

# California Dental Practice Act and Dental Ethics

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2014

Dr. Peltier (your instructor) is not an attorney, so please do not construe this presentation to be legal advice.

This is informational only; a general oral review of the Dental Practice Act.

Consult an attorney for specific legal advice.



Review the CDA or ADA  
codes from time to time.

“patient’s best interest.”

# Law (Jurisprudence)

- Lowest level you can go before you get sanctioned (if you get caught).

STATE OF CALIFORNIA  
DEPARTMENT OF  
CONSUMER AFFAIRS

EDMUND G. BROWN JR.  
GOVERNOR

**CALIFORNIA  
DENTAL PRACTICE ACT  
WITH RELATED  
STATUTES AND  
REGULATIONS**

2012 EDITION



BRUCE L. WHITCHER, DDS  
PRESIDENT  
DENTAL BOARD OF CALIFORNIA

*Dental Practice Act*  
with  
*Regulations and Related Statutes*  
  
*2012*

(Dental Board of California)

Publications Section  
Box 1015  
North Highlands, CA 95660

<http://www.lexisnexis.com/store/catalog/productdetail.jsp?productid=71860>

# Business & Professions Code (B & P Codes)

<http://www.dbc.ca.gov/lawsregs/laws.shtml>

# California Code of Regulations

<http://www.dbc.ca.gov/lawsregs/regulations.shtml>

# Standard of Care

“The level of care that a reasonably prudent dentist would exercise under the same or similar circumstances”

What schools teach

Law/Regulations

Opinion of average dentists

3<sup>rd</sup> Party Payers

Scientific Research,  
Journals, Texts

State  
Boards

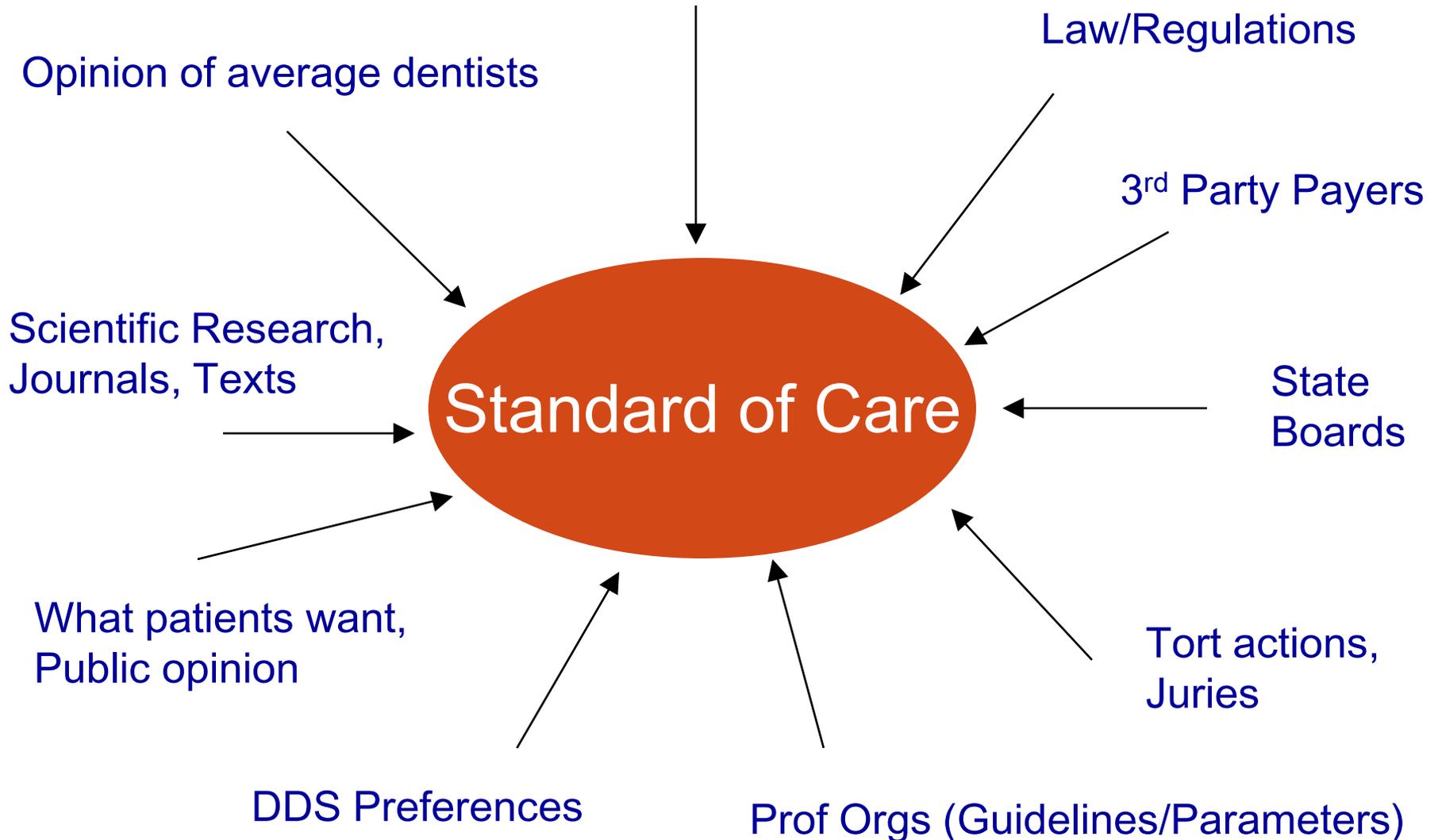
Standard of Care

What patients want,  
Public opinion

Tort actions,  
Juries

DDS Preferences

Prof Orgs (Guidelines/Parameters)



**§ 1601.1. The board shall consist of **eight** practicing dentists, **one** registered dental hygienist, **one** registered dental assistant, and four public members.**

**Of the eight practicing dentists, one shall be a member of a faculty of any California **dental college** and one shall be a dentist practicing in a **nonprofit** community clinic.**

**§ 1603a. A member of the Board of Dental Examiners who has served two terms shall not be eligible for reappointment to the board.**

# Dental Board of California (DBC)

- In the Department of Consumer Affairs.
- Board members appointed by the Governor for a 4 year term
- Majority are dentists (8 of 14).
- 4 public members.
- 1 RDH and 1 RDA.
- At least 5 years of practice experience.
- One from a dental school faculty.
- One from a non-profit.

# Patient of Record

“has been examined, has had a medical and dental history completed and evaluated, has had oral conditions diagnosed, and a written plan by a licensed dentist.”

# Terminating Care

- Stable dental condition.
- Send them a letter.
- Current OH status.
- 30 days emergency care.
- Referral advice.

# National Practitioner Data Bank

(1986)

(Alert qualified entities)

- Payment made by malpractice company (claim, settlement, verdict).
- State board actions.
- Hospital privileges disciplined.
- Professional societies.

NPDB: Not reportable

DDS pays out of pocket.

DDS refunds money to patient.

# NPDB: Mitigating statement

You can submit a statement for the record. Record never goes away.

# NPDB: Who has access?

- DDS may self-query.
- State boards.
- Hospitals.
- Other HC entities (licensing, credentialing, peer review).
- Public does not have access.

The Board can inspect books, records, office of any licensed dentist in response to complaints or suspicion of violations.

(They can even ask for your urine.)

Revocation

Suspension

Probation

Reinstatement

# Board tools

- Obey all laws
- Quarterly declarations
- Probation surveillance
- Interviews
- Change of Address/Absence from state
- Random Urinalysis
- Substance Abuse Tx
- Technical remedials
- Psychotherapy
- Marital counseling
- Ethics course
- Restitution
- Cost Recovery

# Scope of Practice

Dentistry is the diagnosis or treatment, by surgery or other methods, of diseases and lesions and the correction of malpositions of the human teeth, alveolar process, gums, jaws, or associated structures; and such diagnosis or treatment may include all necessary related procedures as well as the use of drugs, anesthetic agents, and physical evaluation.

# Scope of Practice:

## Two kinds

### “Dentistry”

Dentists are licensed to do endo, ortho, implants.

### “Personal”

You can only perform these procedures (endo, ortho, implants) if you are competent to do them.

If you don't have experience with implants, they are not within your personal scope of practice.

Sexual contact or relations  
with a patient constitutes  
unprofessional conduct.

(p. 219)

All people who have reason to attend a dental office, be they patient, staff or visitor, have the right to an environment that is safe and non-threatening.

Sexual harassment violates this right and is considered professional misconduct.

## Definition

Sexual harassment is any unwelcome sexual attention.

Both males and females can be victims.

# Types of Sexual Harassment

- o Quid pro quo

- o Hostile environment

Quid pro quo

“Something for something.”

# Hostile environment

when unwelcome sexual conduct unreasonably interferes with an individual's job performance and creates a hostile, intimidating, or offensive work environment.

# Sexual Harassment

- sexual advances
- sexual jokes
- reward for sexual favors
- malicious gossip
- biased evaluations
- unwelcomed touch
- denied opportunities
- graphic comments about a person's body
- offensive nicknames (hon, dear)

## Promoting a sexual harassment-free environment:

Refrain from any unwanted physical contact.

Refrain from sexualizing tasks and procedures.

Respect each other's values, cultural differences, sexual orientation and individual sensitivities.

Refrain from making comments about a person's body, clothing, appearance or attractiveness.

Recognize that a working relationship is distinct from a personal relationship.

Refuse to participate in a sexually-oriented discussion initiated by a patient.

Ensure instruments are placed on trays and not on the patient.

# AMA Code of Ethics

“Physicians generally should not treat themselves or members of their immediate families.”

# Dual Relationships

- Medical history?
- Things go wrong.
- Exceptions and special treatment.
- Money and value.
- Role spill-over.

# License Renewal

(every two years)

## Continuing Education

- general requirement:

One hour of instruction = 1 unit

DDS = 50 units

RDA, RDH = 25 units

RDHAP = 35 units

# License Renewal

(every two years)

- Tape recorded/Internet courses approved by the board are acceptable for up to **half** of the total units.
- You provide a summary of the CE when you apply for renewal. Keep course certificates on file for **4** years in case you are asked to produce them.

All full-time assistants must  
take this course.

(> 120 days in your practice)

Treat the patient.

Don't treat the insurance  
coverage.

# Standards

(pages 199-207)

Although dentists 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.*

# Prohibited Advertising

- Deceive or mislead the public.
- Professional superiority
- Guarantee
- Painless dentistry
- Solicitors

# Specific commercial language

- “as low as”
- “and up”
- “lowest prices”



## The Ethics of Social Media in Dental Practice: Challenges

BRUCE PELTIER, PHD, MBA, AND ARTHUR CURLEY, JD

**ABSTRACT** This is the first of two essays written to consider several important trends in dental practice that result from innovations in digital and social media. This essay reviews ethical and legal implications of the use of websites, Facebook, review sites, email and other digital innovations in dental practice. The second essay provides ethical tools for analysis, illuminates areas of ethical concern in today's practice environment and offers recommendations for future practice.



## The Ethics of Social Media in Dental Practice: Ethical Tools and Professional Responses

BRUCE PELTIER, PHD, MBA, AND ARTHUR CURLEY, JD

**ABSTRACT** This article considers several important trends in dental practice that result from innovations in digital and social media. It provides ethical tools for analysis, illuminates areas of ethical concern in the current practice environment and offers recommendations for future practice. A summary in the form of a checklist is posted at the end of this essay for dentists considering the use of social media in their practice.

array of integrated marketing tools for dentists, including blogs, videos, Twitter accounts and a Facebook page for the practice. The options are dizzying. The opportunities for patient education are very significant, but the distinction between content and promotion is blurred. Any measure of doctor-patient confidentiality seems gone. Marketers are at the ready to help you create and enhance your Facebook presence.

Facebook pages are currently used by dentists to show before-and-after photos, advertise new techniques that are offered, inform patients of recent training taken by the dentist, promote new products, offer tips for patients (including ways to “make the most of dental insurance”), ask for patient endorsements, promote contests, conduct patient surveys about the practice, banter with patients about their weekend activities and show that the practice is a fun, happy place to be. The possibilities for good and bad on Facebook are vast enough to cause vertigo. It’s overwhelming.

*Coupon brokers.*\* There are several large coupon brokerages, such as Groupon

THE POWER OF  
social couponing  
to produce large  
numbers of new patient  
referrals can be a  
double-edged sword.

dentist who provides the treatment. The dentist then pays \$1,600 to Invisalign for their retainers and services. This leaves a gross profit of only \$600 to the dentist, before deducting normal overhead costs. In this example, the dentist provides services for about 20 percent of his or her normal fee. The dentist can make up some of the difference by doing a high volume of these treatments and thereby securing a reduced fee from the lab. This situation is not abstract, extreme or fantastic, as Internet coupon arrangements have the capacity to produce breathtakingly large numbers of new referrals in short periods. Obviously, the dentist hopes to retain some of these

Obviously, patients themselves get to decide where to seek dental care, but the use of coupons seems likely to encourage “patient poaching.”

The power of social couponing to produce large numbers of new patient referrals can be a double-edged sword. When you sign on with a coupon company to make a special offer to the public you may, in fact, be obligated to accept that discounted fee for hundreds (or even thousands) of patients who contact you to use the coupon. Prior to the offer’s expiration date, it’s unlikely that you can just draw a line when you’ve had enough. This puts a dentist in a horrible position leading to some very unattractive choices, such as telling new patients that you are no longer willing to honor the coupon that they purchased in good faith — or worse: devising deceptive responses that delay or put such patients off indefinitely.

It turns out that Groupon users tend to review businesses more negatively and provide lower ratings than other customers, and further, that their reviews carry more weight with readers. This is called the “Groupon Effect” and it has been examined extensively in the marketing

\* Editor’s note: This article discusses the ethics involved with using online coupon brokers to offer dental services. The Legal Division of the California State Department of Consumer Affairs (DCA) has recently released a legal opinion concluding that a contractual arrangement between a health care professional and an Internet marketing service offering online discounts for medical services violates state law.



## Ethics of social media: Social couponing and fee-splitting

The term “social couponing” refers to an online service that allows members to buy a coupon to save on a variety of goods and services and share their deal with friends through other social media platforms. Some of the more popular social couponing sites include Groupon and LivingSocial. In recent years, there has been significant debate over the ethical and legal concerns involved in this form of marketing for dentists due to the fee structuring of these companies.

Traditional advertising services charge flat rate fees, regardless of the number of patients or amount of business the marketing campaign generates. Advertising via social couponing has created a scenario whereby the advertising service is reimbursed per patient referred, which raises legal and ethical concerns about fee-splitting. Section 650 of the California Business and Professions Code states, “...any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients...is unlawful.” Section 11 of the CDA Code of Ethics states, “It is unethical for a dentist to accept or tender ‘rebates’ or ‘split fees.’”

These ethical and legal policies were designed to protect patients. First, fee-splitting gives the appearance of “buying or selling” patients and can be perceived as a kickback. Second, fee-splitting can compromise patient autonomy and demean the decision-making involved in undertaking a procedure. Patients have the right to expect that a referral is in their best interest, not the financial interest of the referring party. Additionally, fee-splitting represents a potential conflict of interest that may adversely affect patient care; there are concerns that split fees create a financial incentive for the referring party to improperly influence treatment or for a dentist to render unnecessary treatment.

So, does this mean advertising through social couponing is illegal and unethical? Not necessarily. In November 2012, a new advisory opinion was added to the CDA Code of Ethics to define what constitutes fee-splitting in the context of social couponing. Advisory Opinion 11.A.1 states that a dentist is engaged in fee-splitting when marketing dental treatment via social coupons “if the business arrangement between the dentist and the [vendor] providing the marketing services for that treatment... 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.” In order to provide guidance about the ethical use of social couponing, the advisory opinion continues, “The prohibition against fee-splitting is not applicable to marketing via group advertising or referral services that do not base their fees on the number of referrals or amount of professional fees paid by the patient to the dentist.”

The takeaway is this: If you want to participate in social couponing, ask the vendor for a “flat fee” contract, rather than one that compensates them based on the number of referrals (the number of coupons sold). Additional resources about using social media are available on the CDA Compass ([cdacompass.com](http://cdacompass.com)). For further guidance, talk with a member of your local ethics committee. ❖

*By Nicholas C. Marongiu, DDS, Guest member, CDA Judicial Council. This article is the second in a two-part series of articles on the ethical use of social media.*

# Specialty Status

- Completion of a specialty program approved by the ADA and Commission on Dental Accreditation.
- Eligible for exam by national specialty board.
- Diplomate of recognized national specialty board.

# Endorsed Dental Specialties

- Endodontics
- Pediatric Dentistry
- Orthodontics
- Prosthodontics
- Oral Surgery
- Oral Pathology
- Periodontics
- Oral-Maxillofacial Radiology
- Public Health

# What about ?

- Laser Dentistry
- Implant Dentistry
- Cosmetic Dentistry
- Esthetic Dentistry
- Forensic Dentistry
- Spa Dentistry
- Family Dentistry

# You may publicly state:

- that you are certified by a private or public board or agency.
- that you limit your practice to certain fields.
- “...(X -- dentistry) is a discipline not recognized as a dental specialty by the DBC.”

“practice emphasis”

- Capital letters or some clear manner:

“General Dentist”

# Anesthesia (Gen and Consc Sedation)

- dentist must be physically present.
- valid permit.
- advanced training.
- documentation of proper equip + tng.
- other ongoing requirements.

# “Conscious sedation”

- Patient can independently maintain airway.
- Pt can respond to phys stim or verbal command.

There are additional requirements related to anesthesia and conscious oral sedation of minor patients.

Do not admin or supervise  
anesthesia for *reasons other  
than dental treatment.*

Anyone who operates  
radiographic equipment must  
either:

- Take a course.
- Pass a test.

# Confidentiality

- You have a confidential relationship with your patients.
- Everything you find out about them is confidential.
- Educate, train your staff.

# You may provide confidential information without patient authorization:

- ✓ To another healthcare provider for purposes of the patient's care.
- ✓ To an insurer or entity responsible for payment.
- ✓ Court order, subpoena, warrant.
- ✓ To licensing agencies or peer review.

- California Confidentiality of Medical Information Act
- HIPAA

# HIPAA Notice

- Each patient must be given notice of your privacy practices
- Patient must have the ability to review the notice before signing
- Patient must have the right to withdraw or subsequently modify the consent

# Compliance Elements

- Each practice appoints a “privacy officer”
- Tasks
  - Manage and supervise security measures to protect data
  - Train personnel in the protection of data
  - Develop and implement privacy policies and procedures

# Patient Records

- Doctor owns the records.
- The patient holds the privilege.
- Patients have a right to access to complete information regarding their condition and care.

Never hold the treatment or  
the records hostage to the bill.

# Patient Rights (include)

- Ask, see, read, obtain copy of health record (charges may be necessary).
- Ask that information be corrected.
- Ask that your records not be shared with certain parties or used for certain purposes (e.g., research).
- Be informed about who has seen your record.

# Records:

You must keep records for at least 7 years after the end of treatment.  
(or 7 years after a child turns 18).

Never give away the original records.

Check with attorney before  
you send records out.

They can tell you what goes  
forward with the record and  
what does not belong.

# Keep good records:

- Good records enhance the value of your practice when you sell it.

# Patient Records: The Doctor's Choices

1. Send a copy to the patient.
2. Send a summary to the patient.
3. Invite the patient in to review the record.

Any practitioner who has knowledge of or observes (in their professional capacity) a child whom they reasonably suspect has been the victim of child abuse must report this abuse to a child protection agency immediately by telephone and send a written report within 36 hours.

# You are a mandated elder abuse reporter.



Photos by FREDERIC LARSON / The Chronicle

## Elder abuse awareness in S.F.

**D**ruCilla Jones (top, from left), June Steimak and Su Zhen Wu listened to San Francisco Mayor Willie Brown at a rally on the steps of City Hall yesterday. Left: Austin Hechler, 5, held a sign noting that more than 12,000 elderly San Franciscans are abused each year. Brown declared the period between Mother's Day and Father's Day to be "Elder Abuse Awareness Month."

# Domestic Violence

- You are a mandated reporter.

# Domestic Violence

“report providing medical services to a patient whom the practitioner reasonably suspects is suffering from any wound or other physical injury by firearms or assaultive or abusive conduct.”

# What to do

- Ask about abuse
- Provide validating messages
- Document signs
- Refer to specialists

# CDA Foundation

- Dental Professionals Against Violence  
(training for your office)

916.554-4921

Developmentally disabled  
people.

Report abuse or neglect.

- You give information.

- The patient gives consent.

# Two parts of Informed Consent

- A process of interaction, education, and communication.
- Documentation.

(You inform the patient.)

# Informed Consent Includes:

- What's up (nature of the pathology).
- Proposed treatment; pros and cons.
- Alternatives, including no treatment.
- Risks.
- Potential side effects.
- Costs.

# Minors or DD:

- Inform the patient in an age-appropriate way.
- Inform the parent or legal guardian and get consent from them.

(Custodial parent).

You must inform them in  
language that they  
understand.

# Exceptions to disclosure:

(You don't have to inform when)

- your patient asks not to be informed.
- the procedure is simple and any risk is remote (very, very rare).
- the potential harm is quite minor.
- disclosure would harm the patient (scare them so much that they would flee or behave irrationally).

# Dental Assistant

Provides basic supportive dental procedures under the supervision of a licensed dentist.

# “Basic supportive procedures”

- Technically elementary.
- Complete reversibility.
- Won't create potentially hazardous conditions for patients.

# Three categories of dental assistant:

1. Dental Assistant (DA)
2. Registered Dental Assistant (RDA)
3. Registered Dental Assistant in Extended Functions (RDAEF)

# RDAEF

- 90-hour program approved by the Dental Board.
  - University of California, San Francisco (415-476-1101)
  - University of California, Los Angeles (310-206-8388).
- Applicants must then pass a State clinical examination.

# Three categories of dental hygienist:

1. Registered Dental Hygienist (RDH)
2. Registered Dental Hygienist in  
Extended Functions (RDHEF)
3. RDH in Alternative Practice (RDHAP)

# Laws related to auxiliaries:

<http://www.comda.ca.gov./laws.html>

<http://www.comda.ca.gov./lawsregs/dutytable3-20-06.doc>

[http://www.comda.ca.gov./exam\\_rda.html](http://www.comda.ca.gov./exam_rda.html)

[http://www.comda.ca.gov./exam\\_ef.html](http://www.comda.ca.gov./exam_ef.html)

[http://www.comda.ca.gov./exam\\_hap.html](http://www.comda.ca.gov./exam_hap.html)

Dentist must post a notice in a common area which describes duties and functions of auxiliaries.

“Table of Permitted Duties”

# Direct supervision:

- ✓ instructions given by a licensed dentist who is **physically present** in the treatment facility at the time of performance.
- ✓ dentist checks the procedure before discharge.

# General supervision:

instructions given by a licensed dentist, but no requirement that the dentist be physically present during the performance of procedures.

# RDH in Alternative Practice (1998)

- √ B.S. Degree or 120 units of college.
- √ Licensed as RDH
- √ either
  - Schooling (150 hours), Board approved
  - Original Health Manpower Pilot Project

# RDH in Alternative Practice

- √ Residences of the homebound
- √ Schools
- √ Residential facilities
- √ Dental health professional shortage areas (65 in California)
- √ Community clinic or hospital

# RDH in Alternative Practice

- √ Prescription from DDS or MD for hygiene services
- √ No more than 18 months ago.

# RDH in Alternative Practice

- √ No local anesthesia
- √ No soft tissue curettage
- √ No Nitrous

# RDH in Alternative Practice

- √ do the things that hygienists do.
- √ don't imply dentistry.
- √ can be paid by third parties.
- √ documented relationship with a DDS for referral, consultation, emergencies.

# Consideration for referral of patients

“offer, delivery, or acceptance of any rebate, refund, commission, preference, patronage discount, or other consideration (whether in the form of money or otherwise) as compensation or inducement for referring patients is unlawful.”

# Termination of Care

- You can't terminate them mid-care for not paying their bill.
- You cannot withhold records until they finish paying their bill.

Patients have a duty to follow reasonable instructions from their dentist.

# Dental Materials Fact Sheet

- DDS must provide the sheet to all patients prior to restorative work (once each pt.).
- Patients sign acknowledgement, keep this in their record.
- Provide a copy upon pt request, as well.
- If board updates, do it again.
- DDS responsible for copying it.

# Dental Materials Fact Sheet

- Materials available to the profession.
- Relative benefits and detriments.
- Cost comparison.
- Encourage discussion.

# Dental Materials Fact Sheet

- Suggested wording for your patient release form:

“I have received a copy of the Dental Materials Fact Sheet as required by law.”

- Or: make a stamp for charts and have patients sign it.

# Refund of Overpayment

- If a patient requests a refund, you have 30 days to send it.
- If a patient does not (but you become aware - or should have - that there is overpayment):
  - you have 90 days to inform your patient and 30 days after that to send it.
- The patient can request that you retain a credit balance.

# Prescribing:

A prescription may be issued

- by a licensed practitioner
- for a legitimate medical purpose
- in the usual course of professional practice
- to someone under your treatment

# Prescriptions of Convenience

- self medication is generally prohibited
- prescribing for someone who is not a patient of record is prohibited.

# Prescribing

- No person shall prescribe controlled substances to him or herself.
- No person shall antedate or postdate a prescription.
- Records must show the pathology and purpose for the prescription.

# “Unprofessional conduct”

- alcoholic beverages in a manner that is dangerous to self or public.
- conviction of more than one misdemeanor--or a single felony--involving alcohol or other drugs if substantially related to practice.

# Dentists and Substance Abuse

- You are at a higher risk.
- You understand and trust drugs.
- You are under stress.
- Drugs are available.

# “Diversion”

- a voluntary alternative approach to traditional disciplinary action.
- not the subject of a current investigation

State Board Diversion  
Program

916-263-2188

or 800-522-9198

CDA Well Being Committee  
(800) 807-3268

# Acupuncture

- Dentists may add acupuncture to their treatment repertoire.
  - as part of their practice of dentistry
  - successfully complete an approved course of instruction
    - » 50 hours didactic
    - » 30 hours clinical training
  - of sufficient length to ensure necessary skills to consistently perform safely and effectively on patients
  - certified by the Acupuncture Examining Committee

“Universal precautions shall be practiced in the care of all patients.”

# HIV and AIDS

- You *can* refer immuno-compromised patients (e.g. various infections accompanying illness).
- HIV + status and information must be protected. (confidential: released only with patient permission).

# Number of Offices

- “Nothing in this chapter shall be construed to prohibit...
- Get written permission from the board.
- Post a sign with Dentist’s name, mailing address, phone, license #.
- One mobile clinic. Permission req’d.

The name of each person practicing dentistry must be conspicuously displayed in the office.

If you move your practice,  
notify the board within 30  
days.

Patient death or  
hospitalization (>24 hrs),  
inform your state board.  
(w/in 7 days)

# Why do patients sue?

- Not related to amount of harm done.
- Correlation with (perceived) doctor-patient relationship.
- Bad outcome + poor communication.
- Does the doctor seem to care about them?

# Why do patients sue?

- Doctor seems in a hurry.
- Unsympathetic.
- Doctor didn't listen.
- Billing disputes.
- Rude staff.
- Ego.

# Avoiding Litigation

- get to know your patients
- check their perceptions/expectations
- find out what they want
- explain and show things to them
- give them options
- take your time

# The work of other dentists

Inform patients of their

“current oral health status without disparaging comments about prior services.”

# Waiving the Co-payment

- This is considered to be fraud by dental plan companies.
- What is your real fee, doctor?

No person who, in good faith,  
renders emergency care  
(outside of one's practice  
setting--or upon the request of  
another person so licensed)  
shall be liable...

# Your license

- You have 30 days to let the board know of your address change.

# Your license

- Don't carry a fraudulent or fictitious or expired one.
- Don't try to use someone else's.
- Don't create your own on your computer or xerox machine.

You can charge for missed appointments if you let them know your policy ahead of time.

You must have frequent and accurate off-site computer back-up.

# Contact your carrier

- ✓ When you have doubts or questions.
- ✓ When you are served with a legal document.
- ✓ When you have an “incident” or error.
- ✓ If someone threatens to sue.