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Council Appeals for Member Input

NYSDA's Council on Ethics is engaged in a review of the Association's Code of Ethics. It's a process it wants members to participate in.

Lance Plunkett, J.D., LL.M.

The NYSDA Council on Ethics has begun a review of all sections of “The Principles of Ethics and Code of Professional Conduct of the New York State Dental Association.” This official title is often shortened to “NYSDA Code of Ethics.” This is the document that regulates conduct between member dentists and their patients. Note that it only applies to NYSDA members. Dentists receive the document when they first join NYSDA, and all members are encouraged to review it and provide feedback and recommendations to the Council on Ethics as the review process continues throughout this year and into 2024.

All constituent and component dental associations of the American Dental Association (ADA) are bound by the ADA “Principles of Ethics and Code of Professional Conduct.” Constituents and components cannot have ethical codes that are in conflict with or less stringent than the ADA ethical code, except where state or local laws might require otherwise. Components cannot have ethical codes that are in conflict with or less stringent than the NYSDA Code of Ethics, except where local law might require otherwise.

One might wonder why New York or any of its components would need or want to use anything other than the ADA ethics code. That is a good question. The answer is that the NYSDA Code of Ethics references particular aspects of New York State law that the ADA code does not cover. Another reason is that the ADA code is in the model of a comprehensive, complex philosophical document, whereas the NYSDA Code of Ethics is simple and direct. The ADA code is a great read on the framework and nuances of the various pillars of ethics, whereas the NYSDA Code of Ethics is just a streamlined, handy, practical reference tool.

Dealing with Inconsistencies

One example of where the NYSDA and ADA codes differed for many years was the subject of what was ethical for dental specialists to do. The ADA code maintained a rule that specialists should limit their dental practices to their specialty. The NYSDA code eliminated that rule because it was inconsistent with New York laws on dental licensing and scope of practice and in conflict with New York's antitrust law (known as the Donnelly Act). New York has always followed the rule

that any dentist licensed in New York can practice any dental service. Specialists can perform general dentistry and general dentists can perform specialty services (with the obvious requirement that all must be competent to do what they are doing).

Similarly, New York antitrust law forbids a practice known as “division of markets,” whereby specific services and/or products would be allocated to an exclusive group to provide, thereby preventing competition from any other group. The net effect of a division of markets is to drive up costs to consumers because they lack the ability to obtain the services and/or products from someone outside of the exclusive group. Notably, the ADA code eventually dropped its specialty rule too, concluding that it was inconsistent with federal antitrust laws. Interestingly, this might have been different if New York licensed dentists by specialty, but New York does not license either dentists or physicians by specialty. It is a concept that New York has repeatedly rejected, likely because the New York State Education Department would be overwhelmed by the workload.

Another example is the recognition of dental specialties. In New York, recognition of dental specialties is controlled by the New York State Board of Regents. While the Board of Regents has generally aligned with the specialties recognized by the ADA (now done by the National Commission on Recognition of Dental Specialties and Certifying Boards—NCRDSCB), it has not always done so. It took quite some time for the Board of Regents to agree to recognize the specialty of dental anesthesiology. And ethical conduct on claiming specialty status is superseded by the Rules of the Board of Regents on what constitutes unprofessional conduct subject to professional disciplinary action (Part 29 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York). Thus, dental anesthesiologists were for a time caught between a rock and a hard place in New York. Now that is happily resolved and all NCRDSCB specialties are also recognized by the Board of Regents. But until that happened, it would not have been possible for NYSDA to follow the ADA code in this instance without misleading members and putting them at risk of action by the Education Department’s Office of Professional Discipline (OPD).

The foregoing is why NYSDA must periodically review its Code of Ethics. First, to make sure it remains consistent with New York’s unique legal requirements. Second, to make sure it is not unnecessarily out of alignment with the ADA Code. And third, to make certain that

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the specific guidance for New York is still relevant and worthwhile for members. In 2007 (effective Jan. 1, 2008), New York enacted a one-time requirement for licensure that dentists take a minimum three-hour continuing education course in ethics and jurisprudence approved by the Education Department. In 2010, the law was amended to allow dental residents to take the ethics and jurisprudence course during their dental residency, before they are initially licensed in New York. Therefore, members should definitely take an interest in contributing ideas to the NYSDA Council on Ethics review of the NYSDA Code of Ethics.

Where You Come In

What provisions of the NYSDA Code of Ethics might be most useful for members to comment on? The code is divided into six sections: 1) Service to the Public and Quality of Care; 2) Education; 3) Governance of a Profession; 4) Research and Development; Patents and Copyrights; 5) Professional Announcement; and 6) Judicial Procedure. There is also an Introduction, Preamble and Addendum—but those are more like statements of purpose and process than actual ethical rules or advisory opinions on the ethical rules.



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The major part of the NYSDA Code of Ethics is the section on Service to the Public and Quality of Care, dealing with the bulk of common professional ethics issues that dentists encounter with their patients. The next most extensive section is Professional Announcement, which primarily deals with advertising issues. Member input on these two subject areas would make the most difference in any intelligent review. For example, advertising has changed so much in both form and function over the years that current rules may simply be obsolete. When the NYSDA Code of Ethics was first written, there was no Internet.

All the other sections are relatively short and member input into what to do with those sections would be welcome. They can all be read in under one minute. Should they be more in-depth or are they superfluous? For example, NYSDA has never had an ethical case involving patents or copyrights—but does that make the ethical rule on it irrelevant? Members should weigh in.

NYSDA is one of the few states in the country that conducts an active ethics program, hearing a significant number of cases every year. This process is intensive and time-consuming, most often requiring obtaining records from OPD through formal Freedom of Information Law (FOIL) applications. The ADA once tried to survey and assess constituent ethics enforcement programs and received responses like the state that boldly claimed it had a robust ethics program—there had not been a single case in 20 years.

Except for outright dismissals of cases, which remain confidential, all the hearing results in NYSDA ethics cases are published in *The New York State Dental Journal*. The NYSDA Bylaws require such publication. And the Association shares the results with the ADA, also required by the NYSDA Bylaws.

For all the foregoing reasons as to how and why ethics are integrated into the fabric of the dental profession, especially at NYSDA, members should participate in helping to review and edit the Code of Ethics. Don't sit back and just let things happen; help the Ethics Council in its mission to review the NYSDA Code of Ethics by making your voice heard.

Ethics is an organic process, and the NYSDA Code of Ethics is a dynamic, evolving document. You cannot be part of that process if you do not contribute what you really think. Not every idea, whether coming from the Council on Ethics or from a member, will necessarily be adopted, but offering zero ideas is ineffective, which is why the council conducts a periodic review of the language, sense and coverage of the code. It cannot fulfill its duties by offering no ideas. //

The material contained in this column is informational only and does not constitute legal advice. For specific questions, dentists should contact their own attorney.