

**Report of the Council on Ethics, Bylaws and Judicial Affairs on
Advisory Opinion 5.I.1. GENERAL PRACTITIONER ANNOUNCEMENT OF
CREDENTIALS IN NON-SPECIALTY INTEREST AREAS**

Ethical Advertising under ADA Code: The American Dental Association recognizes the right of its members to promote their practices within the ethical standards set forth in the ADA *Principles of Ethics and Code of Professional Conduct* (“Code”). Section 5.F. ADVERTISING of the *Code* states:

Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect.

The standard of “false or misleading in any material respect” is accepted in ethics and the law to distinguish between advertising, which is permitted, and that which is not. The rationale for the standard is the protection of the public. Truthful, nondeceptive advertising of a dentist’s qualifications, services or facilities can help patients make informed choices about practitioners and services. On the other hand, advertising which is false or misleading harms patients by making it more difficult and costly for them to make informed choices.

Ethical Concerns Raised by Advertising of Credentials by General Dentists: The ADA’s specialty recognition system has been responsible for assuring the American public that an individual who truthfully holds himself or herself out as a member of an ADA-recognized specialty meets high standards of education and training. These standards are the same for all the recognized specialties. Their foundation is the successful completion of an educational program accredited by the Commission on Dental Accreditation of two or more years in length.

To help patients distinguish between practitioners who have completed an accredited program beyond the dental degree and those who have not, Section 5.H. of the *Code* states that only dentists who meet the ADA’s General Standards for Announcement of Specialization and Limitation of Practice are qualified to announce as specialists. The nine specialties currently recognized by the ADA are: dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics and prosthodontics.

Announcement of credentials by general dentists raises ethical concerns because there is no standardized, nationally accepted program for recognizing achievement in non-specialty interest areas. Educational qualifications for these credentials range from nonexistent to a basic weekend continuing education course to two years of formal, full-time education. Experience, training and examination may or may not be required to earn

the credential. The varying levels of attainment this represents are understandably confusing.

Announcement of credentials by general dentists also raises ethical concerns as an implied claim of superiority. The Council believes that dental patients are likely to understand statements like, “certified,” “diplomate,” or “fellow” to mean that the general dentist who possesses these credentials is better qualified than the general dentist who does not. An implied claim of superiority may be unethical if it is not subject to reasonable substantiation. Advisory Opinion 5.F.2. EXAMPLES OF “FALSE OR MISLEADING” of the *Code* states in part:

The following examples are set forth to provide insight into the meaning of the term “false or misleading in a material respect.” These examples are not meant to be all-inclusive. Rather, by restating the concept in alternative language and giving general examples, it is hoped that the membership will gain a better understanding of the term. With this in mind, statements shall be avoided which would: . . . d) contain a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dentists, if that representation is not subject to reasonable substantiation.

Need for the Advisory Opinion: The Council has noted over the years the growth of organizations that issue credentials to dentists in non-specialty interest areas. The Council recently identified eighteen organizations that issue one or more credentials in non-specialty interest areas, and their number appears to be growing.

The ability of the dental profession to deal with unethical advertising by its members has been affected by the Federal Trade Commission (FTC) investigation of the ADA’s advertising rules. Concern about legal ramifications has chilled the enforcement of those rules by constituent and component dental societies. Similarly, some state dental boards, under threat of constitutional challenge to their advertising rules, have hesitated to engage in rigorous enforcement.

The Council does not believe that this situation serves the best interests of the public or the profession. Public esteem for the dental profession is based in part on trust in the profession’s veracity as reflected in the advertising of its members. Dentists who make claims which mislead the public about the dentist’s qualifications or which cannot be substantiated undermine not only the relationship between dentists and their patients, but also the relationship between the profession and society.

The Council is sensitive to the legitimate desire of ADA members to build and maintain their dental practices in today’s challenging marketplace through advertising. The Council’s goal in adopting Advisory Opinion 5.I.1 is to respond to these members while at the same time protecting the public from false and misleading advertising by adopting ethical standards for the announcement of credentials by general dentists.

Text of Advisory Opinion: Advisory Opinion 5.I.1. GENERAL PRACTITIONER ANNOUNCEMENT OF CREDENTIALS to the *Code* reads as follows:

A general dentist may not announce to the public that he or she is certified or a diplomate or otherwise similarly credentialed in an area of dentistry not recognized as a specialty area by the American Dental Association unless:

- 1. The organization granting the credential grants certification or diplomate status based on the following: a) the dentist's successful completion of a formal, full-time advanced education program (graduate or postgraduate level) of at least 12 months duration; and b) the dentist's training and experience; and c) successful completion of an oral and written examination based on psychometric principles;*
- 2. The dentist discloses that he or she is a general dentist; and*
- 3. The announcement includes the following language: [Name of announced area of dental practice] is not recognized as a specialty area by the American Dental Association.*

Council Authority to Issue Advisory Opinions: The Council has the authority under the ADA *Bylaws* to issue advisory opinions that give guidance on how the Council would interpret the ADA *Code* if faced with a particular question on appeal. As expressions of the Council's position, advisory opinions take effect when they are adopted by the Council. However, because of the importance of this issue to the profession, the Council took the unusual step of delaying implementation of Advisory Opinion 5.I.1 in order to give the Board of Trustees and the House of Delegates the opportunity to comment. Both the Board and the House supported the Council's decision to adopt the Advisory Opinion effective as of the date it was accepted by the FTC to close its investigation of the ADA's specialty advertising rules (Resolution 96H-1997). The FTC notified the ADA in December 1997 that it had closed its investigation, and Advisory Opinion 5.I.1 is now in effect.

As debate in the House over Resolution 96H-1997 and subsequent discussion have made clear, the profession has a number of questions about the meaning of the Advisory Opinion and its implementation. This report seeks to answer those questions.

Interpretation of Advisory Opinion 5.I.1:

What credentials are covered by the Advisory Opinion? The Advisory Opinion applies to any credential in a non-specialty interest area announced by a general dentist, including "certified," "accredited," "diplomate," "fellow" or "master." It does not apply to a statement of membership in an organization as long as the statement does not express or imply specialization or special qualifications which cannot be substantiated.

What effect will the Advisory Opinion have on the issuance of credentials by organizations in non-specialty interest areas? None. The Advisory Opinion does not control the granting of credentials. Its scope is limited solely to the announcement of credentials by ADA members.

What effect will the Advisory Opinion have on non-ADA members? The ADA Code governs the conduct of ADA members, who agree to abide by the Code as a condition of membership. Nonmembers have not made this commitment. However, the Advisory Opinion will provide guidance to nonmembers and can be of use to state dental boards as a model advertising rule.

Does the Advisory Opinion apply to specialists? Advisory Opinion 5.I.1 applies to general dentists, not members of the ADA-recognized specialties. The Council believes that announcement of additional credentials by specialists in non-specialty interest areas can best be addressed in a separate advisory opinion, which the Council is in the process of developing.

What constitutes a “formal, full-time advanced education program of at least 12 months duration?” The Council will be guided by generally accepted educational standards in defining these terms. The Council’s intent in adopting the 12-month requirement was to specify a program of at least one academic year in length. The concept of an academic year is used in the ADA Bylaws to define a Student Member (Chapter I, Section 20.C). The length of the academic year is traditionally determined by the sponsoring institution. At the advanced dental education level, this is usually 12 months. It is understood that the program content will be primarily related to the non-specialty interest area.

“Formal” is another term that must be defined by reference to accepted usage in the educational community. The Commission on Dental Accreditation has taken the position that a “formal” advanced educational program is one beyond the predoctoral curriculum offered at the graduate or postgraduate level by an accredited institution of higher learning. The Council sees no reason at this time to use a different definition for purposes of this advisory opinion.

Could a dentist fulfill the formal, full-time advanced education requirement on a part-time basis?

Yes, the Council believes that the requirement could be met on a part-time basis, so long as: 1) the educational experience, including clinical experiences and responsibilities, is the same as that required of the full-time program; and 2) there are an equivalent number of months spent in the program.

Will the ADA evaluate educational programs to ensure that they meet these standards? The Advisory Opinion does not require the Council or any agency to credential educational programs in non-specialty interest areas. Decisions about whether a dentist

meets the requirements set forth in Advisory Opinion 5.I.1 for announcement of credentials will be determined on a case-by-case basis when a complaint is filed for an alleged violation of the Advisory Opinion.

What type of “training and experience” is required to announce the credential? The Council believes that this decision should be left to the credentialing body of the non-specialty interest area. As a rule of thumb, the experience requirements of the recognized specialty boards are at least equal in time to their educational requirements.

What are “psychometric principles” and who will decide if a particular examination is based on these principles? Psychometric principles are standards of test construction and administration assuring the reliability, validity and reproducibility of the examination results. These principles are set forth in *Standards for Educational and Psychological Testing* published by the American Educational Research Association, American Psychological Association and National Council on Measurement in Education.

Whether a particular examination is based on psychometric principles will be determined on a case-by-case basis by, in the first instance, the component or constituent society that investigates a complaint of an alleged violation of the Advisory Opinion and ultimately by CEBJA sitting as the highest level of appellate review in the disciplinary process. CEBJA will consult with the appropriate agencies of the ADA as necessary in making these determinations.

Will general dentists who announced their credentials before the Advisory Opinion 5.I.1 was adopted be allowed to continue to do so, even if they do not meet the education, training, experience or testing requirements called for in the Advisory Opinion? The Advisory Opinion does not contain a “grandfather” provision that would waive any of the provisions of Advisory Opinion 5.I.1.

How prominent must the two disclaimers required by the Advisory Opinion be? The disclaimers must be clear and visible compared to the announcement of the credential. Whether a particular disclaimer is clear and visible will be judged in the context of the advertisement as a whole, but, at minimum, the Council will require the disclaimer to be in the same font, size, style and color as the credential. The use of abbreviations to designate credentials shall be avoided when such use would lead the reasonable person to believe that the designation represents an academic degree, when such is not the case.

How will the Advisory Opinion be enforced? It will be enforced like any other part of the Code through the tripartite system’s disciplinary process, which is spelled out in Chapter XII of the ADA *Bylaws*. The Council expects the constituent and component societies’ hearing panels to take evidence on whether an accused member’s advertisement meets the requirements of Advisory Opinion 5.I.1 and to base its findings on the evidence. The constituents and components are reminded that before a member can be disciplined, he or she is entitled to notice and a hearing conducted in accordance with Chapter XII, Section 20 of the ADA *Bylaws*.

Nothing in Advisory Opinion 5.I.1 prohibits a general dentist from truthfully informing the public that the dentist limits services to an area of dentistry not recognized as a specialty by the American Dental Association. However, members are advised to consult their state's dental practice acts and the rules and regulations of their dental boards concerning any legal restrictions in this or any other area of advertising.

How will dentists and other interested parties be informed of future Council interpretations of the Advisory Opinion? The Council has the option of adopting a supplemental report, which would be communicated to the profession and the communities of interest in the same manner as the original report. Interpretations of Council advisory opinions made in the context of disciplinary proceedings are routinely published in the Council's annual report to the House of Delegates.

Adopted June 1998; revised August 1998, June 1999 AND April 2000