



# Dental Practice Marketing and Advertising 101

Marketing and advertising is critical for a dental practice to establish itself successfully in a community and to maintain practice goals. But what is it and how do you do it?

This resource provides basic and essential information on dental practice marketing and advertising. The basic information is general descriptions on how to start the marketing process and on different marketing methods. You can find expanded information on the marketing process and methods through the abundance of available marketing resources – journal articles, books, blogs and consultants. The essential information in this resource, which few organizations can provide, includes the laws and ethics of dental practice marketing and advertising in California. This resource discusses how you should consider the Dental Practice Act (DPA), California and federal privacy laws, federal marketing laws and the CDA Code of Ethics in your marketing activities.

## Marketing vs. Advertising

### Marketing:

It is a process of identifying potential customer wants and needs, focusing on a product or service to fulfill those wants and needs and attempting to move customers toward the product or service offered. Marketing is fundamental to the growth of any business. Effective marketing creates consumer awareness of a product or service through any number of techniques, including advertising. A successful dental practice has both internal and external marketing programs.

- Internal marketing targets current patients and focuses on aligning standard operating procedures with the goal of providing an outstanding patient experience. This is an ongoing process undertaken to build patient loyalty and foster positive “word-of-mouth” marketing.
- External marketing includes both digital and traditional communications to promote your dental practice to the world outside your current patient base. Marketing methods include radio and print ads, websites, direct mail, online advertising and social media.

A dental practice may implement a consistent internal marketing program while changing its external marketing strategy as it moves from a startup practice to a growing practice to an established practice. A marketing plan should be thoughtfully developed, implemented, results-measured and analyzed, then adjusted as needed.

### Advertising:

One aspect of marketing that typically involves the use of space or time to promote a company or product name where it is viewed or heard by potential customers.

### How do I develop a marketing plan?

Set your practice vision – establish goals and measurable objectives. Establish goals in areas such as, but not limited to, number of new patients per month, patient satisfaction and number of therapeutic or crown and bridge cases. Consider including staff in the objective-setting process as a means to both motivate and empower them toward achieving objectives. Then do your research. Who’s your competition? How do you want to differentiate your practice from other practices? Know your target audience and shape your message to appeal to them.

Seek data that characterize your target audience and help identify trends. Do this periodically and not just at the start of your new marketing plan. If not, you may find that your dental practice may have problems attracting new patients.

Marketing is not a “special event.” It should be integrated with your standard practice operations. Regularly review your marketing plan and its implementation to determine its effectiveness.

To help you start the process, use the resource titled “Effectively Using a Vision Statement in the Dental Practice” and the “Dental Office Marketing Plan Template,” which are both available on [cda.org/practicesupport](https://cda.org/practicesupport).

## How do I market my practice?

You need to select the right combination of marketing methods to help you achieve your practice vision. Dentists have extensive informational resources available to help them learn about the various marketing methods — from books, articles and websites that provide detailed information to marketing consultants, website consultants and direct mail companies that provide customized services. Different marketing and advertising methods are summarized below.

- **Business cards/referral cards** – Use of these cards is considered advertising under the DPA.
- **Community events and organizations** – Hold an open house when you first open your office. Join and participate in a service or community organization. Sponsor something at a community or school event. Sponsor or buy a sign at a school or youth sports facility. This is a great way for potential patients to get to know you.
- **Direct mail** – Customize a mailing list to target your preferred demographics. The design and content of your direct mail piece is dependent on your target audience and your practice vision.
- **Discount offers** – Discount offers are popular because everyone loves the idea of saving money. Common offers include exams at a reduced fee or free whitening with a new patient exam. If you want to use discount coupons, know that there are companies that specialize in distributing discount coupons and be sure to familiarize yourself with the DPA rules on discount offers. Read on to learn how offering discounts can affect what a dental plan pays you.
- **Fictitious business name** – This is the name you call your practice if you are not going to use your name under which you hold your professional license. A fictitious business name or DBA (“doing business as”) can include a location, characteristic or adjective that will help patients remember your practice. Fictitious business names must be registered with the Dental Board of California and with the appropriate county office.
- **Group advertising and referral services** – Examples include 1.800.DENTIST and local dental societies. Participants typically pay a fee for the service.
- **Internal marketing** – Many experts believe this to be the most successful means of growing a practice. This process involves a thorough examination of practice operations as it relates to the patient’s experience. From the initial patient inquiry through examination, treatment and follow-up, does the patient feel valued, satisfied and pleased to stay with the practice? Will the patient refer friends and family? Will the patient consider moving forward with additional treatment? Experts believe this type of marketing produces the best return on investment.
- **Logo/branding** – The right logo can effectively communicate your practice image and should be used on all marketing pieces. Branding is a collection of ideas and images that represent your practice as you want your patients to see it. Branding incorporates a logo, other graphics and personal experiences to convey to potential patients positive expectations of the dental practice.
- **Media coverage** – Local newspapers and television news programs will run consumer-focused oral health news. Create public awareness of yourself and your practice by being the news source. Be choosy about the consumer-focused news you promote and do not contact a news outlet more than a handful of times per year.
- **Practice brochure** – This item typically introduces new patients to the practice. It is a traditional marketing piece that can be used in conjunction with a practice website, or not. A brochure has limited space, in comparison to a website, to provide patients with information. However, a well-done brochure can be a terrific promotional tool both inside and outside the practice.

- **Print advertising** – Carriers of print advertising include newspapers, regional magazines and smaller, community-focused newspapers. Assess if your target audience regularly views these publications. Some communities rely more on traditional publications than on the internet. Local newspapers also offer advertising on their websites in conjunction with print ads.
- **Radio/television advertising** – Radio and television ads can be effective if your target audience listens to or watches a particular station. However, producing the ads and buying airtime is expensive. Broadcast time is limited and the periods with the greatest listeners or viewers can demand the highest price. To help you decide where you should spend your advertising dollars, you could survey your current patients to determine which stations they listen to or watch the most.
- **Social media** – Social media sites such as Facebook and Twitter are valuable marketing tools. Many small businesses are using these platforms to connect with their communities, and dental practices can do the same to build their patient base. In addition, online review sites such as Yelp are an increasingly crucial component of the online marketing world.
- **Websites** – Building a website for your practice is a good way to introduce staff, describe procedures, post photos and make new patient forms available. Incorporating extras such as blogs, a patient Q&A or appointment scheduling make it even better. But simply having a website is not enough; developing an online marketing strategy is crucial to drive prospective patients your way.
- **Search engine optimization (SEO)** – SEO is the process of affecting the visibility of your website or a web page in a search engine's unpaid results - often referred to as "natural," "organic" or "earned" results. In general, the earlier (or higher ranked on the search results page) and more frequently a site appears in the search results list, the more visitors it will receive from the search engine's users. Listings are algorithmically determined by an ever-changing formula that takes more than 200 factors about your website into consideration.
- **Pay per click (PPC)** - PPC is an internet advertising model used to direct traffic to your website, in which you pay a fee each time one of your ads is clicked. It is defined simply as the amount spent to get an advertisement clicked.
- **Display advertising** – Display advertising is a type of online advertising that comes in several forms, including banner ads, rich media and more. Unlike text-based ads, display advertising relies on elements such as images, audio and video to communicate an advertising message online. (Definition taken from Marketing Land <https://marketingland.com/library/display-advertising-news>.)

### **How do I determine my marketing budget? How do I know if it is cost-effective?**

The current industry recommendation is to budget as a regular business expense between 1 and 15 percent of your anticipated annual revenue. You will spend more at the outset to market a new practice. Measure the effectiveness of your marketing efforts to determine what works and what does not. Make it a standard procedure to ask new patients how they heard about your practice and track that in the referrals tab of your practice management software. Survey a sample of your current patients to determine their satisfaction level with elements of your practice such as ease in scheduling appointments, friendliness of staff and follow-up after appointments. Marketing consultants can help provide the tools you need to determine your return on investment.

### **I am buying/starting a practice. What marketing strategies should I consider using first?**

Use multiple strategies implemented over a period instead of relying on just one potentially budget-busting strategy. First, establish your brand identity — this includes logo design, collateral material and business signage. Launch your website as a primary marketing tool where you can direct potential and new patients to learn more about you and the practice. A press release to local media works well to create awareness in small- or medium-sized communities. Direct mail is effective in reaching out to residential communities. Tailor your mailing list to match your target audience and ZIP code. Have a direct mail piece designed to attract your ideal patient and include an offer.

Be prepared to mail the piece more than once. You may want to consider developing and mailing a second piece to highlight a different practice feature. If your practice is located in an urban business district, consider print advertising in specialized community publications or outdoor advertising. Another advertising opportunity can be found on community-based websites.

Engage in as much community networking as possible. Take the time to introduce yourself to local business owners and get involved in community events. Moreover, don't forget the internal marketing program to follow through on the exceptional dental practice experience you promise in your external marketing. Other methods of attracting new patients include becoming a provider for a dental benefits plan and joining a referral organization. With all marketing strategies, it is important to measure and track the return on your investment in order to determine if the strategy should be repeated or continued.

### **How does offering a discount affect the payment I receive as a contracted provider?**

Dental benefit plans require a provider to list on the claim form the actual fee charged to a patient. If you offer an exam or X-rays for a reduced fee, the plan bases its payment to you on the actual fee charged. Also, plans require a provider to report the waiver, discounting or other consideration that allows a patient to owe less in a copayment than what a plan has determined. Read your provider handbook and contract to learn more.

### **I have an established practice that I would like to take in a different direction. How do I market the practice to get where I want to go?**

Start by doing what an owner of a new practice does – set your practice vision, do research and rewrite your marketing plan. Economic and community conditions may have changed significantly since your last marketing plan was developed.

### **What should I know about working with a marketing/website/social media consultant?**

Do your own marketing research before meeting with a consultant. It gives you a baseline for assessing the value of the work the consultant proposes to do for you.

Legal considerations for working with a consultant are included in Chapter 2 of the CDA Legal Reference Guide for California Dentists available at [cda.org/practicesupport](http://cda.org/practicesupport).

A non-California based consultant may not be familiar with state laws. The product a consultant produces for your practice is your responsibility. You should make sure your consultant knows state and federal laws. This document describes state and federal requirements with respect to advertising and marketing – provide it to your consultant as a starting point.

### **How can I use the CDA and ADA logos?**

CDA encourages its members to incorporate the CDA logo into their business systems and advertising with guidelines for proper logo usage. Consistent use of the logo by the California Dental Association and its members reinforces this visual image as the symbol of quality dental care.

You may apply for permission to use the CDA logo on certain materials and advertisements by logging on to [cda.org](http://cda.org), reading the CDA Logo Usage Policy and completing the online application or requesting an application through CDA Member Relations Services at 800.232.7645. Members with approved applications will receive the CDA logo by email.

The ADA encourages the use of items with the ADA logo, such as a window decal, membership plaque and patient educational materials within the dental practice. The ADA also has created two logos that members may use. One is a "Visit ADA.org" button that members can use on their practice website. Another logo stating the dentist is an ADA member can be used for practice communications. Members must accept a [graphic usage agreement](#) prior to downloading the logos.

## Legal Limitations

State and federal laws on dental practice marketing and advertising focus on consumer protection and information privacy. Both federal and state laws have anti-kickback rules – refer to Chapter 2 of the CDA Legal Reference Guide for California Dentists. Both the Dental Board of California and the Federal Trade Commission (FTC) enforce “Truth in advertising” rules. The Dental Practice Act sets rules on naming your business, how to advertise fees and discounts, how patients can be referred to your practice and more. Local regulations, such as sign ordinances, can also affect your marketing plan. Read your dental benefit plan handbooks and contracts to learn the limitations of marketing your practice’s affiliation with a plan.

### Outdoor signs

City and county sign ordinances can dictate size, location and look of outdoor business signage. If your sign will be next to a state highway, the state Department of Transportation also has to approve the sign. The Dental Practice Act specifies what information is allowed on the sign. Read this resource further for more information on what the DPA requires. Be sure you know the rules before you order the sign.

### Use of patient information

State and federal laws overlap in the regulation of a dental practice’s use of patient information for marketing purposes. The federal HIPAA Privacy Rule and the state Confidentiality of Medical Information Act (CMIA) effectively require a dental practice to obtain a patient’s authorization prior to using patient health information to communicate about a product or service that encourages a recipient of the communication to purchase or use the product or service. Patient authorization is also needed prior to giving patient information to another entity to market its product or service. A dental practice should utilize an authorization form that meets both HIPAA and CMIA requirements to gain consent to use a patient’s images and testimonial. A valid authorization form must have certain core elements (e.g., description of intended use of information, expiration date) and three required statements. Sample authorization forms are available on [cda.org/practicesupport](https://cda.org/practicesupport).

A dental practice is not required to obtain patient authorization for the following types of communication for which the practice is not financially remunerated by a third party:

Making a patient aware of a health-related product or service (or payment for such product or service) that is included in the patient’s dental benefit plan.

- Providing patient treatment.
- Coordinating care with other providers, such as nursing homes.
- Providing inexpensive items with the practice name and contact information.
- Face-to-face communication.

If a dental practice receives financial remuneration, including, but not limited to, gifts, fees, payments, subsidies or other economic benefits, from a third party for making any marketing, treatment or health care operation communications, the practice must obtain authorization from the patient prior to making that communication.

Additionally, for marketing communications, the practice must:

- Notify the individual receiving the marketing communication in typeface no smaller than 14-point type of the fact that the practice has been remunerated and the source of the remuneration.
- Provide the individual with an opportunity to opt out of receiving future remunerated communications.
- The communication contains instructions in typeface no smaller than 14-point type describing how the individual can opt out of receiving further communications by calling a toll-free number of the dental practice making the remunerated

communications. No further communication may be made to an individual who has opted out after 30 calendar days from the date the individual makes the opt-out request.

The use of patient information to send out patient satisfaction surveys is allowed under privacy laws because such surveys are considered part of a quality assurance process. A dental practice that contracts with a third party to conduct such surveys should sign a HIPAA business associate agreement with the vendor.

Find more information on the marketing limitations in the HIPAA Privacy Rule at the U.S. Department of Health and Human Services [website](#). CMIA information is available from the state [legislative website](#).

## Endorsements

Any endorsement must comply with the FTC's rules covering reviews, social media and traditional advertisements. The FTC rules exist in part to ensure consumers know the nature of the relationship between an endorser and the advertiser so that consumers can properly determine the value of any particular endorsement. For example, if a dental practice gives incentives to patients who provide testimonials, the practice must disclose the incentives.

## Websites

Dental practice websites and liability risks are discussed in Chapter 2 of the CDA Legal Reference Guide for California Dentists. The state [Online Privacy Protection Act](#) requires a commercial website operator to post online and to comply with its privacy policy if the operator collects personal information on California residents through the website. The privacy policy must contain certain elements. A dental practice's HIPAA Notice of Privacy Practices must be posted to the practice website.

Know that web-related copyright or trademark infringement allegations have increased in recent years. Citing or crediting the original copyright owner does not grant the freedom to use content without obtaining documented permission to do so. Refer to the Copyright and Trademark Infringement resource on [cda.org/practicesupport](#).

The Dental Practice Act requires a website that is directly controlled or administered by the licensee or his or her staff to display prominently the name, license type and highest level of academic degree of all who work at the practice. (B&P §680.5)

## Email

The federal [CAN-SPAM Act](#) and [California law](#) apply to all email messages, including business-to-business communications that are advertisements or promotions of a commercial product or service or that promote content on commercial websites. Unsolicited commercial email may not be sent to California email addresses or from California email addresses. An example of a marketing email is a promotion for teeth whitening sent to a dental practice's patients of record. Appointment reminders are not commercial communications.

It is a good idea to obtain an individual's consent prior to sending him or her email, even if the email is not a commercial message. Verbal consent to receive emails is allowed but the consent should be documented.

Following is a summary of the main requirements:

1. The header information — "From," "To," "Reply To" and the originating domain name and email address — is accurate and clearly identifies the person or business who initiated the message. The domain name used must be publicly registered to the person or business who initiated the message or to the company contracted to do the marketing.
2. Subject line accurately reflects content of the message.
3. Clearly and conspicuously identifies the message as an ad.
4. Includes a valid physical postal address of the person or business who initiated the message. This can be a current street

address, a post office box with the U.S. Postal Service or a private mailbox registered with a commercial mail-receiving agency established under postal service regulations.

5. Provides a clear and conspicuous explanation of how the recipient can opt out of getting future emails. Opt-out method should be internet based. A menu to allow a recipient to opt out of certain types of messages can be offered, but the option to stop all commercial messages must be included in the menu.
6. Promptly honor opt-out requests; 10 business days is the maximum period to comply. The recipient cannot be required to pay a fee or provide additional information in order to have an opt-out request honored.
7. Once a recipient has opted out, the email address may not be sold or transferred, even in the form of a mailing list, except if it is being used by a third party to assist with CAN-SPAM compliance.

When sending a group email to patients, a dental practice should ensure email addresses are entered only in the "BCC" field so as not to impermissibly disclose PHI. If a dental practice hires a third party to send marketing communications and the recipient list includes patient email addresses, the practice should sign a HIPAA business associate agreement with the party.

## Telemarketing

Both the Federal Communications Commission and the FTC regulate telemarketing. The FCC enforces the Do Not Call Registry rules, and the FTC enforces the Telemarketing Sales Rule. Even if a dental practice does not use telemarketing and instead uses direct mail or general media (radio, print or internet) advertisements, how a dental practice responds to the calls resulting from those ads can be subject to the rule. Any "upselling" done in the course of a call will make that call subject to the rule. For more information, refer to the [FTC website](#).

## Contests, Referrals and Endorsements

Contests have become popular marketing tools for dental practices. A dental practice that utilizes them must comply with state and federal law. Using contests to obtain patient referrals or endorsements requires the dental practice to be adept at navigating the laws prohibiting compensation for referrals and FTC truth-in-advertising rules.

An example of such a situation is the dental practice that puts the name of a patient in a monthly drawing (technically a "sweepstake" under California law) for a dinner certificate for "liking" the practice's Facebook page or a post. The practice would be required to disclose all the rules of the drawing and also to post a disclosure on the Facebook page that an incentive was offered to solicit the "likes." Refer to [California law \(Business & Professions Code sections 17539-17539\)](#) for rules on operating contests and sweepstakes.

## The Dental Practice Act

How does the state Dental Practice Act affect marketing and advertising? In general, the DPA:

- Defines "advertising" or "advertisement" and states what dental practice advertising may include.
- Prohibits the use of false, misleading or deceptive statements, images or claims.
- Prohibits the advertisement of a guarantee of any dental service.
- Prohibits compensation (including thank-you gifts) and inducements for patient referrals. Requires a permit if the dental practice uses a name other than the name under which a dentist is licensed to practice (fictitious business name).
- Establishes rules for group advertising and referral services.
- Establishes rules for advertising fees, discounts and dentures.

- What follows is a summary of selected sections of the DPA pertaining to advertising and marketing. The appropriate section of the Business & Professions Code (B&P) or Title 16 California Code of Regulations (CCR) is noted. You can view the DPA on the website of the Dental Board of California.

### **Defines advertising**

The DPA defines “advertising” or “advertisement” as any written or printed communication for the purpose of soliciting, describing or promoting a dentist’s licensed activities, or any directory listing caused or permitted by a dentist that indicates his or her licensed activity, or any radio, television or airwave/electronic transmission that solicits or promotes the dentist’s practice, or any printing or writing on novelty objects or dental care products. Advertising does NOT include:

- Any printing or writing used on buildings or uniforms where the purpose of the writing is for identification.
- Any printing or writing on memoranda or other communications used in the ordinary course of business other than solicitation or promotion of the dentist’s practice.

(CCR 16 §1054.3)

### **Identifies what advertising includes**

- Practitioner’s name.
- Office addresses and telephone numbers.
- Office hours.
- Names of languages, other than English, fluently spoken by the practitioner or a person in the practitioner’s office.
- A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her general practice to specific fields.

(B&P §651(h))

### **False and misleading advertising**

Any form of public communication that contains a false, fraudulent, misleading or deceptive statement, claim or image for the purpose of inducing the provision of professional services or product in connection with professional services is prohibited. (B&P §651(a))

A professional card, announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing or similar professional notice or device may not be used if it includes a statement or claim that is false, fraudulent, misleading or deceptive. (B&P §651(e))

A false, fraudulent, misleading or deceptive statement, claim or image includes a statement or claim that does any of the following:

- Contains a misrepresentation of fact.
- Is likely to mislead or deceive because of a failure to disclose material facts.
- Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.
- Uses any photograph or other image of a model (that is, anyone other than an actual patient of the advertising dentist) without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model.

- Uses any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents “before-and-after” views of a patient, without specifying in a prominent location in an easily readable type and size what procedures were performed on that patient. Any “before-and-after” views shall be comparable in presentation so that the results are not distorted by favorable poses, lighting or other features of presentation, and shall contain a statement that the same “before and after” results may not occur for all patients.
- Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.
- Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.
- Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.  
(Also see B&P 1680(i))
- Makes a scientific claim that cannot be substantiated by reliable, peer-reviewed, published scientific studies.
- Includes any statement, endorsement or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(B&P §651(b))

### **Advertising character**

A dental practice may not advertise statements of character tending to deceive or mislead the public. (B&P §1680(h)) Do not use, for example, “Dr. Jim is kind, patient and an expert with children.”

### **Advertising dentures**

Advertising of dentures must include whether the dentures are preformed or custom-made and, in the case of “immediate dentures,” details of (including charges for) later relines or other necessary procedures. Advertising may include fees for various grades of dentures, providing that potentially misleading descriptive phrases are not used and the advertising discloses the variables. (CCR 16 §1053)

### **Advertising discounts**

The advertisement of a discount must:

- List the dollar amount of the nondiscounted fee for the service.
- List either the dollar amount of the discount fee or the percentage of the discount for the specific service.
- Inform the public of the length of time the discount will be honored.
- List verifiable fees.
- Identify specific groups who qualify for the discount or any other terms, conditions or restrictions for qualifying for the discount.

(CCR 16 §1051)

### **Advertising Fees**

Any fee advertisement shall be exact, without the use of phrases including but not limited to “as low as,” “and up,” “lowest prices” or words or phrases of similar import. Any advertisement that refers to services or costs for services and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any advertising shall be prepared

to provide information sufficient to establish the accuracy of that comparison. Fee advertising shall not be fraudulent, deceitful or misleading, including statements or advertisements of bait, discount, premiums, gifts or any statements of a similar nature. In connection with fee advertising, the fee for each product or service shall be clearly identifiable. The fee advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise. Fee advertising for a dental service must fully disclose all services customarily included by the dental profession as part of the advertised service, including but not limited to necessary diagnosis, radiographs, restorative treatment, drugs, local anesthesia or analgesia, materials, laboratory fees and postoperative care.

The advertisement must also disclose any additional services not part of the procedure but for which the patient will be charged, together with the fees for such services. (B&P §651(c) and CCR 16 §1050)

### **Advertising a guarantee**

A dental practice may not advertise a guarantee that any service or dental procedure will be painless. (B&P §1680(l))

### **Advertising superiority**

A dental practice may not advertise either professional superiority or the performance of professional services in a superior manner. (B&P §1680(i)) Dentists cannot advertise that their practice is the “Best Dental Practice in AnyTown,” but if you finish at the top of a local community “best of” competition you can advertise, “Voted Best Dental Practice in AnyCounty” and in the ad indicate the competition year and who voted.

### **Fictitious name**

A dentist must have a valid permit for the use of a fictitious name or any name other than the name under which the dentist is licensed to practice. (B&P §1680(f)) A business with a fictitious name also is required to file the name with the county clerk’s office. In selecting a fictitious name, a dentist should consider the possibility that a name may be misleading. Refer to Section 6C of the CDA Code of Ethics for guidance on practice names.

### **Group advertising and referral services**

A dentist may participate in or operate a group advertising and referral service for dentists if all of the following conditions are met:

- The patient referrals by the service result from patient-initiated responses to service advertising.
- The service advertises, if at all, in conformity with B&P §651 and subdivisions (i) and (l) of §1680.
- The service does not employ a solicitor within the meaning of subdivision (j) of B&P §1680.
- The service does not impose a fee on the member dentists dependent upon the number of referrals or amount of professional fees paid by the patient to the dentist.
- Participating dentists charge no more than their usual and customary fees to any patient referred.
- The service registers with the dental board providing its name and address.
- The service files with the dental board a copy of the standard form contract that regulates its relationship with member dentists, and the contract shall be confidential and not open to public inspection.
- If more than 50 percent of its referrals are made to one individual, association, partnership, corporation or group of three or more dentists, the service discloses that fact in all public communications, including but not limited to communication by means of television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners.

- When member dentists pay any fee to the service, any advertisement by the service shall clearly and conspicuously disclose that fact by including a statement as follows: "Paid for by participating dentists." In print advertisements, the required statement shall be in at least nine-point type. In radio advertisements, the required statement shall be articulated so as to be clearly audible and understandable by the radio audience. In television advertisements, the required statement shall be either clearly audible and understandable to the television audience or displayed in a written form that remains clearly visible for at least five seconds to the television audience.

(B&P §650.2)

### **Patient referrals – compensation or inducement prohibited**

A dentist shall not offer, deliver, receive or accept any gift, rebate, refund, commission, preference or other consideration as compensation or inducement for referring patients. (B&P §650) Thank-you notes may be sent. There is no prohibition on giving gifts to patients or other individuals in recognition of holidays, birthdays or other special events not related to patient referrals.

### **Press/media compensation**

A dentist shall not give anything of value to a representative of the press, radio, television or other communication medium in anticipation of or in return for professional publicity unless the fact of compensation is made known in that publicity.

(B&P §651(d))

### **Social couponing**

Recent changes to state law have established conditions for appropriate advertising using social couponing sites such as Groupon and LivingSocial. If a dentist offers or sells services through a third-party website, the third party does not itself recommend, endorse or otherwise select the dentist and the fee paid by the dentist to the third party is commensurate with the service provided, this type of marketing may not be considered "referral of patients" that is prohibited in Business & Professions Code section 650. Other conditions apply:

- The dentist must disclose in the advertisement that a consultation is required and that the purchaser will receive a refund if not eligible to receive the advertised service.
- Any discount price advertising must include the regular, nondiscounted price for that service.
- The law does not apply to the provision of "basic health care services" or "essential health benefits," which include medically necessary dental anesthesia and pediatric oral care.
- The purchaser is entitled to a refund of the full purchase price (as determined in the agreement between the dentist and third party), if the purchaser elects not to receive the service for any reason and requests a refund or if the dentist determines after consultation with the purchaser that the service is not appropriate for the purchaser.
- The third party must be able to demonstrate that the dentist consented in writing to the above requirements.
- The third party must make available to prospective dentist-advertisers all advertisements on its website by other dentists located in the same geographic region.

### **Specialty advertising**

Limitations on specialty advertising were removed with the passage of legislation in 2011.

You can find on [cda.org/practicesupport](http://cda.org/practicesupport) a resource, Advertising Do's and Don'ts, that provides samples of advertising with notes indicating what is or is not allowed under the DPA and CDA Code of Ethics.

## CDA Code of Ethics

Section 6 of the CDA Code of Ethics advises that dentists have the obligation to represent themselves in a manner that contributes to the esteem of the profession. The standard for judging the ethical propriety of any dentist's advertisement to the public is whether the ad, taken as a whole, is false or misleading in any material respect. A dentist should always ask, "Could my ad be misinterpreted or potentially misleading to someone who knows nothing about my practice or my profession?" The rationale for the standard is protection of the public — a dentist's advertising should contain any information that a patient would consider necessary to make informed choices about practitioners and services.

The CDA Code of Ethics, Advisory Opinion 1.G.1, also advises dentists that in many circumstances promotional activities on school grounds are considered unethical.

The next pages contain excerpts from the California Confidentiality of Medical Information Act, HIPAA and from the CDA Code of Ethics. For information on HIPAA and marketing, refer to the Confidentiality of Medical Information Act.

### References

[Confidentiality of Medical Information Act](#)

[Dental Practice Act](#)

[FCC CAN SPAM](#)

[FTC Endorsement Guide](#)

[FTC Telemarketing Sales Rule](#)

[HIPAA-Compliant Marketing](#)

[HIPAA-Compliant Marketing FAQ](#)

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## Confidentiality of Medical Information Act – excerpts from Civil Code sections 56-56.16

### **CC §56.05 (i)**

“Marketing” means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

“Marketing” does not include any of the following:

- Communications made orally or in writing for which the communicator does not receive direct or indirect remuneration, including but not limited to gifts, fees, payments, subsidies or other economic benefits, from a third party for making the communication.
- Communications made to current enrollees solely for the purpose of describing a provider’s participation in an existing health care provider network or health plan network of a Knox-Keene licensed health plan to which the enrollees already subscribe; communications made to current enrollees solely for the purpose of describing if and the extent to which a product or service, or payment for a product or service, is provided by a provider, contractor or plan or included in a plan of benefits of a Knox-Keene licensed health plan to which the enrollees already subscribe or communications made to plan enrollees describing the availability of more cost-effective pharmaceuticals.
- Communications that are tailored to the circumstances of a particular individual to educate or advise the individual about treatment options and otherwise maintain the individual’s adherence to a prescribed course of medical treatment, as provided in §1399.901 of the Health and Safety Code, for a chronic and seriously debilitating or life-threatening condition as defined in subdivisions (d) and (e) of §1367.21 of the Health and Safety Code if the health care provider, contractor or health plan receives direct or indirect remuneration, including but not limited to gifts, fees, payments, subsidies or other economic benefits, from a third party for making the communication if all of the following apply:
  - The individual receiving the communication is notified in the communication in typeface no smaller than 14-points of the fact that the provider, contractor or health plan has been remunerated and the source of the remuneration.
  - The individual is provided the opportunity to opt out of receiving future remunerated communications.
  - The communication contains instructions in typeface no smaller than 14-points describing how the individual can opt out of receiving further communications by calling a toll-free number of the health care provider, contractor or health plan making the remunerated communications. No further communication may be made to an individual who has opted out after 30 calendar days from the date the individual makes the opt-out request.

### **CC §56.05 (j)**

“Medical information” means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company or contractor regarding a patient’s medical history, mental or physical condition or treatment. “Individually identifiable” means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient’s name, address, electronic mail address, telephone number or Social Security number, or other information that alone or in combination with other publicly available information reveals the individual’s identity.

### **CC §56.10 (d)**

Except to the extent expressly authorized by a patient, enrollee or subscriber, or as provided by subdivisions (b) and (c), a provider of health care, health care service plan, contractor or corporation and its subsidiaries and affiliates shall not intentionally share, sell, use for marketing or otherwise use medical information for a purpose not necessary to provide health care services to the patient.

## HIPAA marketing rules

### § 164.501 definitions, Marketing

1. Except as provided in paragraph (2) of this definition, marketing means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.
2. Marketing does not include a communication made:
  - i. To provide refill reminders or otherwise communicate about a drug or biologic that is currently being prescribed for the individual, only if any financial remuneration received by the covered entity in exchange for making the communication is reasonably related to the covered entity's cost of making the communication.
3. For the following treatment and health care operation purposes, except where the covered entity receives financial remuneration in exchange for making the communication:
  - A. For treatment of an individual by a health care provider, including case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers or settings of care to the individual.
  - B. To describe a health-related product or service (or payment for such product or service) that is provided by or included in a plan of benefits of the covered entity making the communication, including communications about the entities participating in a health care provider network or health plan network; replacement of or enhancements to a health plan; and health-related products or services available only to a health plan enrollee that add value to but are not part of a plan of benefits.
  - C. For case management or care coordination, contacting of individuals with information about treatment alternatives and related functions to the extent these activities do not fall within the definition of treatment.

### § 164.508 uses and disclosures for which an authorization is required

4. Authorization required: marketing. (i) Notwithstanding any provision of this subpart, other than the transition provisions in § 164.532, a covered entity must obtain an authorization for any use or disclosure of protected health information for marketing, except if the communication is in the form of: A) A face-to-face communication made by a covered entity to an individual; or B) A promotional gift of nominal value provided by the covered entity. (ii) If the marketing involves financial remuneration, as defined in paragraph (3) of the definition of marketing at § 164.501, to the covered entity from a third party, the authorization must state that such remuneration is involved.

## CDA Code of Ethics

Section 6 of the CDA Code of Ethics is reproduced here. The entire code is online at [cda.org](http://cda.org).

### Section 6. Representations and Claims

In order to properly serve the public, dentists have the obligation to represent themselves in a manner that contributes to the esteem of the profession.

#### 6A. False and misleading advertising and solicitations

It is unethical for a dentist to mislead a patient or misrepresent in any material respect either directly or indirectly the dentist's identity, training, competence, services or fees. Likewise, it is unethical for a dentist to advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect.

### **Advisory opinions:**

#### **6.A.1. False advertising:**

A dentist shall not disseminate, permit or cause to be disseminated or participate in the benefits from any form of advertising containing a statement or claim which is false or misleading in any material respect for the purpose of, directly or indirectly, soliciting patients or inducing the rendering of dental services.

A statement or claim is false or misleading when it:

- Contains a material misrepresentation of fact.
- Is materially misleading because the statement as a whole makes only a partial disclosure of relevant facts.
- Is intended or is likely to create false or unjustified expectations of favorable results.

#### **6.A.2. Publicity**

A dentist who compensates or gives anything of value to a representative of the press, radio, television or other communication medium in anticipation of, or in return for, professional publicity must make known the fact of such compensation in such publicity.

#### **6.A.3. Public statements**

A dentist shall not issue or cause to be issued through any medium, a public statement expressing or implying official sanction of the ADA, CDA or any of its component societies without due consent of the governing body of said organization. Upon receiving such authorization, the dentist shall ascertain that any public statement is scientifically correct and complies with the Code of Ethics.

#### **6.A.4. Subjective statements about the quality of dental services can raise ethical concerns**

In particular, statements of opinion may be misleading if they are not honestly held, if they misrepresent the qualifications of the holder or the basis of the opinion, or if the patient reasonably interprets them as implied statements of fact. Such statements will be evaluated on a case-by-case basis, considering how patients are likely to respond to the impression made by the advertisement as a whole. The fundamental issue is whether the advertisement, taken as a whole, is false or misleading in a material respect.

#### **6.B. Professional titles and degrees**

Dentists may use the degrees conferred upon them by diploma from recognized dental colleges or schools legally empowered to confer the same, the letters "DDS" as permitted by state law and/or the titles "doctor" or "dentist" and any additional advanced academic degrees earned in health service areas. It is unethical for a dentist to use a title or degree in connection with the promotion of any dental or other commercial endeavor when such usage is false or misleading in any material respect.

### **Advisory opinions:**

#### **6.B.1. Volunteer position titles and experience**

A dentist using volunteer position titles and association and/or component society connected experience in any commercial endeavor may be making a representation that is false or misleading in a material respect. Such use of volunteer position titles and association and/or component society connected experience may be misleading because of the likelihood that it will suggest that the dentist using such is claiming superior skills. However, when such usage does not conflict with state law, volunteer position titles and association and/or component society connected experience may be indicated in scientific papers and curriculum vitae that are not used for any commercial endeavor. In any review by the council of the use of volunteer

position titles and association and/or component society connected experience, the council will apply the standard of whether the use of such is false or misleading in a material respect.

### **6.B.2. Additional advanced academic degrees**

The phrase “any additional advanced academic degrees earned in health service areas” is interpreted to mean only those degrees that are earned after a dentist graduates from dental or medical school. Use of a degree earned prior thereto may be misleading in a material respect because of the likelihood that it will indicate to the public the attainment of specialty status or advanced dental education. A dentist may list degrees only in the order received. A certificate or license is not a degree and shall not be listed with professional titles or degrees.

### **6.B.3. Letter abbreviations**

A dentist may append either the letters “DDS” as permitted by state law, or the letter abbreviation(s) representing the degree(s) conferred upon the dentist by a recognized dental college or school legally empowered to confer the same, when indicating successful completion of a dental educational program. The simultaneous use of these abbreviations, however, may be making a representation that is false or misleading in a material respect as it implies completion of an increased level of dental education. In any review by the council of the use of letter abbreviations, the council will apply the standard of whether the use of such is false or misleading in a material respect.

### **6.C. Name of practice**

As the name under which a dentist conducts a dental practice may be a factor in the selection process of the patient, it is unethical for a dentist to use a trade name or an assumed name that is false or misleading in any material respect. Use of the name of a dentist no longer actively associated with the practice may be continued for a period not to exceed one year