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**Teaching dental  
 students legal  
 reasoning: Case  
 studies in fee splitting**

### **Concerning Fee Splitting**

There are three readily identifiable sources of relevant rules:

- (a) Massachusetts General Laws
- (b) The ADA Code of Professional Conduct
- (c) Regulations issued by the Mass. Board of Registration in Dentistry

### **MGL Ch.112 §52A**

"If a registered dentist contracts with a referral service and a fee is required for the registered dentist to be part of the referral service network, the referral service shall disclose the existence of the fee arrangement in any newspaper, radio or television advertisement, or in any display sign, personal solicitation or other manner of advertising. The disclosure shall plainly state the existence of the fee arrangement between the referral service and the dentists belonging to the referral service network and shall further state that only dentists who pay a fee are participants in such service."

### **American Dental Association Principles of Ethics and Code of Professional Conduct.**

#### SECTION 4 – PRINCIPLE: JUSTICE

4.E. REBATES AND SPLIT FEES.  
 Dentists shall not accept or tender "rebates" or "split fees."

### **Mass. Incorporation by reference**

Regulations issued by the Board of Registration in Dentistry of the Commonwealth of Massachusetts

#### 234CMR §5.20

"Principles of Ethics and Code of Professional Conduct. All dentists licensed by the Board and all practices providing dental services shall comply with the Principles of Ethics and Code of Professional Conduct, January 2004 of the American Dental Association...."

**Advisory Opinion**

**4.E.1. Split Fees In Advertising And Marketing Services.** The prohibition against a dentist's accepting or tendering rebates or split fees ***applies to business dealings between dentists and any third party [Cf. to Mass. Statute], not just other dentists.*** Thus, a dentist who pays for advertising or marketing services by sharing a specified portion of the professional fees collected from prospective or actual patients with the vendor providing the advertising or marketing services is engaged in fee splitting. The prohibition against fee splitting is also applicable to the marketing of dental treatments or procedures via "social coupons" if the business arrangement between the dentist and the concern providing the marketing services for that treatment or those procedures allows the issuing company to collect the fee from the prospective patient, retain a defined percentage or portion of the revenue collected as payment for the coupon marketing service provided to the dentist and remit to the dentist the remainder of the amount collected.

What if dentist would charge \$100 for a coupon patient, but now charges \$115 & gives \$15 to rebate company. Why not jut charge \$100 & have patient pay company \$15

**ADA Advisory Opinion**

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*May a board rule or regulation supersede a statute? May it ban referral fees to a third party referral company?  
And if it does?*

**American Dental Association Principles of Ethics and Code of Professional Conduct. SECTION 5 – PRINCIPLE: VERACITY ("truthfulness")****5.F.4. REFERRAL SERVICES.**

There are two basic types of referral services for dental care: ***not-for-profit and the commercial.*** The not-for-profit is commonly organized by ***dental societies or community services.*** It is open to all qualified practitioners in the area served. A fee is sometimes charged the practitioner to be listed with the service. A fee for such referral services is for the purpose of covering the expenses of the service and has no relation to the number of patients referred. In contrast, some ***commercial referral services restrict access to the referral service to a limited number of dentists in a particular geographic area.*** Prospective patients calling the service may be referred to a single subscribing dentist in the geographic area ***and the respective dentist billed for each patient referred.*** Commercial referral services often advertise to the public stressing that there is no charge for use of the service and the patient may not be informed of the referral fee paid by the dentist. There is a connotation to such advertisements that the referral that is being made is in the nature of a public service. ***A dentist is allowed to pay for any advertising permitted by the Code, but is generally not permitted to make payments to another person or entity for the referral of a patient for professional services. While the particular facts and circumstances relating to an individual commercial referral service will vary, the council believes that the aspects outlined above for commercial referral services violate the Code in that it constitutes advertising which is false or misleading in a material respect and violates the prohibitions in the Code against fee splitting.***

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**234CMR §5.21**

**Prohibited Practices.** Licensees are prohibited from engaging in the following practices:

- (1) {Intentionally deleted}
- (2) Paying or accepting fees in any form or manner as compensation for referring patients to any person for professional services, written work orders, or other services or articles supplied to the patient...."

**Case 1.**

Jim Dentist has a practice of general dentistry located in a large office building. He rents an office to Gloria Endodontist within his premises that he leases from the owner of the building. This arrangement includes Gloria's right to use Jim's telephone equipment and all office equipment; a common waiting room and receptionist for her patients and Jim's; an operatory equipped with all necessary equipment to treat patients; and the assistance of a hygienist proficient in her practice. Gloria pays Jim a set monthly fee, plus 10% of all fees which she collects. Gloria does not disclose her financial arrangement with Jim to her patients. Should a dentist engage in this conduct?

## Case 2.

Jim Dentist has a practice of general dentistry. Gloria Endodontist has a practice down the hall (in an office which she rents independently from their common landlord.) Gloria was graduated from the Harvard School of Dental Medicine within the previous twelve months, and Jim (who is old enough to be her father) has been a professor of clinical practice there for too long. Most of Gloria's patients are referrals from Jim. Generally, Jim confers with Gloria about their patients. Gloria pays Jim's practice a "consulting fee" which is not shown on any invoice to a patient or to an insurance company; i.e., she pays that fee out of her own pocket. Should a dentist engage in this conduct?

## Case 3.

Jim does business with an out-of-state lab. Prior to April 15th of every year, that lab sends to Jim a check equal to 10% of all sums paid by his practice to the lab in the previous calendar year, and all sums collected by the lab from other dentists who Jim has referred to the lab. Should a dentist engage in this conduct?

## Case 4.

Gloria Endodontist is just beginning her practice as an endodontist. She participates in a web service which refers patients to her. The financial relationship is simple: She is obligated to pay an amount equal to ten percent (10%) of her total gross billings to that firm, for all services provided. The firm also provides her with useful "management manuals" and software for financial and patient record keeping. Has Gloria done anything wrong? Under what standard?