

DEPARTMENT OF REGULATORY AGENCIES

Colorado Dental Board

DENTISTS & DENTAL HYGIENISTS

3 CCR 709-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Rule XVII. Advertising

(Effective August 1, 2000; Temporarily Expired December 2, 2002; Effective July 1, 2003; Amended October 27, 2004; Amended October 26, 2006, Effective December 30, 2006; Amended April 25, 2007, Effective July 1, 2007; Amended October 24, 2007, Effective December 31, 2007; Amended October 22, 2008, Effective November 30, 2008; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011; Amended July 13, 2016, Effective September 14, 2016)

This Rule applies to advertising in all types of media that is directed to the public. No dentist or dental hygienist shall advertise in any form of communication in a manner that is misleading, deceptive or false.

A. General Requirements:

1. At the time any type of advertisement is placed, the dentist or dental hygienist 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. A licensed dentist or dental hygienist shall be responsible for, and shall approve any advertisement made on behalf of the dental or dental hygiene practice. The dentist or dental hygienist shall maintain a listing stating the name and license number of the dentists or dental hygienists who approved and are responsible for the advertisement and shall maintain such list for a period of 3 years.

B. Misleading, deceptive, or false advertising includes, but is not limited to the following, and if proven is a violation of section 12-35-129-(1)(l), C.R.S.:

1. A known material misrepresentation of fact;
2. ~~Omits~~ The omission of a fact necessary to make the statement considered as a whole not materially misleading;
3. ~~Is 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. ~~Contains 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 ~~general~~ dentist in violation of section (BC) ~~hereof of this rule~~;
6. The false or misleading use of a claim regarding Board licensure, certification, registration, permitting, listing, education, or an unearned degree;
7. ~~Advertisement 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 ~~ten (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 which shall be made available to the Board within ~~ten (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. "Bait and switch" advertising is defined as set forth in the Colorado Consumer Protection Act, section 6-1-105, C.R.S.;
- ~~11. 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;~~

- ~~1211. If an advertisement~~Advertising that includes an endorsement by a third party in which there is compensation, remuneration, fee paid, or benefit of any kind, ~~the endorsement by the third party must if it does not~~ indicate that it is a paid endorsement;
- ~~1312. Advertising that infers or gives~~Inferring or giving the appearance that such an advertisement is a news item without using the phrase "paid advertisement";
- ~~1413. Promotion~~The promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform;
- ~~1514. The use of any personal testimonial by the licensed provider attesting to a quality or competence of a service or treatment offered by a licensee that is not reasonably verifiable;~~
- ~~16. At the time any type of advertisement is placed the dentist or dental hygienist must in good faith possess information that would substantiate the truthfulness of any assertion, omission or claim set forth in the advertisement;~~
- ~~17. A licensed dentist or dental hygienist shall be responsible and shall approve any advertisement made on behalf of the dental or dental hygiene practice. The dentist or dental hygienist shall maintain a listing stating the name and license number of the dentists or dental hygienists who approved and are responsible for the advertisement and shall maintain such list for a period of three (3) years;~~
- ~~1815. Advertising that claims to provide services at a specific rate and fails to disclose that the patient's insurance may provide payment for all or part of the services.~~

BC. Specialty Practice and Advertising.

1. A licensed dentist has the legal authority to practice in any and all areas of dentistry as defined in section 12-35-103(5), C.R.S., and pursuant to section 12-35-113, C.R.S., 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 Colorado Dental Board.
2. Pursuant to section 12-35-129(1)(ii), C.R.S., 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 section 12-35-107(2), C.R.S., the Board may recognize those dental specialties defined by the American Dental Association (ADA). Dental specialties are recognized as only those currently defined by the American Dental Association ADA and recognized by the Board include the following: and dental specialists are those dentists who have successfully completed a Commission on Dental Accreditation specialty program.
 - a. Dental public health;
 - b. Endodontics;
 - c. Oral and maxillofacial pathology;
 - d. Oral and maxillofacial radiology;
 - e. Oral and maxillofacial surgery;

f. Orthodontics and dentofacial orthopedics;

g. Pediatric dentistry;

h. Periodontics; and

i. Prosthodontics.

3. The Board may also recognize dental specialties not defined by the ADA. Dentists advertising a specialty that is not defined by the ADA must clearly state in all such advertising and/or public promotions that the 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.

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

a. Dentists who have successfully completed a CODA accredited specialty 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.

b. In addition to the requirements of paragraphs (2) and (3) of this rule, dentists who have not completed a CODA accredited specialty program and have limited their practice to a specific ADA defined specialty or 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 the specific training completed (credential awarded) in order to receive the specialty designation and upon request, promptly provide additional information to the public.

35. Practitioners who have successfully completed a Commission on Dental Accreditation accredited specialty program may advertise the practice of that specialty. Practitioners who have not completed an accredited specialty program, and have limited their practice to a specific Commission on Dental Accreditation defined specialty, must clearly state in all advertising and/or public promotions, that he or she is a general dentist who has limited his or her practice to that field of dentistry and must disclose "General Dentistry" in print larger and/or bolder and noticeably more prominent than any other area of practice or service advertised. A dentist who practices general dentistry and advertises performance of a specialty procedure but has not successfully completed a CODA specialty 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.

46. It is misleading, deceptive or false for general practitioners to list their names, advertise, or promote themselves in any area or location that implies a specialty. A general practitioner dentist who advertises in any medium under a specialty heading or section and is not a specialist as defined by the ADA or has not successfully completed a CODA specialty program in the advertised area of specialty, and does not clearly provide additional information as required in paragraphs (3), (4)(b), and (5) of this rule, as

applicable. may be considered ~~to have as having~~ engaged in misleading, deceptive or false advertising and may be in violation of section 12-35-129-(1)(l), C.R.S.

57. 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.

6D. 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.

Editor's Notes

History

Rules XVII eff. 09/14/2016.