**16.5.1.29 ADVERTISING, PROMOTIONS AND SPECIALTY RECOGNITIONS FOR ALL LICENSEES:** This rule applies to advertising in all types of media that is directed to the public. No dentist or dental hygienist, non-dentist owner, or their representatives shall advertise in any form of communication in a manner that is misleading, deceptive, or false. The licensee will be responsible for any third party making such false claims or misleading advertising on their (licensee’s) behalf.

A. Definitions:

* For the purposes of this section, advertising/advertisement is:

1. Any written or printed communication for the purpose of soliciting, describing, or promoting a dentist’s licensed activities, including, but not limited to, a brochure, letter, pamphlet, newspaper, telephone directory listing, periodical, business card or other writing.
2. Any directory listing caused or permitted by a dentist which indicates the dentist’s/hygienist’s/non-dentist’s owners licensed activity.
3. Any radio, television, computer network or similar airwave or electronic transmission which solicits or promotes the dental practice.
4. Any printing or writing on novelty objects or dental care products
5. “Advertising” or “advertisement” does not include any of the following:
6. Any printing or writing on buildings, uniforms or badges, where the purpose of the writing is for identification.
7. Any printing or writing on memoranda or other communications used in the ordinary course of business where the sole purpose of the writing is other than the solicitation or promotion of the dental practice.

* Good Faith: honesty or lawfulness of purpose.
* Bait and Switch: a sales tactic in which a customer is attracted by the advertisement of a low-priced item but is then encouraged to buy a higher-priced one

B. General Requirements

1. At the time any type of advertisement is placed, the licensee must in good faith possess information that would substantiate the truthfulness of any assertion, omission, or claim set forth in the advertisement.

2. The Board recognizes that clinical judgment must be exercised by a dentist or dental hygienist. Therefore, a good faith diagnosis that the patient is not an appropriate candidate for the advertised dental or dental hygiene service or product is not a violation of this rule.

3. Licensee shall be responsible for, and shall approve any advertisement made on behalf of the dental or dental hygiene practice, except for brand advertising, i.e. advertising that is limited to promotion of the name of the practice or dental corporation. The licensee shall maintain a listing stating the name and license number of the licensee(s) who approved and are responsible for the advertisement and shall maintain such list for a period of 3 years.

C. Misleading, deceptive, or false advertising includes, but is not limited to the following, and if proven is a violation and subject to disciplinary action by the board:

1. A known material misrepresentation of fact;

2. The omission of a fact necessary to make the statement considered as a whole not materially misleading;

3. Advertising that is intended to be or is likely to create an unjustified expectation about the results the dentist or dental hygienist can achieve;

4. Advertising that contains a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dental or dental hygiene services if that representation is not subject to reasonable substantiation. For the purposes of this subsection, reasonable substantiation is defined as tests, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Individual experiences are not a substitute for scientific research. Evidence about the individual experience of consumers may assist in the substantiation, but a determination as to whether reasonable substantiation exists is a question of fact on a case-by-case basis;

5. Claims that state or imply a specialty practice by a dentist in violation of section (D) of this rule;

6. The false or misleading use of a claim regarding licensure, certification, registration, permitting, listing, education, or an unearned degree;

7. Advertising that uses patient testimonials unless the following conditions are met:

a. The patient's name, address, and telephone number as of the time the advertisement was made must be maintained by the dentist or dental hygienist and that identifying information shall be made available to the Board within 10 days of a request for the information by the Board.

b. Dentists or dental hygienists who advertise dental or dental hygiene services, which are the subject of the patient testimonial, must have actually provided these services to the patient making the testimonial.

c. If compensation, remuneration, a fee, or benefit of any kind has been provided to the person in exchange for consideration of the testimonial, such testimonial must include a statement that the patient has been compensated for such testimonial.

d. A specific release and consent for the testimonial from the patient shall be obtained from the patient and shall be made available to the Board within 10 days of request of that information.

e. Any testimonial shall indicate that results may vary in individual cases.

f. Patient testimonials attesting to the technical quality or technical competence of a service or treatment offered by a licensee must have reasonable substantiation.

8. Advertising that makes an unsubstantiated medical claim or is outside the scope of dentistry, unless the dentist or dental hygienist holds a license, certification, or registration in another profession and the advertising and/or claim is within the scope authorized by the license, certification, or registration in another profession;

9. Advertising that makes unsubstantiated promises or claims, including but not limited to claims that the patient will be cured;

10. The use of "bait and switch" in advertisements.

11. Advertising that includes an endorsement by a third party in which there is compensation, remuneration, fee paid, or benefit of any kind if it does not indicate that it is a paid endorsement;

12. Advertising that infers or gives the appearance that such advertisement is a news item without using the phrase "paid advertisement";

13. The promotion of a professional service which the licensee knows or should know is beyond the licensee’s ability to perform;

14. The use of any personal testimonial by the licensee attesting to a quality or competence of a service or treatment offered by a licensee that is not reasonably verifiable;

15. Advertising that claims to provide services at a specific rate and fails to disclose that a dental benefit plan may provide payment for all or part of the services.

16. Print Advertising that contains all applicable conditions and restrictions of an offer, as well as the direct reference to the licensee(s) name(s), that is smaller than 15 percent of the largest font contained in the advertisement, or illegible, or not reasonably visible.

17. Audio advertising that contains all applicable conditions and restrictions that is broadcast at different speed and volume of the main recording and offer.

18. Failure to include in all advertising media for the practice (excluding building signage and promotional items), in a reasonably visible and legible manner, the dentist’s name(s), address and contact information or direct reference where the name of the dentist(s) can be found, including, but not limited to, an internet website.

19. Failure to immediately update website(s) wherein the names of the current dentist(s) are for each office location.

20. Failure to practice dentistry under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board, or his/her commonly used name.

21. Failure to practice dentistry without displaying his/her full name as it appears on the license issued by the board on the entrance of each dental office.

22. Advertising or making claims that a general dentist claims to be superior than any other general dentist, including, but not limited to, descriptions of being a “super-dentist” or “super-general dentist/practitioner” or similar.

D. Specialty Practice and Advertising

1. A licensed dentist has the legal authority to practice in any and all areas of dentistry as defined in article 61-5A, and also the authority to confine the areas in which he or she chooses to practice, so long as he/she is practicing within the scope of his/her education, training, and experience and in accordance with applicable law and rules of the NM Board of Dental Health Care.

2. The Board may discipline a dentist for advertising or otherwise holding himself/herself out to the public as practicing a dental specialty in which he or she has not successfully completed the education specified for the dental specialty as defined by the American Dental Association (ADA). Pursuant to Article 61-5A, the Board may recognize those dental specialties defined by the American Dental Association (ADA).

a. Dental specialties currently defined by the ADA and recognized by the Board include the following:

i. Dental public health;  
ii. Endodontics;  
iii. Oral and maxillofacial pathology;  
iv. Oral and maxillofacial radiology;  
v. Oral and maxillofacial surgery;  
vi. Orthodontics and dentofacial orthopedics; vii. Pediatric dentistry;  
viii. Periodontics; and  
ix. Prosthodontics.

b. Dentists advertising a specialty that is defined by the ADA must clearly state in all such advertising and/or public promotions that their specialty has been defined by the American Dental Association, providethe full name of the accredited school where their residency was completed, and upon request, promptly provide additional information to the public.

3. The Board may also recognize dental specialties from the American Board of Dental Specialties. Dentists advertising a specialty from the ABDS must clearly state in all such advertising and/or public promotions that their specialty has not been defined by the American Dental Association. Advertising dentists must also provide the full name of the entity that has defined their specialty and upon request, promptly provide additional information to the public.

a. Dental specialties currently defined by the ABDS and recognized by the Board include:

i. American Board of Oral Implantology/ Implant Dentistry;  
ii. American Board of Oral Medicine:  
iii. American Board of Orofacial Pain;  
iv. American Board of Anesthesiology.

4. ADA defined dental specialists are those dentists who have successfully completed a Commission on Dental Accreditation (CODA) ~~specialty~~ advanced education program. The Board recognizes that dentists advertising a non-ADA defined specialty may or may not have successfully completed a CODA ~~specialty~~ advanced education program. Therefore:

a. Dentists who have successfully completed a CODA accredited ~~specialty~~ advanced education program, whether defined or not defined by the ADA, may advertise the practice of that specialty subject to the provisions of paragraphs (2) or (3) of this rule, including providing the full name of the accredited school where their residency was completed.

b. In addition to the requirements of paragraphs (2) and (3) of this rule, dentists who have not completed a CODA accredited ~~specialty~~ advanced education program and are advertising a non-ADA defined specialty, must clearly state in all advertising and/or public promotions that their specialty program is not accredited by the Commission on Dental Accreditation. Such dentists must also identify their specific training completed (credential awarded) in order to receive their specialty designation and upon request, promptly provide additional information to the public.

5. A dentist who practices general dentistry and advertises performance of a specialty procedure but has not successfully completed a CODA ~~specialty~~ advanced education program in that area of practice, must clearly state in all advertising and/or public promotions, that he or she is a general dentist by disclosing “General Dentistry” in print larger and/or bolder and noticeably more prominent than any other area of practice or service advertised.

6. A dentist who advertises in any medium under a specialty heading or section and is not in compliance with this rule may be in violation of section 16.5.16.10 (B) for engaging in misleading, deceptive, or false advertising.

7. Those group practices which include general dentists and specialists must list the phrase "General Dentistry and Specialty Practice" larger and/or bolder and noticeably more prominent than any service offered in an advertisement. Names and qualifications shall be made available to the public upon request.

D. Acronyms

In addition to those acronyms required by law pertaining to one’s business entity such as Professional Corporation (P.C.) or Limited Liability Company (L.L.C.), dentists or dental hygienists may only use those acronyms earned at a program accredited by a regional or professional accrediting agency recognized by the United States Department of Education or the Council on Postsecondary Accreditation. Any credential that does not meet this requirement must be completely spelled out.

16.5.16.10 GUIDELINES: The board shall use the following as guidelines for disciplinary action.  
A. “Gross incompetence” or “gross negligence” means, but shall not be limited to, a significant

departure from the prevailing standard of care in treating patients.  
B. “Unprofessional conduct” means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one’s license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental profession;

(2) failure to refer a patient, after emergency treatment, to his/her regular dentist and inform the latter of the conditions found and treated;

(3) failure to release to a patient copy of that patient’s records and x-rays within 15 business days regardless whether patient has an outstanding balance;

(4) failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by referral to individuals with special skills, knowledge, and experience, including:

(a) an owner dentist or supervisor causing an employee dentist to make a referral for dental treatment based on contractual obligations when, in the judgment of the treating dentist, the welfare of the patient would be safeguarded or advanced by referral to another practitioner, and failure to notify the patient of such contractual obligations for referrals;

(b) an owner dentist or supervisor causing an employee dentist to use a dental laboratory due to contractual obligations when, in the judgment of the treating dentist, the welfare of the patient would be safeguarded or advanced by the use of another dental laboratory.

(5) failure to advise the patient in simple understandable terms of the proposed treatment, the anticipated fee, the expectations of success, and any reasonable alternatives;

(6) failure of a dentist to comply with advertising and specialty recognition guidelines as defined in 16.5.1.29 NMAC. ~~the following advertising guidelines, no person shall: (a) practice dentistry under the name of a corporation, company, association,~~

~~limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board, or his/her commonly used name;~~

~~(b) practice dentistry without displaying his/her full name as it appears on the license issued by the board on the entrance of each dental office;~~

~~(c) fail to include in all advertising media for the practice (excluding building signage and promotional items), in a reasonably visible and legible manner, the dentist’s names(s), address and telephone number or direct reference where the name of the dentist(s) can be found as defined in Section 16.5.16.7 NMAC;~~

~~(d) advertise an offer for goods or services that does not meet the following~~

~~requirements:~~

~~(i) for a printed advertisement, all applicable conditions and restrictions of an offer, as well as the direct reference to the licensee(s), shall be no smaller than twenty percent of the largest font~~

~~contained in the advertisement;~~

~~(ii) for an audio advertisement, all applicable conditions and restrictions of an offer, as well as the direct reference to the licensee(s), must be stated at the same volume and speed as the offer~~

~~language;~~

~~(iii) advertise a practice in a false, fraudulent or misleading manner; if the name of the practice or office contains one of the American dental association recognized specialties and only a~~

~~general dentists performs that service, the advertisement, signage, or broadcast media must say “services provided by a general dentist”, so as not to imply that a specialist is performing such procedures; and~~

~~(iv) advertise as a specialist unless the dentist is licensed by the board to practice the specialty or unless the dentist has earned a post-graduate degree or certificate from an accredited dental~~

~~college, school of dentistry of a university or other residency program that is accredited by commission on dental accreditation (CODA) in one of the specialty areas of dentistry recognized by the American dental association.~~

16.5.30.10 GUIDELINES: The committee shall define the following as guidelines for disciplinary action. A. “Gross incompetence” or “gross negligence” means, but shall not be limited to, a significant

departure from the prevailing standard of care in patient treatment.  
B. “Unprofessional conduct” means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one’s license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental hygiene profession;

(2) failure to advise the patient in simple understandable terms of the treatment rendered, the expectations for success, and the responsibility the patient must assume;

1. (3)  failure to inform dentist or patient of periodontal assessment;
2. (4)  failure to provide patient education of oral health care regimens which assist in

maintaining good oral health throughout life;

1. (5)  sexual misconduct;
2. (6)  failure to use appropriate infection control techniques and sterilization procedures;
3. (7)  breach of ethical standards, an inquiry into which the committee will begin by reference

to the most recent version of the American dental hygienists association’s code of ethics; (8) fraud, deceit or misrepresentation in any application;

probation order;

1. (9)  violation of any order of the committee, and ratified by the board, including any
2. (10)  injudicious administration of any drug or medicine;

(11) failure to report to the committee or board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board or committee, the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental hygiene or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(12) deliberate and willful failure to reveal, at the request of the committee, the incompetent, dishonest, or corrupt practices of a dentist or dental hygienist licensed or applying for licensure by the committee or board; and

1. (13)  cheating on an examination for licensure;
2. (14)  failure of a dental hygienist to comply with ~~the following~~ advertising guidelines as defined in 16.5.1.29 NMAC, and the following:
   1. (a)  shall not advertise in a false, fraudulent, or misleading manner, and
   2. (b)  shall include in the advertisement the name of the hygienist, the name of the

employer dentist(s), the practice address(es) and telephone number(s);

1. (15)  failure of a collaborative practice dental hygienists to refer a patient for dental care; or
2. (16)  failure of a collaborative practice dental hygienist to comply with the terms of a signed

collaborative practice agreement;

(17) failure of a collaborative practice dental hygienist to professionally and effectively communicate with a patient’s dentist of record, or consulting dentist, in a professional manner in regard to a shared patient's care under 16.5.17 NMAC of these rules;

(18) failure of a collaborative dental hygienist to comply with the following advertisement guidelines, no person shall:

(a) practice dental hygiene under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board;

(b) practice dental hygiene without displaying his/her full name as it appears on the license issued by the board on the entrance door of each office;

(c) shall include in all advertisements the dental hygienist’s name, address and telephone number or direct reference where the name of the dental hygienist(s) can be found as defined in 16.5.30.7 NMAC; and

(d) shall not advertise a practice in a false, fraudulent or misleading manner;  
(19) assisting a health professional, or be assisted by a health professional that is not licensed

to practice by a New Mexico board, agency or commission;

1. (20)  conviction of either a misdemeanor or a felony punishable by incarceration;
2. (21)  aiding and abetting a dental auxiliary who is not properly certified;
3. (22)  patient abandonment;
4. (23)  habitually addicted as defined in 61.5A-21 4 & 6 and Subsections C and D 61.5B-3

NMSA 1978 habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act,30-31-1 NMSA 1978 or habitual or excessive use or abuse of alcohol;

(24) failure of the licensee to furnish the committee within 10 business days of request; its investigators or representatives with information requested by the committee, and ratified by the board;

(25) failure to appear before the board when requested by the committee, and ratified by the board, in any disciplinary proceeding; and

(26) failure to be in compliance with the Parental Responsibility Act Section 40-5A-3 seq., [3-14-73, 4-10-81, 10-16-92, 5-31-95, 9-30-96, 1-1-99, 2-14-00; 16.5.30.10 NMAC - Rn & A, 16 NMAC 5.30.10

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