged to prescribe and supervise the patient care provided by all auxiliary personnel working under their direction.

## **2.D. PERSONAL IMPAIRMENT.**

It is unethical for a dentist to practice while abusing controlled substances, alcohol or other chemical agents which impair the ability to practice. All dentists have an ethical obligation to urge chemically impaired colleagues to seek treatment. Dentists with first-hand knowledge that a colleague is practicing dentistry when so impaired have an ethical responsibility to report such evidence to the professional assistance committee of a dental society.

### **ADVISORY OPINION**

#### **2.D.1. ABILITY TO PRACTICE.**

A dentist who contracts any disease or becomes impaired in any way that might endanger patients or dental staff shall, with consultation and advice from a qualified physician or other authority, limit the activities of practice to those areas that do not endanger patients or dental staff. A dentist who has been advised to limit the activities of his or her practice should monitor the aforementioned disease or impairment and make additional limitations to the activities of the dentist's practice, as indicated.

## **2.E. POSTEXPOSURE, BLOODBORNE PATHOGENS.**

All dentists, regardless of their bloodborne pathogen status, have an ethical obligation to immediately inform any patient who may have been exposed to blood or other potentially infectious material in the dental office of the need for postexposure evaluation and follow-up and to immediately refer the patient to a qualified health care practitioner who can provide postexposure services. The dentist's ethical obligation in the event of an exposure incident extends to providing information concerning the dentist's own bloodborne pathogen status to the evaluating health care practitioner, if the dentist is the source individual, and to submitting to testing that will assist in the evaluation of the patient. If a staff member or other third person is the source individual, the dentist should encourage that person to cooperate as needed for the patient's evaluation.

## **2.F. PATIENT ABANDONMENT.**

Once a dentist has undertaken a course of treatment, the dentist should not discontinue that treatment without giving the patient adequate notice and the opportunity to obtain the services of another dentist. Care should be taken that the patient's oral health is not jeopardized in the process.

## **2.G. PERSONAL RELATIONSHIPS WITH PATIENTS.**

Dentists should avoid interpersonal relationships that could impair their professional judgment or risk the possibility of exploiting the confidence placed in them by a patient.

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**Section 3 PRINCIPLE: BENEFICENCE** ("do good"). The dentist has a duty to promote the patient's welfare.

*This principle expresses the concept that professionals have a duty to act for the benefit of others. Under this principle, the dentist's primary obligation is service to the patient and the public-at-large. The most important aspect of this obligation is the competent and timely delivery of dental care within the bounds of clinical circumstances presented by the patient, with due consideration being given to the needs, desires and values of the patient. The same ethical considerations apply whether the dentist engages in fee-for-service, managed care or some other practice arrangement. Dentists may choose to enter into contracts governing the provision of care to a group of patients; however, contract obligations do not excuse dentists from their ethical duty to put the patient's welfare first.*

### **CODE OF PROFESSIONAL CONDUCT**

#### **3.A. COMMUNITY SERVICE.**

Since dentists have an obligation to use their skills, knowledge and experience for the improvement of the dental health of the public and are encouraged to be leaders in their community, dentists in such service shall conduct themselves in such a manner as to maintain or elevate the esteem of the profession.

#### **3.B. GOVERNMENT OF A PROFESSION.**

Every profession owes society the responsibility to regulate itself. Such regulation is achieved largely through the influence of the professional societies. All dentists, therefore, have the dual obligation of making themselves a part of a professional society and of observing its rules of ethics.

#### **3.C. RESEARCH AND DEVELOPMENT.**

Dentists have the obligation of making the results and benefits of their investigative efforts available to all when they are useful in safeguarding or promoting the health of the public.

#### **3.D. PATENTS AND COPYRIGHTS.**

Patents and copyrights may be secured by dentists provided that such patents and copyrights shall not be used to restrict research or practice.

#### **3.E. ABUSE AND NEGLIGENCE.**

Dentists shall be obliged to become familiar with the signs of abuse and neglect and to report suspected cases to the proper authorities, consistent with state laws.

### **ADVISORY OPINION**

#### **3.E.1. REPORTING ABUSE AND NEGLIGENCE.**

The public and the profession are best served by dentists who are familiar with identifying the signs of abuse and neglect and knowledgeable about the appropriate intervention resources for all populations.

A dentist's ethical obligation to identify and report the signs of abuse and neglect is, at a minimum, to be consistent with a dentist's legal obligation in the jurisdiction where the dentist practices. Dentists, therefore, are ethically obliged to identify and report suspected cases of abuse and neglect to the same extent as they are legally obliged to do so in the jurisdiction where they practice. Dentists have a concurrent ethical obligation to respect an adult patient's right to

self-determination and confidentiality and to promote the welfare of all patients. Care should be exercised to respect the wishes of an adult patient who asks that a suspected case of abuse and/or neglect not be reported, where such a report is not mandated by law. With the patient's permission, other possible solutions may be sought.

Dentists should be aware that jurisdictional laws vary in their definitions of abuse and neglect, in their reporting requirements and the extent to which immunity is granted to good faith reporters. The variances may raise potential legal and other risks that should be considered, while keeping in mind the duty to put the welfare of the patient first. Therefore a dentist's ethical obligation to identify and report suspected cases of abuse and neglect can vary from one jurisdiction to another.

Dentists are ethically obligated to keep current their knowledge of both identifying abuse and neglect and reporting it in the jurisdiction(s) where they practice.

### **3.F. PROFESSIONAL DEMEANOR IN THE WORKPLACE.**

Dentists have the obligation to provide a workplace environment that supports respectful and collaborative relationships for all those involved in oral health care.

#### **ADVISORY OPINION**

##### **3.F.1. DISRUPTIVE BEHAVIOR IN THE WORKPLACE.**

Dentists are the leaders of the oral healthcare team. As such, their behavior in the workplace is instrumental in establishing and maintaining a practice environment that supports the mutual respect, good communication, and high levels of collaboration among team members required to optimize the quality of patient care provided. Dentists who engage in disruptive behavior in the workplace risk undermining professional relationships among team members, decreasing the quality of patient care provided, and undermining the public's trust and confidence in the profession.

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**Section 4 PRINCIPLE: JUSTICE** ("fairness"). The dentist has a duty to treat people fairly.

*This principle expresses the concept that professionals have a duty to be fair in their dealings with patients, colleagues and society. Under this principle, the dentist's primary obligations include dealing with people justly and delivering dental care without prejudice. In its broadest sense, this principle expresses the concept that the dental profession should actively seek allies throughout society on specific activities that will help improve access to care for all.*

#### **CODE OF PROFESSIONAL CONDUCT**

##### **4.A. PATIENT SELECTION.**

While dentists, in serving the public, may exercise reasonable discretion in selecting patients for their practices, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient's race, creed, color, sex or national origin.

#### **ADVISORY OPINION**

##### **4.A.1. PATIENTS WITH BLOODBORNE PATHOGENS.**

A dentist has the general obligation to provide care to those in need. A decision not to provide treatment to an individual because the individual is infected with Human

Immunodeficiency Virus, Hepatitis B Virus, Hepatitis C Virus or another bloodborne pathogen, based solely on that fact, is unethical. Decisions with regard to the type of dental treatment provided or referrals made or suggested should be made on the same basis as they are made with other patients. As is the case with all patients, the individual dentist should determine if he or she has the need of another's skills, knowledge, equipment or experience. The dentist should also determine, after consultation with the patient's physician, if appropriate, if the patient's health status would be significantly compromised by the provision of dental treatment.

#### **4.B. EMERGENCY SERVICE.**

Dentists shall be obliged to make reasonable arrangements for the emergency care of their patients of record. Dentists shall be obliged when consulted in an emergency by patients not of record to make reasonable arrangements for emergency care. If treatment is provided, the dentist, upon completion of treatment, is obliged to return the patient to his or her regular dentist unless the patient expressly reveals a different preference.

#### **4.C. JUSTIFIABLE CRITICISM.**

Dentists shall be obliged to report to the appropriate reviewing agency as determined by the local component or constituent society instances of gross or continual faulty treatment by other dentists. Patients should be informed of their present oral health status without disparaging comment about prior services. Dentists issuing a public statement with respect to the profession shall have a reasonable basis to believe that the comments made are true.

#### **ADVISORY OPINION**

##### **4.C.1. MEANING OF "JUSTIFIABLE."**

Patients are dependent on the expertise of dentists to know their oral health status. Therefore, when informing a patient of the status of his or her oral health, the dentist should exercise care that the comments made are truthful, informed and justifiable. This should, if possible, involve consultation with the previous treating dentist(s), in accordance with applicable law, to determine under what circumstances and conditions the treatment was performed. A difference of opinion as to preferred treatment should not be communicated to the patient in a manner which would unjustly imply mistreatment. There will necessarily be cases where it will be difficult to determine whether the comments made are justifiable. Therefore, this section is phrased to address the discretion of dentists and advises against unknowing or unjustifiable disparaging statements against another dentist. However, it should be noted that, where comments are made which are not supportable and therefore unjustified, such comments can be the basis for the institution of a disciplinary proceeding against the dentist making such statements.

#### **4.D. EXPERT TESTIMONY.**

Dentists may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action.

#### **ADVISORY OPINION**

##### **4.D.1. CONTINGENT FEES.**

It is unethical for a dentist to agree to a fee contingent upon the favorable outcome of the litigation in exchange for testifying as a dental expert.



#### **4.E. REBATES AND SPLIT FEES.**

Dentists shall not accept or tender "rebates" or "split fees."

#### **ADVISORY OPINION**

##### **4.E.1. SPLIT FEES IN ADVERTISING AND MARKETING SERVICES.**

The prohibition against a dentist's accepting or tendering rebates or split fees applies to business dealings between dentists and any third party, not just other dentists. Thus, a dentist who pays for advertising or marketing services by sharing a specified portion of the professional fees collected from prospective or actual patients with the vendor providing the advertising or marketing services is engaged in fee splitting. The prohibition against fee splitting is also applicable to the marketing of dental treatments or procedures via "social coupons" if the business arrangement between the dentist and the concern providing the marketing services for that treatment or those procedures allows the issuing company to collect the fee from the prospective patient, retain a defined percentage or portion of the revenue collected as payment for the coupon marketing service provided to the dentist and remit to the dentist the remainder of the amount collected.

Dentists should also be aware that the laws or regulations in their jurisdictions may contain provisions that impact the division of revenue collected from prospective patients between a dentist and a third party to pay for advertising or marketing services.

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**Section 5 PRINCIPLE: VERACITY** ("truthfulness"). The dentist has a duty to communicate truthfully.

*This principle expresses the concept that professionals have a duty to be honest and trustworthy in their dealings with people. Under this principle, the dentist's primary obligations include respecting the position of trust inherent in the dentist-patient relationship, communicating truthfully and without deception, and maintaining intellectual integrity.*

#### **CODE OF PROFESSIONAL CONDUCT**

##### **5.A. REPRESENTATION OF CARE.**

Dentists shall not represent the care being rendered to their patients in a false or misleading manner.

#### **ADVISORY OPINIONS**

##### **5.A.1. DENTAL AMALGAM AND OTHER RESTORATIVE MATERIALS.**

Based on current scientific data, the ADA has determined that the removal of amalgam restorations from the non-allergic patient for the alleged purpose of removing toxic substances from the body, when such treatment is performed solely at the recommendation of the dentist, is improper and unethical. The same principle of veracity applies to the dentist's recommendation concerning the removal of any dental restorative material.

##### **5.A.2. UNSUBSTANTIATED REPRESENTATIONS.**

A dentist who represents that dental treatment or diagnostic techniques

recommended or performed by the dentist has the capacity to diagnose, cure or alleviate diseases, infections or other conditions, when such representations are not based upon accepted scientific knowledge or research, is acting unethically.

#### **5.B. REPRESENTATION OF FEES.**

Dentists shall not represent the fees being charged for providing care in a false or misleading manner.

#### **ADVISORY OPINIONS**

##### **5.B.1. WAIVER OF COPAYMENT.**

A dentist who accepts a third party<sup>1</sup> payment under a copayment plan as payment in full without disclosing to the third party<sup>1</sup> that the patient's payment portion will not be collected, is engaged in overbilling. The essence of this ethical impropriety is deception and misrepresentation; an overbilling dentist makes it appear to the third party<sup>1</sup> that the charge to the patient for services rendered is higher than it actually is.

##### **5.B.2. OVERBILLING.**

It is unethical for a dentist to increase a fee to a patient solely because the patient is covered under a dental benefits plan.

##### **5.B.3. FEE DIFFERENTIAL.**

The fee for a patient without dental benefits shall be considered a dentist's full fee.<sup>2</sup> This is the fee that should be represented to all benefit carriers regardless of any negotiated fee discount. Payments accepted by a dentist under a governmentally funded program, a component or constituent dental society-sponsored access program, or a participating agreement entered into under a program with a third party shall not be considered or construed as evidence of overbilling in determining whether a charge to a patient, or to another third party<sup>1</sup> in behalf of a patient not covered under any of the aforementioned programs constitutes overbilling under this section of the *Code*.

##### **5.B.4. TREATMENT DATES.**

A dentist who submits a claim form to a third party<sup>1</sup> reporting incorrect treatment dates for the purpose of assisting a patient in obtaining benefits under a dental plan, which benefits would otherwise be disallowed, is engaged in making an unethical, false or misleading representation to such third party.<sup>1</sup>

##### **5.B.5. DENTAL PROCEDURES.**

A dentist who incorrectly describes on a third party<sup>1</sup> claim form a dental procedure in order to receive a greater payment or reimbursement or incorrectly makes a non-covered procedure appear to be a covered procedure on such a claim form is engaged in making an unethical, false or misleading representation to such third party.<sup>1</sup>

##### **5.B.6. UNNECESSARY SERVICES.**

A dentist who recommends and performs unnecessary dental services or procedures is engaged in unethical conduct. The dentist's ethical obligation in this matter applies regardless of the type of practice arrangement or contractual obligations in which he or she provides patient care.

### **5.C. DISCLOSURE OF CONFLICT OF INTEREST.**

A dentist who presents educational or scientific information in an article, seminar or other program shall disclose to the readers or participants any monetary or other special interest the dentist may have with a company whose products are promoted or endorsed in the presentation. Disclosure shall be made in any promotional material and in the presentation itself.

### **5.D. DEVICES AND THERAPEUTIC METHODS.**

Except for formal investigative studies, dentists shall be obliged to prescribe, dispense, or promote only those devices, drugs and other agents whose complete formulae are available to the dental profession. Dentists shall have the further obligation of not holding out as exclusive any device, agent, method or technique if that representation would be false or misleading in any material respect.

#### **ADVISORY OPINIONS**

##### **5.D.1. REPORTING ADVERSE REACTIONS.**

A dentist who suspects the occurrence of an adverse reaction to a drug or dental device has an obligation to communicate that information to the broader medical and dental community, including, in the case of a serious adverse event, the Food and Drug Administration (FDA).

##### **5.D.2. MARKETING OR SALE OF PRODUCTS OR PROCEDURES.**

Dentists who, in the regular conduct of their practices, engage in or employ auxiliaries in the marketing or sale of products or procedures to their patients must take care not to exploit the trust inherent in the dentist-patient relationship for their own financial gain. Dentists should not induce their patients to purchase products or undergo procedures by misrepresenting the product's value, the necessity of the procedure or the dentist's professional expertise in recommending the product or procedure.

In the case of a health-related product, it is not enough for the dentist to rely on the manufacturer's or distributor's representations about the product's safety and efficacy. The dentist has an independent obligation to inquire into the truth and accuracy of such claims and verify that they are founded on accepted scientific knowledge or research.

Dentists should disclose to their patients all relevant information the patient needs to make an informed purchase decision, including whether the product is available elsewhere and whether there are any financial incentives for the dentist to recommend the product that would not be evident to the patient.

### **5.E. PROFESSIONAL ANNOUNCEMENT.**

In order to properly serve the public, dentists should represent themselves in a manner that contributes to the esteem of the profession. Dentists should not misrepresent their training and competence in any way that would be false or misleading in any material respect.<sup>3</sup>

### **5.F. ADVERTISING.**

Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect.<sup>3</sup>

## **ADVISORY OPINIONS**

### **5.F.1. PUBLISHED COMMUNICATIONS.**

If a dental health article, message or newsletter is published in print or electronic media under a dentist's byline to the public without making truthful disclosure of the source and authorship or is designed to give rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dentist, the dentist is engaged in making a false or misleading representation to the public in a material respect.<sup>3</sup>

### **5.F.2. EXAMPLES OF "FALSE OR MISLEADING."**

The following examples are set forth to provide insight into the meaning of the term "false or misleading in a material respect."<sup>3</sup> These examples are not meant to be all-inclusive. Rather, by restating the concept in alternative language and giving general examples, it is hoped that the membership will gain a better understanding of the term. With this in mind, statements shall be avoided which would:

a) contain a material misrepresentation of fact, b) omit a fact necessary to make the statement considered as a whole not materially misleading, c) be intended or be likely to create an unjustified expectation about results the dentist can achieve, and d) contain a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dentists, if that representation is not subject to reasonable substantiation.

Subjective statements about the quality of dental services can also raise ethical concerns. In particular, statements of opinion may be misleading if they are not honestly held, if they misrepresent the qualifications of the holder, or the basis of the opinion, or if the patient reasonably interprets them as implied statements of fact. Such statements will be evaluated on a case by case basis, considering how patients are likely to respond to the impression made by the advertisement as a whole. The fundamental issue is whether the advertisement, taken as a whole, is false or misleading in a material respect.<sup>3</sup>

### **5.F.3. UNEARNED, NONHEALTH DEGREES.**

A dentist may use the title Doctor or Dentist, D.D.S., D.M.D. or any additional earned, advanced academic degrees in health service areas in an announcement to the public. The announcement of an unearned academic degree may be misleading because of the likelihood that it will indicate to the public the attainment of specialty or diplomate status.

For purposes of this advisory opinion, an unearned academic degree is one which is awarded by an educational institution not accredited by a generally recognized accrediting body or is an honorary degree.

The use of a nonhealth degree in an announcement to the public may be a representation which is misleading because the public is likely to assume that any degree announced is related to the qualifications of the dentist as a practitioner.

Some organizations grant dentists' fellowship status as a token of membership in the organization or some other form of voluntary association. The use of such fellowships in advertising to the general public may be misleading because of the likelihood that it will indicate to the public attainment of education or skill in the field of dentistry.

Generally, unearned or nonhealth degrees and fellowships that designate association, rather than attainment, should be limited to scientific papers and

curriculum vitae. In all instances, state law should be consulted. In any review by the council of the use of designations in advertising to the public, the council will apply the standard of whether the use of such is false or misleading in a material respect.<sup>3</sup>

#### **5.F.4. REFERRAL SERVICES.**

There are two basic types of referral services for dental care: not-for-profit and the commercial. The not-for-profit is commonly organized by dental societies or community services. It is open to all qualified practitioners in the area served. A fee is sometimes charged the practitioner to be listed with the service. A fee for such referral services is for the purpose of covering the expenses of the service and has no relation to the number of patients referred. In contrast, some commercial referral services restrict access to the referral service to a limited number of dentists in a particular geographic area. Prospective patients calling the service may be referred to a single subscribing dentist in the geographic area and the respective dentist billed for each patient referred. Commercial referral services often advertise to the public stressing that there is no charge for use of the service and the patient may not be informed of the referral fee paid by the dentist. There is a connotation to such advertisements that the referral that is being made is in the nature of a public service. A dentist is allowed to pay for any advertising permitted by the *Code*, but is generally not permitted to make payments to another person or entity for the referral of a patient for professional services. While the particular facts and circumstances relating to an individual commercial referral service will vary, the council believes that the aspects outlined above for commercial referral services violate the *Code* in that it constitutes advertising which is false or misleading in a material respect and violates the prohibitions in the *Code* against fee splitting.<sup>3</sup>

#### **5.F.5. INFECTIOUS DISEASE TEST RESULTS.**

An advertisement or other communication intended to solicit patients which omits a material fact or facts necessary to put the information conveyed in the advertisement in a proper context can be misleading in a material respect. A dental practice should not seek to attract patients on the basis of partial truths which create a false impression.<sup>3</sup>

For example, an advertisement to the public of HIV negative test results, without conveying additional information that will clarify the scientific significance of this fact contains a misleading omission. A dentist could satisfy his or her obligation under this advisory opinion to convey additional information by clearly stating in the advertisement or other communication: "This negative HIV test cannot guarantee that I am currently free of HIV."

#### **5.F.6. WEBSITES AND SEARCH ENGINE OPTIMIZATION.**

Many dentists employ an Internet web site to announce their practices, introduce viewers to the professionals and staff in the office, describe practice philosophies and impart oral health care information to the public. Dentists may use services to increase the visibility of their web sites when consumers perform searches for dentally-related content. This technique is generally known as "search engine optimization" or "SEO." Dentists have an ethical obligation to ensure that their web sites, like their other professional announcements, are truthful and do not present information in a manner that is false and misleading in a material respect.<sup>3</sup> Also, any SEO techniques used in connection with a dentist's web site should comport with the *ADA Principles of Ethics and Code of Professional Conduct*.

## **5.G. NAME OF PRACTICE.**

Since the name under which a dentist conducts his or her practice may be a factor in the selection process of the patient, the use of a trade name or an assumed name that is false or misleading in any material respect is unethical. Use of the name of a dentist no longer actively associated with the practice may be continued for a period not to exceed one year.<sup>3</sup>

### **ADVISORY OPINION**

#### **5.G.1. DENTIST LEAVING PRACTICE.**

Dentists leaving a practice who authorize continued use of their names should receive competent advice on the legal implications of this action. With permission of a departing dentist, his or her name may be used for more than one year, if, after the one year grace period has expired, prominent notice is provided to the public through such mediums as a sign at the office and a short statement on stationery and business cards that the departing dentist has retired from the practice.

## **5.H. ANNOUNCEMENT OF SPECIALIZATION AND LIMITATION OF PRACTICE.**

This section and Section 5.I are designed to help the public make an informed selection between the practitioner who has completed an accredited program beyond the dental degree and a practitioner who has not completed such a program. The dental specialties recognized by the American Dental Association and the designation for ethical specialty announcement and limitation of practice are: 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. Dentists who choose to announce specialization should use "specialist in" or "practice limited to" and shall limit their practice exclusively to the announced dental specialties, provided at the time of the announcement such dentists have met in each recognized specialty for which they announce the existing educational requirements and standards set forth by the American Dental Association. Dentists who use their eligibility to announce as specialists to make the public believe that specialty services rendered in the dental office are being rendered by qualified specialists when such is not the case are engaged in unethical conduct. The burden of responsibility is on specialists to avoid any inference that general practitioners who are associated with specialists are qualified to announce themselves as specialists.

### **GENERAL STANDARDS.**

The following are included within the standards of the American Dental Association for determining the education, experience and other appropriate requirements for announcing specialization and limitation of practice:

- 1.** The special area(s) of dental practice and an appropriate certifying board must be approved by the American Dental Association.
- 2.** Dentists who announce as specialists must have successfully completed an educational program accredited by the Commission on Dental Accreditation, two or more years in length, as specified by the Council on Dental Education and Licensure, or be diplomates of an American Dental Association recognized certifying board. The scope of the individual specialist's practice shall be governed by the educational standards for the specialty in which the specialist is announcing.
- 3.** The practice carried on by dentists who announce as specialists shall be limited exclusively to the special area(s) of dental practice announced by the dentist.

## **STANDARDS FOR MULTIPLE-SPECIALTY ANNOUNCEMENTS.**

The educational criterion for announcement of limitation of practice in additional specialty areas is the successful completion of an advanced educational program accredited by the Commission on Dental Accreditation (or its equivalent if completed prior to 1967)<sup>4</sup> in each area for which the dentist wishes to announce. Dentists who are presently ethically announcing limitation of practice in a specialty area and who wish to announce in an additional specialty area must submit to the appropriate constituent society documentation of successful completion of the requisite education in specialty programs listed by the Council on Dental Education and Licensure or certification as a diplomate in each area for which they wish to announce.

### **ADVISORY OPINIONS**

#### **5.H.1. DUAL DEGREE DENTISTS.**

Nothing in Section 5.H shall be interpreted to prohibit a dual degreed dentist who practices medicine or osteopathy under a valid state license from announcing to the public as a dental specialist provided the dentist meets the educational, experience and other standards set forth in the *Code* for specialty announcement and further providing that the announcement is truthful and not materially misleading.

#### **5.H.2. SPECIALIST ANNOUNCEMENT OF CREDENTIALS IN NON-SPECIALTY INTEREST AREAS.**

A dentist who is qualified to announce specialization under this section may not announce to the public that he or she is certified or a diplomate or otherwise similarly credentialed in an area of dentistry not recognized as a specialty area by the American Dental Association unless:

1. The organization granting the credential grants certification or diplomate status based on the following: a) the dentist's successful completion of a formal, full-time advanced education program (graduate or postgraduate level) of at least 12 months' duration; and b) the dentist's training and experience; and c) successful completion of an oral and written examination based on psychometric principles; and
2. The announcement includes the following language: [Name of announced area of dental practice] is not recognized as a specialty area by the American Dental Association.

Nothing in this advisory opinion affects the right of a properly qualified dentist to announce specialization in an ADA-recognized specialty area(s) as provided for under Section 5.H of this *Code* or the responsibility of such dentist to limit his or her practice exclusively to the special area(s) of dental practice announced. Specialists shall not announce their credentials in a manner that implies specialization in a non-specialty interest area.

#### **5.I. GENERAL PRACTITIONER ANNOUNCEMENT OF SERVICES.**

General dentists who wish to announce the services available in their practices are permitted to announce the availability of those services so long as they avoid any communications that express or imply specialization. General dentists shall also state that the services are being provided by general dentists. No dentist shall announce available services in any way that would be false or misleading in any material respect.<sup>3</sup>

## **ADVISORY OPINIONS**

### **5.I.1. GENERAL PRACTITIONER ANNOUNCEMENT OF CREDENTIALS IN INTEREST AREAS IN GENERAL DENTISTRY.**

A general dentist may not announce to the public that he or she is certified or a diplomate or otherwise similarly credentialed in an area of dentistry not recognized as a specialty area by the American Dental Association unless:

1. The organization granting the credential grants certification or diplomate status based on the following: a) the dentist's successful completion of a formal, full-time advanced education program (graduate or postgraduate level) of at least 12 months duration; and b) the dentist's training and experience; and c) successful completion of an oral and written examination based on psychometric principles;
2. The dentist discloses that he or she is a general dentist; and
3. The announcement includes the following language: [Name of announced area of dental practice] is not recognized as a specialty area by the American Dental Association.

### **5.I.2. CREDENTIALS IN GENERAL DENTISTRY.**

General dentists may announce fellowships or other credentials earned in the area of general dentistry so long as they avoid any communications that express or imply specialization and the announcement includes the disclaimer that the dentist is a general dentist. The use of abbreviations to designate credentials shall be avoided when such use would lead the reasonable person to believe that the designation represents an academic degree, when such is not the case.

#### **NOTES:**

1. A third party is any party to a dental prepayment contract that may collect premiums, assume financial risks, pay claims, and/or provide administrative services.
2. A full fee is the fee for a service that is set by the dentist, which reflects the costs of providing the procedure and the value of the dentist's professional judgment.
3. Advertising, solicitation of patients or business or other promotional activities by dentists or dental care delivery organizations shall not be considered unethical or improper, except for those promotional activities which are false or misleading in any material respect. Notwithstanding any *ADA Principles of Ethics and Code of Professional Conduct* or other standards of dentist conduct which may be differently worded, this shall be the sole standard for determining the ethical propriety of such promotional activities. Any provision of an ADA constituent or component society's code of ethics or other standard of dentist conduct relating to dentists' or dental care delivery organizations' advertising, solicitation, or other promotional activities which is worded differently from the above standard shall be deemed to be in conflict with the *ADA Principles of Ethics and Code of Professional Conduct*.
4. Completion of three years of advanced training in oral and maxillofacial surgery or two years of advanced training in one of the other recognized dental specialties prior to 1967.

## **IV. INTERPRETATION AND APPLICATION OF PRINCIPLES OF ETHICS AND CODE OF PROFESSIONAL CONDUCT.**

The foregoing *ADA Principles of Ethics and Code of Professional Conduct* set forth the ethical duties that are binding on members of the American Dental Association. The component and constituent societies may adopt additional requirements or interpretations not in conflict with the *ADA Code*.

Anyone who believes that a member-dentist has acted unethically should bring the matter to the attention of the appropriate constituent (state) or component (local) dental society. Whenever possible, problems involving questions of ethics should be resolved at the state or local level. If a satisfactory resolution cannot be reached, the dental society may decide, after proper investigation, that the matter warrants issuing



formal charges and conducting a disciplinary hearing pursuant to the procedures set forth in the *ADA Bylaws*, Chapter XII. PRINCIPLES OF ETHICS AND CODE OF PROFESSIONAL CONDUCT AND JUDICIAL PROCEDURE. The Council on Ethics, Bylaws and Judicial Affairs reminds constituent and component societies that before a dentist can be found to have breached any ethical obligation the dentist is entitled to a fair hearing.

A member who is found guilty of unethical conduct proscribed by the *ADA Code* or code of ethics of the constituent or component society, may be placed under a sentence of censure or suspension or may be expelled from membership in the Association. A member under a sentence of censure, suspension or expulsion has the right to appeal the decision to his or her constituent society and the ADA Council on Ethics, Bylaws and Judicial Affairs, as provided in Chapter XII of the *ADA Bylaws*.

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