

**Adoption of 108.50 – 108.55 and 108.57 – 108.63 was published in the December 7, 2012 issue of the *Texas Register*.**

**Adoption of 108.56 was published in the February 15, 2013 issue of the *Texas Register*.**

**The adoption of these rules is effective on May 1, 2013.**

**The Board has directed staff to delay enforcement pursuant to these rules until September 1, 2013.**

***§108.50. Objectives of Rules.***

(a) The purpose of this subchapter is to provide guidelines for communications to the public, including but not limited to advertising, professional communications and referral services.

(b) As professionals, dentists have the duty to communicate truthfully and without deception to the public.

(c) It is hereby declared that the sections, clauses, sentences and parts of this subchapter are severable, are not matters of mutual essential inducement, and any of them shall be removed if this subchapter would otherwise be unconstitutional or ineffective. If any or more sections, clauses, sentences or parts shall for any reasons be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

***§108.51.Definitions.***

The following words and terms when used in this subchapter shall have the following meanings unless the contents clearly indicate otherwise.

(1) Advertisements--Information communications made directly or indirectly by publication, dissemination, solicitation, endorsement or circulation or in any other way to attract directly or indirectly any person to enter into an express or implied agreement to accept dental services or treatment related thereto. Advertising may include oral, written, broadcast and other types of communications disseminated by or at the behest of a dentist. The communications include, but are not limited to, those made to patients, prospective patients, professionals or other persons who might refer patients, and to the public at large. Advertisements include electronic media and print media.

(2) Electronic Media--Radio, television and the Internet.

(3) Location Signage--Signage adhered to the physical building at which a dental office is located or at the entry to a shopping park or parking lot that is intended as an indicator for the public to physically locate the dental office.

(4) Patient of Record--A patient who has been examined and diagnosed by a licensed dentist and whose treatment has been planned by a licensed dentist.

(5) Print Media--Newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers and other similar documents or comparable publications, the content of which is disseminated by means of the printed word. "Print media" shall also include stationery and business cards.

(6) Testimonial--An attestation or implied attestation to the competence of a dentist's services or treatment.

***§108.52.Names and Responsibilities.***

(a) Disclosure of Full Name.

(1) Any person who practices dentistry under any name or trade name must provide full and outward disclosure of his full name as it appears on his license or renewal certificate issued by the board, or his commonly used name.

(2) Any person who owns, maintains, or operates an office or place of business in which the person employs or engages under any type of contract another person to practice dentistry, either directly or indirectly, under any name or trade name must provide full and outward disclosure of his full name as it appears on his license or renewal certificate issued by the board, or his commonly used name.

(3) Any person who holds himself out to the public, directly or indirectly, as soliciting patronage or as being qualified to practice dentistry in the state of Texas under any name or trade name must provide full and outward disclosure of his full name as it appears on his license or renewal certificate issued by the board, or his commonly used name.

(4) Any person who operates, manages, or is employed in any facility where dental service is rendered or conducted under any name or trade name must provide full and outward disclosure of his full name as it appears on the license or renewal certificate issued by the board, or his commonly used name.

(5) Any person who practices dentistry must display his full name as it appears on his license or renewal certificate issued by the board, or his commonly used name, outside the primary entry of each location at which he practices dentistry.

(6) If the names of auxiliary personnel, such as dental hygienists or dental assistants, are displayed in any manner or in any advertising, the auxiliary personnel must be clearly identified by title, along with the name of a supervising dentist.

(b) Name of Practice.

(1) Each dental office shall post at or near the entrance of the office in an area visible to the public, the name of, each professional degree received by and each school attended by each dentist practicing in the office.

(2) The name of the owner shall be prominently displayed and only the names of the dentists who are engaged in the practice of the profession at a particular location shall be used.

(3) The name of a deceased or retired dentist leaving a practice shall not be used at such location more than one (1) year following departure from the practice.

(4) The name of a dentist who transfers or sells his practice to another dentist may be used by the acquiring dentist for no more than forty (40) days following the transfer. However, if the transferring dentist remains actively engaged in the practice of dentistry in the transferred practice, the acquiring dentist may continue using the name of the transferring dentist.

(5) A licensed Texas dentist, in any professional communication concerning dental services, shall include the dentist's dental degree; the words "general dentist" or "general dentistry;" or an ADA approved dental specialty if the dentist is a specialist in the field designated.

(6) A licensed Texas dentist who is also authorized to practice medicine in Texas may use the initials "M.D." or "D.O." along with the dentist's dental degree.

(c) Use of Trade Name.

(1) A dentist may practice under his or her own name, or use a corporation, company, association or trade name as provided by §259.003 of the Texas Occupations Code.

(2) A dentist practicing under a corporation, company, association or trade name shall give each patient the name and license number of the treating dentist, in writing, either before or after each office visit, upon request of a patient.

(3) An advertisement under a corporation, company, association or trade name must include prominently the name of the owner(s) and at least one

dentist actually engaged in the practice of dentistry under that trade name at each location advertised. This provision does not apply to location signage.

(4) Each dentist practicing under a corporation, company, association or trade name shall file notice with the board of every corporation, company, association or trade name under which that dentist practices upon initial application for licensure and annual license renewal.

(5) 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.

(d) Responsibility. The responsibility for the form and content of an advertisement offering services or goods by a dentist shall be jointly and severally that of each licensed professional who is an owner, principal, partner, or officer of the firm or entity identified in the advertisement.

***§108.53.Fees.***

(a) General. Dentists shall not represent or advertise the fees they charge in a false or misleading manner. Dentists shall state availability and price of goods, appliances or services in a clear and non-deceptive manner and include all material information to fully inform members of the general public about the nature of the goods, appliances or services offered at the announced price.

(b) Fee-Splitting. No dentist or any other licensee or registrant shall divide, share, split or allocate, either directly or indirectly, any fee for dental services, appliances, or materials with another dentist or with a physician, except upon a division of services or responsibility and with the prior knowledge and written approval of the patient.

(c) Disclosures. An advertisement which includes the price of dental services shall disclose:

(1) the professional service being offered in the advertisement;

(2) any related services which are usually required in conjunction with the advertised services and for which additional fees may be charged;

(3) a disclosure statement that the fee is a minimum fee and that the charges may increase depending on the treatment required;

(4) the dates upon which the advertised service will be available at the advertised price;

(5) when a service is advertised at a discount, the standard fee of the service and whether the discount is limited to a cash payment; and

(6) if the advertisement quotes a range of fees for a service, the advertisement shall contain all the basic considerations upon which the actual fee shall be determined.

(d) A dentist shall not:

(1) represent that health care insurance deductibles or copayments may be waived or are not applicable to dental services to be provided if the deductibles or copayments are required;

(2) represent that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(3) refer to a fee for dental services without disclosing that additional fees may be involved in individual cases, if the possibility of additional fees may be reasonably predicted;

(4) offer a discount for dental services without disclosing the total fee to which the discount will apply; and

(5) represent that services are "free" when there is remuneration by a third-party payor, including Medicaid or Medicare.

***§108.54. Advertising of Specialties.***

(a) Recognized Specialties. A dentist may advertise as a specialist or use the terms "specialty" or "specialist" to describe professional services in recognized specialty areas that are:

- (1) recognized by a board that certifies specialists in the area of specialty; and
- (2) accredited by the Commission on Dental Accreditation of the American Dental Association.

(b) The following are recognized specialty areas and meet the requirements of subsection (a)(1) and (2) of this section:

- (1) Endodontics;
- (2) Oral and Maxillofacial Surgery;
- (3) Orthodontics and Dentofacial Orthopedics;
- (4) Pediatric Dentistry;
- (5) Periodontics;
- (6) Prosthodontics;
- (7) Dental Public Health;
- (8) Oral and Maxillofacial Pathology; and
- (9) Oral and Maxillofacial Radiology.

(c) A dentist who wishes to advertise as a specialist or a multiple-specialist in one or more recognized specialty areas under subsection (a)(1) and (2) and subsection (b)(1) - (9) of this section shall meet the criteria in one or more of the following categories:

- (1) Educationally qualified is a dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of

the American Dental Association, as specified by the Council on Dental Education of the American Dental Association.

(2) Board certified is a dentist who has met the requirements of a specialty board referenced in subsection (a)(1) and (2) of this section, and who has received a certificate from the specialty board, indicating the dentist has achieved diplomat status, or has complied with the provisions of §108.56(a) and (b) of this subchapter (relating to Certifications, Degrees, Fellowships, Memberships and Other Credentials).

(3) A dentist is authorized to use the term 'board certified' in any advertising for his/her practice only if the specialty board that conferred the certification is referenced in subsection (a)(1) and (2) of this section, or the dentist complies with the provisions of §108.56(a) and (b) of this subchapter.

(d) Dentists who choose to communicate specialization in a recognized specialty area as set forth in subsection (b)(1) - (9) of this section should use "specialist in" or "practice limited to" and should limit their practice exclusively to the advertised specialty area(s) of dental practice. Dentists may also state that the specialization is an "ADA recognized specialty." At the time of the communication, such dentists must have met the current educational requirements and standards set forth by the American Dental Association for each approved specialty. A dentist shall not communicate or imply that he/she is a specialist when providing specialty services, whether in a general or specialty practice, if he or she has not received a certification from an accredited institution. The burden of responsibility is on the practice owner to avoid any inference that those in the practice who are general practitioners are specialists as identified in subsection (b)(1) - (9) of this section.

***§108.55. Advertising for General Dentists.***

(a) A dentist whose license is not limited to the practice of an ADA recognized specialty identified under §108.54(b)(1) - (9) of this subchapter (relating to Advertising of Specialties), may advertise that the dentist performs dental services in those specialty areas of practice, but only if the advertisement also includes a clear disclosure that he/she is a general dentist.

(b) Any advertisement of any specific dental service or services by a general dentist shall include the notation "General Dentist" or "General Dentistry" directly after the name of the dentist. The notation shall be in a font size no smaller than the largest font size used to identify the specific dental services being advertised. For example, a general dentist who advertises "ORTHODONTICS" and "DENTURES" and/or "IMPLANTS" shall include a disclosure of "GENERAL DENTIST" or "GENERAL DENTISTRY" in a font size no smaller than the largest font size used for terms 'orthodontics,' 'dentures' and/or 'implants.' Any form of broadcast advertising by a general dentist (radio, television, promotional DVDs, etc) shall include either "General Dentist" or "General Dentistry" in a clearly audible manner.

(c) A general dentist is not prohibited from listing services provided, so long as the listing does not imply specialization. A listing of services provided shall be separate and clearly distinguishable from the dentist's designation as a general dentist.

(d) The provisions of this rule shall not be required for professional business cards or professional letterhead.

***108.5.6 Certifications, Degrees, Fellowships, Memberships and Other Credentials***

(a) Dentists may advertise credentials earned in dentistry so long as they avoid any communications that express or imply specialization in a recognized specialty, or specialization in an area of dentistry that is not recognized as a specialty, or attainment of an earned academic degree.

(b) A listing of credentials shall be separate and clearly distinguishable from the dentist's designation as a dentist. A listing of credentials may not occupy the same line as the dentist's name and designation as a dentist. Any use of abbreviations to designate credentials shall be accompanied by a definition of the acronym immediately following the credential.

For example:

Jane Doe, DDS, General Dentist

FAAD, Fellow Anytown Academy of Dentistry

OR

John Doe, DDS, General Dentist

MACD, Master Anytown College of Dentists

(c) The provisions of subsection (b) of this section shall not be required in materials not intended for business promotion or public dissemination, such as such as peer-to-peer communications.

***§108.57.False, Misleading or Deceptive Advertising.***

(a) A dentist has a duty to communicate truthfully. Professionals have a duty to be honest and trustworthy in their dealings with people. 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. In order to properly serve the public, dentists should represent themselves in a manner that contributes to the esteem of the profession. Dentists shall not misrepresent their training and competence in any way that would be false or misleading in any material respect. Dentists shall not advertise or solicit patients in any form of communication in a manner that is false, misleading, deceptive, or not readily subject to verification.

(b) Published Communications. A dental health article, message or newsletter published in print or electronic media under a dentist's byline to the public must make truthful disclosure of the source and authorship of the publication. If compensation was made for the published communication, a disclosure that the communication is a paid advertisement shall be made. If the published communication fails to make truthful disclosure of the source, authorship and if compensation was made, that the communication is a paid advertisement, the dentist is engaged in making a false or misleading representation to the public in a material respect. If the published communication 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.

(c) Examples. In addition to the plain and ordinary meaning of the provision set forth throughout these guidelines, additional examples of advertisements that may be false, misleading, deceptive, or not readily subject to verification include but are not limited to:

(1) making a material misrepresentation of fact or omitting a fact necessary to make a statement as a whole not materially misleading;

(2) intimidating or exerting undue pressure or undue influence over a prospective patient;

(3) appealing to an individual's anxiety in an excessive or unfair way;

(4) claiming to provide or perform dental work without pain or discomfort to the patient;

(5) implying or suggesting superiority of materials or performance of professional services;

(6) comparing a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(7) communicating an implication, prediction or suggestion of any guarantee of future satisfaction or success of a dental service or otherwise creating unjustified expectations concerning the potential result of dental treatment. The communication of a guarantee to return a fee if the patient is not satisfied with the treatment rendered is not considered false, misleading deceptive or not readily subject to verification under this rule;

(8) containing a testimonial from a person who is not a patient of record or that includes false, misleading or deceptive statements, or which is not readily subject to verification, or which fails to include disclosures or warnings as to the identity and credentials of the person making the testimonial;

(9) referring to benefits or other attributes of dental procedures or products that involve significant risks without including realistic assessments of the safety and efficacy of those procedures or products;

(10) causing confusion or misunderstanding as to the credentials, education, or licensing of a health care professional;

(11) representing in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional;

(12) failing to make truthful disclosure of the source and authorship of any message published under a dentist's byline;

(13) communicating an implication or suggestion that a service is free or discounted when the fee is built in to a companion procedure provided to the patient and charged to the patient; and

(14) communicating statistical data, representations, or other information that is not subject to reasonable verification by the public.

(d) Photographs or other representations may be used in advertising of actual patients of record of the licensee. Written patient consent must be obtained prior to the communication of facts, data, or information which may identify the patient. The advertising must include language stating "Actual results may vary."

(e) Advertising or promotion of products from which the dentist receives a direct remuneration or incentive is prohibited unless the dentist fully and clearly discloses that he is a paid spokesman for the product, or the dentist fully and clearly discloses that he is the inventor or manufacturer of the product.

(f) Any and all advertisements are presumed to have been approved by the licensee named therein.

***§108.58.Solicitation, Referrals and Gift Schemes.***

(a) This rule prohibits conduct which violates §§102.001 - 102.011 and §259.008(8), of the Texas Occupations Code. A licensee shall not offer, give, dispense, distribute or make available to any third party or aid or abet another so to do, any cash, gift, premium, chance, reward, ticket, item, or thing of value for securing or soliciting patients. A licensee may offer, give, dispense, distribute or make available directly to a potential patient, a non-cash gift valued at no more than ten dollars to secure or solicit the potential patient.

(b) This rule shall not be construed to prohibit a licensee from offering, giving, dispensing, distributing or making available to any patient of record any cash premium, chance, reward, ticket, item or thing of value for the continuation of that relationship as a patient of that licensee. The cash premium, chance, reward, ticket, item or thing of value cannot be for the purpose of soliciting new patients.

(c) This rule shall not be construed to prohibit remuneration for advertising, marketing, or other services that are provided for the purpose of securing or soliciting patients, provided the remuneration is set in advance, is consistent with the fair market value of the services, and is not based on the volume or value of any patient referrals.

***§108.59. Website Disclosures.***

Dental practice websites should clearly disclose:

- (1) ownership of the website;
- (2) services provided;
- (3) office addresses and contact information; and
- (4) licensure and qualifications of dentist(s) and associated health care providers.

***§108.60. Record Keeping of Advertisements.***

(a) Retention of broadcast, print and electronic advertising. A pre-recorded copy of all broadcast advertisements, a copy of print advertisements and a copy of electronic advertisements shall be retained for four years following the final appearance or communication of the advertisement. In addition, the dentist shall document the date the dentist discovered that he or she had placed a false or misleading advertisement, as well as the date and substance of all corrective measures the dentist took to rectify false or misleading advertisements. The dentist shall maintain documentation of all corrective measures for four years following the most recent appearance or communication of the advertisement which the dentist discovered was inaccurate.

(b) The advertising dentist shall be responsible for making copies of the advertisement available to the board if requested.

***§108.61. Grounds and Procedures for Disciplinary Action for Advertising Violations.***

(a) In accordance with the Board's statutory and regulatory authority authorizing disciplinary action and denial of licensure for advertising violations as set forth in this subchapter, the Board may refuse to issue or renew a license, may suspend or revoke a license, may issue a warning or reprimand, restrict or impose conditions on the practice of a licensee or applicant for licensure. "Advertising violations" consist of expressions explicitly or implicitly authorized by a licensee, or applicant for licensure, which are false or misleading as otherwise referenced in this subchapter.

(b) A licensee or applicant for licensure explicitly or implicitly authorizes advertising when the individual permits or fails to correct statements that are false or misleading. Failure to attempt to retract or otherwise correct advertising violations as directed by the Board may constitute a willful violation of these provisions and may be a separate and distinct independent violation of the Board's statutory or regulatory authority. A willful violation of the Board's directive, may subject the licensee or applicant to disciplinary action, nonrenewal or denial of licensure.

(c) When determining whether an "advertising violation" has occurred, the Board shall proceed in accordance with due process and its statutory and regulatory provisions which govern investigations and contested case proceedings.

***§108.62. Awards, Honors and Recognitions.***

(a) A licensee may publicize the receipt of a professional award, honor, recognition, or rating in an advertisement or otherwise, if the publication is not false, misleading, or deceptive, and is subject to reasonable verification by the public. Any advertisement must comply with all laws and rules governing advertisement by licensees.

(b) The publication of an award, honor, recognition or rating must reflect truth, state the specific year or time period of receipt and clearly name the awarding organization or entity.

(1) Proper: John Doe, DDS - Included in Anytown Quarterly's Fall 2012 Top Dentists

(2) Improper: John Doe, DDS - Top Dentist

(3) Proper: John Doe, DDS - Selected as Anytown's 2012 Dentist of the Year by the Anytown

(4) Improper: John Doe, DDS - Dentist of the Year

(c) The publication must state the licensee's receipt of an award, honor, recognition or rating as inclusion or selection in a listing of other licensees, if applicable.

(1) Proper: John was selected for inclusion in 2012 Anytown Yearly's Super Dentists List

(2) Improper: John is an Anytown Super Dentist

(d) The publication may include the trademark or logo of the award, honor, recognition or rating, so long as the advertisement conforms to all laws and rules governing advertisement by licensees.

(e) The publication of an award, honor, recognition or rating is false, misleading or deceptive if the licensee compensated a third party for the inclusion of the licensee's name in the survey, ballot, or poll that determined the recipients of the award, honor, recognition or rating. This does not preclude licensees from purchasing advertisements to communicate the receipt of an award, honor, recognition or rating.

(f) The publication of an award, honor, recognition or rating is false, misleading or deceptive if the publication imputes an individual licensee's selection or inclusion to an entire practice, clinic or office. An advertisement for an entire dental practice, clinic or office at which more than one licensee engages in the practice of dentistry, must clearly denote the specific licensees within in the practice who received the award, honor, recognition or rating.

***§108.63. Advertisement and Education by Unlicensed Clinicians.***

(a) Any advertisement placed by a person who is not domiciled and located in this state and subject to the laws of this state may not advertise or cause or permit to be advertised, published, directly or indirectly, printed, or circulated in this state a notice, statement, or offer of any service, drug, or fee relating to the practice of dentistry, unless the advertising conspicuously discloses that the person is not licensed to practice dentistry in this state.

(b) Licensees of other jurisdictions may be permitted to demonstrate their professional technique and ability on live patients at scientific and clinical meetings upon prior approval by the State Board of Dental Examiners. The State Board of Dental Examiners must approve any and all courses, seminars, clinics, or demonstrations that involve live patients, including those pertaining to anesthesia or anesthetic agents and duties of auxiliary personnel except those sponsored by recognized dental schools, dental hygiene schools, medical schools or colleges.