

3. That the complaint is of a nature that requires the complainant to be directly examined by another dentist to determine the state of the patient's dental health and the quality of the services which are the subject matter of the complaint;

4. That the complaint requires an investigative hearing as provided by N.J.S.A. 45:1-18; and/or

5. That the complaint is of a nature that requires referral for investigative purposes to the appropriate governmental agency.

(e) Upon completion of its review of a complaint the Board shall make one of the following determinations:

1. No cause for Board action;
2. Probable cause for action with attendant offer of settlement by mutual consent;
3. Referral to the Division of Law for action pursuant to N.J.S.A. 45:1-14 et seq.; and/or
4. Other direction or informal resolution as the Board shall deem appropriate.

New Rule, R.1976 d.422, effective December 17, 1976.

See: 8 N.J.R. 248(a), 9 N.J.R. 41(a).

Amended by R.1989 d.63, effective February 6, 1989.

See: 20 N.J.R. 2680(a), 21 N.J.R. 338(a).

Repealed (a)3.

Amended by R.1990 d.205, effective April 2, 1990.

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

(b)-(g) deleted, new (b)-(e) added.

Amended by R.1995 d.191, effective April 3, 1995.

See: 27 N.J.R. 293(a), 27 N.J.R. 1424(b).

Case Notes

Telephone complaints permitted, but must be confirmed in writing; Board secretary required to maintain complaint log book; complainant's identity and complaint contents may be withheld during investigation, but professional has a right to disclosure of that information upon completion of the investigation. *Grodjesk v. Faghani*, 198 N.J.Super. 449, 487 A.2d 759 (App.Div.1985) modified and remanded 104 N.J. 89, 514 A.2d 1328 (1986).

13:30-8.6 Professional advertising

(a) Definitions:

1. The term "advertisement" shall refer to the attempt 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.

2. The term "routine professional service" shall refer to a service which the advertising licensee, professional association or institution providing dental care routinely performs.

3. The term "print media" shall refer to 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.

4. The term "electronic media" shall include radio and television, but shall not include communications made by sound equipment from a motor vehicle.

5. The term "range of fees" shall refer to an expressly stated upper and lower limit on the fee charged for a professional service.

(b) A licensed dentist who is actively engaged in the practice of dentistry in the State of New Jersey may provide information to the public by advertising in print or electronic media.

(c) A licensee who engages in the use of advertising which contains the following shall be deemed to be engaged in professional misconduct:

1. Any statement, claim or format which is false, fraudulent, misleading or deceptive.

2. Claims that the service performed or the materials used are professionally superior to that which is ordinarily performed or used unless such claims can be substantiated by the licensee and are not misleading or deceptive.

3. Promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform.

4. Techniques of communication which appear to intimidate, exert undue pressure or undue influence over a prospective patient.

5. The communication of personally identifiable facts, data, or information about a patient without first obtaining written consent.

6. The use of any misrepresentation.

7. The suppression, omission or concealment of any material fact under circumstances which a Board licensee knows or should know that the omission is improper or prohibits a prospective patient from making a full and informed judgment, on the basis of the information set forth in the advertisement.

8. Any print, language or format which directly or indirectly obscures a material fact.

(d) The Board may require a licensee to substantiate the truthfulness of any objective assertion or representation set forth in an advertisement. Failure of a licensee to provide factual substantiation to support a representation or assertion shall be deemed professional misconduct.

(e) A Board licensee shall not engage in uninvited, in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence. This subsection shall not prohibit the offering of services by a Board licensee to any bona fide representative of prospective patients including, but not

limited to employers, labor union representatives, or insurance carriers.

(f) Advertising making reference to setting forth a fee shall be limited to that which contains a fixed or a stated range of fees for a specifically described professional service.

1. A licensee who advertises shall disclose all the relevant variables and considerations which are ordinarily included in such a service so that the fees will not be misunderstood. In the absence of such a disclosure, the stated fees shall be presumed to include everything ordinarily required for such a service. No additional charges shall be made for an advertised service unless the advertisement includes the following disclaimer: "Additional charges may be incurred for related services which may be required in individual cases". The disclaimer cannot be used for treatment where related services are ordinarily required.

(g) Offers of discounts or fee reductions or free services shall indicate the advertiser's fixed or stated range of fees against which said discount is to be made and/or the value of the free service.

1. The fixed or stated range of fees or value of free service shall mean and be established on the basis of the advertiser's most commonly charged fee for the stated service within the most recent 60 days prior to, or to be charged in the first 60 days following, the effective date of the advertisement.

2. Offers of across-the-board discounts shall include a representative list of services and the fixed or stated range of fees against which discounts are to be made for these services. The list for general dentistry shall include a sampling of the advertiser's most frequently performed services from the areas of preventive, diagnostic, restorative, endodontic, periodontic, prosthodontic (fixed and removable) dentistry, and oral surgery.

i. "Across-the-board discounts" shall mean the offer of a specified discount on an undefined class of services or the offer of a specified discount to a defined class of patients (for example, "15 percent discount during April on all dental services" or "15 percent discount to senior citizens on all dental services").

ii. Example of Representative List of Services:

	Regular Fee	Discount Fee
Prophylaxis	\$	\$
Examination		
Complete X-Rays		
One Surface Filling		
Root Canal		
Crown		
Gingivectomy		
Complete Denture		
Simple Extraction		

3. Licensees who limit their practice to one or more areas of dentistry, as permitted by N.J.A.C. 13:30-8.4, shall in similar manner, as in (g)2 above, include a representative list of the most frequently performed services in the advertiser's office.

(h) All licensee advertisements and public representations shall contain the name and address or telephone number of the licensee, professional service corporation or trade name under which the practice is conducted and shall also set forth the names of at least one licensee responsible for the dental practice in the facility identified in the advertisement and/or public representation.

(i) A licensee shall be presumed to have approved and shall be personally responsible for the form and contents of an advertisement which contains the licensee's name, office address, or telephone number. A licensee who employs or allows another to employ for his benefit an intermediary source or other agent in the course of advertising shall be personally responsible for the form and contents of said advertisement.

(j) The effective period during which a fee or discount shall remain in effect shall be set forth on the face of the advertisement. In the absence of such disclosure and solely for the purposes of enforcement, the effective period shall be deemed to be 30 days from the date of the advertisement's initial publication.

(k) A video or audio tape of every advertisement communicated by electronic media shall be retained by the licensee and made available for review upon request by the Board or its designee.

(l) A licensee shall be required to keep a copy of all advertisements for a period of three years. All advertisements in the licensee's possession shall indicate the accurate date and place of publication.

(m) An advertisement may contain either a lay or expert testimonial, provided that such testimonial is based upon personal knowledge or experience obtained from a provider relationship with the licensee or direct personal knowledge of the subject matter of the testimonial. A lay person's testimonial shall not attest to any technical matter beyond the testimonial giver's competence to comment upon. An expert testimonial shall be rendered only by an individual possessing specialized expertise sufficient to allow the rendering of a bona fide statement or opinion. An advertiser shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial, and the failure to do so, if required by the Board, may be deemed professional misconduct. Where an advertiser directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a legible and readable manner in any advertisement in the following language or its substantial equivalent:

**COMPENSATION HAS BEEN PROVIDED
FOR THIS TESTIMONIAL.**

New Rule, R.1978 d.170, effective May 23, 1978.

See: 10 N.J.R. 117(b), 10 N.J.R. 261(c).

Repeal and New Rule, R.1980 d.540, effective December 15, 1980.

See: 12 N.J.R. 668(a), 13 N.J.R. 103(a).

Section was "Providing information to the public."

Amended by R.1985 d.253, effective May 20, 1985.

See: 17 N.J.R. 378(a), 17 N.J.R. 1320(a).

Amended by R.1987 d.158, effective April 6, 1987.

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

Deleted (c)6; renumber (c)8-12 to (c)7-11.

Amended by R.1987 d.417, effective October 19, 1987.

See: 19 N.J.R. 1053(a), 19 N.J.R. 1910(a).

Substantially amended.

Correction: Delete "routine" from (f).

See: 20 N.J.R. 1959(a).

Amended by R.1993 d.332, effective July 6, 1993.

See: 24 N.J.R. 2801(a), 25 N.J.R. 2898(a).

Amended by R.1993 d.651, effective December 20, 1993.

See: 25 N.J.R. 2823(a), 25 N.J.R. 5934(a).

13:30-8.7 Patient records

(a) A contemporaneous, permanent patient record shall be prepared and maintained by a licensee for each person seeking or receiving dental services, regardless of whether any treatment is actually rendered or whether any fee is charged. Licensees also shall maintain records relating to charges made to patients and third party carriers for professional services. All treatment records, bills and claim forms shall accurately reflect the treatment or services rendered. Such records shall include, at a minimum:

1. The name, address, and date of birth of the patient and, if a minor, the name of the parent or guardian;
2. The patient's medical history;
3. A record of results of a clinical examination where appropriate or an indication of the patient's chief complaint;
4. A treatment plan where appropriate;
5. The dates of each patient visit and a description of the treatment or services rendered at each visit;
6. A description of all radiographs taken and diagnostic models made properly identified with the patient's name and date;
7. The date and a description of any medications prescribed, dispensed or sold including the dosage or a copy of any written prescriptions;
8. Complete financial data concerning the patient's account, including each amount billed to or received from the patient or third party payor and the date of each such bill and payment;
9. Copies of all claim forms submitted to third party payors by a licensee or the licensee's agent or employee;
10. Payment vouchers received from third party payors; and

11. A record of any recommendations or referrals for treatment or consultation by a specialist, including those which were refused by the patient.

(b) A patient record may be prepared and maintained on a personal or other computer provided that the licensee complies with all of the following requirements:

1. The licensee shall use a computer system which contains an internal, permanently activated date recordation for all entries;
2. The computer system shall have the capability to print on demand a hard copy of all current and historical data contained in each patient record file;
3. The licensee shall identify each patient record by the patient's name and at least one other form of identification so that the record may be readily accessed;
4. The licensee shall post record entries at least once a month so that the entries are permanent and cannot be deleted or altered in any way. The licensee may subsequently make a new entry to indicate a correction to a permanent entry, provided that the new entry generates a permanent audit trail which is maintained in the patient record. The audit trail shall show the original entry, the revised entry, the date of the revised entry, the reason for the change and the identity of the person who authorized the change;
5. The licensee shall prepare a back-up of all computerized patient records at least quarter-annually, except that if a licensee changes computer systems or software programs, the licensee shall prepare a back-up as of the last date when the system to be replaced shall be used.
 - i. For purposes of this section, "back-up" shall cover data files and the software programs required to retrieve those files including, but not limited to, the operating system and the program file.
 - ii. The back-ups shall be clearly dated and marked with an external label as "Back-up of computerized data as of (date)."
 - iii. The licensee shall maintain and store at least the last three quarterly back-ups onsite.
 - iv. The licensee shall maintain and store the fourth quarter (annual) back-up offsite; and
6. The licensee shall provide to the Board upon request any back-up data maintained off premises, together with the following information:
 - i. The name of the computer operating system containing the patient record files and instructions on using such system;
 - ii. Current passwords;
 - iii. Previous passwords if required to access the system; and

iv. The name of contact person at the practice management company, if any, that provides technical support for the licensee's computer system.

(c) Patient records, including all radiographs, shall be maintained for at least seven years from the date of the last entry, except that diagnostic models need be maintained only for three years from the date the model is made. Working models and preliminary models need not be kept.

(d) Licensees shall provide patient records to the patient or the patient's authorized representative or another dentist in accordance with the following:

1. Upon receipt of a written request from a patient or the patient's authorized representative and within 14 days thereof, legible copies of the patient record including, if requested, duplicates of models and copies of radiographs, shall be furnished to the patient or an authorized representative or a dentist. "Authorized representative" means, but is not necessarily limited to, a person who has been designated by the patient or a court to exercise rights under this section. An authorized representative may be the patient's attorney or an agent of an insurance carrier with whom the patient has a contract which provides that the carrier be given access to records to assess a claim for monetary benefits or reimbursement. If the patient is a minor, a parent or guardian who has custody (whether sole or joint) will be deemed to be an authorized representative.

2. A licensee may require any unpaid balance for diagnostic services be paid prior to release of such records. Where treatment of a patient whose dental expenses are paid through Medicaid is discontinued by the dentist prior to completion of the treatment, no charge for the records shall be made or payment required.

3. The licensee may charge a reasonable fee for the reproduction of records, which shall be no greater than an amount reasonably calculated to recoup the cost of copying or duplicating. To the extent that the record is illegible or prepared in a language other than English, the licensee shall provide a typed transcription and/or translation at no additional cost to the patient.

(e) Licensees shall maintain the confidentiality of patient records, except that:

1. The licensee shall release patient records as directed by the Board of Dentistry or the Office of the Attorney General, or by a Demand for Statement in Writing under Oath, pursuant to N.J.S.A. 45:1-18. Such records shall be originals, unless otherwise specified, and shall be unedited, with full patient names. To the extent that the record is illegible, the licensee, upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the licensee shall also provide a translation. All radiographs, models, and reports maintained by the licensee, including those prepared by other dentists, also shall be provided. The costs of producing such records shall be borne by the licensee.

2. The licensee, in the exercise of professional judgment and in the best interests of the patient (even absent the patient's request), may release pertinent information about the patient's treatment to another licensed health care professional who is providing or who has been asked to provide treatment to the patient, or whose expertise may assist the licensee in his or her rendition of professional services.

3. The licensee shall release information as required by law or regulation, such as the reporting of communicable diseases or gunshot wounds or suspected child abuse, etc., or when the patient's treatment is the subject of peer review.

(f) If a licensee ceases to engage in practice or it is anticipated that he or she will remain out of practice for more than six months, the licensee or a designee shall:

1. Establish a procedure by which patients can obtain treatment records or agree to the transfer of those records to another licensee who is assuming the responsibilities of that practice;

2. If the practice will be unattended by another licensee, publish a notice of the cessation and the established procedure for the retrieval of records in a newspaper of general circulation in the geographic location of the licensee's practice, at least once each month for the first three months after the cessation;

3. File a notice of the established procedure for the retrieval of records with the Board of Dentistry;

4. Make reasonable efforts to directly notify any patient treated during the six months preceding the cessation of practice providing information concerning the established procedure for retrieval of records; and

5. Conspicuously post a notice on the premises of the procedure for the retrieval of records when possible.

(g) The provisions of this section shall not apply to situations where no patient-dentist relationship exists, such as where the professional services of a dentist are rendered at the behest of a third party for the purposes of examination and evaluation only or at the behest of the Board pursuant to N.J.A.C. 13:30-8.5 or in the course of any investigation.

New Rule, R.1980 d.457, effective October 16, 1980.

See: 12 N.J.R. 347(a), 12 N.J.R. 672(f).

Amended by R.1986 d.269, effective July 7, 1986.

See: 18 N.J.R. 816(a), 18 N.J.R. 1394(a).

Added text to (c) "provided, however, where ... or payment required."

Amended by R.1990 d.205, effective April 2, 1990.

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

Repeal and New Rule, R.1993 d.650, effective December 20, 1993.

See: 25 N.J.R. 1833(a), 25 N.J.R. 5935(a).

Amended by R.1998 d.90, effective February 17, 1998.

See: 29 N.J.R. 4069(b), 30 N.J.R. 686(a).