

SB

212

ADA

1/1, 1995

FLEFAX - (907)274-2960

Ms. Martha A. Reinbold
Executive Director
Alaska Dental Society
3400 Spenard Road, Suite 10
Anchorage, Alaska 99503

*Response on proposed
AK dental statute
language change to
prevent the state board
from taking action on
a dental license solely
for practicing "alternative
dentistry."*

Dear Martha:

This responds to your request for an opinion on whether the proposed legislation about alternative dentistry is consistent with the ADA Principles of Ethics and Code of Professional Conduct. It is impossible to say for sure without seeing the exact wording of the bill, but my initial impression is that it may be inconsistent with the ADA Code.

I base this opinion on the prototype from the medical practice act which you provided. It prohibits the medical board from basing a finding of professional incompetence solely on the fact that a licensee's practice is unconventional or experimental in the absence of demonstrable physical harm to a patient.

In contrast, the ADA Code recognizes that dentists may be incompetent who recommend certain treatments to their patients, even if no physical harm results. Code Section 1-K, Representation of Care, and the two advisory opinions published thereunder prohibit dentists from making false or misleading representations about the care they render to their patients. Generally such representations concern the treatment's therapeutic value.

The patient is induced to pay money for something that has little or no value according to accepted scientific knowledge or research. The patient is usually not informed that the treatment is unconventional or experimental in nature. Physical harm is not required to establish a violation of Section 1-K, but it often exists. For example, the patient may be induced to forego accepted treatment for a particular condition in reliance on the dentist's claim for the unconventional treatment, suffering harm as a result.

OCT-27-1995 16:47 FROM

TO

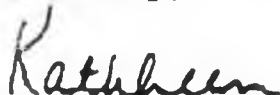
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Ms. Reinbold
October 27, 1995
Page 2

In summary, I would be concerned that the proposed amendment to the dental practice act might undermine patient protection against fraud afforded by Section 1-K of the ADA Code. You may also wish to consider whether the proposed legislation would limit similar protection against deceit, fraud and intentional misrepresentation currently afforded by Section §8.64.326(2) of the Alaska dental practice act.

I hope this information is helpful. Please call me at 1-800-621-8099, ext. 2914 if you have any questions or would like to discuss.

Sincerely,



Kathleen M. Todd
Director
Council on Ethics, Bylaws
and Judicial Affairs

/xt



Alaska Dental Society

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January 16, 1995

Representative Cynthia Toohey
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Representative Toohey:

Ben Brown has sent us a copy of SB #212 introduced on January 11, 1996 and has asked for our comment.

Anticipating this situation, the Alaska Dental Society, in October contacted the American Dental Association for a legal interpretation. We received a response on October 27th from ADA attorney Kathleen Todd, Director for the Council on Ethics, Bylaws and Judicial Affairs. I have quoted from her letter.....

"It is impossible to say for sure without seeing the exact wording of the bill, but my initial impression is that it may be inconsistent with the ADA Code.

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In contrast, the ADA Code recognizes that dentists may be incompetent who recommend certain treatments to their patients, even if no physical harm results. Code Section 1-K, Representation of Care, and the two advisory opinions published thereunder prohibit dentists from making false or misleading representations about the care they render to their patients. Generally such representations concern the treatment's therapeutic value.

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January 16, 1998
Representative Cynthia Toohay

In summary, I would be concerned that the proposed amendment to the dental practice act might undermine the patient protection against fraud afforded by Section 1-K of the ADA Code. You may also wish to consider whether the proposed legislation would limit similar protection against deceit, fraud and intentional misrepresentation currently afforded by Section 08.38.315 (2) of the Alaska dental practice act."

Based on Ms. Todd's concerns, the Alaska Dental Society will stand opposed to this proposed legislation. I have attached the pertinent pages from the ADA Principles of Ethics and Code of Professional Conduct (January, 1995) and the pertinent pages from the Alaska dental statute, (September, 1995).

We appreciate your interest in hearing our position.

Sincerely,



Martha A. Reinbold
Executive Director
Alaska Dental Society

cc: Sam Kito, Lobbyist

James A. Clark, DMD, President
Alaska Board of Dental Examiners

Phyllis L. Pendergraft, DMD, President
Alaska Dental Society

American Dental Association

E

ADA
PRINCIPLES OF
ETHICS
AND CODE OF

C
PROFESSIONAL
CONDUCT

American Dental Association
Council on Ethics, Bylaws and Judicial Affairs
211 East Chicago Avenue
Chicago, Illinois 60611
With official advisory opinions
revised to January, 1995

With official advisory opinions
revised to January, 1995.



72811

he dentist, upon completion of such treatment, is obliged to return the patient to his or her regular dentist unless the patient expressly reveals a different preference.

1-E. CONSULTATION AND REFERRAL.

Dentists shall be obliged to seek consultation, if possible, whenever the welfare of patients will be safeguarded or advanced by utilizing those who have special skills, knowledge, and experience. When patients visit or are referred to specialists or consulting dentists for consultation:

1. The specialists or consulting dentists upon completion of their care shall return the patient, unless the patient expressly reveals a different preference, to the referring dentist, or if none, to the dentist of record for future care.
2. The specialists shall be obliged when there is no referring dentist and upon a completion of their treatment to inform patients when there is a need for further dental care.

1-F.

1. A dentist who has a patient referred by a third party or a "second opinion" regarding a diagnosis or treatment plan recommended by the patient's treating dentist should render the requested second opinion in accordance with this Code of Ethics.

In the interest of the patient being afforded quality care, the dentist rendering the second opinion should not have a vested interest in the ensuing recommendation.

1-F. CHILD ABUSE

Dentists shall be obliged to become familiar with the warning signs of child abuse and to report suspected cases to the proper authorities consistent with state laws.

1-G. USE OF AUXILIARY PERSONNEL.

Dentists shall be obliged to protect the health of their patients by only assigning to qualified auxiliaries those duties which can be legally delegated. Dentists shall be further obliged to prescribe and supervise the patient care provided by all auxiliary personnel working under their direction.

1-H. JUSTIFIABLE CRITICISM.

Dentists shall be obliged to report to the appropriate reviewing agency as determined by the local component or constituent society instances of gross or continual faulty treatment by other dentists.

Patients should be informed of their present oral health status without disparaging comment about prior services.

Dentists issuing a public statement with respect to the profession shall have a reasonable basis to believe that the comments made are true.

Advisory Opinion

1. A dentist's duty to the public imposes a responsibility to report instances of gross or continual faulty treatment. However, the heading of this section is "Justifiable Criticism." Therefore, when informing a patient of the status of his or her oral health, the dentist should exercise care that the comments made are justifiable. For example, a difference of opinion as to preferred treatment should not be communicated to the patient in a manner which would imply mistreatment. There will necessarily be cases where it will be difficult to determine whether the comments made are justifiable. Therefore, this section is phrased to address the discretion of dentists and advises against disparaging statements against another dentist. However, it should be noted that where comments are made which are obviously not supportable and therefore unjustified, such comments can be the basis for the institution of a disciplinary proceeding against the dentist making such statements.

1-I. EXPERT TESTIMONY.

Dentists may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action.

Advisory Opinion

1. It is unethical for a dentist to agree to a fee contingent upon the favorable outcome of the litigation in exchange for testifying as a dental expert.

1-J. REBATE AND SPLIT FEES.

Dentists shall not accept or render "rebates" or "split fees."

1-K. REPRESENTATION OF CARE.

Dentists shall not represent the care being rendered to their patients in a false or misleading manner.

Advisory Opinions

1. Based on available scientific data the ADA has determined through the adoption of Resolution 42H-1986 (Trans. 1985:536) that the removal of amalgam restorations from the non-allergic patients for the alleged purpose of removing toxic substances from the body, when such treatment is performed solely at the recommendation or suggestion of the dentist, is improper and unethical.

The Council reminds constituent and component societies that before a dentist can be found to have breached any ethical obligation the dentist is entitled to a fair hearing.

2. A dentist who represents that dental treatment recommended or performed by the dentist has the capacity to cure or alleviate diseases, infections or other conditions, when such representations are not based upon accepted scientific knowledge or research, is acting unethically.

1-L. REPRESENTATION OF FEES.

Dentists shall not represent the fees being charged for providing care in a false or misleading manner.

Notes

1. A dentist who accepts a third party* payment under a copayment plan as payment in full without disclosing to the third party* that the patient's payment portion will not be collected, is engaged in overbilling. The essence of this ethical impropriety is deception and misrepresentation; an overbilling dentist makes it appear to the third party* that the charge to the patient for services rendered is higher than it actually is.

2. It is unethical for a dentist to increase a fee to a patient solely because the patient has insurance.

3. Payments accepted by a dentist under a governmentally funded program, a component or constituent dental society sponsored access program, or a participating agreement entered into under a program of a third party* shall not be considered as evidence of overbilling in determining whether a charge to a patient, or to another third party* in behalf of a patient not covered under any of the aforesaid programs constitutes overbilling under this section of the Code.

4. A dentist who submits a claim form to a third party* reporting incorrect treatment dates for the purpose of assisting a patient in obtaining benefits under a dental plan, which benefits would otherwise be disallowed, is engaged in making an unethical, false, or misleading representation to such third party*.

5. A dentist who incorrectly describes on a third party* claim form a dental procedure in order to receive a greater payment or reimbursement or incorrectly makes a non-covered procedure appear to be a covered procedure on such a claim form is engaged in making an unethical, false, or misleading representation to such third party*.

6. A dentist who recommends and performs unnecessary dental services or procedures is engaged in unethical conduct.

*A third party is any party to a dental prepayment contract that may collect premiums, assume financial risks, pay claims, and/or provide administrative services

1-M. PATIENT INVOLVEMENT.

The dentist should inform the patient of the proposed treatment, and any reasonable alternatives, in a manner that allows the patient to become involved in treatment decisions.

1-N. CHEMICAL DEPENDENCY.

It is unethical for a dentist to practice while abusing controlled substances, alcohol or other chemical agents which impair the ability to practice. All dentists have an ethical obligation to urge impaired colleagues to seek treatment. Dentists with first-hand knowledge that a colleague is practicing dentistry when so impaired have an ethical responsibility to report such evidence to the professional assistance committee of a dental society.

Principle - Section 2

EDUCATION.

The privilege of dentists to be accorded professional status rests primarily in the knowledge, skill, and experience with which they serve their patients and society. All dentists, therefore, have the obligation of keeping their knowledge and skill current.

Code of Professional Conduct

2-A. DISCLOSURE OF CONFLICT OF INTEREST

A dentist who presents educational or scientific information in an article, seminar or other program shall disclose to the readers or participants any monetary or other special interest the dentist may have with a company whose products are promoted or endorsed in the presentation. Disclosure shall be made in any promotional material and in the presentation itself.

Principle - Section 3

GOVERNMENT OF A PROFESSION.

Every profession owes society the responsibility to regulate itself. Such regulation is achieved largely through the influence of the professional societies. All dentists, therefore, have the dual obligation of making themselves a part of a professional society and of observing its rules of ethics.

Principle - Section 4

RESEARCH AND DEVELOPMENT.

Dentists have the obligation of making the results and benefits of their investigative efforts available to all when they are useful in safeguarding or promoting the health of the public.

ARTICLE 3
UNLAWFUL ACTS.

Section

- 315. Grounds for discipline, suspension or revocation of license
- 320. Summary license suspension
- 340. Penalties

Sec. 08.36.315. Grounds for discipline, suspension or revocation of license. The board may revoke or suspend the license of a dentist, may reprimand, censure, or discipline a dentist, or both, if the board finds after a hearing that the dentist

(1) used or knowingly cooperated in deceit, fraud, or intentional misrepresentation to obtain a license;

(2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing or billing for professional dental services or engaging in professional activities;

(3) advertised professional dental services in a false or misleading manner;

(4) received compensation for referring a person to another dentist or dental practice;

(5) has been convicted of a felony or other crime that affects the dentist's ability to continue to practice dentistry competently and safely;

(6) engaged in the performance of patient care, or permitted the performance of patient care by persons under the dentist's supervision, that does not conform to minimum professional standards of dentistry regardless of whether actual injury to the patient occurred;

(7) failed to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board;

(8) continued to practice after becoming unfit due to

(A) professional incompetence;

(B) failure to keep informed of or use current professional theories or practices;

(C) addiction or dependence on alcohol or other drugs that impairs the dentist's ability to practice safely;

(D) physical or mental disability;

(9) engaged in lewd or immoral conduct in connection with the delivery of professional service to patients;

(10) permitted a dental hygienist or dental assistant who is employed by the dentist or working under the dentist's supervision to perform a dental procedure in violation of AS 08.32.110 or AS 08.36.070(a)(11);

(11) failed to report to the board a death that occurred on the premises used for the practice of dentistry within 48 hours.

Sec. 08.36.320. Summary license suspension. (a) [Repealed 1987.]

(b) [Repealed 1987.]

(c) The board may summarily suspend the license of a licensee who refuses to submit to a physical or mental examination under AS 08.36.070(b)(1). A person whose license is suspended under this section is entitled to a hearing by the board within seven days after the effective date of the order. If, after a hearing, the board upholds the suspension, the licensee may appeal the suspension to a court of competent jurisdiction.

(d) [Repealed 1987.]

(e) [Repealed 1987.]

Sec. 08.36.340. Penalties. A person who violates any provision of this chapter or regulations adopted under this chapter for which no specific penalty is provided is guilty of a class B misdemeanor.

ARTICLE 4
GENERAL PROVISIONS.

Section

- 350. Application of chapter
- 360. Practice of dentistry defined
- 365. Rights of dentists
- 370. Definitions

Sec. 08.36.350. Application of chapter. (a) This chapter applies to a person who practices, or offers or attempts to practice dentistry in the state except

(1) a dental surgeon or dentist in the military service in the discharge of official duties;

(2) a dentist in the employ of the United States Public Health Service, United States Veterans' Administration, Alaska Native Service, or other agency of the federal government, in the discharge of official duties;

(3) a physician or surgeon;

(4) a dentist providing care in an isolated area by authority of a permit issued under AS 08.36.271;

(5) a dentist licensed in another state who is teaching or demonstrating clinical techniques at a meeting, seminar or limited course of instruction sponsored by a dental or dental auxiliary society or association or by an accredited dental or dental auxiliary educational institution;

(6) a dentist licensed in another state who provides emergency care to an injured or ill person who reasonably appears to the dentist to be in immediate need of emergency aid in order to avoid serious harm or death if the care is provided without remuneration.

(b) A person excepted from this chapter under (a) of this section shall be

Alaska State Legislature

Sen. Lyda Green, Chairman
Sen. Loren Leman, Vice-Chairman
Sen. Mike Miller
Sen. Johnny Ellis
Sen. Judith Salo



State Capitol
Room 423
Juneau, Alaska 99801-1182
907-463-3762

Senate Committee on Health, Education and Social Services

SB 212 Disciplinary Sanctions for Dentists

Sponsor Statement

SB 212 was introduced by request to address two main concerns. First, it insures the rights of dentists to practice the safe dentistry method of their choice and secondly, by insuring this right, the bill provides dentists the same level of protection against board sanctions physicians currently receive under the law.

Fear of state board sanctions is prevalent in Alaska as well as across the country by dentists who practice or would like to practice non-traditional means of dentistry. The premise behind this bill is that it is not the role of government to restrict new ideas and methods, but to insure the safety of its consumers and the quality of its professionals. SB 212, by making a minor modification in the Alaska Statutes, will create a system where this premise will become practice.

The language of this bill is taken from AS 08.64.326 (State Medical Board--Grounds for imposition of disciplinary sanctions) which was adopted in 1990 as a part of HB 146. With the passage of this bill, dentists will also be able to advise their patients of safe, alternative methods without fear of sanctions.

This bill has a zero fiscal note from the Department of Commerce and Economic Development.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 212

Revision Date: _____ Department: Commerce and Economic Development
 Title: An Act relating to the grounds for revoking or BRU: Occupational Licensing
suspending a dental license.... Component: Operations
 Sponsor: Senate HESS
 Requestor: Senator Green COMPONENT SERIAL NO. 1844

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SB 212 amends AS 08.36.315 of the dental statutes by adding a new subsection to prevent disciplinary action against a licensee solely on the basis of unconventional or experimental practice unless the board finds demonstrable physical harm to a patient. New funds are not required to implement this provision.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 485-2144
 Division: Occupational Licensing Date: January 12, 1996
 Approved by Commissioner: William L. Hensley Date: 1-15-96
 Agency: Commerce and Economic Development

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