Combined Codes of the MDA Standards of Ethics and Code of Professional Conduct and the ADA Principles of Ethics and Code of Professional Conduct

October 2010

This document contains the combined Michigan Dental Association and American Dental Association *Codes of Ethics*. The MDA has adopted the ADA *Code* with MDA additions appearing in gray boxes.

CONTENTS

I. INTRODUCTION 1

II. PREAMBLE 1

III. PRINCIPLES, CODE OF PROFESSIONAL CONDUCT AND ADVISORY OPINIONS 2

The Code of Professional Conduct is organized into five sections. Each section falls under the Principle of Ethics that predominately applies to it. Advisory Opinions follow the section of the Code that they interpret.

Section 1 - PRINCIPLE: PATIENT AUTONOMY ("self-governance") 2

Code of Professional Conduct

1.A. Patient Involvement 2

1.B. Patient Records 2

Advisory Opinions

1.B.1. Furnishing Copies of Records 2

1.B.1. MDA Advisory Opinion: Copies of Records 2

1.B.2. Confidentiality of Patient Records 2

Section 2 - PRINCIPLE: NONMALEFICENCE ("do no harm") 3

Code of Professional Conduct

2.A. Education 3

2.B. Consultation and Referral 3

Advisory Opinion

2.B.1. Second Opinions 3

2.C. Use Of Auxiliary Personnel 3

MDA Addition to Use Of Auxiliary Personnel 3

2.D. Personal Impairment 3

Advisory Opinion

2.D.1. Ability to Practice 4

2.E. Postexposure, Bloodborne Pathogens 4

2.F. Patient Abandonment 4

2.G. Personal Relationships with Patients 4

2.G. MDA Addition to Personal Relationships with Patients 4

Section 3 - PRINCIPLE: BENEFICENCE ("do good") 4

Code of Professional Conduct

3.A. Community Service 4

MDA Advisory Opinion

3.A.1. Statement of the Individual Dentist Participating in Civic and Community Affairs 4

3.B. Government of a Profession 5

3.B. MDA Addition to Government of a Profession 5

3.C. Research & Development 5

3.D. Patents & Copyrights 5

3.E. Abuse and Neglect 5

Advisory Opinion

3.E.1. Reporting Abuse and Neglect 5

3.F. Professional Demeanor In the Workplace 6

3.F. MDA Addition to Professional Demeanor 6

Section 4 - PRINCIPLE: JUSTICE ("fairness") 6

Code of Professional Conduct

4.A. Patient Selection 6

Advisory Opinion

4.A.1. Patients with Bloodborne Pathogens 6

4.B. Emergency Service 6

4.C. Justifiable Criticism ... 6
Advisory Opinion
4.C.1. Meaning of "Justifiable" ... 6
4.D. Expert Testimony ... 6
Advisory Opinion
4.D.1. Contingent Fees ... 7
4.E. Rebates & Split Fees ... 7

Section 5 - PRINCIPLE: VERACITY ("truthfulness") ... 7
Code of Professional Conduct
5.A. Representation of Care ... 7
Advisory Opinions
5.A.1. Dental Amalgam and Other Restorative Materials ... 7
5.A.2. Unsubstantiated Representations ... 7
5.B. Representation of Fees ... 7
Advisory Opinions
5.B.1. Waiver of Copayment ... 7
5.B.2. Overbilling ... 7
5.B.3. Fee Differential ... 7
5.B.4. Treatment Dates ... 7
5.B.5. Dental Procedures ... 8
5.B.6. Unnecessary Services ... 8
5.C. Disclosure of Conflict of Interest ... 8
5.D. Devices and Therapeutic Methods ... 8
Advisory Opinions
5.D.1. Reporting Adverse Reactions ... 8
5.D.2. Marketing or Sale of Products or Procedures ... 8
5.E. Professional Announcement ... 8
5.F. Advertising ... 8
Advisory Opinions
5.F.1. Articles and Newsletters ... 9
5.F.2. Examples of "False or Misleading" ... 9
5.F.3. Unearned, Nonhealth Degrees ... 9
5.F.4. Referral Services ... 9
5.F.5. Infectious Disease Test Results ... 10
5.F.5. MDA Advisory Opinion: HIV Test Results ... 10
5.G. Name of Practice ... 10
Advisory Opinions
5.G.1. Dentist Leaving Practice ... 10
5.G.1. MDA Advisory Opinion: Dentist Leaving Practice ... 10
5.H. Announcement of Specialization and Limitation of Practice ... 10
General Standards ... 11
MDA Addition: Education ... 11
Standards for Multiple-Specialty Announcements ... 11
Advisory Opinions
5.H.1. Dual Degreed Dentists ... 11
5.H.2. Specialist Announcement of Credentials in Non-Specialty Interest Areas ... 11
5.I. General Practitioner Announcement of Services ... 12
Advisory Opinions
5.I.1. General Practitioner Announcement of Credentials in Non-Specialty Interest Areas ... 12
5.I.2. Credentials in General Dentistry ... 12
5.I.3. MDA Addition: Clarity of Announcement ... 12
NOTES ... 12

IV. INTERPRETATION AND APPLICATION ... 13
V. INDEX ... 14
Exhibit 1 - MDA *Bylaws,* Chapter VII Standards of Ethics and Judicial Procedure ... 18

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.

56 **III. PRINCIPLES, CODE OF PROFESSIONAL CONDUCT AND ADVISORY OPINIONS**
57
58 **Section 1 - PRINCIPLE: PATIENT AUTONOMY** ("self-governance"). The dentist has a duty to respect the
59 patient's rights to self-determination and confidentiality.
60
61 *This principle expresses the concept that professionals have a duty to treat the patient according to the patient's*
62 *desires, within the bounds of accepted treatment, and to protect the patient's confidentiality. Under this principle, the*
63 *dentist's primary obligations include involving patients in treatment decisions in a meaningful way, with due*
64 *consideration being given to the patient's needs, desires and abilities, and safeguarding the patient's privacy.*
65
66 **CODE OF PROFESSIONAL CONDUCT**
67
68 1.A. PATIENT INVOLVEMENT.
69 The dentist should inform the patient of the proposed treatment, and any reasonable alternatives, in a manner that allows
70 the patient to become involved in treatment decisions.
71
72 1.B. PATIENT RECORDS.
73 Dentists are obliged to safeguard the confidentiality of patient records. Dentists shall maintain patient records in a
74 manner consistent with the protection of the welfare of the patient. Upon request of a patient or another dental
75 practitioner, dentists shall provide any information in accordance with applicable law that will be beneficial for the
76 future treatment of that patient.
77
78 **ADVISORY OPINIONS**
79
80 1.B.1. FURNISHING COPIES OF RECORDS. A dentist has the ethical obligation on request of either the
81 patient or the patient's new dentist to furnish in accordance with applicable law, either gratuitously or for nominal
82 cost, such dental records or copies or summaries of them, including dental X-rays or copies of them, as will be
83 beneficial for the future treatment of that patient. This obligation exists whether or not the patient's account is
84 paid in full.
85
86 MDA Advisory Opinion
87 1.B.1. COPIES OF RECORDS. A dentist has the ethical obligation on request of either the patient or patient's
88 new dentist to furnish, either gratuitously **or for a nominal copying charge, copies of** such dental records,
89 including dental x-rays, as **may** be beneficial for the future treatment of that patient. **This obligation exists**
90 **whether or not the patient's account is paid in full.**
91
92 1.B.2. CONFIDENTIALITY OF PATIENT RECORDS. The dominant theme in Code Section l-B is the
93 protection of the confidentiality of a patient's records. The statement in this section that relevant information in
94 the records should be released to another dental practitioner assumes that the dentist requesting the information is
95 the patient's present dentist. There may be circumstances where the former dentist has an ethical obligation to
96 inform the present dentist of certain facts. Code Section 1-B assumes the dentist releasing relevant information is
97 acting in accordance with applicable law. Dentists should be aware that the laws of the various jurisdictions in the
98 United States are not uniform, and some confidentiality laws appear to prohibit the transfer of pertinent
99 information, such as HIV seropositivity. Absent certain knowledge that the laws of the dentist's jurisdiction
100 permit the forwarding of this information, a dentist should obtain the patient's written permission before
101 forwarding health records which contain information of a sensitive nature, such as HIV seropositivity, chemical
102 dependency or sexual preference. If it is necessary for a treating dentist to consult with another dentist or
103 physician with respect to the patient, and the circumstances do not permit the patient to remain anonymous, the
104 treating dentist should seek the permission of the patient prior to the release of data from the patient's records to
105 the consulting practitioner. If the patient refuses, the treating dentist should then contemplate obtaining legal
106 advice regarding the termination of the dentist/patient relationship.

107 **Section 2 - PRINCIPLE: NONMALEFICENCE** ("do no harm"). The dentist has a duty to refrain from harming the
108 patient.
109
110 *This principle expresses the concept that professionals have a duty to protect the patient from harm. Under this*
111 *principle, the dentist's primary obligations include keeping knowledge and skills current, knowing one's own*
112 *limitations and when to refer to a specialist or other professional, and knowing when and under what circumstances*
113 *delegation of patient care to auxiliaries is appropriate.*
114
115 **CODE OF PROFESSIONAL CONDUCT**
116
117 2.A. EDUCATION.
118 The privilege of dentists to be accorded professional status rests primarily in the knowledge, skill and experience with
119 which they serve their patients and society. All dentists, therefore, have the obligation of keeping their knowledge and
120 skill current.
121
122 2.B. CONSULTATION AND REFERRAL.
123 Dentists shall be obliged to seek consultation, if possible, whenever the welfare of patients will be safeguarded or
124 advanced by utilizing those who have special skills, knowledge, and experience. When patients visit or are referred to
125 specialists or consulting dentists for consultation:
126
127 **1.** The specialists or consulting dentists upon completion of their care shall return the patient, unless the patient
128 expressly reveals a different preference, to the referring dentist, or, if none, to the dentist of record for future care.
129
130 **2.** The specialists shall be obliged when there is no referring dentist and upon a completion of their treatment to inform
131 patients when there is a need for further dental care.
132
133 **ADVISORY OPINION**
134
135 2.B.1. SECOND OPINIONS. A dentist who has a patient referred by a third party[1] for a "second opinion"
136 regarding a diagnosis or treatment plan recommended by the patient's treating dentist should render the requested
137 second opinion in accordance with this *Code of Ethics*. In the interest of the patient being afforded quality care,
138 the dentist rendering the second opinion should not have a vested interest in the ensuing recommendation.
139
140 2.C. USE OF AUXILIARY PERSONNEL.
141 Dentists shall be obliged to protect the health of their patients by only assigning to qualified auxiliaries those duties
142 which can be legally delegated. Dentists shall be further obliged to prescribe and supervise the patient care provided by
143 all auxiliary personnel working under their direction.
144
145 *MDA Addition to 2.C. USE OF AUXILIARY PERSONNEL:*
146 *Dentists shall be obliged* ***to protect the health of their patient by only assigning to qualified auxiliaries those duties***
147 ***which can be legally delegated. Dentists shall be further obliged to prescribe and supervise the care provided by all***
148 ***auxiliary personnel working under their direction and control.***
149
150 2.D. PERSONAL IMPAIRMENT.
151 It is unethical for a dentist to practice while abusing controlled substances, alcohol or other chemical agents which
152 impair the ability to practice. All dentists have an ethical obligation to urge chemically impaired colleagues to seek
153 treatment. Dentists with first-hand knowledge that a colleague is practicing dentistry when so impaired have an ethical
154 responsibility to report such evidence to the professional assistance committee of a dental society.
155

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.

MDA Addition to 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. **At a minimum a dentist's ethical duties include terminating the dentist-patient relationship before initiating a sexual relationship or sexual contact with a patient. This prohibition does not apply if a sexual relationship existed prior to the initiation of the dentist-patient relationship. This prohibition does not apply to relationships between a dentist and his or her spouse or equivalent domestic partner.**

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.

MDA Advisory Opinion
3.A.1. Statement of the Individual Dentist Participating in Civic and Community Affairs:
Dentists who actively participate in civic and community affairs bring favorable credit to the profession at large

211 because of their voluntary efforts. It is the opinion of the Committee on Ethics that individual recognition received
212 as a result of these activities is desirable providing it complies with the Standards of Ethics. Component societies
213 are urged to permit sufficient exposure of such community activities which improve the public acceptance of the
214 dental profession.
215
216 3.B. GOVERNMENT OF A PROFESSION.
217 Every profession owes society the responsibility to regulate itself. Such regulation is achieved largely through the
218 influence of the professional societies. All dentists, therefore, have the dual obligation of making themselves a part of a
219 professional society and of observing its rules of ethics.
220
221 *MDA ADDITION TO 3.B. GOVERNMENT OF A PROFESSION:*
222 ***If a member fails to comply with a request and/or refuses to cooperate with a committee which is charged with the***
223 ***responsibility of ethical or judicial considerations, including but not limited to component society and MDA peer***
224 ***review committees, on dental care and ethics, such failure to cooperate shall be considered a violation of the***
225 ***Standards of Ethics and the member failing to cooperate shall be subject to the sanctions of Chapter I, Sections 3***
226 ***and 6 and Chapter VII of the MDA Bylaws and Chapter XII of the ADA Bylaws.***
227
228 3.C. RESEARCH AND DEVELOPMENT.
229 Dentists have the obligation of making the results and benefits of their investigative efforts available to all when they
230 are useful in safeguarding or promoting the health of the public.
231
232 3.D. PATENTS AND COPYRIGHTS.
233 Patents and copyrights may be secured by dentists provided that such patents and copyrights shall not be used to restrict
234 research or practice.
235
236 3.E. ABUSE AND NEGLECT.
237 Dentists shall be obliged to become familiar with the signs of abuse and neglect and to report suspected cases to the
238 proper authorities, consistent with state laws.
239
240 **ADVISORY OPINION**
241
242 3.E.1. REPORTING ABUSE AND NEGLECT. The public and the profession are best served by dentists who
243 are familiar with identifying the signs of abuse and neglect and knowledgeable about the appropriate intervention
244 resources for all populations.
245
246 A dentist's ethical obligation to identify and report the signs of abuse and neglect is, at a minimum, to be
247 consistent with a dentist's legal obligation in the jurisdiction where the dentist practices. Dentists, therefore, are
248 ethically obliged to identify and report suspected cases of abuse and neglect to the same extent as they are legally
249 obliged to do so in the jurisdiction where they practice. Dentists have a concurrent ethical obligation to respect an
250 adult patient's right to self-determination and confidentiality and to promote the welfare of all patients. Care
251 should be exercised to respect the wishes of an adult patient who asks that a suspected case of abuse and/or
252 neglect not be reported, where such a report is not mandated by law. With the patient's permission, other possible
253 solutions may be sought.
254
255 Dentists should be aware that jurisdictional laws vary in their definitions of abuse and neglect, in their reporting
256 requirements and the extent to which immunity is granted to good faith reporters. The variances may raise
257 potential legal and other risks that should be considered, while keeping in mind the duty to put the welfare of the
258 patient first. Therefore a dentist's ethical obligation to identify and report suspected cases of abuse and neglect
259 can vary from one jurisdiction to another.
260
261 Dentists are ethically obligated to keep current their knowledge of both identifying abuse and neglect and
262 reporting it in the jurisdiction(s) where they practice.

263 3.F. PROFESSIONAL DEMEANOR IN THE WORKPLACE.
264
265 Dentists have the obligation to provide a workplace environment that supports respectful and collaborative relationships
266 for all those involved in oral health care.
267
268 *MDA ADDITION TO 3F PROFESSIONAL DEMEANOR:*
269 ***A dentist, as a member of a profession, should provide a professional environment with conduct that demonstrates moral***
270 ***character and professional competence, upholds the dignity and honor of the profession and accepts its self-imposed***
271 ***disciplines.***
272
273 **Section 4 - PRINCIPLE: JUSTICE** ("fairness"). The dentist has a duty to treat people fairly.
274
275 *This principle expresses the concept that professionals have a duty to be fair in their dealings with patients, colleagues*
276 *and society. Under this principle, the dentist's primary obligations include dealing with people justly and delivering*
277 *dental care without prejudice. In its broadest sense, this principle expresses the concept that the dental profession*
278 *should actively seek allies throughout society on specific activities that will help improve access to care for all.*
279
280 **CODE OF PROFESSIONAL CONDUCT**
281
282 4.A. PATIENT SELECTION.
283 While dentists, in serving the public, may exercise reasonable discretion in selecting patients for their practices, dentists
284 shall not refuse to accept patients into their practice or deny dental service to patients because of the patient's race,
285 creed, color, sex or national origin.
286
287 **ADVISORY OPINION**
288
289 4.A.1. PATIENTS WITH BLOODBORNE PATHOGENS. A dentist has the general obligation to provide care
290 to those in need. A decision not to provide treatment to an individual because the individual is infected with
291 Human Immunodeficiency Virus, Hepatitis B Virus, Hepatitis C Virus or another bloodborne pathogen, based
292 solely on that fact, is unethical. Decisions with regard to the type of dental treatment provided or referrals made
293 or suggested should be made on the same basis as they are made with other patients. As is the case with all
294 patients, the individual dentist should determine if he or she has the need of another's skills, knowledge, equipment
295 or experience. The dentist should also determine, after consultation with the patient's physician, if appropriate, if
296 the patient's health status would be significantly compromised by the provision of dental treatment.
297
298 4.B. EMERGENCY SERVICE.
299 Dentists shall be obliged to make reasonable arrangements for the emergency care of their patients of record. Dentists
300 shall be obliged when consulted in an emergency by patients not of record to make reasonable arrangements for
301 emergency care. If treatment is provided, the dentist, upon completion of treatment, is obliged to return the patient to
302 his or her regular dentist unless the patient expressly reveals a different preference.
303
304 4.C. JUSTIFIABLE CRITICISM.
305 Dentists shall be obliged to report to the appropriate reviewing agency as determined by the local component or
306 constituent society instances of gross or continual faulty treatment by other dentists. Patients should be informed of
307 their present oral health status without disparaging comment about prior services. Dentists issuing a public statement
308 with respect to the profession shall have a reasonable basis to believe that the comments made are true.
309
310 **ADVISORY OPINION**
311
312 4.C.1. MEANING OF "JUSTIFIABLE." Patients are dependent on the expertise of dentists to know their oral
313 health status. Therefore, when informing a patient of the status of his or her oral health, the dentist should exercise
314 care that the comments made are truthful, informed and justifiable. This should, if possible involve consultation
315 with the previous treating dentist(s), in accordance with applicable law, to determine under what circumstances
316 and conditions the treatment was performed. A difference of opinion as to preferred treatment should not be
317 communicated to the patient in a manner which would unjustly imply mistreatment. There will necessarily be
318 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."

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 or suggestion 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[1] payment under a copayment plan as payment in full without disclosing to the third party[1] 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[1] 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. 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 of a third party[1] shall not be considered as evidence of overbilling in determining whether a charge to a patient, or to another third party[1] in behalf of a patient not covered under any of the aforecited 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[1] 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.[1]

5.B.5. DENTAL PROCEDURES. A dentist who incorrectly describes on a third party[1] 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.[1]

5.B.6. UNNECESSARY SERVICES. A dentist who recommends and performs unnecessary dental services or procedures is engaged in unethical conduct.

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.[2]

431
432 5.F. ADVERTISING.
433 Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a
434 manner that is false or misleading in any material respect.[2]
435
436 **ADVISORY OPINIONS**
437
438 5.F.1. PUBLISHED COMMUNICATIONS. If a dental health article, message or newsletter is published in print
439 or electronic media under a dentist's byline to the public without making truthful disclosure of the source and
440 authorship or is designed to give rise to questionable expectations for the purpose of inducing the public to utilize
441 the services of the sponsoring dentist, the dentist is engaged in making a false or misleading representation to the
442 public in a material respect. [2]
443
444 5.F.2. EXAMPLES OF "FALSE OR MISLEADING." The following examples are set forth to provide insight
445 into the meaning of the term "false or misleading in a material respect." [2] These examples are not meant to be all-
446 inclusive. Rather, by restating the concept in alternative language and giving general examples, it is hoped that the
447 membership will gain a better understanding of the term. With this in mind, statements shall be avoided which
448 would: **a)** contain a material misrepresentation of fact, **b)** omit a fact necessary to make the statement considered
449 as a whole not materially misleading, **c)** be intended or be likely to create an unjustified expectation about results
450 the dentist can achieve, and **d)** contain a material, objective representation, whether express or implied, that the
451 advertised services are superior in quality to those of other dentists, if that representation is not subject to
452 reasonable substantiation.
453
454 Subjective statements about the quality of dental services can also raise ethical concerns. In particular, statements
455 of opinion may be misleading if they are not honestly held, if they misrepresent the qualifications of the holder, or
456 the basis of the opinion, or if the patient reasonably interprets them as implied statements of fact. Such statements
457 will be evaluated on a case by case basis, considering how patients are likely to respond to the impression made by
458 the advertisement as a whole. The fundamental issue is whether the advertisement, taken as a whole, is false or
459 misleading in a material respect.[2]
460
461 5.F.3. UNEARNED, NONHEALTH DEGREES. A dentist may use the title Doctor or Dentist, DDS, DMD or
462 any additional earned, advanced academic degrees in health service areas in an announcement to the public. The
463 announcement of an unearned academic degree may be misleading because of the likelihood that it will indicate to
464 the public the attainment of specialty or diplomate status. For purposes of this advisory opinion, an unearned
465 academic degree is one which is awarded by an educational institution not accredited by a generally recognized
466 accrediting body or is an honorary degree.
467
468 The use of a nonhealth degree in an announcement to the public may be a representation which is misleading
469 because the public is likely to assume that any degree announced is related to the qualifications of the dentist as a
470 practitioner.
471
472 Some organizations grant dentists fellowship status as a token of membership in the organization or some other
473 form of voluntary association. The use of such fellowships in advertising to the general public may be misleading
474 because of the likelihood that it will indicate to the public attainment of education or skill in the field of dentistry.
475
476 Generally, unearned or nonhealth degrees and fellowships that designate association, rather than attainment,
477 should be limited to scientific papers and curriculum vitae. In all instances, state law should be consulted. In any
478 review by the council of the use of designations in advertising to the public, the council will apply the standard of
479 whether the use of such is false or misleading in a material respect. [2]
480
481 *5.F.4. REFERRAL SERVICES.* There are two basic types of referral services for dental care: not-for-profit and
482 the commercial. The not-for-profit is commonly organized by dental societies or community services. It is open
483 to all qualified practitioners in the area served. A fee is sometimes charged the practitioner to be listed with the
484 service. A fee for such referral services is for the purpose of covering the expenses of the service and has no
485 relation to the number of patients referred. In contrast, some commercial referral services restrict access to the
486 referral service to a limited number of dentists in a particular geographic area. Prospective patients calling the

487 service may be referred to a single subscribing dentist in the geographic area and the respective dentist billed for
488 each patient referred. Commercial referral services often advertise to the public stressing that there is no charge
489 for use of the service and the patient may not be informed of the referral fee paid by the dentist. There is a
490 connotation to such advertisements that the referral that is being made is in the nature of a public service. A
491 dentist is allowed to pay for any advertising permitted by the *Code*, but is generally not permitted to make
492 payments to another person or entity for the referral of a patient for professional services. While the particular
493 facts and circumstances relating to an individual commercial referral service will vary, the council believes that
494 the aspects outlined above for commercial referral services violate the *Code* in that it constitutes advertising which
495 is false or misleading in a material respect and violates the prohibitions in the *Code* against fee splitting. [2]
496
497 5.F.5. INFECTIOUS DISEASE TEST RESULTS. An advertisement or other communication intended to solicit
498 patients which omits a material fact or facts necessary to put the information conveyed in the advertisement in a
499 proper context can be misleading in a material respect. A dental practice should not seek to attract patients on the
500 basis of partial truths which create a false impression. [2]
501
502 For example, an advertisement to the public of HIV negative test results, without conveying additional information
503 that will clarify the scientific significance of this fact contains a misleading omission. A dentist could satisfy his
504 or her obligation under this advisory opinion to convey additional information by clearly stating in the
505 advertisement or other communication: "This negative HIV test cannot guarantee that I am currently free of HIV."
506
507 MDA Advisory Opinion:
508 *5.F.5. HIV TEST RESULTS.* **Any communication** which omits a material fact or facts necessary to put the
509 information conveyed in the **communication** in a proper context can be misleading in a material respect.
510 **Communicating** HIV negative test results, without conveying additional information that will clarify the scientific
511 significance of this fact, is an example of misleading omission. A dental practice should not seek to attract
512 patients on the basis of partial truths which create a false impression.
513
514 5.G. NAME OF PRACTICE.
515 Since the name under which a dentist conducts his or her practice may be a factor in the selection process of the patient,
516 the use of a trade name or an assumed name that is false or misleading in any material respect is unethical. Use of the
517 name of a dentist no longer actively associated with the practice may be continued for a period not to exceed one year. [2]
518
519 **ADVISORY OPINION**
520
521 5.G.1. DENTIST LEAVING PRACTICE. Dentists leaving a practice who authorize continued use of their
522 names should receive competent advice on the legal implications of this action. With permission of a departing
523 dentist, his or her name may be used for more than one year, if, after the one year grace period has expired,
524 prominent notice is provided to the public through such mediums as a sign at the office and a short statement on
525 stationery and business cards that the departing dentist has retired from the practice.
526
527 MDA Advisory Opinion:
528 *5.G.1. DENTIST LEAVING PRACTICE.* Dentists leaving a practice who authorize continued use of their names
529 should receive competent advice on the legal implications of this action. With permission of a departing dentist,
530 his or her name may be used for more than one year, if, after the one year grace period has expired, prominent
531 notice is provided to the public **including, but not limited to,** a sign at the office and a short statement on
532 stationery and business cards that the departing dentist has retired from the practice.
533
534 5.H. ANNOUNCEMENT OF SPECIALIZATION AND LIMITATION OF PRACTICE.
535 This section and Section 5.I are designed to help the public make an informed selection between the practitioner who
536 has completed an accredited program beyond the dental degree and a practitioner who has not completed such a
537 program. The special areas of dental practice approved by the American Dental Association and the designation for
538 ethical specialty announcement and limitation of practice are: dental public health, endodontics, oral and maxillofacial
539 pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics,
540 pediatric dentistry, periodontics and prosthodontics. Dentists who choose to announce specialization should use
541 "specialist in" or "practice limited to" and shall limit their practice exclusively to the announced special area(s) of dental

542 practice, provided at the time of the announcement such dentists have met in each approved specialty for which they
543 announce the existing educational requirements and standards set forth by the American Dental Association. Dentists
544 who use their eligibility to announce as specialists to make the public believe that specialty services rendered in the
545 dental office are being rendered by qualified specialists when such is not the case are engaged in unethical conduct.
546 The burden of responsibility is on specialists to avoid any inference that general practitioners who are associated with
547 specialists are qualified to announce themselves as specialists.
548
549 GENERAL STANDARDS.
550 The following are included within the standards of the American Dental Association for determining the education,
551 experience and other appropriate requirements for announcing specialization and limitation of practice:
552
553 1. The special area(s) of dental practice and an appropriate certifying board must be approved by the American Dental
554 Association.
555
556 2. Dentists who announce as specialists must have successfully completed an educational program accredited by the
557 Commission on Dental Accreditation, two or more years in length, as specified by the Council on Dental Education and
558 Licensure, or be diplomates of an American Dental Association recognized certifying board. The scope of the
559 individual specialist's practice shall be governed by the educational standards for the specialty in which the specialist is
560 announcing.
561
562 MDA Addition
563 ***2. Dentists who announce as specialists must have successfully completed an educational program accredited by the***
564 ***Commission on Dental Accreditation, two or more years in length, as specified by the ADA Council on Dental***
565 ***Education and Licensure, and possess a valid health profession specialty license from the State of Michigan, or be***
566 ***diplomates of an American Dental Association recognized certifying board. The scope of the individual specialist's***
567 ***practice shall be governed by the educational standards for the specialty in which the specialist is announcing.***
568
569 3. The practice carried on by dentists who announce as specialists shall be limited exclusively to the special area(s) of
570 dental practice announced by the dentist.
571
572 STANDARDS FOR MULTIPLE-SPECIALTY ANNOUNCEMENTS.
573 The educational criterion for announcement of limitation of practice in additional specialty areas is the successful
574 completion of an advanced educational program accredited by the Commission on Dental Accreditation (or its
575 equivalent if completed prior to 1967)[3] in each area for which the dentist wishes to announce. Dentists who are
576 presently ethically announcing limitation of practice in a specialty area and who wish to announce in an additional
577 specialty area must submit to the appropriate constituent society documentation of successful completion of the
578 requisite education in specialty programs listed by the Council on Dental Education and Licensure or certification as a
579 diplomate in each area for which they wish to announce.
580
581 **ADVISORY OPINIONS**
582
583 5.H.1. DUAL DEGREED DENTISTS. Nothing in Section 5.H shall be interpreted to prohibit a dual degreed
584 dentist who practices medicine or osteopathy under a valid state license from announcing to the public as a dental
585 specialist provided the dentist meets the educational, experience and other standards set forth in the *Code* for
586 specialty announcement and further providing that the announcement is truthful and not materially misleading.
587
588 5.H.2. SPECIALIST ANNOUNCEMENT OF CREDENTIALS IN NON-SPECIALTY INTEREST AREAS.
589 A dentist who is qualified to announce specialization under this section may not announce to the public that he or
590 she is certified or a diplomate or otherwise similarly credentialed in an area of dentistry not recognized as a
591 specialty area by the American Dental Association unless:
592
593 1. The organization granting the credential grants certification or diplomate status based on the following: a) the
594 dentist's successful completion of a formal, full-time advanced education program (graduate or postgraduate level)
595 of at least 12 months' duration; and b) the dentist's training and experience; and c) successful completion of an oral
596 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.[2]

ADVISORY OPINIONS

5.I.1. GENERAL PRACTITIONER ANNOUNCEMENT OF CREDENTIALS IN NON-SPECIALTY INTEREST AREAS.
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.

MDA Addition
5.I.3. CLARITY OF ANNOUNCEMENT. If a general practitioner advertises a service or services included in the nine 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) approved by the ADA, the advertisement must emphasize that the service(s) are being provided by a general dentist, and must not contain the phrase "specialist in" and/or "practice limited to", which are reserved for the use by accredited specialists. Advertisements of general practice must not imply specialization. A general practitioner may mention specialty fields in advertising, as long as the general practitioner discloses in the advertisement that s/he is not certified as a specialist in that field.

NOTES:
1 A third party is any party to a dental prepayment contact that may collect premiums, assume financial risks, pay claims, and/or provide administrative services.

653 2 Advertising, solicitation of patients or business or other promotional activities by dentists or dental care
654 delivery organizations shall not be considered unethical or improper, except for those promotional activities which
655 are false or misleading in any material respect. Notwithstanding any *ADA Principles of Ethics and Code of*
656 *Professional Conduct* or other standards of dentist conduct which may be differently worded, this shall be the sole
657 standard for determining the ethical propriety of such promotional activities. Any provision of an ADA
658 constituent or component society's code of ethics or other standard of dentist conduct relating to dentists' or dental
659 care delivery organizations' advertising, solicitation, or other promotional activities which is worded differently
660 from the above standard shall be deemed to be in conflict with the *ADA Principles of Ethics and Code of*
661 *Professional Conduct.*
662
663 3 Completion of three years of advanced training in oral and maxillofacial surgery or two years of advanced
664 training in one of the other recognized dental specialties prior to 1967.
665
666
667 **PART IV. INTERPRETATION AND APPLICATION OF *PRINCIPLES OF ETHICS AND CODE OF***
668 ***PROFESSIONAL CONDUCT.***
669
670 The foregoing *ADA Principles of Ethics and Code of Professional Conduct* set forth the ethical duties that are binding
671 on members of the American Dental Association. The component and constituent societies may adopt additional
672 requirements or interpretations not in conflict with the *ADA Code.*
673
674 Anyone who believes that a member-dentist has acted unethically should bring the matter to the attention of the
675 appropriate constituent (state) or component (local) dental society. Whenever possible, problems involving questions
676 of ethics should be resolved at the state or local level. If a satisfactory resolution cannot be reached, the dental society
677 may decide, after proper investigation, that the matter warrants issuing formal charges and conducting a disciplinary
678 hearing pursuant to the procedures set forth in the ADA *Bylaws*, Chapter XII. PRINCIPLES OF ETHICS AND CODE
679 OF PROFESSIONAL CONDUCT AND JUDICIAL PROCEDURE. The Council on Ethics, Bylaws and Judicial
680 Affairs reminds constituent and component societies that before a dentist can be found to have breached any ethical
681 obligation the dentist is entitled to a fair hearing.
682
683 A member who is found guilty of unethical conduct proscribed by the *ADA Code* or code of ethics of the constituent or
684 component society, may be placed under a sentence of censure or suspension or may be expelled from membership in
685 the Association. A member under a sentence of censure, suspension or expulsion has the right to appeal the decision to
686 his or her constituent society and the ADA Council on Ethics, Bylaws and Judicial Affairs, as provided in Chapter XII
687 of the ADA *Bylaws.*
688
689 American Dental Association
690 Council on Ethics, Bylaws and Judicial Affairs
691 211 East Chicago Avenue
692 Chicago, Illinois 60611
693
694 With official advisory opinions revised to October, 2010.
695
696
697 Michigan Dental Association
698 3657 Okemos Road, Suite 200
699 Okemos, MI 48864
700
701 With MDA additions and changes revised to May, 2008.
702
703 lab
704 r:\ethics\code\ADA MDA Code october 2010

INDEX

Advisory opinions are designated by their relevant section in parentheses, e.g. (2.D.1.).

A

Abandonment, 4
Ability to practice (2.D.1.), 4
Abuse and neglect, 5
Abuse and neglect, reporting (3.E.1), 5
Adverse reactions (reporting) (5.D.1.), 8
Advertising, 8
- Articles, newsletters (5.F.1.), 8
- Credentials
  - general dentistry (5.I.2.), 12
  - non-specialty interest areas, general dentist (5.I.1.), 11
  - non-specialty interest areas, specialist (5.H.2.), 11
  - nonhealth, (5.F.3.), 8
  - unearned (5.F.3.), 8
  - honorary (5.F.3.), 8
  - membership and other affiliations (5.F.3.), 8
  - specialty, 10
- Dual degrees (5.H.1.), 8
- False and misleading (examples) (5.F.2.), 8
- General dentists, 11
- HIV test results (5.F.5), 9
- Honorary degrees (5.F.3.), 8
- Infectious disease test results (5.F.5.), 9
- Name of practice, 9
- Non-specialty interest areas (5.H.2. and 5.I.1.), 10-11
- Referral Services (5.F.4.), 9
- Services, 11
- Specialties, 10
- Unearned, nonhealth degrees (5.F.3.), 8

Advisory Opinions (definition), 1
Amalgam and other restorative materials (5.A.1.), 7
Announcement of specialization and limitation of practice, 10
Articles and newsletters (5.F.1.),9
Autonomy (patient), 2
Auxiliary personnel, 3

B

Beneficence, 4
Billing, 7
Bloodborne pathogen exposure incident, 4
Bloodbornee pathogen patients with (4.A.1), 6
Bylaws, MDA Chapter VII, Exhibit I, 19

C

Code of professional conduct (definition), 1
Child abuse (MDA addition), 5
Clarity of announcement (MDA addition), 12
Community service, 4
Confidentiality of patient records (1.B.2.), 2
Conflict of interest, disclosure, 8
Consultation and referral, 3

Copayment, waiver of (5.B.1.), 7
Copyrights and patents, 5
Credentials (see advertising)

D
Degrees (advertising; 5.F.3.), 8
Dental amalgam and other restorative materials (5.A.1.), 7
Dental procedures, fees (5.B.5), 8
Dentists leaving practice (5.G.1.), 10
Dentists leaving practice (MDA), 10
Devices and therapeutic methods 8
Disclosure, conflict of interest, 8
Dual degreed dentists (5.H.1.), 11

E
Education, 3
Education (MDA addition), 11
Emergency service, 6
Expert testimony, 6

F
False and misleading, examples (5.F.2.), 9
Fees
- contingent (4.D.1.), 7
- differential (5.B.3.), 7
- representation, 6
- split,

Furnishing copies of records (1.B.1.), 2

G
General practitioner announcement of credentials in non-specialty areas (5.I.1.), 12
General practitioner announcement of services in non-specialty interest areas, 11
General standards (for announcement of specialization and limitation of practice), 11
Government of a profession, 5
Government of a profession (MDA addition), 5
Gross or continual faulty treatment (reporting), 5

H
HIV positive patients (4.A.1.), 6
HIV test results (advertising) (5.F.5.), 9
HIV test results (MDA), 10

I
Impaired dentist, 3
Infectious disease test results (5.F.5.), 10
Interpretation and application of principles of ethics and code of professional conduct, 13

J
Justifiable criticism, 6
Justifiable criticism (meaning of "justifiable"; 4.C.1.), 6
Justice, 6

L
Law (and ethics), 1
Limitation of practice, 10

M
Marketing or sale of products or procedures (5.D.2.), 8

N
Name of practice, 10
Newsletters (5.F.1.), 8
Nonhealth degrees, advertising (5.F.3.), 8
Nonmaleficence, 3

O
Overbilling (5.B.2.), 7

P
Patents and copyrights, 5
Patient abandonment, 4
Patient autonomy, 2
Patient involvement, 2
Patient records, 2
    confidentiality (1.B.2), 2
    furnishing copies (1.B.1.), 2
    furnishing copies (MDA addition), 2
Patient selection, 6
Personal impairment, 3
Personal relationships with patients, 4
Personal relationships with patients (2.G.; MDA addition), 4
Practice
    ability to (2.D.1.), 4
    dentist leaving (5.G.1.), 10
    name of, 10
Preamble, 1
Principles of ethics (definition), 1
Principles
    beneficence, 4
    justice, 5
    nonmaleficence, 3
    patient autonomy, 2
    veracity, 6
Procedures (marketing or sale) (5.D.2.), 7
Products (marketing or sale) (5.D.2.), 7
Professional announcement, 8
Professional demeanor (3.F.), 6
Professional demeanor (MDA addition), 6

R
Rebates and split fees, 7
Records (patient), 2
    confidentiality (1.B.2), 2
    furnishing copies (1.B.1.), 2
    furnishing copies (MDA addition), 2
Referral, 3
Referral services (5.F.4.), 9
Reporting
    abuse and neglect (3.E.1.), 5

adverse reactions (5.D.1.), 8
gross and continual faulty treatment, 6
personal impairment, 3
Representation of care, 7
Representation of fees, 7
Research and Development, 5

S

Sale of products or procedures (5.D.2.), 7
Second opinions (2.B.1.), 3
Specialist (announcement and limitation of practice), 10
Specialist (announcement of credentials in non-specialty interest areas) (5.H.2.), 11
Split fees, 6
Standards for multiple-specialty announcements, 11

T

Treatment dates (5.B.4.), 7
Therapeutic methods, 8

U

Unearned, nonhealth degrees (5.F.3.), 9
Unnecessary services (5.B.6.), 8
Unsubstantiated representations (5.A.2.), 7
Use of auxiliary personnel, 3

V

Veracity, 7

W

Waiver of copayment (5.B.1.), 7

Exhibit 1

CHAPTER VII

STANDARDS OF ETHICS

AND JUDICIAL PROCEDURE

For additional provisions on this topic, refer to Chapter I, Section 3, and Section 6.

Section 1. - Professional Conduct of Members: The professional conduct of a member of this Association shall be governed by the 'Standards of Ethics and Code of Professional Conduct' of this Association, the 'Principles of Ethics and Code of Professional Conduct' of the American Dental Association, and the code of ethics of this Association's component society within whose jurisdiction he/she practices, or conducts or participates in other professional dental activities, or is employed.

Section 2. - Judicial Procedures: All judicial procedures conducted by this Association and its component societies, including disciplinary proceedings, penalties, and appeals, shall be in accordance with provisions of this Chapter, the MDA Peer Review Manual and the MDA Peer Review Ethics Manual, and the Constitution and Bylaws of the American Dental Association.

Section 3. – Discipline of Members:

A. Conduct Subject to Discipline. A member may be disciplined by the MDA or the member's component society for 1) having been found guilty of a felony, 2) having been found guilty of violating the Michigan Public Health Code, or the dental practice act of any other state, territory, dependency, or country, or 3) violating the ADA or MDA *Bylaws*, the ADA *Principles of Ethics and Code of Professional Conduct*, the MDA *Standards of Ethics and Code of Professional Conduct*, or the bylaws or code of ethics of the component society in which the accused is a member. Disciplinary proceedings may be instituted by either the appropriate component society or the MDA Committee on Peer Review/Ethics. Disciplinary proceedings against members of this association without component affiliation may be instituted by the Committee on Peer Review/Ethics of this association.

B. Disciplinary Penalties. A member may be placed under a sentence of censure or suspension or may be expelled from membership for any of the offenses enumerated in Section 3 of this Chapter.

Censure is a disciplinary sentence expressing in writing severe criticism or disapproval of a particular type of conduct or act.

Suspension, subject to Chapter I, Section 3 of these *Bylaws*, means all membership privileges except continued entitlement to coverages under insurance programs are lost during the suspension period. Suspension shall be unconditional and for a specified period at the

termination of which full membership privileges are automatically restored. A subsequent violation shall require a new disciplinary procedure before additional discipline may be imposed.

Expulsion is an absolute discipline and may not be imposed conditionally except as otherwise provided herein. The expelled individual is eligible to continue any of the cancelable association sponsored insurance programs in which s/he held insurance before the termination until the first renewal date following the exhaustion of all appeals, or one year following termination, whichever last occurs.

Probation, to be imposed for a specified period and without loss of rights, may be administratively and conditionally imposed when circumstances warrant in lieu of a suspended disciplinary penalty. Probation shall be conditioned on good behavior. Additional reasonable conditions may be set forth in the decision for the continuation of probation. In the event that the conditions for probation are found by the MDA or component society to have been violated, after a hearing on the probation violation charges in accordance with Chapter VII, Section 6, the original disciplinary penalty shall be automatically reinstated; except that when circumstances warrant the original disciplinary penalty may be reduced to a lesser penalty. There shall be no right of appeal from a finding that the conditions of probation have been violated.

After all appeals are exhausted or after the time for filing an appeal has expired, a sentence of censure, suspension or expulsion meted out to any member, including those instances when the disciplined member has been placed on probation, shall be promulgated by such member's component society and this association.

Section 4. – Investigation Committee: The Committee on Peer Review/Ethics may appoint one (1) or more of its members to investigate any charge received by the committee. The investigating committee member (s) shall report recommendations to the committee, and may attend and participate in the proceedings, but shall not have a vote in those proceedings.

Section 5. – Investigation Committee's Dismissal, Mediation, or Formal Complaint: Upon receipt of the report of the investigating committee member(s), the Committee may dismiss the charge, endeavor to settle the matter without issuing a formal complaint, or issue a formal complaint. Any complaint issued by the Committee shall be in writing, specify the section of the Bylaws or ethical provision alleged to have been violated, and contain a description of each alleged violation.

Section 6. – Disciplinary Proceedings: Before a disciplinary penalty is invoked against a member the following procedures shall be followed by the society/committee preferring charges:

A. Hearing. The accused member shall be entitled to a hearing at which the accused shall be given the opportunity to present a defense to all charges brought against the accused. The accused is permitted to be represented by legal counsel.

B. Written Notice. The accused member shall be notified in writing of charges brought against the accused and of the time and place of the hearing, such notice to be sent by certified mail-return receipt requested addressed to the accused's last known address and mailed not

less than forty-five (45) days prior to the date set for the hearing. When selecting a hearing date, the committee shall select an alternate date, in the event of a postponement. An accused member, upon request, shall be granted one postponement for a period not to exceed thirty (30) days. Requests for postponement shall be made in writing and addressed to the Chair of the Michigan Dental Association Committee on Peer Review/Ethics at least thirty (30) days prior to the hearing date. No additional requests for postponement shall be granted except upon written application to the Chair, demonstrating good cause to the satisfaction of the Chair.

C. The hearing chair shall have the authority to determine all procedural issues including, but not limited to, the following:

- Time and place of the hearing,
- Adjournment time,
- Continuance or delay of hearing,
- Whether witnesses not actively testifying shall be excluded from the proceedings; and
- Whether spectators shall be permitted.

D. Charges. The written charges shall include an officially certified copy of the alleged conviction or determination of guilt, or a specification of the bylaw or ethical provisions alleged to have been violated, as the case may be, and a description of the conduct alleged to constitute each violation.

D. Hearing Committee. The hearing may be conducted by the full committee or a panel of three (3) or more members of the committee appointed by the chair. This panel shall have the full powers of the committee with regard to the hearing.

E. Respondent's Representation. The respondent may be represented by an attorney at the hearing; shall be confronted by any witnesses and documentary evidence, and have an opportunity to cross-examine witnesses and present any matter pertinent to his/her defense.

G. Rules of Evidence. The Committee or panel shall not be bound by rules of evidence used in court, and may receive oral and written evidence which, in its judgement, will best and most fairly present the relevant facts.

H. Record of Disciplinary Proceedings. Minutes shall be taken at the hearing. The MDA will provide for transcription of hearings by a court reporter.

I. Decision. Every decision which shall result in censure, suspension or expulsion or in probation shall be reduced to writing and shall specify the charges made against the member, the facts which substantiate any or all of the charges, the verdict rendered, the penalty imposed or when appropriate the suspended penalty imposed and the conditions for probation, and a notice shall be mailed to the accused member informing the accused of the right to appeal. Within ten (10) days of the date on which the decision is rendered a copy thereof shall be sent by certified mail-return receipt requested to the last known address of each of the following parties: the accused member; the secretary of the component society of which the

accused is a member; the MDA Committee on Peer Review/Ethics chair, the chair of the ADA Council on Ethics, Bylaws and Judicial Affairs; and the MDA and ADA executive directors. The hearing committee can postpone the actual date of rendering the decision for a reasonable time to permit time for preparation and approval of formal written decisions, and if applicable, the minority or dissenting report.

J. Acceptance of Decision. It shall be assumed that the respondent has accepted the decision and recommendations of the committee unless an appeal is made to the Michigan Dental Association Board of Trustees, as provided in Section 7 of this Chapter.

Section 7. - Appeals: The accused member under sentence of censure, suspension or expulsion shall have the right to appeal from a decision of the MDA Committee on Peer Review/Dental Care or Committee on Peer Review/Ethics to the MDA Board by filing an appeal in affidavit form with the secretary of the MDA. Such an accused member shall have the right to appeal from a decision of the MDA Board to the ADA Council on Ethics, Bylaws, and Judicial Affairs by filing an appeal in affidavit form with the chair of the Council on Ethics, Bylaws and Judicial Affairs.

An appeal from any decision shall not be valid unless notice of appeal is filed within thirty (30) days and the supporting brief, if one is to be presented, is filed within sixty (60) days after such decision has been rendered. A reply brief, if one is to be presented, shall be filed within ninety (90) days after such decision is rendered. A rejoinder brief, if one is to be presented, shall be filed within one hundred five (105) days after such decision is rendered. After all briefs have been filed, a minimum of forty-five (45) days shall lapse before the hearing date. Omission of briefs will not alter the briefing schedule or hearing date unless otherwise agreed to by the parties and the MDA president. The appropriate MDA hearing chair may grant adjournments and extensions of time at its discretion and for good cause.

No decision shall become final while an appeal there from is pending or until the thirty (30) day period for filing notice of appeal has elapsed. In the event of a sentence of expulsion and no notice of appeal is received within the thirty (30) day period, the MDA shall notify all parties of the failure of the accused member to file an appeal. The sentence of expulsion shall take effect on the date the parties are notified. The component shall determine what portion of component dues, if any, shall be returned to the expelled member. Dues paid to the MDA shall not be refundable in the event of expulsion.

The following procedure shall be used in processing appeals to the MDA Board of Trustees:

A. Hearings on Appeal to MDA Board of Trustees. The accused member or the society (s) (or Committee on Peer Review/Dental Care or Committee on Peer Review/Ethics) concerned shall be entitled to a hearing on an appeal, provided that such appeal is taken in accordance with, and satisfies the requirements of, Section 7 of this Chapter. The accused member is permitted to be represented by legal counsel. The accused member need not appear for the appeal to be heard by the board of trustees. The board may appoint a panel of three (3) or more members to hear the appeal. This panel shall have the full authority of the board with regard to the appeal.

B. Hearing Notice. The MDA shall notify the society (s) (or Committee on Peer Review/Dental Care or Committee on Peer Review/Ethics) concerned and the accused

member of the date, time, and place of the appeal hearing, such notice to be sent by certified mail – return receipt requested to the last known address of the parties to the appeal and mailed not less thirty (30) days prior to the date set for the hearing. Granting of continuances shall be at the option of the appropriate hearing chair.

C. Briefs. Every party to an appeal shall be entitled to submit a brief in support of the party's position. The briefs of the parties shall be submitted to the secretary of the MDA Board of Trustees, and to the opposing party (ies) in accordance with the prescribed briefing schedule. The party initiating the appeal may choose to rely on the record and/or on an oral presentation and not file a brief.

D. Record of Disciplinary Proceedings. Upon notice of an appeal the society, or committee, which preferred charges shall furnish to the secretary of the MDA Board of Trustees and to the accused member a transcript of, or an officially certified copy of the minutes of the hearing accorded the accused member. The transcript or minutes shall be accompanied by certified copies of any affidavits or other documents submitted as evidence to support the charges against the accused member or submitted by the accused member as part of the accused's defense. The accused may provide a court reporter at the accused's expense. In the event new evidence is to be presented, the MDA Board shall either record or have transcribed the portion of the hearing pertaining to new evidence.

E. Appeals Jurisdiction. The board shall be required to review the decision appealed from to determine whether the evidence before the Committee on Peer Review/Ethics supports that decision and/or warrants the penalty imposed. The Board of Trustees shall not be required to consider additional evidence unless there is a clear showing that either party to the appeal will be unreasonably harmed by failure to consider the additional evidence. If the board allows additional evidence, it shall not be presented except upon written application to the board at least ten (10) days in advance of the hearing and for good cause. The parties to an appeal are the accused member and the Committee on Peer Review/Ethics, or the society which preferred charges.

F. Decision on Appeals to the Board: Every decision on appeal shall be reduced to writing and shall state clearly the conclusion of the board and the reasons for reaching that conclusion. The board shall have the discretion 1) to uphold the decision of the committee on peer review/ethics which preferred charges against the accused member; 2) to reverse the decision of the Committee on Peer Review/Ethics which preferred charges and thereby exonerate the accused member; 3) to deny an appeal which fails to satisfy the requirements of section 7 of this chapter; 4) to refer the case back to the Committee on Peer Review/Ethics which preferred charges for new proceedings, if the rights of the accused member under all applicable bylaws were not accorded the accused; 5) to remand the case back to the Committee on Peer Review/Ethics which preferred charges for further proceedings when the appellate record is insufficient in the opinion of the board to
enable it to render a decision; or 6) to uphold the decision of the Committee on Peer Review/Ethics which preferred charges against the accused member and reduce the penalty imposed.

Within thirty (30) days of the date on which a decision on appeal is rendered, a copy thereof

shall be sent by certified mail-return receipt requested to the last known address of each of the following parties: the accused member, the secretary of the MDA, the chair of the MDA Committee on Peer Review/Ethics, the chair of the ADA Council on Ethics, Bylaws and Judicial Affairs, the executive directors of the MDA and ADA.

F. The decision of the board shall be final unless appealed to the Council on Judicial Procedures, constitution and bylaws of the American Dental Association in accordance with the applicable provisions of the bylaws of the American Dental Association; provided, however, that if no notice of appeal is received by the American Dental Association within the time limit specified in its bylaws, the board shall notify all parties specified in this chapter (section 8, c) of the failure of the respondent to file an appeal, and the disciplinary penalty shall take effect on the date such parties are notified.

Section 8. - Committee on Peer Review/Dental Care:

A. An active, life, retired or limited time practice/professional leave, or graduate student member who has had three complaints judged against him/her and/or resolved by mediation (or in any combination) by the peer review/dental care system in a five-year period, which raise issues of quality of care, appropriateness of care, or professional competency, may be reviewed by the Committee on Peer Review/Dental Care. The review may result in the issuance of a formal complaint. Any complaint issued by the Committee on Peer Review/Dental Care shall be in writing and specify this section of the Bylaws.

B. The Hearing, Appeal and Decision of the Board provisions and procedures set forth in Sections 6 and 7 of Chapter VII shall be applicable to a complaint issued under this Section 8, except all references to the Committee on Peer Review/Ethics shall be changed to the Committee on Peer Review/Dental Care.

C. Should suspension or expulsion be the penalty with regard to a complaint issued under this Section 8 of Chapter VII, the suspended or expelled member shall be eligible for reinstatement. Applications/requests for reinstatement by the dentist is sent to the appropriate MDA peer review committee for membership approval as described in the *Association Policy Manual.*

Section 9. - Committee on Peer Review/Ethics:

A. An active, life, retired or limited time practice/professional leave, or graduate student member who has had three complaints involving him/her heard by the peer review/ethics system may be reviewed by the Committee on Peer Review/Ethics. The review may result in the issuance of a formal complaint. Any complaint issued by the Committee on Peer Review/Ethics shall be in writing and specify this section of the bylaws.

B. The hearing, appeal and decision of the board provisions and procedures set forth in Sections 6 and 7 of Chapter VII shall be applicable to a complaint issued under Section 9.

C. Should suspension or expulsion be the penalty with regard to a complaint issued under this Section 9 of Chapter VII, the suspended or expelled member shall be eligible for

reinstatement. Applications/requests for reinstatement by the dentist is sent to the appropriate MDA peer review committee for membership approval as described in the *Association Policy Manual.*

Michigan Dental Association
3657 Okemos Road
Suite 200
Okemos, MI 48864-3927
Phone: (517) 372-9070
Fax: (517) 372-0008