



# NEWS FROM THE Idaho State Board of DENTISTRY

## STATEMENT OF PURPOSE

**T**he purpose of the Idaho State Board of Dentistry is to assure the public health, safety and welfare in Idaho by the licensure and regulation of dentists and dental hygienists.

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## OUTGOING CHAIRMAN'S MESSAGE

by *Richard J. Teich, DDS*

Dear Colleagues,

As I bid adieu to the last five years as a Dental Board member, I will take this opportunity to recognize and thank those individuals on the team. First, my fellow Board members, Dentists, Hygienists and Lay members who donate many hours reviewing and planning for our quarterly meetings. Secondly, and no less important, our staff at the Board office, Executive Director, Art Sacks, Administrative Assistant, Susan Miller and Office Specialist, Stephanie Seal. These folks oil the gears that keep the organization humming. Dental board activities and other pertinent items are covered elsewhere in this newsletter.

I love my chosen profession and have been honored to serve as one of your representatives to our Board of Dentistry. I wish to share a bit of wisdom I came across several years ago and have adapted it to our State.

So long for now,

*Richard J. Teich, DDS*

## SUGGESTIONS FOR DENTAL PROFESSIONALS

The following are suggestions for dental professionals to improve themselves and the dental profession. Some of these apply more to dentists than dental hygienists or dental assistants, but everyone can learn from all of them:

- Read and familiarize yourself with the Idaho Dental Practice Act and the Rules of the Idaho State Board of Dentistry.
- Become familiar with the scope of practice for your profession and/or the scope of practice of the employees under your supervision.
- Do not perform duties outside of your scope of practice and/or delegate duties to your employees that are not within their scope of practice.
- Do not practice without a current license issued by the Idaho Board of Dentistry; do not allow any of your employees to practice without a current license /certification permit.
- Keep your and your employees' credentials available in an office or place in which he or she practices and show such proof of credentialing upon request.

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**Chairman's Message** (continued from page 1)

- Review the advertisements for your practice to be sure that the information is not misleading. See article in this newsletter regarding advertising regulations..
- Communicate clearly and respectfully with all patients, staff and colleagues. If you are uncomfortable with communicating or do not seem to be communicating clearly, consider attending a course to improve your communication skills. NOTE: Some courses may not qualify as acceptable continuing education.
- Make sure all patients understand their options, the risks and benefits, the cost of each option, and give informed consent for treatment before treatment begins.
- Listen to patients and staff. Listen to their concerns and problems with an open mind.
- Never hesitate to assist dissatisfied patients. If necessary, refund the patient and refer them to another dentist.
- If the dentist determines that the dentist/patient relationship should be terminated, follow the proper guidelines.
- When in doubt, refer. Recognize that you may sometimes need to refer patients to someone better qualified to treat their problem and not try to perform procedures which you are not qualified to treat or not familiar with treating.
- Remember that it is better to prevent problems than to "cure" problems. Remember you cannot "fix" everything nor do everything yourself.
- Practice mainstream dentistry and not be the first or the last to use a new technique or material. Carefully research what you intend to do or use and do not rely solely on a manufacturer's or "guru's" claims.
- Do not over-treat patients! Be reasonable with treatment plans and fees. The patient's pocket is not a bottomless pit.
- First, do no harm! Take care of your patients and they will take care of you.
- The Board does not tolerate dishonesty. Read and understand before you sign any Board documents (including renewal applications) and do not alter records for your or the Board's benefit.
- Your personal life reflects into your practice and you cannot properly perform your dental duties if your personal life is a mess.
- Encourage any dental professional who is impaired due to the use of alcohol or other drugs to obtain assistance and treatment from the Program for Recovering Dental Professionals (PRDP). Contact the Board office for additional information.
- Be aware of patients seeking controlled substances and of your prescribing authority.
- Complete continuing education for professional development, not just for credit accumulation.
- Abide by the dental statutes, and rules and regulations at all times. The Board has suggested that all dental professionals read the statutes and rules and regulations pertaining to your profession.

Please follow these suggestions throughout this year and every year to prevent problems, complaints and/or disciplinary action against you and your license.

*\*Adapted from the Tennessee Board of Dentistry Newsletter*

**Idaho Board of Dentistry  
Refresher on Commercial Advertising**

On March 1, 2008, the Board issued a guidance letter to all dentists licensed in Idaho concerning The Idaho Dental Practice Act and the Rules of the Board of Dentistry pertaining to commercial advertising. The memorandum has been also included in the initial license approval packet to all new dentists. The initial correspondence triggered a huge influx of advertising complaints brought by dentists against their peers. The Board has vigorously investigated all complaints brought before it. In the two years since the original correspondence, the Board has received and/or adjudicated 56 advertising complaints. While the amount of complaints has diminished since the initial letter to dentists, the incidents of improper advertising by dentists has not ceased. Accordingly, the following information is intended as a refresher to all dentists on the subject of advertising.

An "advertisement" is defined as: any public communication, made in any form or manner whatsoever, about a licensee's professional services or qualifications for the purpose of soliciting business. "Advertising" or "advertise" shall mean holding out, broadcasting, mailing, publishing, transmitting, announcing, distributing or otherwise disseminating any advertisement, whether directly or indirectly through the efforts of another person or entity. Any sign soliciting business, whether at the location of the dental practice or otherwise, shall be considered as an advertisement. A licensee who engages or authorizes another person or entity to advertise for or on the licensee's behalf is responsible for the content of the advertisement unless the licensee can prove that the content of the advertisement was contrary to the licensee's specific directions. *IDAPA 19.01.01.046(01)*.

The Idaho Legislature determined that the advertising can subject a dentist to disciplinary action as set forth below (a break in statutory continuity is identified by asterisks):

The board may refuse to issue or renew a dental license, or may revoke, suspend, place on probation, reprimand or take other disciplinary action with respect to a dental license as the board may deem proper, including administrative penalties not to exceed ten thousand dollars (\$10,000) per violation and assessment of the costs of disciplinary proceedings in the event a dentist shall:

\* \* \*

(4)(a) Make, or cause to be made, or assist in making, any fraudulent, false, or misleading statement as to his own, or an employee's, associate's, or other dentist's or dental hygienist's skill or lack of skill, or method of practice; or (b) Claim to practice dentistry without causing pain; or (c) Claim superiority over other dentists; or (d) Publish, advertise, or circulate reports, letters, certificates, endorsements, or evidence of cures or corrections of dental conditions by such dentist, his employee or associate by reason of his or their skill, experience, or ability or of his or their use of any system, method, technique, device, drug, medicine, material, manipulation or machine; or (e) Advertise the use

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of, or use, any system, method, technique, device, drug, medicine, material or machine, which is either falsely advertised or misnamed; or

\* \* \*

(8) Engage in unprofessional, unethical or immoral conduct, as defined by board rules; or

(9) Advertise in such way as to deceive or defraud, or probably deceive or defraud, the public or patrons; or

\* \* \*

(13) Falsely identify himself to the public as a specialist in a specialty area of dentistry as defined by rule.

Idaho Code § 54-924.

Additionally, the Board has the authority to prohibit the commercial advertising of a licensee that is false, fraudulent, deceptive, or inherently misleading. The Board's rules address advertising. A licensee is obligated to comply with both state statutes and Board rules. The Board is urging all licensed dentists and hygienists to review all provisions of Rule 46 in their entirety. The rule begins by noting:

Dentists and dental hygienists licensed to practice in Idaho may advertise in any medium or by other form of public communication so long as any such advertising is not **false, deceptive, misleading or not readily subject to verification**. In addition to any other applicable grounds, a violation of this advertising rule shall constitute and be considered as unethical and unprofessional conduct pursuant to the Idaho Dental Practice Act and this chapter. *IDAPA 19.01.01.046 (emphasis added)*.

Rule 46(02) specifically provides that a licensee shall not advertise in any form or manner which is "false, misleading or deceptive to the public or which is not readily susceptible to verification." The Board has determined by rule that **the following advertising is false, deceptive, not readily subject to verification, or inherently misleading:**

- a. Makes a material misrepresentation of fact or omits a material fact;
- b. Makes a representation likely to create an unjustified expectation about the results of a dental procedure;
- c. Compares a licensee's services with another licensee's services unless the comparison can be factually substantiated;
- d. Makes a representation that is misleading as to the credentials, education, or the licensing status of a licensee;
- e. Represents that the benefits of a dental insurance plan will be accepted as full payment when deductibles or copayments are required;
- f. Makes a representation that is intended to take advantage of the fears or emotions of a particularly susceptible type of patient; and
- g. Refers to benefits of dental procedures or products that involve significant risks without including realistic assessments of the safety and efficacy of those procedures or products.

The Board has reviewed the statutes, case law from Idaho and around the country, and determined that the following words and phrases are additional examples of inherently misleading advertising:

- Painless or pain free dentistry
- Total Comfort
- "Quality Dentistry"
- Offer to correct/perfect consumer's smile or correct/perfect consumer's dental condition
- The term "board certified" when used to describe a certification that does not meet the statutory criteria.
- "Free" services without explaining the purchase of additional services is required to obtain the "free" services.

Additionally, the Board "recognizes and licenses the following specialty areas of dental practice: Dental Public Health; Endodontics; Oral and Maxillofacial Pathology; Oral and Maxillofacial Radiology; Oral and Maxillofacial Surgery; Orthodontics; Pediatric Dentistry; Periodontics; and Prosthodontics." IDAPA 19.01.01.046(3). The following rule, which was amended in 2005, relates specifically to the advertising of specialty services:

A. An advertisement shall not state that a licensee is a specialist, or specializes in a recognized specialty area of dental practice, or limits his practice to any recognized specialty area of dental practice unless the licensee has been issued a license or certification in that specialty area of dental practice by the Board.

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Use of words or terms in advertisements such as “Endodontist,” “Pedodontist,” “Pediatric Dentist,” “Periodontist,” “Prosthodontist,” “Orthodontist,” “Oral and Maxillofacial Pathologist,” “Oral Pathologist,” “Oral and Maxillofacial Radiologist,” “Oral Radiologist,” “Oral and Maxillofacial Surgeon,” “Oral Surgeon,” “Specialist,” “Board Certified,” “Diplomate,” “Practice Limited To,” and “Limited To Specialty Of” shall be prima facie evidence that the licensee is announcing or holding himself out to the public as a specialist or that the licensee specializes in a recognized area of dental practice.

**b.** A licensee who has not been licensed or certified by the Board in a recognized specialty area of dental practice may advertise as being qualified in a recognized specialty area of dental practice so long as each such advertisement, regardless of form, contains a prominent disclaimer that the licensee is “licensed as a general dentist” or that the specialty services “will be provided by a general dentist.” Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area.

**c.** A licensee shall not advertise as being a specialist in or as specializing in any area of dental practice which is not a Board recognized and licensed specialty area unless the advertisement, regardless of form, contains a prominent disclaimer that the advertised area of dental practice is not recognized as a specialty area of dental practice by the Idaho Board of Dentistry. Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area.

*IDAPA 19.01.01.046(3)(a-c).*

The Board and its staff have an obligation to review and evaluate every complaint and/or advertisement submitted to them, whether that submission is anonymous, by a dentist, or by a member of the public. Pursuant to Board Rule 46, if the advertising consists of or contains verbal communication to the public by television, radio, or other means, the advertisement shall be prerecorded and a recording of the advertisement must be retained by licensee for two (2) years. Upon receipt of a written request from the Board, a licensee shall provide any such recorded advertisement to the Board within five (5) working days. If you do not routinely keep copies of your advertising on file, you should do so to enable you to comply with the rule if a request is issued by the Board.

The Board will consider a number of factors when evaluating the advertising, including: whether the advertisement includes words or phrases that have been prohibited by statute and/or Board rule, whether the advertisement includes words or phrases that are inherently misleading, false, fraudulent, or deceptive, whether the advertisement is potentially misleading, whether the advertisement includes a proper disclaimer, the medium of the advertising (e.g. internet, print, radio, and/or television), the licensee’s attempts to bring himself or herself into compliance with the statutes and rules, and the licensee’s history, including whether the licensee has previously been found by the Board to have violated the advertising rules and/or statutes. These considerations apply to all licensees and all advertising. Additionally, each day an unlawful advertisement is published or broadcast it can constitute a separate violation.

### **THE COMPLAINT PROCESS WHAT IT IS AND HOW IT WORKS**

The mission of the Idaho State Board of Dentistry is to assure the public health safety and welfare in the State of Idaho by the licensure and regulation of dentists and dental; hygienists, In order to effectuate that mission, a complaint process exists to investigate and adjudicate complaints brought against licensees by the public as well as other licensees. Periodically, inquiries have come from licensees and the public as to how the complaint system works. The Board staff has received comments ranging from “It’s a witch hunt”, to “It’s burdensome”. “confusing” , and “unnecessary.” Initially, it must be said that complaint resolution is a required function of the Board Members. It is a function which is not taken lightly. The complaint system is designed to fully investigate, review, and adjudicate complaints, while affording licensees the right of due process as required by law.

It must be initially noted that the Board of Dentistry’s jurisdiction is limited. The Board of Dentistry does not review fee disputes or monetary issues between a patient and a dentist, personality conflicts, or concerns with dental insurance carriers. The Board cannot obtain refunds of money paid for services or require that desired or corrective services be provided to a patient. The Board of Dentistry’s primary enforcement authority is to impose discipline against a licensee, which may include such actions as the issuance of a letter of reprimand or the suspension or revocation of a license. The Board may also impose monetary penalties in the form of fines. The following is a description of the complaint process of the Idaho State Board of Dentistry.

The Board receives many inquiries, statements, and complaints from the general public and other licensees. It is the policy of the Board not to act on verbal statements received over the telephone. Complainants are instructed to complete complaint forms which may be downloaded from the Board’s website, [www.idaho.gov/isbd](http://www.idaho.gov/isbd), printed, filled out, and mailed to the Board. Complainants are encouraged to fully set forth the complaint so as to fully advise the Board of all necessary and pertinent information. Complaint form packets include a release by the complainant to allow the Board to obtain all relevant dental and medical records.

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## *Complaint Process—continued*

When the Board of Dentistry initially receives a written complaint, a review will take place in order to determine whether the circumstances reported in the complaint fall within the Board of Dentistry's jurisdiction. If the Board is unable to consider the complaint, the complainant is advised in writing.

If the complaint falls within the Board of Dentistry's jurisdiction, the first action taken will be to provide a copy of the complaint to the dentist or the dental hygienist, with a brief description of the complaint, in order to allow the licensee to provide a written response to the complaint, together with applicable copies of dental records, including x-rays or radiographs. At the same time that a response is requested from the licensee, other health care professionals identified by the complainant as having provided follow-up care to the complainant are also contacted in writing in order to obtain medical and dental reports and records concerning the complaint. These other health care professionals are advised that the complainant has filed a complaint with the Board of Dentistry against a licensee, but they are not told the name of the licensee.

After the response from the licensee and responses from other healthcare providers have been received, the complaint is reviewed to determine if further investigation is required. Further investigation may be made by Board staff, or investigators (usually dentists). If the complaint does not require further investigation, or after further investigation has been completed, all available information is provided to the members of the Board of Dentistry for their review. The members of the Board of Dentistry review complaints and make disciplinary decisions at their quarterly meetings. Pursuant to the Idaho Open Meetings law, the actual discussion of the disciplinary complaint is discussed in Executive Session of the Board meeting, which is not open to the public. However, when the Board makes a decision concerning the complaint, the motion and voting is done in open session, with only case numbers being used, and it is open to the public.

In providing all available information to the members of the Board of Dentistry, great care is taken to maintain impartiality and objectivity. Information sent to the Board Members does not contain any identifying information which may identify the complainant, the name of the licensee who is the subject of the complaint, or even the addresses of the parties, so that the Board members may make objective decisions. In the rare instance when a Member may be aware of a pending complaint being reviewed by the Board, that Member will be self-removed from the consideration of the complaint.

At the quarterly Board meetings, a review of a complaint may result one of many results. If the Board feels that all information is present to make a decision, a decision will be reached. Such decisions will include, but not be limited to, a finding that there were no violations of either the Idaho Dental Practice Act or the Rules of the Board of Dentistry, or that there were violations, with a proposed resolution of the complaint. Proposed resolutions may include recommendations of the issuance of a Letter of Concern, a Letter of Reprimand,

suspension or revocation of a license, imposition of a monetary fine, or other disciplinary measures including remedial education as the Board deems appropriate.

The Board may determine that further investigation or further procedures are necessary. These could include the gathering of additional information from the complainant, the licensee complained about, or from other sources. Matters may also be referred to Board counsel for further proceedings.

If the complaint results in disciplinary action being taken against a licensee, the case may be resolved by mutual agreement or may require that an administrative hearing be held. An administrative hearing is similar to a court trial and involves lawyers, a court reporter, a hearing officer, and witnesses who testify under oath. Complainants may be required to appear and testify about the complaint.

As can be seen, the complaint process of the Board of Dentistry is detailed and carefully conducted. This ensures that the complaint is fully reviewed, the Board performs its mission, and the licensee is afforded due process rights as required by law. Because of these requirements and safeguards, the entire process may take some time to complete. At the completion of the process, all parties are advised of the decision of the Board.

## **PROPOSED RULE CHANGES MOVING THROUGH STATE LEGISLATURE**

As of the time this newsletter went to press, the State Legislature has considered proposed changes to four of the Rules of the Board of Dentistry. The changes have been approved by the Health and Welfare Committees of both the Senate and the House, after public hearings, and it is anticipated that they will be approved in the omnibus resolution when the legislature adjourns. Since the adjournment date of the legislative session is fluid, it is difficult, at this time to determine the effective date of the rule changes. The full text of the rule changes will be published in the next newsletter.

The proposed rule changes involve Board Rules 045 (Requirements for Specialty Licenses), Rules 050 and 051 (Continuing Education for Dentists and Dental Hygienists), and Rule 062 (Use of Other Anesthesia Personnel).



Know a Dentist in trouble with  
drugs/alcohol or mental health problems?  
Please contact the **Program for Recovering Dental Professionals** for help.  
[www.SouthworthAssociates.net](http://www.SouthworthAssociates.net) 800.386.1695  
**24** CONFIDENTIAL Toll free Crisis Line  
**HOUR 866.460.9014**

**2010 BOARD  
OF DENTISTRY  
MEETINGS**

April 23-24  
Boise

July 16-17  
Post Falls

October 29-30  
Boise



**NAME / ADDRESS CHANGE**

If your address of record changes or if you have a name change, you should inform the Board of Dentistry of that fact. You can notify the Board of Dentistry about a change by using the following form. The form can be mailed to the Board of Dentistry, P.O. Box 83720, Boise, ID 83720-0021 or transmitted via facsimile to (208) 334-3247.

|                            |  |
|----------------------------|--|
| NAME (last, first, middle) | FORMER NAME (if applicable)            |
| OLD ADDRESS:<br>Street     | NEW ADDRESS (if applicable):<br>Street |
| City / State / Zip         | City / State / Zip                     |
| License Number             | Daytime Phone Number                   |
| Signature                  | Effective Date                         |

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