

Resolution No. 65 New
 Report: N/A Date Submitted: August 2016
 Submitted By: Council on Ethics, Bylaws and Judicial Affairs
 Reference Committee: D (Legislative, Health, Governance and Related Matters)
 Total Net Financial Implication: None Net Dues Impact: _____
 Amount One-time _____ Amount On-going _____ FTE 0
 ADA Strategic Plan Objective: Membership-Obj. 1: Leaders and Advocates in Oral Health
 How does this resolution increase member value: See Background

AMENDMENT TO SECTION 5.H. OF THE ADA PRINCIPLES OF ETHICS AND CODE OF PROFESSIONAL CONDUCT

Background: The professional landscape concerning the recognition of specialties has undergone dramatic change. Over the past several years, compelled by court decisions, states have begun to recognize specialties beyond the nine dental specialties recognized by the ADA. The Council on Ethics, Bylaws and Judicial Affairs (the Council) has been advised that the trend of states recognizing specialties in addition to those recognized by the ADA is expected to continue, either through voluntary state action or as the result of additional litigation. Faced with the changing environment concerning specialty recognition, the Council has examined the ADA *Principles of Ethics and Code of Professional Conduct* (the Code), and in particular Section 5.H. of the Code, *Announcement of Specialization and Limitation of Practice*, to ensure that the Code remains aligned with the legal landscape of specialty recognition in all jurisdictions and hereby proposes amendments to that section of the Code. Section 5.H. with the amendments proposed by the Council is appended hereto as **Appendix 1**.

Broadening the Specialties that can be Ethically Announced. Section 5.H. of the Code states: "The dental specialties recognized by the American Dental Association and the designation for ethical specialty announcement and limitation of practice are..." and then proceeds to list the nine dental specialties recognized by the ADA. As noted above, however, there is movement in certain jurisdictions to recognize areas of dentistry as specialties beyond those recognized through the specialty recognition process established by the ADA.

Consider a jurisdiction that recognizes oral medicine as a specialty and allows a dentist who has successfully completed an advanced dental education program in oral medicine accredited by the Commission on Dental Accreditation to announce as a specialist in oral medicine. A dentist who did so, however, might be accused of violating the Code because oral medicine is not one of the nine specialties recited for which "ethical specialty announcement" is presently permitted.

The Council proposes to amend Section 5.H. of the Code so that it aligns with the changes in the scope of specialty recognition in some jurisdictions. The amendment to Section 5.H. of the Code would permit educationally qualified dentists practicing in areas of dentistry recognized as specialties in their jurisdictions, but not by the ADA, to announce as specialists. The Council requested that the Council on Dental Education and Licensure (CDEL) review and comment on this proposed revision of Section 5.H. of the Code and have been informed that CDEL is supportive of the amendment.

1 *Exclusivity of Practice.* The other portion of Section 5.H. of the *Code* reviewed by the Council is that
2 which requires dentists announcing as specialists to limit their practices exclusively to the announced
3 specialty. Thus, as presently written, dentists cannot ethically practice any aspect of dentistry except for
4 the announced specialty or specialties. This is so even though the specialist dentists hold D.D.S. or
5 D.M.D. degrees and, in many jurisdictions, hold the exact same licenses awarded to general dentists after
6 successfully completing the exact same licensing examination as general dentists. Consequently, the
7 Council examined amending Section 5.H. to remove the exclusivity limitation

8
9 When the Council requested comment from CDEL with respect to this proposed amendment to Section
10 5.H. of the *Code*, CDEL responded that it had reservations concerning the proposal and suggested that
11 the Council request input from the specialty organizations concerning the exclusivity provisions of Section
12 5.H. The Council did so, asking the nine specialty organizations for their input on whether it was
13 necessary for specialists to practice exclusively in their areas of specialty in order to maintain the skill and
14 expertise needed to announce as a specialist and whether there were reasons other than maintenance of
15 skill and expertise for limiting a specialist's practice to an announced specialty.

16
17 Responses from six specialty organizations were received. One reply was not responsive of the inquiries
18 made and instead addressed the issue of a general dentist practicing in areas within the scope of a
19 specialty and general dentists using specialist designations in practice announcements. Four responses
20 indicated that exclusivity of practice was not believed to be required in order for specialists to maintain
21 their expertise in the specialty (although one response indicated that ability to maintain the appropriate
22 level of expertise in the specialty must be considered on an individual basis). In addition, three of the
23 responses received knew of no reason to restrict an announced specialist to practicing solely in the
24 announced specialty except if there was such a restriction imposed by license. Two responses received
25 from the specialty organizations indicated that the limitation of practice to the announced specialty is
26 needed to assure, protect and or inform the public and third parties such as payment programs and
27 professional liability insurers concerning the practitioner's expertise and concentration in providing
28 competent care in the specialty.

29
30 Having carefully considered the reservations expressed by CDEL and the views expressed by the
31 specialty organizations that responded to the Council's inquiries, the Council is of the belief that dentists
32 holding specialty degrees should be permitted to announce their specialty to the public and also be
33 permitted to practice to the full scope of the dental licenses that they hold so long as they maintain
34 adequate expertise in the specialty. A dentist's training – be it D.D.S. or D.M.D. degree alone, the
35 successful completion of a residency in general dentistry or the awarding of a specialty degree – is a fact
36 that is reasonably easy to verify.

37
38 Moreover, the Council does not believe there is any ethical impropriety in, for example, a dentist
39 announcing as a specialist while practicing other areas of dentistry so long as the dentist is permitted to
40 do so under the licensing provisions of the jurisdiction in which the dentist practices, the public is not
41 misled by the dentist's announcement, the announcement is not false in any material respect, and the
42 dentist maintains his or her level of skill and expertise in the specialty practice area and is clinically
43 competent in the other areas of dentistry in which the dentist practices. To the contrary, the existing
44 provision requiring exclusivity may be viewed as restricting dentists' ability to engage in free competition
45 and as creating a legal risk to the association. The removal of this restriction will alleviate that risk.

46
47 With respect to the concerns that the exclusivity provisions of Section 5.H. of the *Code* serve to assure,
48 inform and protect patients and the public, the Council notes that other provisions of the *Code* serve to
49 provide that protection. Section 2 of the *Code*, Nonmaleficence, reminds dentists that they have the duty
50 to refrain from harming patients. Section 2.A., Education, imposes the duty for dentists to keep their
51 knowledge and skills current, while Section 2.B., Consultation and Referral, obligates dentists to refer
52 patients whenever the welfare of the patient will be safeguarded or advanced by the referral. Section 4 of
53 the *Code* provides that dentists shall treat patients fairly; Section 5 imposes the duty to communicate
54 truthfully while Section 5.F. admonishes that dentists should not advertise in a manner that is false or

misleading in any material respect. The Council believes that, taken as a whole, the Code places sufficient ethical obligations upon dentists who announce as specialists and who wish to practice beyond the scope of the specialty to provide ample protection to the public.

The amendments proposed by the Council will support the primary goal of dentists as set forth in the Preface to the Code – benefitting the patient. For example, general dentists in rural parts of the country often by necessity refer patients to specialists located a substantial distance from where the referring dentist and patient are located. With the amendments proposed by the Council, the referring dentist and specialist can confer and agree, with the consent of the patient, to the completion of dental treatments by the specialist where the completion requires treatment beyond the scope of the specialty involved. Allowing treatment completion by specialists will save the patient time, as the treatment will be able to be completed without an additional trip to the referring dentist's office and potential discomfort that might arise between the visit to the specialist and the return visit to the referring dentist.

Based on the Council's considered review of Section 5.H. of the Code as summarized above, the Council recommends the adoption of Resolution 65.

Resolution

65. Resolved, that Section 5.H. of the ADA Principles of Ethics and Code of Professional Conduct be amended as set forth below (additions underscored, deletions ~~stricken through~~):

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. A dentist may ethically announce as a specialist to the public in any of the~~ The dental specialties recognized by the American Dental Association including 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, and in any other areas of dentistry for which specialty recognition has been granted under the standards required or recognized in the practitioner's jurisdiction, provided the dentist meets the educational requirements required for recognition as a specialist adopted by the American Dental Association or accepted in the jurisdiction in which they practice. Dentists who choose to announce specialization should use "specialist in" or "practice limited to" and shall devote a sufficient portion of their practice to the announced specialty or specialties to maintain expertise in that specialty or those specialties. Dentists whose practice is devoted exclusively to an announced specialty or specialties may announce that their practice "is limited to" that specialty or those specialties. ~~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 or be recognized by the jurisdiction in which the dentist practices.~~

~~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 recognized by the American Dental Association or the jurisdiction in which the announcing dentist practices. 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) 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.~~

* In the case of the ADA, the educational requirements include successful completion of an advanced 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 being a diplomate of an American Dental Association recognized certifying board for each specialty announced.

BOARD RECOMMENDATION: Vote Yes.

BOARD VOTE: UNANIMOUS. (BOARD OF TRUSTEES CONSENT CALENDAR ACTION—NO BOARD DISCUSSION)