michigan dental
ASSOCIATION
YOUR CONNECTION TO ORAL HEALTH

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

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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.

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I. INTRODUCTION

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

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

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

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

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

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

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

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

II. PREAMBLE

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

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

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

III. PRINCIPLES, CODE OF PROFESSIONAL CONDUCT AND ADVISORY OPINIONS

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

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

CODE OF PROFESSIONAL CONDUCT

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

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

ADVISORY OPINIONS

1.B.1. FURNISHING COPIES OF RECORDS. A dentist has the ethical obligation on request of either the patient or the patient's new dentist to furnish in accordance with applicable law, either gratuitously or for nominal cost, such dental records or copies or summaries of them, including dental X-rays or copies of them, as will be beneficial for the future treatment of that patient. This obligation exists whether or not the patient's account is paid in full.

MDA Advisory Opinion
1.B.1. COPIES OF RECORDS. A dentist has the ethical obligation on request of either the patient or patient's new dentist to furnish, either gratuitously or for a nominal copying charge, copies of such dental records, including dental x-rays, as may be beneficial for the future treatment of that patient. This obligation exists whether or not the patient's account is paid in full.

1.B.2. CONFIDENTIALITY OF PATIENT RECORDS. The dominant theme in Code Section l.B is the protection of the confidentiality of a patient's records. The statement in this section that relevant information in the records should be released to another dental practitioner assumes that the dentist requesting the information is the patient's present dentist. There may be circumstances where the

former dentist has an ethical obligation to inform the present dentist of certain facts. Code Section 1. B assumes the dentist releasing relevant information is acting in accordance with applicable law. Dentists should be aware that the laws of the various jurisdictions in the United States are not uniform, and some confidentiality laws appear to prohibit the transfer of pertinent information, such as HIV seropositivity. Absent certain knowledge that the laws of the dentist's jurisdiction permit the forwarding of this information, a dentist should obtain the patient's written permission before forwarding health records which contain information of a sensitive nature, such as HIV seropositivity, chemical dependency or sexual preference. If it is necessary for a treating dentist to consult with another dentist or physician with respect to the patient, and the circumstances do not permit the patient to remain anonymous, the treating dentist should seek the permission of the patient prior to the release of data from the patient's records to the consulting practitioner. If the patient refuses, the treating dentist should then contemplate obtaining legal advice regarding the termination of the dentist/patient relationship.

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

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

CODE OF PROFESSIONAL CONDUCT

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

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

1. The specialists or consulting dentists upon completion of their care shall return the patient, unless the patient expressly reveals a different preference, to the referring dentist, or, if none, to the dentist of record for future care.

2. The specialists shall be obliged when there is no referring dentist and upon a completion of their treatment to inform patients when there is a need for further dental care.

ADVISORY OPINION

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

2.C. USE OF AUXILIARY PERSONNEL.
Dentists shall be obliged to protect the health of their patients by only assigning to qualified auxiliaries

those duties which can be legally delegated. Dentists shall be further obliged to prescribe and supervise the patient care provided by all auxiliary personnel working under their direction.

MDA Addition to 2.C. USE OF AUXILIARY PERSONNEL
Dentists shall be obliged to protect the health of their patient by only assigning to qualified auxiliaries those duties which can be legally delegated. Dentists shall be further obliged to prescribe and supervise the care provided by all auxiliary personnel working under their direction and control.

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

ADVISORY OPINION
2.D.1. ABILITY TO PRACTICE. A dentist who contracts any disease or becomes impaired in any way that might endanger patients or dental staff shall, with consultation and advice from a qualified physician or other authority, limit the activities of practice to those areas that do not endanger patients or dental staff. A dentist who has been advised to limit the activities of his or her practice should monitor the aforementioned disease or impairment and make additional limitations to the activities of the dentist's practice, as indicated.

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

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

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

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.

ADVISORY OPINION

3.A.1. ELECTIVE AND NON-EMERGENT PROCEDURES DURING A PUBLIC HEALTH EMERGENCY. Dentists have ethical obligations to provide care for patients and also serve the public at large. Typically, these obligations are interrelated. Dentists are able to provide oral health care for patients according to the patient's desires and wishes, so long as the treatment is within the scope of what is deemed acceptable care without causing the patient harm or impacting the public. During public health crises or emergencies, however, the dentist's ethical obligation to the public may supersede the dentist's ethical obligations to individual patients. This may occur, for example, when a communicable disease causes individual patients who undergo treatment and/or the public to be exposed to elevated health risks. During the time of a public health emergency, therefore, dentists should balance the competing ethical obligations to individual patients and the public. If, for example, a patient requests an elective or non-emergent procedure during a public health crisis, the dentist should weigh the risk to the patient and the public from performing that procedure during the public health emergency, postponing such treatment if, in the dentist's judgment, the risk of harm to the patient and/ or the public is elevated and cannot be suitably mitigated. If, however, the patient presents with an urgent or emergent condition necessitating treatment to prevent or eliminate infection or to preserve the structure and function of teeth or orofacial hard and soft tissues, the weighing of the dentist's competing ethical obligations may result in moving forward with the treatment of the patient.

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 because of their voluntary efforts. It is the opinion of the Committee on Ethics that individual recognition received as a result of these activities is desirable providing it complies with the Standards of Ethics. Component societies are urged to permit sufficient exposure of such community activities which improve the public acceptance of the dental profession.

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

MDA ADDITION TO 3.B. GOVERNMENT OF A PROFESSION

If a member fails to comply with a request and/or refuses to cooperate with a committee which is charged with the responsibility of ethical or judicial considerations, including but not limited to component society and MDA peer review committees, on dental care and ethics, such failure to cooperate shall be considered a violation of the Standards of Ethics and the member failing to cooperate shall be subject to the sanctions of Chapter I, Sections 3 and 6 and Chapter VII of the MDA Bylaws and Chapter XII of the ADA Bylaws.

3.C. RESEARCH AND DEVELOPMENT.

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

3.D. PATENTS AND COPYRIGHTS.

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

3.E. ABUSE AND NEGLECT.

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

ADVISORY OPINION

3.E.1. REPORTING ABUSE AND NEGLECT. The public and the profession are best served by dentists who are familiar with identifying the signs of abuse and neglect and knowledgeable about the appropriate intervention resources for all populations.

A dentist's ethical obligation to identify and report the signs of abuse and neglect is, at a minimum, to be consistent with a dentist's legal obligation in the jurisdiction where the dentist practices. Dentists, therefore, are ethically obliged to identify and report suspected cases of abuse and neglect to the same extent as they are legally obliged to do so in the jurisdiction where they practice. Dentists have a concurrent ethical obligation to respect an adult patient's right to self-determination and confidentiality and to promote the welfare of all patients. Care should be exercised to respect the wishes of an adult patient who asks that a suspected case of abuse and/or neglect not be reported, where such a report is not mandated by law. With the patient's permission, other possible solutions may be sought.

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

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

3.F. PROFESSIONAL DEMEANOR IN THE WORKPLACE.

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

ADVISORY OPINION

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

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

MDA ADDITION TO 3F PROFESSIONAL DEMEANOR
A dentist, as a member of a profession, should provide a professional environment with conduct that demonstrates moral character and professional competence, upholds the dignity and honor of the profession and accepts its self-imposed disciplines.

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

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

CODE OF PROFESSIONAL CONDUCT

4.A. PATIENT SELECTION.
While dentists, in serving the public, may exercise reasonable discretion in selecting patients for their practices, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient's race, creed, color, gender, sexual orientation or gender identity or national origin or disability.

ADVISORY OPINION
4.A.1. PATIENTS WITH BLOODBORNE PATHOGENS. As is the case with all patients, when considering the treatment of patients with a physical, intellectual or developmental disability or disabilities, including patients infected with Human Immunodeficiency Virus, Hepatitis B Virus, Hepatitis C Virus or another bloodborne pathogen, or are otherwise medically compromised, the individual dentist should determine if he or she has the need of another's skills, knowledge, equipment or experience and if so, consultation or referral pursuant to Section 2.B hereof is indicated. Decisions regarding the type of dental treatment provided, or referrals made or suggested, should be made on the same basis as they are made with other patients. The dentist should also determine, after consultation with the patient's physician, if appropriate, if the patient's health status would be significantly compromised by the provision of dental treatment.

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

4.C. JUSTIFIABLE CRITICISM.
Dentists shall be obliged to report to the appropriate reviewing agency as determined by the local component or constituent society instances of gross or continual faulty treatment by other dentists.

Patients should be informed of their present oral health status without disparaging comment about prior services. Dentists issuing a public statement with respect to the profession shall have a reasonable basis to believe that the comments made are true.

ADVISORY OPINION

4.C.1. MEANING OF "JUSTIFIABLE." Patients are dependent on the expertise of dentists to know their oral health status. Therefore, when informing a patient of the status of his or her oral health, the dentist should exercise care that the comments made are truthful, informed and justifiable. This should, if possible involve consultation with the previous treating dentist(s), in accordance with applicable law, to determine under what circumstances and conditions the treatment was performed. A difference of opinion as to preferred treatment should not be communicated to the patient in a manner which would unjustly imply mistreatment. There will necessarily be cases where it will be difficult to determine whether the comments made are justifiable. Therefore, this section is phrased to address the discretion of dentists and advises against unknowing or unjustifiable disparaging statements against another dentist. However, it should be noted that, where comments are made which are not supportable and therefore unjustified, such comments can be the basis for the institution of a disciplinary proceeding against the dentist making such statements.

4.D. EXPERT TESTIMONY.

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

ADVISORY OPINION

4.D.1. CONTINGENT FEES. It is unethical for a dentist to agree to a fee contingent upon the favorable outcome of the litigation in exchange for testifying as a dental expert.

4.E. REBATES AND SPLIT FEES.

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

ADVISORY OPINION

4.E.1. SPLIT FEES IN ADVERTISING AND MARKETING SERVICES. The prohibition against a dentist's accepting or tendering rebates or split fees applies to business dealings between dentists and any third party, not just other dentists. Thus, a dentist who pays for advertising or marketing services by sharing a specified portion of the professional fees collected from prospective or actual patients with the vendor providing the advertising or marketing services is engaged in fee splitting. The prohibition against fee splitting is also applicable to the marketing of dental treatments or procedures via "social coupons" if the business arrangement between the dentist and the concern providing the marketing services for that treatment or those procedures allows the issuing company to collect the fee from the prospective patient, retain a defined percentage or portion of the revenue collected as payment for the coupon marketing service provided to the dentist and remit to the dentist the remainder of the amount collected.

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

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

This principle expresses the concept that professionals have a duty to be honest and trustworthy in their dealings with people. Under this principle, the dentist's primary obligations include respecting the position

of trust inherent in the dentist-patient relationship, communicating truthfully and without deception, and maintaining intellectual integrity.

CODE OF PROFESSIONAL CONDUCT

5.A. REPRESENTATION OF CARE.
Dentists shall not represent the care being rendered to their patients in a false or misleading manner.

ADVISORY OPINIONS

5.A.1. DENTAL AMALGAM AND OTHER RESTORATIVE MATERIALS. Based on current scientific data the ADA has determined that the removal of amalgam restorations from the non-allergic patient for the alleged purpose of removing toxic substances from the body, when such treatment is performed solely at the recommendation of the dentist, is improper and unethical. The same principle of veracity applies to the dentist's recommendation concerning the removal of any dental restorative material.

5.A.2. UNSUBSTANTIATED REPRESENTATIONS. A dentist who represents that dental treatment or diagnostic techniques recommended or performed by the dentist has the capacity to diagnose, cure or alleviate diseases, infections or other conditions, when such representations are not based upon accepted scientific knowledge or research, is acting unethically.

5.B. REPRESENTATION OF FEES.
Dentists shall not represent the fees being charged for providing care in a false or misleading manner.

ADVISORY OPINIONS

5.B.1. WAIVER OF COPAYMENT. A dentist who accepts a third party[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. The fee for a patient without dental benefits shall be considered a dentist's full fee[2]. This is the fee that should be represented to all benefit carriers regardless of any negotiated fee discount. Payments accepted by a dentist under a governmentally funded program, a component or constituent dental society sponsored access program, or a participating agreement entered into under a program of a third party shall not be considered or construed as evidence of overbilling in determining whether a charge to a patient, or to another third party[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 or performs unnecessary dental services or procedures is engaged in unethical conduct. The dentist's ethical obligation in this matter applies regardless of the type of practice arrangement or contractual obligations in which he or she provides patient care.

5.C. DISCLOSURE OF CONFLICT OF INTEREST.

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

5.D. DEVICES AND THERAPEUTIC METHODS.

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

ADVISORY OPINIONS

5.D.1. REPORTING ADVERSE REACTIONS. A dentist who suspects the occurrence of an adverse reaction to a drug or dental device has an obligation to communicate that information to the broader medical and dental community, including, in the case of a serious adverse event, the Food and Drug Administration (FDA).

5.D.2. MARKETING OR SALE OF PRODUCTS OR PROCEDURES. Dentists who, in the regular conduct of their practices, engage in or employ auxiliaries in the marketing or sale of products or procedures to their patients must take care not to exploit the trust inherent in the dentist-patient relationship for their own financial gain. Dentists should not induce their patients to purchase products or undergo procedures by misrepresenting the product's value, the necessity of the procedure or the dentist's professional expertise in recommending the product or procedure.

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

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

5.E. PROFESSIONAL ANNOUNCEMENT.

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

5.F. ADVERTISING.

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

ADVISORY OPINIONS

5.F.1. PUBLISHED COMMUNICATIONS. If a dental health article, message or newsletter is published

in print or electronic media under a dentist's byline to the public without making truthful disclosure of the source and authorship or is designed to give rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dentist, the dentist is engaged in making a false or misleading representation to the public in a material respect. [3]

5.F.2. EXAMPLES OF "FALSE OR MISLEADING." The following examples are set forth to provide insight into the meaning of the term "false or misleading in a material respect."[3] These examples are not meant to be all-inclusive. Rather, by restating the concept in alternative language and giving general examples, it is hoped that the membership will gain a better understanding of the term. With this in mind, statements shall be avoided which would: a) contain a material misrepresentation of fact, b) omit a fact necessary to make the statement considered as a whole not materially misleading, c) be intended or be likely to create an unjustified expectation about results the dentist can achieve, and d) contain a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dentists, if that representation is not subject to reasonable substantiation.

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

5.F.3. UNEARNED, NONHEALTH DEGREES. A dentist may use the title Doctor or Dentist, DDS, DMD or any additional earned, advanced academic degrees in health service areas in an announcement to the public. The announcement of an unearned academic degree may be misleading because of the likelihood that it will indicate to the public the attainment of specialty or diplomate status. For purposes of this advisory opinion, an unearned academic degree is one which is awarded by an educational institution not accredited by a generally recognized accrediting body or is an honorary degree.

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

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

Generally, unearned or nonhealth degrees and fellowships that designate association, rather than attainment, should be limited to scientific papers and curriculum vitae. In all instances, state law should be consulted. In any review by the council of the use of designations in advertising to the public, the council will apply the standard of whether the use of such is false or misleading in a material respect. [3]

5.F.4. REFERRAL SERVICES. There are two basic types of referral services for dental care: not-for-profit and the commercial. The not-for-profit is commonly organized by dental societies or community services. It is open to all qualified practitioners in the area served. A fee is sometimes charged the practitioner to be listed with the service. A fee for such referral services is for the

purpose of covering the expenses of the service and has no relation to the number of patients referred. In contrast, some commercial referral services restrict access to the referral service to a limited number of dentists in a particular geographic area. Prospective patients calling the service may be referred to a single subscribing dentist in the geographic area and the respective dentist billed for each patient referred. Commercial referral services often advertise to the public stressing that there is no charge for use of the service and the patient may not be informed of the referral fee paid by the dentist. There is a connotation to such advertisements that the referral that is being made is in the nature of a public service. A dentist is allowed to pay for any advertising permitted by the *Code*, but is generally not permitted to make payments to another person or entity for the referral of a patient for professional services. While the particular facts and circumstances relating to an individual commercial referral service will vary, the council believes that the aspects outlined above for commercial referral services violate the *Code* in that it constitutes advertising which is false or misleading in a material respect and violates the prohibitions in the *Code* against fee splitting. [3]

5.F.5. INFECTIOUS DISEASE TEST RESULTS. An advertisement or other communication intended to solicit patients which omits a material fact or facts necessary to put the information conveyed in the advertisement in a proper context can be misleading in a material respect. A dental practice should not seek to attract patients on the basis of partial truths which create a false impression. [3]

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

MDA Advisory Opinion

5.F.5. HIV TEST RESULTS. Any communication which omits a material fact or facts necessary to put the information conveyed in the communication in a proper context can be misleading in a material respect. Communicating HIV negative test results, without conveying additional information that will clarify the scientific significance of this fact, is an example of misleading omission. A dental practice should not seek to attract patients on the basis of partial truths which create a false impression.

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

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

5.G. NAME OF PRACTICE.

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

ADVISORY OPINION

5.G.1. DENTIST LEAVING PRACTICE. Dentists leaving a practice who authorize continued use of their

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

MDA Advisory Opinion

5.G.1. DENTIST LEAVING PRACTICE. Dentists leaving a practice who authorize continued use of their names should receive competent advice on the legal implications of this action. With permission of a departing dentist, his or her name may be used for more than one year, if, after the one year grace period has expired, prominent notice is provided to the public including, but not limited to, a sign at the office and a short statement on stationery and business cards that the departing dentist has retired from the practice.

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

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 anesthesiology, 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 the 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.

ADVISORY OPINIONS

5.H.1. DUAL DEGREED DENTISTS.

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

*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.

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

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

1. The organization granting the credential grants certification or diplomate status based on the following: a) the dentist's successful completion of a formal, full-time advanced education program (graduate or postgraduate level) of at least 12 months' duration; and b) the dentist's training and experience; and c) successful completion of an oral and written examination based on psychometric principles; and

2. The announcement includes the following language; [Name of announced area of dental practice] is not recognized as a specialty area by the National Commission on Recognition of Dental Specialties and Certifying Boards or (the names of the jurisdiction in which the dentist practices).

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

MDA Commentary
In Michigan, in order to announce as a specialty, the dentist must also possess a specialty license from the State of Michigan. This requirement arises from Michigan law and is not an ethical requirement.

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.[3]

ADVISORY OPINIONS

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

A general dentist may not announce to the public that he or she is certified or a diplomate or otherwise similarly credentialed in an area of dentistry not recognized as a specialty area by the National Commission on Recognition of Dental Specialties and Certifying Boards or by the Jurisdiction in which the dentist practices 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.

4. Completion of three years of advanced training in oral and maxillofacial surgery or two years of advanced training in one of the other recognized dental specialties prior to 1967.

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 ten specialties (dental anesthesiology, 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.
2. A full fee is the fee for a service that is set by the dentist, which reflects the costs of providing the procedure and the value of the dentist's professional judgment.
3. Advertising, solicitation of patients or business or other promotional activities by dentists or dental care delivery organizations shall not be considered unethical or improper, except for those promotional activities which are false or misleading in any material respect. Notwithstanding any *ADA Principles of Ethics and Code of Professional Conduct* or other standards of dentist conduct which may be differently worded, this shall be the sole standard for determining the ethical propriety of such promotional activities. Any provision of an ADA constituent or component society's code of ethics or other standard of dentist conduct relating to dentists' or dental care delivery organizations' advertising, solicitation, or other promotional activities which is worded differently from the above standard shall be deemed to be in conflict with the *ADA Principles of Ethics and Code of Professional Conduct*.

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

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

Anyone who believes that a member-dentist has acted unethically should bring the matter to the attention of the appropriate constituent (state) or component (local) dental society. Whenever possible, problems involving questions of ethics should be resolved at the state or local level. If a satisfactory resolution cannot be reached, the dental society may decide, after proper investigation, that the matter warrants issuing formal charges and conducting a disciplinary hearing pursuant to the procedures set forth in-Chapter XI of the ADA *Bylaws and Governance and Organizational Manual of the American Dental Association ("Governance Manual")*. PRINCIPLES OF ETHICS AND CODE OF PROFESSIONAL CONDUCT, MEMBER CONDUCT POLICY AND JUDICIAL PROCEDURE. The Council on Ethics, Bylaws and Judicial Affairs reminds constituent and component societies that before a dentist can be found to have breached any ethical obligation the dentist is entitled to a fair hearing.

A member who is found guilty of unethical conduct proscribed by the *ADA Code* or code of ethics of the

constituent or component society, may be placed under a sentence of censure or suspension or may be expelled from membership in the Association. A member under a sentence of censure, suspension or expulsion has the right to appeal the decision to his or her constituent society and the ADA Council on Ethics, Bylaws and Judicial Affairs, as provided in Chapter XI of the ADA *Bylaws and Governance Manual*.

American Dental Association
Council on Ethics, Bylaws and Judicial Affairs
211 East Chicago Avenue
Chicago, Illinois 60611

With official advisory opinions revised to October 2020.

Michigan Dental Association
3657 Okemos Road, Suite 200
Okemos, MI 48864
With MDA additions and changes revised to February 2019.

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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*.