

DENTAL BOARD[650]

Adopted and Filed

Rule making related to dental specialty advertising

The Dental Board hereby amends Chapter 26, “Advertising,” and rescinds Chapter 28, “Designation of Specialty,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 153.33 and 153.34.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 153.13.

Purpose and Summary

These amendments update the requirements to advertise a specialty in the practice of dentistry. The amendments permit a dentist to advertise as a specialist if the dentist is a diplomate of, or board-eligible for, a national certifying board of a specialty recognized by the American Dental Association (ADA), or a diplomate of a board recognized by the American Board of Dental Specialties. In addition, the amendments provide a third option for those seeking board approval of a proposed area of specialty. The ADA has recently addressed the changing scope of specialization, and recent court cases have highlighted the constitutional rights of licensees to advertise the services they provide. Chapter 28 established in detail the specialties that could be advertised and the requirements for those specialties. Since the amendments to Chapter 26 set forth the criteria for advertising specialties, the Board is rescinding Chapter 28 at this time.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 18, 2018, as **ARC 3901C**. A public hearing was held at the offices of the Dental Board on August 21, 2018. Two people were in attendance. Dr. Keith Krell, representing the American Association of Endodontists, submitted a position statement issued by the ADA, which acknowledges First Amendment concerns related to advertising but advocates for the establishment of minimum standards related to specialty advertising. Mr. Sean Murphy, counsel for the American Association of Orthodontists (AAO), summarized the written statement submitted by the AAO, which encouraged the Board to utilize recognition by the Commission on Dental Accreditation as the sole criterion for conferring specialty status. Additionally, the AAO suggested placing parameters on new areas of specialty which may arise and adding the word “expert” to the list of regulated words.

The Board received three additional written comments. The American Academy of Pediatric Dentistry indicated support for the amendments, with a proposal to add additional language to subrule 26.4(7) to preclude general practitioners from using advertising that incorporates the term “pediatric dentistry.” Dr. Duane Van Nieuwenhuyzen, a practicing endodontist, submitted comments which stated that deregulation posed a danger to the public as it would allow general practitioners to make claims of specialty without the requirement of adequate training. Dr. Van Nieuwenhuyzen recommended that the Board establish minimum standards for the purposes of advertising as a specialist. The American Association of Endodontists submitted a copy of the ADA position statement summarized above.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on September 28, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 650—Chapter 7.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on November 28, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 650—26.4(153) as follows:

650—26.4(153) Public representation. All ~~advertisement~~ advertisements and public representations shall contain the name and address or telephone number of the practitioner who placed the ad.

26.4(1) If one's practice is referred to in the advertisement, the ad may state either "general/family practice" or ~~the American Dental Association recognized specialty that the practitioner practices~~ "specialist," "specializes," or "specializing." A dentist advertising or representing oneself as a specialist must comply with the other provisions of this rule.

26.4(2) ~~No dentist may state or imply that the dentist is certified as a specialist when that is not the case. Use of the terms "specialist," "specializing in" or other similar terms in connection with areas that are not recognized as specialties pursuant to 650—Chapter 28 is not permitted~~ A dentist may advertise as a specialist if the dentist meets the standards set forth in this rule.

a. The dentist wishing to advertise as a specialist must be a diplomate of, or board-eligible for, a national certifying board of a specialty recognized by the American Dental Association (ADA), or a diplomate of a board recognized by the American Board of Dental Specialties (ABDS); and

b. The indicated area of specialty must be board-approved. Board-approved ADA specialties are as follows: dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics and oral and maxillofacial radiology. Board-approved ABDS specialties are as follows: oral implantology/implant dentistry, oral medicine, orofacial pain, and anesthesiology.

26.4(3) A certifying board may apply for a new area of specialty to become board-approved by submitting information regarding the area of specialty, including an explanation of how the proposed specialty is within the scope of practice of dentistry in Iowa, and proof of the following:

a. The proposed specialty is separate and distinct from any preexisting specialty recognized by the board or combination of board-recognized dental specialties;

b. The proposed specialty is a distinct and well-defined field which requires unique knowledge and skills beyond those commonly possessed by dental school graduates;

c. The certifying board is an independent entity that is comprised of licensed dentists, whose membership is reflective of the proposed specialty, and that is incorporated and governed solely by the licensed dentists/board members;

d. The certifying board has a permanent headquarters and staff;

e. The certifying board has issued diplomate certificates to licensed dentists for at least five years;

f. The certifying board requires passing an oral and written examination based on psychometric principles that tests the applicant's knowledge and skill in the proposed specialty;

g. The certifying board requires all dentists who seek certification in the proposed specialty to have successfully completed a specified, objectively verifiable amount of post-DDS or -DMD education and experience that is appropriate for the proposed specialty area, as determined by the board; and

h. The certifying board's website that includes online resources for the consumer to verify the certifying board's certification requirements and a list of the names and addresses of the dentists who have been awarded certification by the board shall be made available for public access.

26.4(4) The use of the terms "specialist," "specializes," "orthodontist," "oral and maxillofacial surgeon," "oral and maxillofacial radiologist," "periodontist," "pediatric dentist," "prosthodontist," "endodontist," "oral pathologist," "public health dentist," "dental anesthesiologist," or other similar terms which imply that the dentist is a specialist may only be used by a licensed dentist meeting the requirements of this rule. A dentist who advertises as a specialist must avoid any implication that other dentists associated with the same practice are specialists unless the dentists also meet all of the requirements of this rule.

26.4(5) The term "diplomate" or "board-certified" may only be used by a dentist who has successfully completed the qualifying examination of the appropriate certifying board of one or more of the specialties recognized by the ADA or the ABDS, or as otherwise permitted pursuant to these rules.

26.4(6) A dentist advertising as a specialist pursuant to these rules shall include the name of the national certifying board and the name of the entity which recognizes the board in the advertisement.

~~26.4(3)~~ 26.4(7) Dentists A dentist may advertise the areas in which they practice the dentist practices, including, but not limited to, specialty services, using other descriptive terms such as "emphasis on _____" or other similar terms, as long as all other provisions of these rules regarding advertising are met.

ITEM 2. Rescind and reserve **650—Chapter 28.**

[Filed 10/1/18, effective 11/28/18]

[Published 10/24/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/24/18.