

**Council on Ethics, Bylaws and Judicial Affairs
Unofficial Report of Major Actions
July 30-31, 2021 Meeting**

The Council met in person on Friday and Saturday, July 30-31, 2021, during which it considered and discussed the following matters and took the following major actions:

1. Dr. Meredith A. Bailey, council vice chair and chair of the administrative and policy review subcommittee, indicated that three (3) of the Council's statements were reviewed by the subcommittee prior to the July meeting. The subcommittee recommended that one of the statements – Reporting Abuse and Neglect be retained without amendment. The second statement reviewed – Unearned, Nonhealth Degrees – engendered discussion from the council respecting whether the word "unearned" in the statement was appropriate. Staff was requested to research whether the reasoning behind the use of "unearned" can be determined and provide a report to the council at its next meeting. The subcommittee recommended that amendments to the third statement (Marketing or Sale of Products and Procedures) be made and, as amended, the statement be retained. Upon review and discussion, the council adopted the subcommittee's recommendations.
2. Dr. Bailey also reported that the administrative and policy review subcommittee had discovered that another statement entitled "Treatment of Patients with Infectious Diseases of Uncertain Transmission," originally developed in conjunction with the Council on Scientific Affairs (CSA), had been archived by CSA. It was reported that CSA undertook that action upon finding that material available from the Centers for Disease Control adequately address the clinical treatment of patients infected with diseases having unknown transmission parameters. The subcommittee recommended that the council consider if it is necessary or advisable for the council to develop a statement concerning the ethical implications of treating patients with such infections. Following discussion, a consensus among council members was that the statement continues to have relevance in light of the COVID-19 pandemic, and the chair referred the matter to the administrative and policy review committee to revise the archived statement to focus on the ethical aspects of treating patients with diseases having unknown transmissibility parameters or, alternatively, develop a new statement. The chair requested that the subcommittee present a proposed replacement statement at the March 2021 council meeting.
3. The council was given a status report on its annual Student Ethics Video Contest and was told that marketing material for the 2021 contest has been distributed via, among other channels, the American Student Dental Association and the Student Professionalism &

Ethics Association as well as the ADA's office of student affairs. Members were requested to encourage dental students in their districts to develop and submit entries for the contest and to publicize the contest to the constituent and component dental societies in their districts.

4. The Council received a report from the bylaws subcommittee concerning the subcommittee's periodic review of sections of the *Bylaws and Governance Manual*. Reviewed this year were Chapter VI., Elective Officers of the Association and Chapter XI., Principles of Ethics and Code of Professional Conduct, Member Conduct Policy and Judicial Procedures. Dr. Jill M. Burns, bylaws subcommittee chair, summarized the editorial and conforming changes that the subcommittee recommended be made. Following 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*.

5. The bylaws subcommittee, through its chair Dr. Burns, reported on its consideration of the request that the duties of the Treasurer enumerated in the ADA *Bylaws* (Chapter VI., Section 90.F.) be reviewed and revised. Dr. Burns reported that the subcommittee thoroughly studied the issue and, for several interrelated reasons, recommended that the ADA assemble a special committee composed of individuals having budgeting and financial expertise to review the duties of the Treasurer, the Budget and Finance Committee of the Board of Trustees and the Chief Financial Officer to determine an appropriate division of authority in financial and budgeting matters for the ADA. The council concurred, noting that the council members lacked the experience needed. A communication of the council's decision was forwarded to the ADA president, noting that the council could use its governance and bylaws language expertise, if needed, to assist in developing a resolution to amend the ADA *Bylaws* to embody a special committee's intended restructuring of authority over financial and budgeting matters.

6. 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. Following a lengthy discussion of the amendments, the council unanimously approved forwarding the background statement and amendments to the 2021 House of Delegates. A copy of the background statement and resolution amending the teledentistry policy is attached to this report as Appendix 1.

7. Dr. Guenter J. Jonke, chair of the ethics subcommittee, reported that the

subcommittee considered the issue of payer ratings of providers that was brought to the council's attention by an ADA trustee during its March 2021 meeting. Dr. Jonke stated that, after review and discussion the subcommittee determined that, based on the *ADA Principles of Ethics and Code of Professional Conduct*, no action by the council was warranted at this time.

8. Dr. Jonke also 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. Following the council's review the statement developed by the ethics subcommittee was approved and the council requested that the statement be forwarded to the 2021 House of Delegates.

9. Because the council had not met in person for two years, a detailed summary of the council's responsibilities with respect to developing Ethical Moment articles for publication in *The Journal of the American Dental Association (JADA)* was provided. Council members also participated in a workshop that provided guidance and suggestions for authoring Ethical Moment articles.

10. The Council adopted a resolution calling for each council members to author or co-author one Ethical Moment per year during their tenure on the council to ensure sufficient production for an Ethical Moment article to appear in each issue of JADA.

11. Dr. Alma J. Clark, chair of the continuing education subcommittee, reported on the activities of the subcommittee, including its involvement in the development of a council sponsored on-demand continuing education webinar for SmileCon™ 2021 on the ethical considerations of conscious and unconscious bias on the dental practice. A discussion ensued regarding the potential of using a non-council expert in diversity and inclusion in the webinar, including facilitating a discussion among council members on the ethical implications of conscious and unconscious bias. After discussing the concept, the council approved the participation of a non-council individual with expertise in diversity and inclusion matters in the council's webinar under development.

12. Dr. Clark also provided a report to the council concerning the initial work that has been undertaken to develop a continuing education offering for SmileCon™ 2022.

13. Ms. Nanette Elster, Manager of Ethics Outreach and Programs informed the council that an overture has been received from the American College of Dentists and the American Society for Dental Ethics for the council to collaborate in the development of ethics programming. It was explained that the initial suggested effort would be to develop

facilitator guides to accompany selected Ethical Moment articles; it was explained that the facilitator guides would allow the Ethical Moment articles to be easily used as ethics teaching tools and that such uses would have clear and consistent learning objectives. Following the presentation and ensuing discussion, the council approved the exploration of establishing a collaborative relationship with the American College of Dentists and the American Society for Dental Ethics with the development of facilitator guides for Ethical Moment articles as the initial project to be undertaken. The ethics subcommittee was requested to report back to the council in March 2022 on the status of the collaboration.

14. The council received a presentation from the Executive Director, Dr. Kathleen T. O'Loughlin, concerning the ADA's membership and economic recovery from the pandemic, the emphasis that the ADA is placing on segments of the dental profession (e.g., women, young, ethnically diverse and employed dentists) and the progress that has been made toward fulfilling the goals of the ADA's current strategic plan.

15. The Council received short presentations from several council chairs and a council vice chair and the chair of the Committee on Annual Meetings (CAM) concerning important initiatives and projects that have engaged the councils and CAM in 2021.

16. Dr. Gary Oyster, Board of Trustees Liaison to the council, presented plaques to Dr. Jill M. Burns, Dr. Guenter J. Jonke, Dr. Onika R. Patel and Dr. Robert J, Wilson, Jr. to commemorate their four years of service to the council, the American Dental Association and the profession of dentistry.

17. Dr. Meredith A. Bailey (1st District, Massachusetts), current council vice chair, was selected as the council chair for the 2021-2022 term.

18. Dr. Bruce A. Burton (11th District, Oregon) was elected as vice chair of the council for the 2021-2022 term.

1 examinations and treatments with their long-time dentists. Other dentists practicing in areas bordering
2 another jurisdiction have patients who travel across jurisdictional lines for dental treatment, prioritizing the
3 trust and respect signified by the doctor-patient relationship over the protection of the dental practice act
4 protections afforded them by their own jurisdiction's laws and regulations. It is believed that the mutual
5 trust and respect developed by existing doctor-patient relationships, which are continually validated and
6 strengthened each time the patient returns to their dentist's office for an examination or treatment can
7 safely be relied upon as the principal patient safeguard in a teledentistry encounter between a dentist and
8 a patient of record. Indeed, in such instances, allowing the patient to be treated through teledentistry by
9 their chosen treating dentist allows the practitioner with the most knowledge of the patient's dental history
10 and any ongoing treatment to apply that experience and knowledge to carry out the duty of putting the
11 patient's welfare first, as the ethical principle of Beneficence requires.

12 The proposed amendments to Paragraph No. 1 in the policy's Patients' Rights section allows for there to
13 be different requirements for teledentistry treatment between patients of record and new patients.
14 Modifying the patient safeguards provided in the current teledentistry policy based upon whether a pre-
15 existing doctor-patient relationship exists between the patient and the dentist performing the teledentistry
16 treatment will alleviate the abandonment dilemma faced by practitioners using teledentistry techniques to
17 remotely treat patients-of-record.

18 **B. Providing Additional Safeguards Where Teledentistry is used with New Patients Further**
19 **Supports the Tenets of the Code of Ethics.** Maintaining the existing licensure requirements of the
20 teledentistry policy for situations where services are delivered to new patients provides some protection of
21 the patient's welfare, and those safeguards should remain in place. Proposed new Paragraph No. 2 in
22 the Patients' Rights section of the teledentistry policy provides the licensure requirements found in the
23 current policy continues when new patients are treated via teledentistry. It is believed, however, that
24 additional safeguards should be added to the teledentistry policy to bolster the patient protections
25 afforded by the policy. The proposed amendments to the teledentistry policy prohibit the provision of
26 comprehensive or elective care solely by teledentistry. Instead, where a doctor-patient relationship is first
27 established by the provision of services through a teledentistry encounter, to protect the welfare of and
28 safeguard the patient, the treating dentist must perform an in-person oral examination as soon as
29 possible after the teledentistry encounter and before any comprehensive care or elective treatment is
30 undertaken. The requirement for an in-person examination will allow the dentist to detect any issues or
31 conditions that would potentially affect the outcome of any procedure or treatment that went undetected
32 during the teledentistry encounter. The addition of a requirement of an in-person examination for new
33 patients before comprehensive or elective treatment is added to the Patients' Rights section of the policy
34 by the addition of proposed Paragraph No. 3.

35 It would also provide additional patient protections and bolster the patient's right to self-determination
36 under the ethical principle of Patient Autonomy for the ADA's teledentistry policy to require additional
37 basic information concerning the practitioner providing the teledentistry services and to require a
38 disclosure of the limitations of teledentistry encounters. These additional measures are added by the
39 amendments to Paragraph Nos. 4 and 8 of the Patients' Rights section of the policy. Also supporting the
40 ethical principles of Patient Autonomy and Nonmaleficence is the addition of Paragraph No. 9 to the
41 Patients' Rights section of the teledentistry policy. Only by allowing patients the right to discuss their
42 treatment with any third party is it possible for patients to exercise their right to seek a second opinions or
43 pursue separate consultations regarding the treatment rendered by teledentistry.

44 **C. The Question of Equivalency of Care.** In reviewing the comprehensive teledentistry policy, there
45 was concern expressed regarding the blanket statement of equivalency between in-person (face-to-face)
46 care and care provided by teledentistry techniques that is found in the policy. Given that providing
47 treatment via teledentistry is a relatively new development and that new technologies are continuing to
48 emerge that have application to telehealth and teledentistry encounters, it may be premature to declare
49 without qualification that all care provided by the provision of teledentistry techniques is equivalent to in-
50 person care. It appears that the import of the statement is to urge that insurance reimbursement rates be

1 the same for equivalent in-person and teledentistry care. Changing the first word of sentence from “As” to
2 “When” allows that same point to be made without the questionable accuracy of a statement of
3 equivalency between all delivered in-person and via teledentistry.

4 **D. Remaining Proposed Amendments in the Policy.** The current policy uses the term “state” when
5 referring to, for example, licensure. Technically, licensure in the area served by the American Dental
6 Association is the province of not only states, but also territories and the District of Columbia. For that
7 reason, the amendments to the policy include amending the word “state” to the phrase “state or other
8 territory or jurisdiction.” These amendments have the added benefit of aligning the statement with other
9 policy and governance documents of the Association, including the ADA *Bylaws*.

10 The remaining amendments proposed in the following resolution are conforming in nature, providing
11 amending language needed to make the policy internally consistent with the principal amendments
12 discussed above.

13 The Council on Ethics, Bylaws and Judicial Affairs requests adoption of the following resolution:

14 **Resolution**

15 **0. Resolved**, that the Comprehensive ADA Policy Statement on Teledentistry (*Trans.2015:244*;
16 *2020:107*) be amended as follows (additions underscored, deletions ~~stricken through~~):

17

18 **Comprehensive ADA Policy Statement on Teledentistry**

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

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

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

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

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

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

39 **General Considerations:** While in-person (face to face) ~~direct~~ examination has been
40 historically the most direct way to provide care, advances in technology have expanded the
41 options for dentists to communicate with patients and with remotely located licensed dental

1 team members. The ADA believes that examinations performed using teledentistry can be an
2 effective way to extend the reach of dental professionals, increasing access to care by reducing
3 the effect of distance barriers to care.

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

7 In order to achieve this goal, services delivered via teledentistry must be consistent with how they
8 would be delivered in-person. Examinations and subsequent interventions performed using
9 teledentistry must be based on the same level of information that would be available in an in-
10 person environment, and it is the legal responsibility of the dentist to ensure that all records
11 collected are sufficient for the dentist to make a diagnosis and treatment plan. The treatment of
12 patients who receive services via teledentistry must be properly documented and should include
13 providing the patient with a summary of services. A dentist who uses teledentistry shall have
14 adequate knowledge of the nature and availability of local dental resources to provide
15 appropriate follow-up care to a patient following a teledentistry encounter. A dentist shall refer a
16 patient to an acute care facility or an emergency department when referral is necessary for the
17 safety of the patient or in case of emergency.

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

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

- 23 1. That any dentist delivering, directing or supervising services to a patient of record using
24 teledentistry technologies will be licensed in the a state or other territory or jurisdiction of
25 the United States, where the patient receives services, or be providing these services as
26 otherwise authorized by the that state's dental board of that state, territory or
27 jurisdiction.
- 28 2. That any dentist delivering, directing or supervising services to a new patient using
29 teledentistry technologies will be licensed in the state or other territory or jurisdiction of
30 the United States where the patient receives the services.
- 31 3. That if a dentist-patient relationship is established via a teledentistry encounter, an in-
32 person (face-to-face) oral examination should be performed by the dentist as soon as
33 practical and prior to initiating any comprehensive care or elective care.
- 34 24. Access to the name, practice address, telephone number, email address, licensure and
35 board certification qualifications and emergency contact information of the all oral health
36 care practitioners who is providing the provide care via teledentistry techniques in
37 advance of the visit will be made available to the patient prior to such encounter.
- 38 35. That the delivery of services through teledentistry technologies will follow evidence-
39 based practice guidelines, to the degree they are available, as a means of ensuring
40 patient safety, quality of care and positive health outcomes.
- 41 46. That patients will be informed about the identity of the providers collecting or evaluating
42 their information or providing treatment, and of any costs they will be responsible for in
43 advance of the delivery of services.

- 1 57. That relevant patient information will be collected prior to performing services using
- 2 teledentistry technologies and methods including medical, dental, and social history,
- 3 and other relevant demographic and personal information.

- 4 68. That the provision of services using teledentistry technologies will be properly
- 5 documented, ~~that and~~ the records and documentation collected will be provided to the
- 6 patient upon request and that the limitations of teledentistry encounters should be
- 7 disclosed to a patient prior to the initiation of any teledentistry encounter.

- 8 9. That any patient has the right to discuss their treatment with any third party. A patient
- 9 should not be required to agree to any provision that restricts the patient's freedom to
- 10 bring any concerns about their dental treatment to the attention of an entity of the
- 11 patient's choosing.

- 12 710. That services provided using teledentistry technologies and methods include care
- 13 coordination as a part of a dental home and that the patient's records be made
- 14 available to any entity that is serving as the patient's dental home.

- 15 811. That the patient will be actively involved in treatment decisions, will be able to choose
- 16 how they receive a covered service, including considerations for urgency, convenience
- 17 and satisfaction and without such penalties as higher deductibles, co-payments or
- 18 coinsurance relative to that of in-person services.

- 19 912. That the dentist shall determine the delivery of services using teledentistry technologies
- 20 and all services are performed in accordance with applicable laws and regulations
- 21 addressing the privacy and security of patients' private health information.

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

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

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

45 **Reimbursement:** Dental benefit plans and all other third-party payers, in both public (e.g.
 46 Medicaid) and private programs, shall provide coverage for services using teledentistry

1 technologies and methods (synchronous or asynchronous) delivered to a covered person to the
2 same extent that the services would be covered if they were provided through in-person
3 encounters. Coverage for services delivered via teledentistry modalities will be at the same levels
4 as those provided for services provided through in-person encounters and not be limited or
5 restricted based on the technology used or the location of either the patient or the provider as
6 long as the health care provider is licensed ~~in the state where the patient receives service as~~
7 indicated above.

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

13 **DRAFT BOARD RECOMMENDATION: Vote Yes.**

14 **PLEASE NOTE YOUR COMMENTS/CHANGES TO THIS DRAFT BOARD RECOMMENDATION**
15 **BELOW.**

NOTES