



STATE OF IOWA

IOWA DENTAL BOARD

KIM REYNOLDS, GOVERNOR
ADAM GREGG, LT. GOVERNOR

JILL STUECKER
EXECUTIVE DIRECTOR

June 26, 2017

To: Iowa Licensed Dentists
From: Jill Stuecker, Executive Director, Iowa Dental Board
Re: Draft Rule Revisions Regarding Recognition of Specialties

At its July 13, 2017 meeting, the Iowa Dental Board will be discussing rule revisions to chapter 26, "Advertising", specifically regarding specialty advertising, and chapter 28, "Designation of Specialty".

Recognition of specialties has recently become a challenging legal area. The American Dental Association (ADA) has revised their own guidelines around this issue due to the changing legal landscape (see enclosed). More recently, the Texas Dental Board lost an appeal in federal court, which held that certain dental advertising restrictions violated dentists' first amendment rights to engage in commercial speech. To read more click [here](#).

Litigation around this issue has been initiated in several states. Many state dental boards around the country are considering similar revisions. In summary, the courts have ruled that dental boards cannot prohibit commercial speech without evidence of harm to the public if the speech were allowed.

The enclosed draft changes to the specialty advertising rules in Iowa do not affect those currently under the umbrella of the ADA specialty status. What is different, is that the American Board of Dental Specialties (ABDS) would be added as a national certifying board. All member boards of this certifying body would now have specialty status, under these proposed rules, and could advertise as such. To read more about the ABDS click [here](#).

In addition, there would also be a provision for those who do not fall under the ADA or ABDS umbrella. This would allow dentists to advertise as a specialist if he/she earned diplomate status from a national certifying board that met certain criteria. The criteria are stringent, and are established to ensure that those specialties being considered are bona fide. Because the amendments in chapter 26 establish who can and cannot hold themselves out as a specialist, the Board will also be discussing a rescindment of chapter 28. To read chapter 28 in its current form click [here](#).

While there will be a formal public comment period if/when the rules are formally noticed by the Board, the Board is asking for initial feedback now for consideration at its July 13 meeting. Written comments can be submitted directly to jill.stuecker@iowa.gov by July 7, 2017.

DENTAL BOARD [650]

Notice of Intended Action

Pursuant to the authority of Iowa Code 153.33 and 153.34, the Dental Board hereby gives Notice of Intended Action to amend Chapter 26, “Advertising”, and to rescind and reserve Chapter 28, “Designation of Specialty” Iowa Administrative Code.

The amendments clarify the requirements to advertise a specialty in the practice of dentistry to permit dentists to advertise as a specialist if they are a diplomate of, or board eligible for, a national certifying board of a specialty recognized by the American Dental Association or a diplomate of a board recognized by the American Board of Dental Specialties. In addition, the rules permit dentists a third option for advertising as a specialist if they are a diplomate of a national certifying board that meets established criteria. The American Dental Association has recently addressed the changing scope of specialization and recent court cases have highlighted the constitutional rights of licensees to advertise the services they provide. Chapter 28 currently sets forth in detail the specialties that may be advertised and the requirements for those specialties. Because the proposed amendments to chapter 26 set forth the criteria for advertising specialties, the Board is also seeking to rescind chapter 28 at this time.

Any interested person may make written comments on the proposed amendments on or before September 12, 2017. Such written materials should be directed to Phil McCollum, Associate Director, Iowa Dental Board, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa 50309 or sent by email to phil.mccollum@iowa.gov.

There will be a public hearing on September 12, 2017 at 2:00 pm in the Board office, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa, 50309 at which time persons may present their views orally or in writing.

The proposed amendments are subject to waiver or variance pursuant to 650-chapter 7.

After analysis and review of this rule making, there is no impact on jobs.

ITEM 1. Amend subrule 650—26.4 as follows:

650—26.4(153) Public representation. All advertisement and public representations shall contain the name and address or telephone number of the practitioner who placed the ad.

26.4(1) If one's practice is referred to in the advertisement, the ad may state either "general/family practice" or "specialist", ~~the American Dental Association recognized specialty that the practitioner practices.~~

26.4(2) ~~No dentist may state or imply that the dentist is certified as a specialist when that is not the case. Use of the terms "specialist," "specializing in" or other similar terms in connection with areas that are not recognized as specialties pursuant to 650—Chapter 28 is not permitted.~~

A dentist may advertise as a specialist if the dentist meets the standards set forth in this rule.

1. The indicated specialty(s) of dentistry must be those for which there are national certifying boards recognized by the American Dental Association or by the American Board of Dental Specialties.
2. The dentist wishing to advertise as a specialist must be a Diplomate of, or board eligible for, a national certifying board of a specialty recognized by the American Dental Association, or a Diplomate of a board recognized by the American Board of Dental Specialties.
3. A dentist who does not meet the requirements of (2) may advertise as a specialist if he/she can demonstrate that he/she has earned "Diplomate" status from a national certifying board that meets all of the following criteria:
 - i. is an independent entity comprised of licensed dentists and is incorporated and governed solely by the licensed dentists/board members;
 - ii. has a permanent headquarters and staff;
 - iii. has issued Diplomate certificates to licensed dentists for at least five years;
 - iv. requires passing an oral and written examination based on psychometric principles that tests the applicant's knowledge and skills in the specific area of dentistry;
 - v. requires all dentists who seek certification to have successfully completed a specified, objectively verifiable amount of post DDS or DMD education through a formal postgraduate program and/or an organized continuing education program of comprehensive scope that is earned through continuing education providers approved by the Board; and
 - vi. has its own website that provides an online resource for the consumer to verify its certification requirements and a listing of the names and addresses of the dentists who have been awarded its board certification.

26.4(3) The use of the terms "specialist", "specializes", "orthodontist", "oral and maxillofacial surgeon", "oral and maxillofacial radiologist", "periodontist", "pediatric dentist", "prosthodontist", "endodontist", "oral pathologist", "public health dentist," dental anesthesiologist, or other similar terms which imply that the dentist is a specialist may only be used by licensed dentists meeting the requirements of this rule. A dentist who advertises as a specialist must avoid any implication that other dentists associated with him or her in practice are specialists.

26.4(4) The term "diplomate" or "board certified" may only be used by a dentist who has successfully

completed the qualifying examination of the appropriate certifying board of one or more of the specialties recognized by the American dental association or the American Board of Dental Specialties, or otherwise permitted pursuant to these rules.

26.4(5) A dentist advertising as a specialist pursuant to these rules shall include the name of the national certifying board and the name of the entity which recognizes the board.

26.4(36) Dentists A dentist may advertise the areas in which they practice, including, but not limited to, specialty services, using other descriptive terms such as “emphasis on _____” or other similar terms, as long as all other provisions of these rules regarding advertising are met.

ITEM 2. Rescind and reserve 650—Chapter 28.

DRAFT

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

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

4
 5 The amendments proposed by the Council will support the primary goal of dentists as set forth in the
 6 Preface to the *Code* – benefitting the patient. For example, general dentists in rural parts of the country
 7 often by necessity refer patients to specialists located a substantial distance from where the referring
 8 dentist and patient are located. With the amendments proposed by the Council, the referring dentist and
 9 specialist can confer and agree, with the consent of the patient, to the completion of dental treatments by
 10 the specialist where the completion requires treatment beyond the scope of the specialty involved.
 11 Allowing treatment completion by specialists will save the patient time, as the treatment will be able to be
 12 completed without an additional trip to the referring dentist’s office and potential discomfort that might
 13 arise between the visit to the specialist and the return visit to the referring dentist.

14
 15 Based on the Council’s considered review of Section 5.H. of the Code as summarized above, the Council
 16 recommends the adoption of Resolution 65.

17
 18 **Resolution**

19
 20 **65. Resolved**, that Section 5.H. of the ADA Principles of Ethics and Code of Professional Conduct be
 21 amended as set forth below (additions underscored, deletions ~~stricken through~~):

22
 23 **5.H. ANNOUNCEMENT OF SPECIALIZATION AND LIMITATION OF PRACTICE.**

24 ~~This section and Section 5.I are designed to help the public make an informed selection between~~
 25 ~~the practitioner who has completed an accredited program beyond the dental degree and a~~
 26 ~~practitioner who has not completed such a program. A dentist may ethically announce as a~~
 27 ~~specialist to the public in any of the~~ The dental specialties recognized by the American Dental
 28 ~~Association including and the designation for ethical specialty announcement and limitation of~~
 29 ~~practice are:~~ dental public health, endodontics, oral and maxillofacial pathology, oral and
 30 maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics,
 31 pediatric dentistry, periodontics, and prosthodontics, and in any other areas of dentistry for which
 32 specialty recognition has been granted under the standards required or recognized in the
 33 practitioner’s jurisdiction, provided the dentist meets the educational requirements required for
 34 recognition as a specialist adopted by the American Dental Association or accepted in the
 35 jurisdiction in which they practice. Dentists who choose to announce specialization should use
 36 “specialist in” or “practice limited to” and shall devote a sufficient portion of their practice to the
 37 announced specialty or specialties to maintain expertise in that specialty or those specialties,
 38 Dentists whose practice is devoted exclusively to an announced specialty or specialties may
 39 announce that their practice “is limited to” that specialty or those specialties. ~~limit their practice~~
 40 ~~exclusively to the announced dental specialties, provided at the time of the announcement such~~
 41 ~~dentists have met in each recognized specialty for which they announce the existing educational~~
 42 ~~requirements and standards set forth by the American Dental Association. Dentists who use their~~
 43 eligibility to announce as specialists to make the public believe that specialty services rendered in
 44 the dental office are being rendered by qualified specialists when such is not the case are engaged
 45 in unethical conduct. The burden of responsibility is on specialists to avoid any inference that
 46 general practitioners who are associated with specialists are qualified to announce themselves as
 47 specialists.

48
 49 **GENERAL STANDARDS.**

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

1 ~~1. The special area(s) of dental practice and an appropriate certifying board must be approved by~~
2 ~~the American Dental Association or be recognized by the jurisdiction in which the dentist practices.~~

3
4 ~~2. Dentists who announce as specialists must have successfully completed an educational program~~
5 ~~accredited by the Commission on Dental Accreditation, two or more years in length, as specified by~~
6 ~~the Council on Dental Education and Licensure, or be diplomates of an American Dental~~
7 ~~Association recognized certifying board recognized by the American Dental Association or the~~
8 ~~jurisdiction in which the announcing dentist practices. The scope of the individual specialist's~~
9 ~~practice shall be governed by the educational standards for the specialty in which the specialist is~~
10 ~~announcing.~~

11 ~~3. The practice carried on by dentists who announce as specialists shall be limited exclusively to~~
12 ~~the special area(s) of dental practice announced by the dentist.~~

13
14 ~~STANDARDS FOR MULTIPLE SPECIALTY ANNOUNCEMENTS.~~

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

23 ^{*} In the case of the ADA, the educational requirements include successful completion of an advanced
24 educational program accredited by the Commission on Dental Accreditation, two or more years in length,
25 as specified by the Council on Dental Education and Licensure, or being a diplomate of an American
26 Dental Association recognized certifying board for each specialty announced.

27 **BOARD RECOMMENDATION: Vote Yes.**

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

APPENDIX 1

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

A dentist may ethically announce as a specialist to the public in any of the dental specialties recognized by the American Dental Association including 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" 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. 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.

* 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.

NOTES