

**ADA COUNCIL ON ETHICS, BYLAWS, AND JUDICIAL AFFAIRS**  
**Minutes of the July 30-31, 2021 Meeting**

The regular meeting of the Council on Ethics, Bylaws, and Judicial Affairs (CEBJA or the Council) was called to order at 8:30 a.m. on Friday, July 30, 2021. Council chair Dr. Robert Wilson presided at the meeting which took place in the Boardroom on the 22<sup>nd</sup> Floor of the ADA Headquarters Building located at 211 E. Chicago Avenue, Chicago, IL 60611.

**Roll call:** Council members in attendance for the meeting: Dr. Robert J. Wilson, Jr., Chair, Dr. Meredith A. Bailey, Vice Chair, Dr. Jill M. Burns, Dr. Guenter J. Jonke, Dr. Onika R. Patel, Dr. William D. Cranford, Dr. Alma J. Clark, Dr. Jay A. ("Drew") Johnson, Dr. Bruce A. Burton, Dr. Gary S. Davis, Dr. Ansley H. Depp, Dr. Renee P. Pappas, Dr. Chris Adkins, Dr. Kathleen Nichols, Dr. Allen Reavis, Dr. Debra A. Peters, Dr. Debra West, and Dr. Alex Mellion (New Dentist Committee). Following the roll call, a quorum was announced as being present.

Also present for all or a portion of the meeting were: Dr. Gary D. Oyster, 16<sup>th</sup> District Trustee and Board Liaison to the Council and Dr. Joseph Manzella, American Student Dental Association Liaison to the Council.

CEBJA staff present for all or a portion of the meeting: Thomas C. Elliott, Jr. Esq., deputy general counsel and director of the Council on Ethics, Bylaws and Judicial Affairs; Nanette Elster, Esq., manager, Ethics Outreach Programs; and Mr. Earl Sewell, council specialist.

ADA personnel present for all or a portion of the meeting: Dr. Kathleen T. O'Loughlin, executive director; Scott Fowkes, general counsel, Cathryn E. Albrecht, Esq., senior associate general counsel.

**Participant Disclosures:** The ADA Disclosure Policy was referenced. No disclosures were made.

**Call for New Business:** One items of New Business where added to the agenda.

**Adoption of the Agenda:** By voice vote, the Council adopted the agenda for the meeting:

**Resolved,** that the printed agenda of the July 30-31, 2021, meeting of the Council on Ethics, Bylaws and Judicial Affairs be adopted as the official order of business with the stipulation that the chair is authorized to change the order of items for discussion to expedite the business of the Council and to accommodate scheduling issues and special presentations.

**Adoption of Consent Agenda:** A consent agenda was prepared to expedite the business of the Council. By voice vote, the Council adopted the consent agenda for the meeting:

**Resolved**, that the items of business marked on the agenda as being on consent for the July 30-31, 2021 meeting of the Council on Ethics, Bylaws and Judicial Affairs and listed below be approved, the reports thereon filed and resolutions therein adopted.

Items on Consent

- Item 3.4 Report on the Approval of Mail Ballots
- Item 5.9 Reports of the ADA Trustee Districts – (Written Reports only)

**Future Meeting Dates:** Due to a scheduling conflict with a Board of Trustees meeting, alternative meeting dates of July 7-8, 2023 were presented to the Council. After discussion a motion to accept the new dates was made and adopted by voice vote.

**SPECIAL PRESENTATIONS**

**Executive Director's Presentation:** The Executive Director presented on membership and the budget and the status of the five-year strategic plan Common Ground 2025. At the conclusion of the presentation the floor opened to questions and discussion.

**Reports From ADA Council Leadership:** Chairs from the Council on Dental Benefit Programs, Council on Dental Education and Licensure, Council on Dental Practice, Council on Communications, Council on Government Affairs, Council on Membership, Council on Advocacy for Access and Prevention, and the Committee on Annual Meetings attended a portion of the meeting. They gave 10-minute presentations on emerging topics their councils and committees address and essential issues to the Council on Ethics.

**COUNCIL LEADERSHIP AND STAFF  
REPORTS**

**Report of the Chair:** Dr. Wilson welcomed attendees to the meeting and highlighted the Council's continuing response to the pandemic and other emerging issues.

**Report of the Vice Chair:** Dr. Bailey welcomed attendees to the meeting and highlighted the importance of members meeting in person and staying connected virtually. Dr. Bailey also encouraged members to promote the Student Ethics Video Contest to their constituents and offered additional ways to increase participation and visibility of the contest in the coming year. Dr. Bailey also emphasized the duty of each council member to submit at least one Ethical Moment Article per year for publication in the Journal of the American Dental Association (JADA).

**Report of the Board of Trustees Liaison:** Dr. Oyster thanked the Council for the work produced related to ethics and for providing guidance to the association membership.

**Report of the New Dentist Member:** Dr. Alex Mellion submitted a written report for the council's review prior to the meeting.

**Report of the ASDA Liaison:** Dr. Joe Manzella submitted a written report for the council's review prior to the meeting.

**District Report Updates:** Members reported various issues from their districts with a recommendation that the District Report Survey questions be updated to include an inquiry about any ethical issues that may have arisen in peer review hearings. The council believes that adding such a question will generate more robust reports and provide the council with better insight into emerging ethical issues constituents might face.

**Report of the Council Director:** The Council Director presented an oral report reflecting on the duties of the council and policies of the association that affect volunteer members and thanked the council for its work.

**Report of the Council Manager:** The Council Manager reported on the work of the Ethical Moment submissions to JADA and the 2021 Annual Meeting Continuing Education Course.

## COUNCIL BUSINESS

### Summary Report on Resolutions Previously Presented to the House:

As a reminder, Council Members who will be in attendance at the 2021 House of Delegates were given a summary of three pre-approved council resolutions, which will get forwarded to the 2021 House of Delegates. The provided summary allows Council Members ample time to refresh their memories and be ready to respond to questions about them during caucus meetings or rise in support of the resolutions during the reference committee hearing. Hereafter, the resolutions are referred to by the resolution numbers applied to the resolutions for the 2021 House of Delegates annual session.

**Resolution 34:** Amendment and Simplification of Bylaws Chapter I., Section 20.B. This resolution was placed on the special referral consent calendar. (Resolution 97-2020) by the Speaker of the House of Delegates to simplify and streamline the conduct of the 2020 House of Delegates which was conducted virtually.

The resolution is as follows:

**Resolved**, that Chapter I, Section B. of the ADA *Bylaws* be amended as follows (additions underscored, deletions ~~stricken through~~):

B. LIFE MEMBER. Any person holding a D.D.S., D.M.D. or equivalent degree shall be eligible to be a life member of this Association if he or she meets the following qualifications:

a. Association Membership. The member has been:

1. ~~Has been an~~ An active and/or retired member in good standing of this Association for at least thirty (30) consecutive years or a total of at least forty (40) non-consecutive years; or

2. Was a member of the National Dental Association for twenty-five (25) years and has been an active and/or retired member in good standing of this Association for at least ten (10) years:

- b. Reached the age of at least sixty-five (65) during the previous calendar year; and
- c. Maintains membership in good standing in a constituent and component, if such exists, and in this Association.
- d. ~~A member may also qualify for life member status by having been a member of the National Dental Association for twenty-five (25) years and subsequently holding membership in this Association for at least ten (10) years and having reached the age of at least sixty-five (65) during the previous calendar year.~~

The proposed amendment seeks to simplify and clarify the ADA *Bylaws* by combining subsections a. and d. of Section B., thereby placing the length of membership eligibility criterion in a single subsection, rather than having that the membership criterion recited in two separate subsections that are separated by additional life membership eligibility criteria.

**Resolution 35:** \*Council on Ethics, Bylaws and Judicial Affairs Report 1 to the House of Delegates: Response to Referred Resolution 64-2020—Amendment of Chapter III., Section 120 of the ADA *Bylaws*. This resolution was also placed on the special referral consent calendar (Resolution 97-2020) by the Speaker of the House of Delegates to simplify and streamline the conduct of the 2020 House of Delegates which was conducted virtually. Earlier this year, in response to comments that indicated the amendment originally proposed was confusing and difficult to understand, the Council further revised the wording of Section 120 of Chapter III. of the *Bylaws*. After it was submitted to the Board of Trustees for review, the Speaker proposed additional revisions to the amendments. The ensuing discussions resulted in the following proposed amendment and was approved by the Council chair, Dr. Wilson.

The resolution is as follows:

**Resolved**, that Chapter III. Section 120. of the ADA *Bylaws* be amended as shown below (additions underscored, deletions ~~stricken through~~):

Section 120. METHOD OF ELECTION: Elective officers and members of councils and committees shall be elected by ballot, except that when there is only one candidate, such candidate may be declared elected by the Speaker of the House of Delegates. The Secretary shall provide facilities for voting.

1. When one is to be elected, and more than one has been nominated, the majority of the ballots cast shall elect. In the event no candidate receives a majority on the first ballot, the candidate with the fewest votes shall be removed from the ballot and the remaining candidates shall be balloted upon again. This process shall be repeated until one (1) candidate receives a majority of the

votes cast.

2. When more than one is to be elected, and the nominees exceed the number to be elected, ~~the votes cast shall be non-cumulative, and the following applies:~~
  - a. Each voting member may vote for a number of nominees not to exceed the number 16 to be elected; and
  - b. For any single nominee, only one vote may be cast by each voting member; c. The candidates receiving the greatest number of votes shall be elected.

**Resolution 45:** Amendment to Section 3.A. of the ADA Principles of Ethics and Code of Professional Conduct. This resolution was placed on the special referral consent calendar (Resolution 97-2020) by the Speaker of the House of Delegates to simplify and streamline the conduct of the 2020 House of Delegates which was conducted virtually.

The resolution is as follows:

**Resolved**, that Section 3.A. of the ADA *Principles of Ethics & Code of Professional Conduct* be amended by deletion as follows (deletion ~~stricken through~~):

### **3.A. COMMUNITY SERVICE.**

Since dentists have an obligation to use their skills, knowledge and experience for the improvement of the ~~dental~~ health of the public and are encouraged to be leaders in their community, dentists in such service shall conduct themselves in such a manner as to maintain or elevate the esteem of the profession.

When the proposal was made to delete the word “dental” from Section 3.A. of ADA *Principles of Ethics & Code of Professional Conduct*, the amendment was proposed to emphasize that oral health is integral in the oral health in the general population.

**CEDL CE Liaison Report:** Dr. Alma Clark presented an oral report on the ongoing collaboration between and the CEBJA and CEDL.

**Administrative and Policy Review Subcommittee:** Dr. Meredith Bailey, subcommittee chair, presented the following reports from the Administrative and Policy Review Subcommittee:

**Advisory Opinion 3.E.1. Reporting Abuse and Neglect:** The Administrative and Policy Review subcommittee (the subcommittee) reviewed Council statements pursuant to the framework for conducting periodic statement reviews that the Council approved at its last meeting. Among the statements reviewed was one entitled “Report of the ADA Council on Ethics, Bylaws and Judicial Affairs on Advisory Opinion 3.E.1. The subcommittee reviewed and discussed the statement, finding it well written and still current despite having been written several years ago. After discussion, on behalf of the subcommittee, Dr. Bailey moved the following

resolution, which was adopted by voice vote.

**Resolved**, that the statement of the Council entitled “Report of the ADA Council on Ethics, Bylaws and Judicial Affairs on Advisory Opinion 3.E.1. REPORTING ABUSE AND NEGLECT” be retained without amendment.

Advisory Opinion 5.D.2. Marketing or Sale of Products and Procedures: The administrative and Policy Review Subcommittee (the subcommittee) reviewed Council statements pursuant to the framework for conducting periodic statement reviews that the Council approved at its last meeting. Among the statements reviewed was one entitled “Report and Advisory Opinion of the Council on Ethics, Bylaws and Judicial Affairs Marketing or Sale of Products or Procedures.” The subcommittee reviewed and discussed the statement, finding it to be generally well written and still relevant despite having been written several years ago. While the subcommittee believes that the statement provided valuable guidance concerning the ethical issues that arise when products and procedures are marketed and sold by professionals, the subcommittee found the percentages and types of products referenced in the statement to be dated.

The subcommittee discussed several revisions to the statement so that it better reflects current practices. Ultimately, the subcommittee decided to update the statement by making revisions to the first paragraph of the Background Section and refreshing the reference that remains in the revised paragraph. On behalf of the Subcommittee, Dr. Bailey moved the following resolution, which was adopted by voice vote.

**Resolved**, that the statement of the Council entitled “Report and Advisory Opinion of the Council on Ethics, Bylaws and Judicial Affairs Marketing or Sale of Products or Procedures” be amended as shown and be retained as a Council statement. Deletions stricken through additions underscored.

**Background**: A ~~small but~~ significant number of dentists sell or market dental products to their patients. ~~One survey puts the figure as high as 17%.<sup>4</sup>~~ They may also engage in the sale or marketing to their patients of non-dental products, such as vitamins and nutritional supplements.<sup>21</sup>

In most cases, the sale or marketing of products by dentists is ancillary to the delivery of dental services and is motivated by considerations of patient convenience and compliance. For example, some dentists carry fluoride formulas or flavors that pharmacies decline to carry because of insufficient prescription requests and high inventory costs. Dentists may sell or market oral hygiene aids to their patients to help reinforce their hygiene recommendations.

The sale or marketing of products in the dental office is a potential source of income. Income enhancement is a common inducement for dentists to participate in multi-level marketing programs or distribution networks.<sup>32</sup>

No one knows more about oral health care or is better qualified than the dentist to make

recommendations about the safety and efficacy of dental products. Indeed, patients look to their dentists for this kind of advice. In a 1994 ADA survey, the dentist topped the list of sources Americans rely on for dental information.<sup>43</sup> Dental manufacturers report that the dentist's recommendations can have substantial influence on the consumer's decision to buy a particular dental product.<sup>54</sup>

The fact that the dentist derives income from the sale or marketing of products does not, by itself, make the practice unethical; after all, dentists also derive income from the delivery of dental services. Any transaction for profit involves the potential for conflict between the interests of the buyer and the seller. However, dentists, as professionals, have an ethical obligation to put the interests of their patients above their own financial gain. As stated in the Preamble to the *ADA Principles of Ethics and Code of Professional Conduct (Code)*, "The American Dental Association calls upon dentists to follow high ethical standards which have the benefit of the patient as their primary goal."

Section 5 – Principle: Veracity of the *Code* states:

This principle expresses the concept that professionals have a duty to be honest and trustworthy in their dealings with people. Under this principle, the dentist's primary obligations include respecting the position of trust inherent in the dentist-patient relationship, communicating truthfully and without deception, and maintaining intellectual integrity.

The principle of veracity is directly relevant to representations dentists make about products they sell or market to their patients.

**Ethical Considerations Involved in Marketing or Sale of Procedures:** Some dental practices offer financial incentives to their staff as a way to increase office production.<sup>65</sup> The ethical considerations that apply to these incentive programs are similar to those involved in the marketing or sale of products. First and foremost is the principle of veracity. Staff should not be allowed to "oversell" procedures to patients by misrepresenting their value.

Providing financial incentives to staff based on production also raises concerns about the appropriate use of auxiliary personnel. Dentists are ethically obliged to protect the health of their patients by only assigning to qualified auxiliaries those duties which can be legally delegated and by supervising the patient care provided by auxiliaries (*Code*, Section 2.C. USE OF AUXILIARY PERSONNEL). Only the dentist is qualified by education and training to diagnose dental disease and prescribe treatment. Auxiliaries under the dentist's supervision should not be permitted to recommend treatment until the dentist has examined the patient and determined that the treatment is appropriate.

In May 1995, the Council adopted Advisory Opinion 5.D.2 covering the sale or marketing of products in the dental office. The Council subsequently amended the advisory opinion in February 1999 to address the sale or marketing of dental procedures. As amended by the

Council, Advisory Opinion 5.D.2 reads as follows:

5.D.2. MARKETING OR SALE OF PRODUCTS OR PROCEDURES. Dentists who, in the regular conduct of their practices, engage in or employ auxiliaries in the marketing or sale of products or procedures to their patients must take care not to exploit the trust inherent in the dentist-patient relationship for their own financial gain. Dentists should not induce their patients to purchase products or undergo procedures by misrepresenting the product's value, the necessity of the procedure or the dentist's professional expertise in recommending the product or procedure.

In the case of a health-related product, it is not enough for the dentist to rely on the manufacturer's or distributor's representations about the product's safety and efficacy. The dentist has an independent obligation to inquire into the truth and accuracy of such claims and verify that they are founded on accepted scientific knowledge or research. Dentists should disclose to their patients all relevant information the patient needs to make an informed purchase decision, including whether the product is available elsewhere and whether there are any financial incentives for the dentist to recommend the product that would not be evident to the patient.

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- <sup>1</sup>Grove, SJ, *et al.* Root Canals and Retailing. *J Health Care Marketing*. 1994;14:36-40.

- <sup>2</sup>Gabriel, T. Many Trade a Briefcase In For the Sample Case of Sales. *New York Times*. January 28, 1997.

<sup>1</sup>Selling Home Care, September 1, 2000, *Dental Economics*, <https://www.dentaleconomics.com/practice/article/16388361/selling-home-care>, accessed June 29, 2021. <sup>32</sup>See, e.g., Position Statement on PharmAssist AP-24, Oral Care System. Council on Dental Therapeutics; January 2, 1994; Kaster, D. Fresh Breath Centre. *The Profitable Dentist*. 1995;89:5-6.

- <sup>43</sup>Survey on Dental Health Care Issues. American Dental Association; November 1994.

<sup>54</sup>Schwartz, DM. Should Selling Products Be a Part of Your Practice? *Dental Management*. 1989;29(1);28-37. <sup>65</sup>ADA Council on Dental Practice. *Employee Office Manual: A Guide for the Dental Practice* (1995); ADA Council on Dental Practice. *Recruiting and Retaining Staff: A Guide for the Dental Office* (1998).

Advisory Opinion 5.F.3. Unearned Nonhealth Degrees: The Administrative and Policy Review subcommittee (the subcommittee) reviewed Council statements pursuant to the framework for conducting periodic statement reviews that the Council approved at its last meeting. Among the statements reviewed was one entitled "Report of the ADA Council on Ethics, Bylaws and Judicial Affairs on Advisory Opinion 5.F.3. UNEARNED, NONHEALTH DEGREES."

The subcommittee reviewed and discussed the statement, finding it well written and still current despite having been written several years ago. The subcommittee finds the statement helpful in reminding practitioners that it is in patients' best interests to refrain from disseminating public facing announcements listing unearned academic, honorary or nonhealth degrees and the dentist's dental degrees together. And any earned advanced



health-related degrees, as such announcements might confuse or mislead the public concerning the practitioner's clinical training and academic attainments. After discussion, on behalf of the subcommittee, Dr. Bailey moved the following resolution, which was adopted by voice vote.

**Resolved**, that the statement of the Council entitled "Report of the ADA Council on Ethics, Bylaws and Judicial Affairs on Advisory Opinion 5.F.3. UNEARNED, NONHEALTH DEGREES" be retained without amendment.

Statement on the Treatment of Patients with Infectious Diseases: The Administrative and Policy Review subcommittee (the subcommittee) reviewed Council statements pursuant to the framework for conducting periodic statement reviews that the Council approved at its last meeting. Initially, the subcommittee was slated to review a statement entitled "Treatment of Patients with Infectious Diseases of Uncertain Transmission." That statement initially was the product of a collaboration between the Council and the Council on Scientific Affairs. The impetus for the statement was the SARS outbreak in spring 2003; the statement was submitted to the Council for approval in 2005.

During the course of preparing agenda material for the subcommittee's meeting at which Council statements were to be discussed, it was discovered that the statement has been archived. Apparently, the Council on Scientific Affairs determined that two documents available by the Centers for Disease Control, a 2016 document entitled "[CDC Summary of Infection Prevention Practices in Dental Settings: Basic Expectations for Safe Care](#)" and the "[Guidelines for Infection Control in Dental Health-Care Settings — 2003](#)" adequately treat the clinical aspects of treating patients who may be infected with diseases with unknown transmissibility parameters.

The Council discussed whether there is sufficient guidance on the ethical issues of treating patients with infectious diseases available for members of the Association and the public, or whether a need exists for a statement that discusses the ethical issues and implications of the treatment of patients having infectious diseases so that patients, dentists and allied personnel and their families are protected from inadvertent disease transmission occurring during oral health care encounters. Following discussion, the chair referred the matter to the ethics subcommittee to consider whether, in light of the material recently prepared by the council on vaccinations and in response to the COVID-19 pandemic, further documentation concerning the ethics of treating patients having infections of uncertain transmission parameters should be developed. The ethics subcommittee was requested to report to the council on the status of its consideration of that matter at the March 2022 council meeting.

**Bylaws Subcommittee**: Dr. Jill Burns, subcommittee chair, presented the following report from the Bylaws Subcommittee.

Periodic Review of Governance Documents: Dr. Jill M. Burns, the Bylaws Subcommittee chair, summarized the editorial and conforming changes in the Governance Manual and Constitution and Bylaws that the subcommittee recommends be made. Following discussion, on behalf of

the subcommittee, Dr. Burns moved the following resolutions, which were adopted by voice vote.

**Resolved**, that the amendments mentioned in the above table and illustrated in Appendix 1 be approved pursuant to the provisions of Chapter VIII., Section K.6.b.ii. of the *Governance Manual*.

and be it further

**Resolved**, that the council staff be directed to report the approved editorial and conforming amendments to the House of Delegates pursuant to Chapter VIII., Section K.6.b.iii. of the *Governance Manual*. After discussion, the Council unanimously approved the amendments presented by the subcommittee and directed the staff to report the amendments to the House of Delegates pursuant to Chapter VIII., Section K.6.b.iii. of the *Governance Manual*.

Report on the Duties of the Treasurer: Dr. Jill M. Burns, the bylaws subcommittee chair, summarized a request the council received from Dr. Daniel Kemmedson which directed CEBJA to review the Treasurer's duties as stated in Section 90.F. of Chapter VI. of the ADA *Bylaws* to determine whether it believes modifications to that section of the *Bylaws* are needed to (i) add clarity to duties and obligations of the ADA Treasurer, (ii) resolve any ambiguities that may exist in the recitation of the Treasurer's duties found in the *Bylaws*, (iii) harmonize the Treasurer's duties as stated in the *Bylaws* with the responsibilities of financial professionals on the ADA staff such as the chief financial officer, (iv) ascertain whether the language currently used in the ADA *Bylaws* needs to be modernized given the substantial period of time since those duties were last reviewed, and (v) whether any best practices concerning the utilization of the corporate officer position of Treasurer have emerged over the last few years that would be beneficial to incorporate into the ADA's Treasurer's duties in the *Bylaws*.

Dr. Burns also summarized the position of the subcommittee stating that the lack of financial expertise of the Council, the lack of guidance concerning best practices regarding the division of responsibilities between a corporate treasurer and other financial agencies within an organization and the potential political ramifications that a proposal to realign the Treasurer duties may have when the proposal comes from an agency with no expertise in the financial or budgeting areas, the Bylaws Subcommittee believes the most prudent course of action is decline Dr. Klemmedson's request for CEBJA to propose a revision of the Treasurer's duties and obligations and to suggest, in follow up correspondence, that a task force composed of ADA volunteer leaders, members of the House of Delegates and senior professional staff having financial and/or budgetary experience would be better equipped to review and make suggested revisions in this important area.

Following discussion, Dr. Burns, on behalf of the subcommittee, moved the following resolution, which were adopted by voice vote.

**Resolved**, that the Council on Ethics, Bylaws, and Judicial Affairs communicate with the ADA President in the form of correspondence declining to propose

revisions to the responsibilities and duties of the Treasurer as set forth in the ADA Bylaws, Chapter VI, Section 90.F. for reasons stated in the communication.

ADA Policy Statement on Teledentistry: Dr. Burns, assisted by the chair, led the Council through a review of amendments to the ADA's Teledentistry Policy proposed by the Bylaws and Ethics Subcommittees and a proposed background statement to accompany a resolution to approve those amendments. After discussion, Dr. Burns, on behalf of the subcommittee, moved the following resolution, which was adopted by voice vote.

**Resolved**, that the Council on Ethics, Bylaws and Judicial Affairs approves the worksheet and resolution proposing amendments to the Comprehensive ADA Policy Statement on Teledentistry as presented in **Appendix 2**.

**Ethics Subcommittee:** Dr. Guenter Jonke, subcommittee chair, presented the following report on behalf of the Ethics Subcommittee.

Ethical Moments: Dr. Jonke discussed how imperative it is for CEBJA Members to write at least one Ethical Moment Article per year because the column will no longer exist without submissions. To reach the goal of having a pool of articles to select from, Dr. Jonke announced several new initiatives to help members start writing and presented the following resolution which was adopted by voice vote after discussion.

**Resolved**, that each member of the Council on Ethics, Bylaws and Judicial Affairs is responsible for the submission of at least one (1) Ethical Moment article per year while serving on the Council for publication in The Journal of the American Dental Association,

And be it further,

Any Council member wishing assistance in developing topics and in content development for their Ethical Moment obligation should contact Council staff Nanette Elster or Earl Sewell to schedule that assistance.

Ethical Moments Workshop: Ms. Nanette Elster and Mr. Earl Sewell facilitated a workshop that provided guidance and suggestions for authoring Ethical Moment articles.

Payer Rating of Providers: Dr. Jonke reported that the subcommittee considered payer ratings for providers, an issue brought to the council's attention during its March 2021 meeting. After review and discussion, Dr. Jonke informed the council that the subcommittee determined that no action was required at this time.

Statement on the Ethics of Teledentistry: Dr. Jonke led the Council through a review of the statement on the Ethics of Teledentistry that the Ethics Subcommittee was requested to develop in response to Resolution 106-2021. As a result, the Ethics Subcommittee met and prepared a proposed guiding document on Teledentistry and how to apply it to the ADA *Code of Ethics*. Following the Council's review, Dr. Jonke, on behalf of the subcommittee, moved the following resolution, which was adopted by voice vote.

**Resolved**, that the CEBJA Statement on the Ethics of Teledentistry be approved,

and be it further

**Resolved**, that staff of the Council be directed to notify the House of Delegates of the availability of the Statement,

and be it further

**Resolved**, that staff collaborate with other ADA agencies to publicize the development of and disseminate the Statement to the ADA membership and other interested parties.

**CE Subcommittee**: Dr. Alma J. Clark, subcommittee chair, presented the following report from the CE Subcommittee.

Continuing Education at the Annual Meeting: Dr. Alma Clark, chair of the continuing education subcommittee, reported on the progress of the council's upcoming webinar Conscious and Unconscious bias in the Dental Practice. The program will be uploaded to the American Dental Association's Website, in the member's only section, and offered as a self-directed continuing education course. Dr. Clark also reported that the subcommittee preferred a diversity and inclusion expert rather than a Council to facilitate the webinar. After a discussion, the council approved the attainment of a non-council member with expertise in the above-mentioned subject area to facilitate the webinar.

Continuing Education Programming for 2022: Dr. Clark provided a report to the council concerning the initial work that has been undertaken to develop a continuing education offering for SmileCon® 2022.

Continuing Education Collaborative Efforts Between CEBJA and the American College of Dentistry: Through the Chair, Dr. Alma J. Clark, Ms. Nanette Elster gave a report on CEBJA's mission to enhance the ethical conscience of dentists by promoting the highest moral, ethical and professional standards in the provision of dental care to the public. Collaborating with the American College of Dentists ("ACD") and the American Society for Dental Ethics ("ASDE") in the development of ethics education tools is one way to present an integrated approach to ethics education across the profession. After discussion, the following resolutions were presented and adopted by voice vote.

**Resolved**, that the Continuing Education subcommittee with the assistance of council staff, explore establishing a collaborative relationship with the American College of Dentists and the American Society for Dental Ethics,

and be it further,

**Resolved**, that the initial effort between the council, the American College of Dentists and the American Society for Dental Ethics consist of the Continuing Education guides to supplement a selection of previously published Ethical Moments using a facilitator template developed by the American College of Dentists and the American Society for Dental Ethics,

and be it further,

**Resolved**, that the Continuing Education subcommittee provide a written status report on the development of the collaboration with the outside entities to the council at its March 2022 meeting.

**Selection of Council Chair**: Dr. Meredith A. Bailey (1st District, Massachusetts), current council vice chair, was selected as the council chair for the 2021-2022 term.

**Selection of Council Vice-Chair**: Dr. Bruce A. Burton (11th District, Oregon) was elected as vice chair of the council for the 2021-2022 term.

## **NEW BUSINESS**

**Listing of Council Statements in the ADA Code of Ethics Pamphlet**: During the discussion and review of the Council's statements discussed earlier during the meeting, the subject of providing more visibility and easier navigation to the statements was raised. One idea that surfaced during that discussion is to provide a listing of and a link to the Council's statements in the PDF version of the pamphlet containing the *ADA Principles of Ethics and Code of Professional Conduct*. It is suggested that the placement of a list of and links to the Council's statements in the pamphlet is an appropriate place for such a tool, as most of the Council's statements are based in whole or in part on interpretations of the ADA's *Code of Ethics*. Moreover, providing a list and links in the *Code of Ethics* pamphlet may be more visible to the average ADA member than including the list as a page on ADA.org. The listing in the Code of Ethics booklet will also be easy and inexpensive to implement and will be more within the control of the Council than a listing that appears as a page on ADA.org. After some discussion, the following resolution was presented and adopted by voice vote.

**Resolved**, that the staff of the Council on Ethics, Bylaws and Judicial Affairs be directed to create a listing of statements that have been promulgated by the Council, with the listing containing links to the locations where the statements are housed;

and be it further

**Resolved**, that the listing of statements be included in the ADA Principles of Ethics and Code of Professional Conduct booklet that is periodically distributed by the Council,

and be it further

**Resolved**, that staff report back to the Council at its next meeting on the status of the project.

## **ADJOURNMENT**

On motion duly seconded, there being no remaining business on the Council's agenda, the chair declared the meeting adjourned at approximately 12:30 P.M. CDT on Saturday, July 31, 2021.

**APPENDIX 1**

<b>Amendments to Governance Documents Made Pursuant to Ch. VIII., Section K.6.b.ii. of the Governance Manual Upon Unanimous Vote of the Council on Ethics, Bylaws and Judicial Affairs</b>			
<i>Source</i>	<i>Location</i>	<i>Amendment</i> <i>Additions <u>underscored</u> (except headings), deletions <del>stricken</del>.</i>	<i>Rationale</i>
<i>Governance Manual</i>	Chapter VI, Section B.2., page 16, lines 468-469	Delete as shown: 2. <u>Treasurer</u> . The search for Treasurer shall be announced in an official publication of the Association in November of the final year of the incumbent Treasurer’s term, together with the recommended qualifications for that position as provided in the Bylaws. Candidates for the office of Treasurer shall apply by submitting a standardized Treasurer Curriculum Vitae form to the Executive Director at least one hundred twenty (120) days prior to the convening of the House of Delegates. Each candidate’s application shall be reviewed by the Board of Trustees. At least sixty (60) days prior to the convening of the House of Delegates the Executive Director shall provide all members of the House of Delegates, with each candidate’s standardized Treasurer Curriculum Vitae and the determination of the Board of Trustees as to whether the candidate meets the recommended qualifications for the office of Treasurer. <del>No other candidate shall be nominated from the floor of the House of Delegates.</del> Nominations shall be made in accordance with the order of business. Each nomination may be followed by an acceptance speech not to exceed four (4) minutes by the candidate from the podium, according to the protocol established by the Speaker of the House of Delegates. Seconding a nomination is not permitted. No further nominations for the office of	Redundant to sentence at page 16, lines 472-473 (see shaded portion)

		Treasurer shall be accepted from the floor of the House of Delegates. If there are no eligible candidates for the office of Treasurer when the House of Delegates meets, the term of the incumbent Treasurer shall be extended by one (1) year. Should the incumbent Treasurer be unwilling or unable to serve an additional one (1) year term, the office of Treasurer shall be filled in accordance with the vacancy provisions of this chapter of the Governance Manual. Under these circumstances, former Treasurers of this Association not otherwise eligible to serve as Treasurer due to term limits will be eligible to serve as Treasurer until the House of Delegates can elect a Treasurer.	
<i>Governance Manual</i>	Chapter XI, Section A.1., page 30, line 918-919	Add as shown: 1. <u>Member Conduct Subject to Discipline.</u> A member may be disciplined for (1) having been found guilty of a felony, (2) having been found guilty of violating the dental practice act of a state or other jurisdiction of the United States, (3) having been discharged or dismissed from practicing dentistry with one of the federal dental services under dishonorable circumstances, (4) violating the <u>ADA Bylaws</u> , the <u>ADA Principles of Ethics and Code of Professional Conduct</u> , or the bylaws or code of ethics of the constituent or component of which the accused is a member, or (5) violating the Association's <i>Member Conduct Policy</i> .	"ADA" inserted for clarity and to differentiate from constituents' bylaws and codes of ethics.
<i>Governance Manual</i>	Chapter XI, Section A.2.b., page 30, line 925 and 926	Add and delete as shown: b. <u>Suspension.</u> <del>Suspension means</del> <u>During a suspension period</u> all membership privileges except continued entitlement to coverages under insurance programs are lost <del>during the suspension period.</del> Suspension shall be unconditional and for a specified period at the termination of which full membership privileges are automatically restored. A subsequent violation shall require a new disciplinary procedure before additional discipline may be imposed	Editorial revision to simplify and shorten



<i>Governance Manual</i>	Chapter XI, Section A.2.e., page 30, line 945	Add as shown: e. <u>Removal from Office</u> . If the member holds any ADA office, disciplinary action may include removal from office as a trustee, delegate, alternate delegate or elective officer for the remaining term. <u>Removal from office</u> may be imposed in addition to, or in lieu of, any of the penalties enumerated above.	Editorial revision to simplify
<i>Governance Manual</i>	Chapter XI, Section B.2.a.ii., page 32, line 1030	Delete as shown: ii. <u>Disciplinary Decision of a Constituent</u> . Any member or component shall have a right to appeal a disciplinary decision <del>that is adverse to it that is</del> issued by a constituent. That appeal shall be made to the Council on Ethics, Bylaws and Judicial Affairs of this Association by filing a notice of appeal in affidavit form with the Chair of the Council on Ethics, Bylaws and Judicial Affairs.	Editorial revision to simplify and clarify
<i>Governance Manual</i>	Chapter XI, Section B.2.c., page 33, line 1042	Add and delete as follows: c. <u>Time for the Filing of Briefs on Appeal</u> . Briefs in appeals brought under this <del>Article II</del> <u>Section</u> must be filed in accordance with the following schedule:	Conforming revision
<i>Governance Manual</i>	Chapter XI, Section B.2.e.v., page 33, line 1066	Add and delete as shown: v. <u>Option to Conduct <del>Telephonic</del> Virtual Hearings</u> . Upon the request by a party and the concurrence of all other parties, the body hearing the appeal may permit one or more of the parties to an appeal to participate in the hearing remotely via telephone or other suitable means. The decision whether to allow remote participation in an appeal hearing is discretionary with the body hearing the appeal and granting such a request can be subject to meeting reasonable terms and conditions set by the hearing body.	Editorial revision to conform to current practice
<i>Governance Manual</i>	Chapter XI, Section B.2.e.xi., page 34, line 1106	Add and delete as shown: xi. <u>Appellate Jurisdiction</u> . The body to which a decision has been appealed shall be required to review the decision appealed from to determine whether the evidence before the	Editorial revision to simplify

		<p>component, constituent or body which brought the charges against the accused member supports that decision or warrants the penalty imposed. The body hearing the appeal shall not be required to consider additional evidence unless <del>there is a clear showing it is clearly</del> <u>shown</u> that a party to the appeal will be unreasonably harmed by failure to consider the additional evidence.</p>	
<i>Governance Manual</i>	Chapter XI, Section B.2.e.xii.(d), page 34, line 1117-1118	<p>Add and delete as shown:</p> <p>(d) Refer the case back to the body that brought the charges for new proceedings, if the rights of the accused member under all applicable bylaws were violated or <del>if the</del> <u>adopted</u> disciplinary procedures were not followed <del>to the detriment of the accused</del> <u>resulting in detriment to the accused</u>;</p>	Editorial revision to simplify
<i>Governance Manual</i>	Chapter XI, Section C.4., page 35, line 1168	<p>Add and delete as shown:</p> <p>4. <del>In the event of finding of</del> <u>Hearing. In the event of finding of</u> <del>If a possible violation of the Member Conduct Policy is determined,</del> the accused member shall be entitled to a hearing before a panel of three (3) members of the Council on Ethics, Bylaws and Judicial Affairs.</p>	Editorial revision to simplify and clarify
<i>Governance Manual</i>	Chapter XI, Section C.4.b., page 36, line 1175	<p>Delete as shown:</p> <p>b. <u>Purpose.</u> The purpose of the hearing is to provide the accused member with an opportunity to present a defense to the charges brought <del>against him or her.</del></p>	Editorial revision to simplify
<i>Governance Manual</i>	Chapter XI, Section C.4.d., page 36, line 1180	<p>Delete as shown:</p> <p>d. <u>Continuances.</u> An accused member is entitled to one (1) hearing postponement. The postponement cannot exceed thirty (30) days. Additional requests for postponement may be granted or denied at the discretion of the chair of the Council on Ethics, Bylaws and Judicial Affairs, who may <del>but need not</del> <u>consult</u> with the Council or the hearing panel on the request.</p>	Editorial revision to correct redundancy
<i>Governance Manual</i>	Chapter XI, Section C.6.,	<p>Add and delete as shown:</p> <p>6. <u>Notice of Right to Appeal.</u> A written</p>	Editorial revision to

	page 36, line 1201-02	notice to the accused member informing the accused member of <del>his or her</del> <u>the</u> right to appeal the decision of the hearing panel must accompany the copies of the decision sent pursuant to these procedures.	simplify
<i>Governance Manual</i>	Chapter XI, Section D.5.e., page 37, line 1249	Add and delete as shown: e. <u>Option to Conduct Telephonic-Virtual Hearing.</u> Upon the request by a party and the concurrence of all other parties, the Council on Ethics, Bylaws and Judicial Affairs may permit one or more of the parties to an appeal to participate in the hearing remotely via telephone or other suitable means. The decision whether to allow remote participation in an appeal hearing is discretionary with the Council and granting such a request can be subject to meeting reasonable terms and conditions set by the Council.	Editorial revision to conform to current practice
<i>Governance Manual</i>	Chapter XI, Section D.5.f., page 38, line 1259	Add and delete as shown: f. <u>Hearing Notice.</u> The Council on Ethics, Bylaws and Judicial Affairs shall notify the accused member; the Association member or Association staff member bringing the charges; the secretary of the accused member's component, if applicable; and the secretary of the accused member's constituent, if applicable of the time and place of the appeal hearing. The hearing notice will be sent by certified mail, return receipt requested, to the last known <del>addresses</del> <u>address</u> of the parties to the appeal and the other entities receiving notice. The notice of hearing is to be mailed not less than thirty (30) days prior to the hearing date.	Grammatical correction
<i>Governance Manual</i>	Chapter XI, Section D.5.k., page 38, line 1286	Delete as shown: k. <u>Appellate Jurisdiction.</u> The Council on Ethics, Bylaws and Judicial Affairs is required to review the decision appealed <del>from</del> to determine whether the evidence before the hearing panel supports that decision or warrants the penalty(ies) imposed. The Council on Ethics, Bylaws and Judicial Affairs shall not be required to consider additional	Grammatical correction

		evidence unless there is a clear showing that a party to the appeal will be unreasonably harmed by failure to consider the additional evidence.	
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## Appendix 2

### Comprehensive ADA Policy Statement on Teledentistry

Teledentistry refers to the use of telehealth systems and methodologies in dentistry. Telehealth refers to a broad variety of technologies and tactics to deliver virtual medical, health, and education services. Telehealth is not a specific service, but a collection of means to enhance care and education delivery.

Teledentistry can include patient care and education delivery using, but not limited to, the following modalities:

**Synchronous (live video):** Live, two-way interaction between a person (patient, caregiver, or provider) and a provider using audiovisual telecommunications technology.

**Asynchronous (store and forward):** Transmission of recorded health information (for example, radiographs, photographs, video, digital impressions and photomicrographs of patients) through a secure electronic communications system to a practitioner, who uses the information to evaluate a patient's condition or render a service outside of a real-time or live interaction.

**Remote patient monitoring (RPM):** Personal health and medical data collection from an individual in one location via electronic communication technologies, which is transmitted to a provider (sometimes via a data processing service) in a different location for use in care and related support of care.

**Mobile health (mHealth):** Health care and public health practice and education supported by mobile communication devices such as cell phones, tablet computers, and personal digital assistants (PDA).

**General Considerations:** While in-person (face to face) direct examination has been historically the most direct way to provide care, advances in technology have expanded the options for dentists to communicate with patients and with remotely located licensed dental team members. The ADA believes that examinations performed using teledentistry can be an effective way to extend the reach of dental professionals, increasing access to care by reducing the effect of distance barriers to care.

Teledentistry has the capability to expand the reach of a dental home to provide needed dental care to a population within reasonable geographic distances and varied locations where the services are rendered.

In order to achieve this goal, services delivered via teledentistry must be consistent with how they would be delivered in-person. Examinations and subsequent interventions performed using teledentistry must be based on the same level of information that

would be available in an in-person environment, and it is the legal responsibility of the dentist to ensure that all records collected are sufficient for the dentist to make a diagnosis and treatment plan. The treatment of patients who receive services via teledentistry must be properly documented and should include providing the patient with a summary of services. A dentist who uses teledentistry shall have adequate knowledge of the nature and availability of local dental resources to provide appropriate follow-up care to a patient following a teledentistry encounter. A dentist shall refer a patient to an acute care facility or an emergency department when referral is necessary for the safety of the patient or in case of emergency.

~~As~~ When the care provided is equivalent to in-person care, insurer reimbursement of services provided must be made at the same rate that it would be made for the services when provided in-person, including reimbursement for the teledentistry codes as appropriate.

**Patients' Rights:** Dental patients whose care is rendered or coordinated using teledentistry modalities have the right to expect:

1. That any dentist delivering, directing or supervising services to a patient of record using teledentistry technologies will be licensed in ~~the a~~ state or other territory or jurisdiction of the United States, where the patient receives services, or be providing these services as otherwise authorized by ~~the that state's~~ dental board of that state, territory or jurisdiction.
2. That any dentist delivering, directing or supervising services to a new patient using teledentistry technologies will be licensed in the state or other territory or jurisdiction of the United States where the patient receives the services.
3. That if a dentist-patient relationship is established via a teledentistry encounter, an in-person (face-to-face) oral examination should be performed by the dentist as soon as practical and prior to initiating any comprehensive care or elective care.
24. Access to the name, practice address, telephone number, email address, licensure and board certification qualifications and emergency contact information of ~~the all~~ oral health care practitioners who is providing the provide care via teledentistry techniques in advance of the visit will be made available to the patient prior to such encounter.
35. That the delivery of services through teledentistry technologies will follow evidence-based practice guidelines, to the degree they are available, as a means of ensuring patient safety, quality of care and positive health outcomes.
46. That patients will be informed about the identity of the providers collecting or evaluating their information or providing treatment, and of any costs they will be responsible for in advance of the delivery of services.
57. That relevant patient information will be collected prior to performing services using teledentistry technologies and methods including medical, dental, and social history, and other relevant demographic and personal information.
68. That the provision of services using teledentistry technologies will be properly documented, that and the records and documentation collected will be provided to the patient upon request and that the limitations of teledentistry encounters should be disclosed to a patient prior to the initiation of any teledentistry encounter.

9. That any patient has the right to discuss their treatment with any third party. A patient should not be required to agree to any provision that restricts the patient's freedom to bring any concerns about their dental treatment to the attention of an entity of the patient's choosing.
710. That services provided using teledentistry technologies and methods include care coordination as a part of a dental home and that the patient's records be made available to any entity that is serving as the patient's dental home.
811. That the patient will be actively involved in treatment decisions, will be able to choose how they receive a covered service, including considerations for urgency, convenience and satisfaction and without such penalties as higher deductibles, co-payments or coinsurance relative to that of in-person services.
912. That the dentist shall determine the delivery of services using teledentistry technologies and all services are performed in accordance with applicable laws and regulations addressing the privacy and security of patients' private health information.

**Quality of Care:** The dentist is responsible for, and retains the authority for ensuring, the safety and quality of services provided to patients using teledentistry technologies and methods. Services delivered via teledentistry should be consistent with in-person services, and the delivery of services utilizing these modalities must abide by laws addressing privacy and security of a patient's dental/medical information.

**Supervision of Allied Dental Personnel:** The extent of the supervision of allied dental personnel should conform to the applicable dental practice act in the state, territory or jurisdiction of the United States where the patient receives services and where the dentist is licensed. The dentist should be knowledgeable regarding the competence and qualifications of the allied personnel utilized, and should have the capability of immediately contacting both the allied dental personnel providing service and the patient receiving services. All services delivered by allied dental personnel should be consistent with the ADA Comprehensive Statement on Allied Dental Personnel.

**Licensure:** Dentists ~~and allied dental personnel~~ who deliver services through teledentistry modalities must be licensed or credentialed in accordance with the laws of the state, territory or jurisdiction in which the dentist practices. Allied dental personnel who deliver services through teledentistry modalities must be licensed or credentialed in accordance with the laws of the state, territory or other jurisdiction in which the patient receives service. The delivery of services via teledentistry must comply with the ~~state's~~ scope of practice laws, regulations or rules applicable to the encounter. Teledentistry cannot be used to expand the scope of practice or change permissible duties of ~~dental auxiliaries~~ allied dental personnel. The American Dental Association opposes a single national federalized system of dental licensure for the purposes of teledentistry.

**Reimbursement:** Dental benefit plans and all other third-party payers, in both public (e.g. Medicaid) and private programs, shall provide coverage for services using teledentistry technologies and methods (synchronous or asynchronous) delivered to a covered person to the

same extent that the services would be covered if they were provided through in-person encounters. Coverage for services delivered via teledentistry modalities will be at the same levels as those provided for services provided through in-person encounters and not be limited or restricted based on the technology used or the location of either the patient or the provider as long as the health care provider is licensed ~~in the state where the patient receives service as~~ indicated above.

**Technical Considerations:** Dentists are encouraged to consider conformance with applicable data exchange standards to facilitate delivery of services via teledentistry modalities. These include, but are not limited to, Digital Imaging and Communications in Medicine (DICOM) standards when selecting and using imaging systems, X12/HL7 for the exchange of information and ICD-9/10-CM/SNOMED/SNODENT for documentation consistency



