

CHAPTER 64B5-4 ADVERTISING

- 64B5-4.002 Advertising and Soliciting by Dentists.
- 64B5-4.003 Advertisement of Fees and Discounted Services.
- 64B5-4.004 Advertising Specialty Services.
- 64B5-4.005 Advertising of HIV/AIDS Status.

64B5-4.002 Advertising and Soliciting by Dentists.

(1) As used in the rules of the Board, the terms “advertisement” and “advertising” shall mean any statements, oral or written disseminated to or before the public or any portion thereof with the intent of furthering the purpose, either directly or indirectly, of selling professional services, or offering to perform professional services, or inducing members of the public to enter into any obligation relating to such professional services. The provisions of this rule shall apply to media exposure of any nature regardless of whether it is in the form of paid advertising.

(2) All advertising in any media must identify the Florida licensed dentist, who assumes total responsibility for the advertisement. The term “identify” shall mean the use of the license number of the dentist as it appears on his license and renewal certificate or the use of the licensee’s commonly used name together with the current address and telephone number the licensee has on file with the Department.

(3) No dentist shall disseminate or cause the dissemination of any advertisement or advertising which is in any way fraudulent, false, deceptive, or misleading in form or content. Additionally, no dentist shall disseminate or cause the dissemination of any advertisement or advertising which:

- (a) Contains misrepresentations of fact;
- (b) Is likely to mislead or deceive because in its context or in the context in which it is presented it makes only a partial disclosure of relevant facts;
- (c) Contains laudatory statements about the dentist or group of dentists;
- (d) Is intended or is likely to create false, unjustified expectations of favorable results;
- (e) Relates to the quality of dental services provided as compared to other available dental services;
- (f) Contains other representations or implications that in reasonable probability will cause an ordinary prudent person to misunderstand or to be deceived. For example, it is fraudulent, false, deceptive, and misleading for a dentist who utilizes the laser in his dental practice to advertise that the use of lasers is painless, heals faster, or provides better results than other dental procedures. However, a dentist may advertise that he treats patients with a laser in certain instances.
- (g) Is intended or is likely to appeal primarily to a layperson’s fears.

(4) In person and telephone solicitation of dental services by a dentist or his agent poses an inherent danger to the public because such advertising cannot be supervised, may exert pressure, and often demands an immediate response without affording the recipient an opportunity for comparison or reflection. Unlike an advertisement appearing in print or on television or radio, in person and telephone solicitation does not simply provide information and leave the recipient free to act or not, but is ripe with the potential for overbearing persuasion. Accordingly, in person and telephone solicitation of dental services by a dentist or his agent is prohibited. The term “solicitation” as used in this rule does not include in person or telephone communication by a dentist or his or her agent with a patient or former patient for purposes of scheduling an appointment or offering follow-up care.

(5) Advertising which includes the name of a person who is not either actually involved in the practice of dentistry at the advertised location or an owner of the practice being advertised is not permitted. However, to facilitate the smooth transition of a practice after its sale from one licensee to another, it is permissible to identify the previous owner in advertising by the new owner for a reasonable period of time not to exceed a period of 2 years. This rule does not provide authority to use a previous owner’s name in any advertising without first obtaining that licensee’s written permission to do so.

(6) Any dentist who advertises by, through or with a referral service shall be held responsible for the content of such advertising and all such advertisements shall comply with this rule and contain the following:

- (a) A statement that the advertisement is for a dental referral service and is in behalf of the dentist members of the referral service.
- (b) A statement that the referral service refers only to those dentists who have paid or been otherwise selected for membership in the referral service.
- (c) A statement that membership in the referral service is limited by the referral agency.

(d) A statement that dentists who receive referrals from the referral service charge no more than their usual and customary professional fees for service.

(e) These required statements shall be present in reasonably recognizable print or volume equivalent to the size or volume of other information in the advertisement.

(7) No licensee may use, or cause the use of the term “sleep dentistry” in any advertisement, unless the licensee possesses a valid general anesthesia permit issued by the Board of Dentistry pursuant to the requirement of Sections 64B5-14.003(1) and 64B5-14.005 F.A.C.

Specific Authority 466.004(4), 466.019 FS. Law Implemented 466.019, 466.028(1)(d) FS. History—New 7-7-87, Amended 1-11-89, 10-29-90, 4-24-91, 7-14-92, Formerly 21G-4.002, Amended 3-30-94, Formerly 61F5-4.002, 59Q-4.002, Amended 5-20-01, 1-29-03, 2-26-06.

64B5-4.003 Advertisement of Fees and Discounted Services.

(1) An appropriate disclosure regarding advertised fees is necessary to protect the public since there is no uniform code available which would enable a fair and rational selection based upon advertised fees.

(2) Any advertisement containing fee information shall contain a disclaimer that the fee is a minimum fee only.

(3) Any advertised fee for a dental service shall state a specified period during which the fee is in effect or that service shall remain available at or below the advertised fee for at least 90 days following the final advertisement for that service.

(4) Any dental service for which a fee is advertised shall be accompanied either by a description of that service using the exact wording for that service contained in the American Dental Association’s “Code on Dental Procedures and Nomenclature” which is hereby adopted and incorporated by reference or by the specific ADA Code number or numbers which accurately and fully describes the advertised dental service. Listing of a category of service (diagnostic, preventive, restorative, endodontics, periodontics, prosthodontics-removable, prosthodontics-fixed, oral surgery, orthodontics) or a sub-category (any procedure whose ADA Code # ends in 00, i.e., root canal therapy 03300) is not sufficient for the purpose of advertising a fee. The advertisement must specify by use of exact nomenclature or exact code number what procedure within the sub-category is being offered. If no fee is specified for a procedure advertised then a general description of procedure by category or sub-category is permitted.

(5) Any advertisement for free or discounted services must comply with the requirements of Section 456.062, F.S., and must also clearly identify the dates that free, discounted or reduced fee services will be available.

Specific Authority 466.004(4), 466.019 FS. Law Implemented 466.019, 466.028(1)(d) FS. History—New 1-11-89, Amended 10-29-90, 3-11-92, Formerly 21G-4.003, 61F5-4.003, 59Q-4.003.

64B5-4.004 Advertising Specialty Services.

Rulemaking Authority 466.004(4), 466.019 FS. Law Implemented 466.019, 466.028(1)(d), 466.0282 FS. History—New 1-11-89, Formerly 21G-4.004, 61F5-4.004, Amended 6-9-96, Formerly 59Q-4.004, Repealed 7-5-10.

64B5-4.005 Advertising of HIV/AIDS Status.

(1) Public fear regarding the possibility of HIV transmission from health care workers to patients, although scientifically unfounded, has resulted in concerns regarding the safety of dental care. In order to prevent the inappropriate exploitation of such fears and the fostering of such concerns, the advertising of dental health care workers’ HIV status must be sufficiently regulated.

(2) Public misunderstanding of the significance of HIV test results may cause an inappropriate reliance on negative test results. Reliance on test results may diminish vigilance necessary for the success of universal precautions in the safe practice of dentistry. HIV antibody testing is extremely accurate in detecting existing HIV antibodies. However, there are limitations to the testing technology. The “window” period between infection and the appearance of HIV antibodies may produce false negative results. The existence of this “window” period diminishes the reliability of any negative test results.

(3) It is the position of the Board of Dentistry that HIV/AIDS issues are best handled on an individual basis directly between patients and dental health care workers. However, if such advertising is to be utilized the following guidelines must be followed:

(a) No dental health care licensee may represent that he or she is HIV negative or free from AIDS. Only representations as to test results may be advertised or noticed; and

(b) Any such advertisement or notice must clearly state the following:

THIS NEGATIVE HIV TEST CANNOT GUARANTEE THAT I AM CURRENTLY FREE OF HIV.

(c) Any referral or endorsement of a dental health care licensee based upon the licensee's negative HIV test result must clearly state the following:

THIS NEGATIVE HIV TEST CANNOT GUARANTEE THAT THE PERSON TESTED IS CURRENTLY FREE OF HIV.

(d) Any representation as to a dental health care licensee's HIV test results must include the exact date of the HIV test result that is the basis of such representations.

(e) No dental health care licensee may state or imply in any advertisement or notice of his or her own HIV test results that any other licensee is or may be a greater risk to patients due to a failure or refusal to provide similar advertising or notice.

(f) Any dental health care licensee who advertises or provides notice of his or her HIV test results must produce upon the request of a patient, a prospective patient, a former patient, or a Department of Health Investigator, an original HIV test result provided by a clinical laboratory regulated by the Department of Health, indicating the result of an HIV test. If the advertisement or notice states that the dental health care licensee has tested negative for HIV, the required test result must indicate a negative result.

Specific Authority 456.032, 466.004 FS. Law Implemented 456.032, 466.019 FS. History—New 12-10-91, Formerly 21G-4.005, 61F5-4.005, 59Q-4.005.