CNA HealthPro

FAQs – Weight Loss Management

Q. I recently read about a removable intraoral appliance that is being marketed by dental practices as a behavior modification device for the sole purpose of patient weight loss. What are the risks I need to consider before deciding whether or not to offer this treatment option in my practice?

A. The most significant question the appliance has generated is whether the various state dental boards will construe the facilitation and/or supervision of weight loss as dental treatment. From a risk management perspective, dentists should only engage in treatment that falls within the scope of dental practice as determined by their state dental board's interpretation of the state dental practice act. Most dental practice acts are broadly written and rarely include or exclude a particular treatment modality.

State medical boards could also enter the fray by alleging the dentist was practicing medicine without a license. Although the appliance to which you refer is intraoral, the condition being treated – obesity – is not. To our knowledge, the medical management and supervision of patients attempting to lose weight is not taught in any U.S. dental school and thus would generally be considered within the domain of physicians.

However, dentists do have the ability to participate in weight loss strategies based on a referral by the physician supervising the patient's progress and condition. This arrangement would not be unlike the treatment of the medical condition of sleep apnea, which requires a sleep study to confirm its diagnosis as a medical condition. The physician then refers the patient to the dentist for fabrication of an intraoral sleep apnea appliance. In the case of this particular weight loss appliance program, the protocol does not appear to require the evaluation or supervision of a physician.

Some dentists have questioned this seemingly narrow interpretation of the profession, asking how weight loss treatment is any different than the tobacco cessation treatment currently offered by numerous dentists. The difference lies in the fact that tobacco use has a direct causal link to oral pathology, whether from smoking, "dipping" or chewing. In contrast, carrying excess weight does *not* directly cause oral disease.

Even if state medical and dental boards permit dentists to supervise weight loss procedures, other risks exist. Most dentists have no knowledge of what tests (blood, urine, or other) to run or how to physically monitor bodily systems during weight loss. Dentists alleged to have been negligent in this process may find that the plaintiff's expert witness is a physician with significant experience in weight loss management. The rules for expert witness testimony vary by state.

Additionally, some patients will present for weight loss management and refuse a comprehensive examination. These patients present a risk for future failure to diagnose and failure to treat allegations. Considering the fees recommended by the marketer of the appliance, patient expectations for success will be significant. While disclaimers, informed consents, and hold harmless agreements that deflect the dentist's responsibility may be part of the treatment protocol, dissatisfied patients can still find ways to extract their revenge. Complaints to the dental board, medical board, dental association, and better business bureaus are all options that are available to disgruntled patients.

Update: Weight Loss Management by Dentists

In our Summer 2004 issue of *Dental Expressions*, the Information Byte Q&A addressed the issue of removable intraoral appliances being marketed by dental practices as a behavior modification device for the sole purpose of patient weight loss. We noted at that time, "The most significant question the appliance has generated is whether the various state dental boards will construe the facilitation and/or supervision of weight loss as dental treatment."

The state dental boards in Illinois and Georgia have since reviewed the issue and issued rulings. The September 2004 issue of the *Illinois Dental News* reported the outcome of the State Board's June 18, 2004 meeting:

> "The Illinois State Board of Dentistry recently ruled that the treatment of obesity by a dentist using dental appliances is not within the scope of dental practice. . . It was the opinion of the Board that primary treatment for obesity by a dentist falls outside the definition of dental treatment in the Illinois Dental Practice Act. The Board cautioned dentists about undertaking such a treatment plan. However, the Board did indicate that a dentist could cooperate with a physician who is treating an obese patient by preparing an appliance for use by the physician's patient."

The determination made by the Georgia Board of Dentistry mirrors that of the Illinois Board. A ruling adopted October 8, 2004 under the heading "Appliances Used For Weight Loss" stated:

> "The impression, construction, insertion (delivery) of the appliance and the maintenance of the oral health related to the appliance is within the scope of practice of dentistry pursuant to [Georgia law] O.C.G.A. Title 43 Chapter 11. The diagnosis, evaluation and continued evaluation of the patient's suitability for the appliance is not within the scope of practice pursuant to [Georgia law].
>
> Therefore, only under the orders of a physician can a dentist fabricate this appliance for the designated patient and conduct only those tasks allowed pursuant to [Georgia law]"

The Illinois and Georgia boards both ruled – as we anticipated – that dentists do have the ability to participate in weight loss strategies based on a referral by the physician supervising the patient's progress and condition. Consequently, dentists must ensure that referral documentation from the treating physician is present in the chart of each patient receiving a weight loss appliance.

If said documentation is missing, the dentist should request it immediately. If the patient has not been previously evaluated and referred by a physician, the dentist should cease any further weight loss treatment until such time as the evaluation has been completed and a referral report is received.

In our view, the requirement of a physician's evaluation and referral presented in these rulings reduces the risk exposure for Illinois and Georgia dentists fabricating weight loss appliances. The risk of future failure to diagnose and failure to treat allegations pertaining to serious medical conditions associated with obesity, such as diabetes and hypertension, will probably be attributed to the treating physician rather than the dentist.

Dentists in other states, while not bound by these decisions, should consider following the protocols mandated in Illinois and Georgia as a straightforward method of reducing their professional liability risks.

We will continue to monitor the actions of state boards of dentistry regarding this and other treatment issues and encourage you to do the same for your own jurisdiction of practice.