

(b) Dentists may engage in the practice of dentistry in any permissible business format in which they are not shielded from liability for their own breaches of professional duties, they retain responsibility for the quality of care and the appropriateness of their professional judgments, and they are assured access to information and involvement in issues pertaining to quality of care, professional judgment, recordkeeping, advertising practices, and the finances of the permissible business format.

(c) Dentists may be employed by a permissible business format which includes one or more closely allied health care professionals, including at least one licensed dentist, provided their professional practice is not supervised and evaluated by a professional who is not a dentist.

(d) Dentists shall not receive, solicit, offer or pay any remuneration as an inducement to make a referral or as compensation for a referral of a patient for a service, product, drug or device or to purchase, prescribe or recommend a product, drug or device. Nothing contained in this section shall prohibit a licensee from paying the reasonable costs of any advertisement permitted pursuant to N.J.A.C. 13:30-6.1 and 6.2.

(e) Dentists shall not participate in any arrangement or agreement, with any person other than an associate, whereby any remuneration received by that person in payment for the provision of space, facilities, equipment, personnel, marketing or management services used by the dentist is to be determined or calculated as a fixed percentage of, or otherwise dependent upon, the income or receipts derived from the practice of dentistry. Nothing in this section, however, shall preclude a dentist from entering into a bona fide profit sharing plan or retaining the services of a collection agency.

New Rule, R.1987 d.158, effective April 6, 1987.

See: 18 N.J.R. 2419(a), 19 N.J.R. 552(a).

Recodified from N.J.A.C. 13:30-8.15 by R.1990 d.205, effective April 2, 1990.

See: 22 N.J.R. 149(b), 22 N.J.R. 1145(a).

Repeat and New Rule, R.1999 d.68, effective March 1, 1999.

See: 30 N.J.R. 1898(a), 31 N.J.R. 649(a).

Section was "Referral fees".

Amended by R.2000 d.147, effective April 3, 2000.

See: 32 N.J.R. 215(a), 32 N.J.R. 1221(a).

In (d), added a second sentence; and deleted a former (f).

13:30-8.14 Dental X-rays; lead shields

Every licensee, as well as any employee or agent of such licensee duly licensed by the Department of Environmental Protection pursuant to N.J.S.A. 26:2D-24 et seq. shall use a lead shield to provide protection to the greatest extent possible to the torso and thyroid areas of patients during all dental X-ray procedures.

New Rule, R.1987 d.98, effective February 2, 1987.

See: 18 N.J.R. 2113(c), 19 N.J.R. 296(b).

Recodified from N.J.A.C. 13:30-8.16 by R.1990 d.205, effective April 2, 1990.

See: 22 N.J.R. 149(b), 22 N.J.R. 1145(a).

Amended by R.2000 d.147, effective April 3, 2000.

See: 32 N.J.R. 215(a), 32 N.J.R. 1221(a).

Inserted N.J.S.A. reference.

13:30-8.15 Dentist of record; fee reimbursement

(a) Each patient shall have a dentist of record who shall remain primarily responsible for assuring the proper implementation of the dental treatment plan on such patient regardless of whether the treatment is rendered by the dentist of record, by another dentist or by a dental hygienist rendering such treatment in conjunction with, in the employ of, at the direction or request of, or under the supervision of such dentist of record.

(b) The name of the dentist of record shall be conspicuously identified on the patient record. If the dentist of record is not identified on the patient record, it shall be presumed that the dentist of record is the owner(s) of the practice in which the patient was treated.

(c) Each dentist or dental hygienist shall sign or initial each entry on the patient record pertaining to the treatment he or she rendered. If no such entry appears on the patient record, it shall be presumed that such treatment was rendered by the dentist of record, unless the latter shall establish, to the satisfaction of the Board, the identity of the individual who rendered such treatment.

(d) In a multi-dentist practice, the dentists of record shall not change unless the subsequent treating dentist acknowledges in writing in the patient record that he or she is currently the dentist of record for the patient. The dentist of record shall be changed when the licensee leaves the practice where treatment was provided and the patient elects to continue treatment in the facility in which treatment began.

(e) A new dentist of record shall be presumed to have obtained or reviewed the patient's medical history and dental records, examined the patient, and either developed a new treatment plan or concurred with the continuance of the pre-existing treatment plan.

(f) A licensee found to have rendered deficient treatment and the owner of the facility in which the licensee rendered the deficient treatment shall be jointly and severally responsible for the reimbursement to the patient and/or third party payor of any fees as may be directed by the Board.

New Rule, R.1988 d.81, effective February 16, 1988.

See: 19 N.J.R. 1629(a), 20 N.J.R. 403(c).

Recodified from N.J.A.C. 13:30-8.17 by R.1990 d.205, effective April 2, 1990.

See: 22 N.J.R. 149(b), 22 N.J.R. 1145(a).

Amended by R.2000 d.147, effective April 3, 2000.

See: 32 N.J.R. 215(a), 32 N.J.R. 1221(a).

In (f), inserted a reference to third party payors.

13:30-8.16 Opportunity to be heard

Prior to any suspension, revocation or refusal to renew a license, the licensee shall have an opportunity to be heard consistent with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

New Rule, R.1990 d.205, effective April 2, 1990.
 See: 22 N.J.R. 149(b), 22 N.J.R. 1145(a).
 Amended by R.2000 d.147, effective April 3, 2000.
 See: 32 N.J.R. 215(a), 32 N.J.R. 1221(a).

Substituted "an opportunity to be heard consistent with" for "the right to request a hearing which shall be conducted pursuant to" following "shall have".

13:30-8.17 Delegation of physical modalities to unlicensed dental assistants

(a) A dentist may direct an unlicensed assistant to administer to the dentist's patients certain physical modalities in the limited circumstances set forth in this section.

(b) Physical modalities, for the purpose of this section, shall be limited to heat, cold, ultrasound, and electrogalvanic stimulation. An unlicensed assistant shall not be permitted to perform any rehabilitative exercise programs. No other physical modalities including transcutaneous electrical nerve stimulation ("T.E.N.S.") and phonophoresis, shall be performed by an unlicensed assistant.

(c) A dentist may direct the administration of the physical modalities by the unlicensed assistant provided all of the following conditions are satisfied:

1. The dentist shall examine the patient to ascertain the nature of the dental condition or disease; to determine whether the application of a physical modality will encourage the alleviation of dentally related pain and the promotion of healing; to assess the risks of the modality for a given patient and the diagnosed condition, injury or disease, and to decide that the anticipated benefits are likely to outweigh those risks.

2. The dentist shall examine the patient prior to each visit and shall determine all components of the treatment to be performed. This determination shall include all types of modalities to be employed, a delineation of the precise area to which the application of each modality shall be limited, the dosage, wattage, or other applicable setting, the length of the treatment, and any and all other factors peculiar to the risks of that modality such as strict avoidance of certain parts of the body or static placement of the applicator. This information shall be written on the patient's chart prior to each patient's treatment after the dentist has examined the patient, and it shall be made available at all times to the unlicensed assistant who is responsible for administering the modality. A dentist who employs unlicensed assistants shall submit written notice to the Board of such employment prior to permitting an unlicensed assistant to perform physical modalities as provided in this section.

3. The dentist shall provide instruction to and shall ascertain a satisfactory level of education, competence and comprehension of each unlicensed assistant in regard to all modalities used in that office prior to the use of any modality by an unlicensed assistant. The dentist shall prepare and maintain a written document listing the names of all such unlicensed assistants and outlining the instructions given to each unlicensed assistant. The dentist shall submit such document to the Board upon request.

4. The dentist shall evaluate the patient prior to any subsequent scheduled application of the modality to ascertain that continued treatment is appropriate and that no contraindications to treatment have become apparent.

5. The dentist shall be physically present in the dental office at all times that treatment orders are being carried out by the unlicensed assistant and shall be within reasonable proximity to the treatment room.

(d) On a health insurance claim form pertaining to physical modalities and requiring certification by the dentist, the dentist shall identify the specific modality applied and shall not generically identify the treatment as physical therapy.

New Rule, R.1991 d.351, effective July 15, 1991.

See: 23 N.J.R. 2647(b), 23 N.J.R. 2159(a).

Amended by R.2000 d.147, effective April 3, 2000.

See: 32 N.J.R. 215(a), 32 N.J.R. 1221(a).

In (b), substituted "physical modalities including" for "modalities including, but not limited to," following "other" in the second sentence; in (c)2, deleted "at the present patient visit" following "performed" in the first sentence, and substituted "who is responsible for administering modality" for "carrying out the instruction" at the end of the third sentence; deleted a former (d); and recodified former (e) as (d), and substituted "physical modalities" for "such service" following "pertaining to".

13:30-8.18 (Reserved)

Repealed by R.2000 d.147, effective April 3, 2000.

See: 32 N.J.R. 215(a), 32 N.J.R. 1221(a).

Section was "Continuing dental education; requirements; exceptions; resumption of practice".

13:30-8.19 through 13:30-8.20 (Reserved)

13:30-8.21 Divestiture of interest in professional corporations by disqualified licensees

(a) As used in this section, the following terms shall have the following meanings unless the context indicates otherwise:

"Divest" means to relinquish interest of all shares or equity interest in a professional corporation or other permissible business format, as defined in N.J.A.C. 13:30-8.13.

"Licensee" means any person licensed by the Board to engage in the practice of dentistry.

"Professional practice" means that activity which is defined as "practicing dentistry" pursuant to N.J.S.A. 45:6-19.

(b) A licensee disqualified pursuant to Board order shall divest his or her interest in each professional corporation for which the holding of a license issued by the Board is a prerequisite. The licensee shall complete such divestiture within 90 days of the entry of the Board order and shall furnish proof of divestiture to the Board.

(c) If all shareholders of a professional corporation are disqualified pursuant to Board order, the employees of the professional corporation shall cease to engage in professional practice in the professional corporation until the professional corporation is restructured in membership and in a format authorized to engage in professional practice pursuant to N.J.S.A. 14A:17-13.

(d) Transfer of any shares or equity interest to a member of the licensee's immediate family shall not be deemed a divestiture as required in (b) above unless:

1. The immediate family member held an interest in the professional corporation prior to the licensee's disqualification; and
2. The immediate family member was actively engaged in the practice of dentistry within the professional corporation prior to the licensee's disqualification.

New Rule, R.1998 d.286, effective June 1, 1998.
See: 30 N.J.R. 516(d), 30 N.J.R. 2049(a).
Amended by R.2000 d.147, effective April 3, 2000.
See: 32 N.J.R. 215(a), 32 N.J.R. 1221(a).
Rewrote (a).

13:30-8.22 Validity of diagnostic tests for traumatically induced temporomandibular dysfunction

(a) As used in this section, the following terms shall have the following meanings, unless the context clearly indicates otherwise.

"Clinically supported" means that a licensee, prior to selecting, performing or ordering the administration of a diagnostic test, has:

1. Personally performed a physical examination, making an assessment of any current and/or historical subjective complaints, observations, and objective findings;
2. Considered any and all previously performed tests relating to the patient's injury; and
3. Documented in the patient record positive and negative findings, observations and clinical indications to justify the test.

"Conservative treatment" means therapy which is not considered aggressive; avoiding the utilization of invasive procedures until such procedures are clearly indicated.

"Diagnostic test" means a service or procedure intended to assist in establishing a dental diagnosis for the purpose of recommending a course of treatment to be implemented by the treating dentist or by the consultant.

"Medically necessary" means that the treatment is consistent with the symptoms or diagnosis, and treatment of the injury:

1. Is not primarily for the convenience of the injured person or provider;

2. Is the most appropriate standard or level of service which is in accordance with standards of good practice and standard professional treatment protocols, as such protocols may be recognized or designated by the Commissioner of Banking and Insurance, in consultation with the Commissioner of Health and Senior Services or with a professional licensing or certifying board in the Division of Consumer Affairs in the Department of Law and Public Safety, or by a nationally recognized professional organization; and

3. Does not involve unnecessary diagnostic testing.

(b) A licensee may charge the patient or bill a third party for the following diagnostic tests to determine the presence of temporomandibular dysfunction (TMD) resulting from traumatic injury, which tests have been determined to have value in the evaluation of traumatic injuries and the diagnosis and development of a treatment plan, when medically necessary and consistent with clinically supported findings:

1. Diagnostically acceptable panoramic x-ray or transcranial temporomandibular joint x-ray: This diagnostic test may be repeated post surgery.

2. Magnetic resonance imaging (MRI): Where there are clinical signs of internal derangement such as nonself-induced clicking, deviation, limited opening, and pain with a history of trauma to the lower jaw, an MRI is allowable to show displacement of the condylar disc, such procedure following a panoramic or transcranial x-ray and six to eight weeks of conservative treatment. This diagnostic test may be repeated post surgery and/or post appliance therapy.

3. Tomography: Where there are clinical signs of degenerative joint disease as a result of traumatic injury of the temporomandibular joint, tomograms may not be performed sooner than 12 months following traumatic injury.

(c) A licensee shall not charge the patient or bill a third party for the following diagnostic tests to determine the presence of temporomandibular dysfunction (TMD) resulting from traumatic injury, as these tests fail to yield data of sufficient value, not otherwise available from a comprehensive clinical examination and/or tests listed in (b) above, which would alter or influence the development, evaluation, or implementation, of a plan of treatment for injuries sustained as a result of trauma:

1. Mandibular tracking;
2. Surface EMG;
3. Sonography;
4. Doppler ultrasound;

5. Needle EMG;
6. Electroencephalogram (EEG);
7. Thermograms/thermographs;
8. Video fluoroscopy;
9. Reflexology.

(d) Notwithstanding the limitations set forth in (c) above, a licensee may perform such enumerated diagnostic tests for which there shall be no charge to the patient or third party payor only after obtaining written informed consent from the patient.

New Rule, R.1999 d.69, effective March 1, 1999.

See: 30 N.J.R. 3748(b), 31 N.J.R. 651(a).

Administrative correction.

See: 31 N.J.R. 2360(a).

Amended by R.2000 d.147, effective April 3, 2000.

See: 32 N.J.R. 215(a), 32 N.J.R. 1221(a).

In (a), deleted "Board".