

DON'T BE A LOSER

In your zeal to help your patients manage their weight, you could be putting your dental license in jeopardy.

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AS I FLIPPED THROUGH THE PAGES of a weekly magazine, I came across an advertisement for a new weight-loss method. The ad stated: "Want to Lose Weight? Call Your Dentist." The item being marketed is an oral retainer-like appliance that when worn, apparently, forces the individual to eat more slowly, thereby leading the person to eat less and lose weight. The company that created the device has been aggressively marketing it to dentists, urging them to become "certified" to prescribe the device for patients.

There may be several hundred such "certified" dentists in New York State. Before you consider joining their rank, beware, and understand the limits of the New York State Dental Practice Act. Otherwise, in helping your patients to lose weight, you could be jeopardizing your dental license and facing serious liability risks.

In New York State, the practice of dentistry is defined in Education Law § 6601 as follows:

"The practice of the profession of dentistry is defined as diagnosing, treating, operating, or prescribing for any disease, pain, injury, deformity or physical condition of the oral and maxillofacial area related to restoring and maintaining dental health. The practice of dentistry includes the prescribing and fabrication of dental prostheses and appliances. The practice of dentistry may include performing physical evaluations in conjunction with the provision of dental treatment."

The state dental practice act does not give dentists unfettered license to treat all physical maladies and conditions; whatever you are doing must relate to restoring and maintaining dental health.

In recent months there have been articles in several state dental journals warning dentists that if they do offer this service or device to their patients, it may be considered outside the practice of dentistry in the particular state and, therefore, may not be covered by malpractice insurance.

Since the purpose of these new devices is solely for weight loss, NYSDA is of the opinion that they are not within the scope of the practice of dentistry as set forth in Education Law § 6601. If the patient's medical condition is properly diagnosed by a physician and an appropriate plan of treatment is provided, including a prescription for an oral appliance, a dentist could fit and fabricate the appliance. The danger is in the dentist diagnosing, treating and monitoring the medical condition of obesity or other weight-related condition. The treatment of any weight condition could result in many adverse consequences beyond dental health, which may not be covered by a dentist's malpractice insurance.

NYSDA requested that the New York State Education Department issue clear guidance regarding the issue. The department confirmed the Association's opinion and issued a letter stating the following:

"If the purpose of the dental appliance is solely to treat a diet or weight loss condition, it would appear that this would not be within the scope of practice of dentistry as defined in New York. Nonetheless, if the condition is properly diagnosed and a lawful treatment plan is prescribed by a professional authorized to do so, the fitting and attaching of the appliance could very well have

dental health implications, and a dentist may be involved in those services.”

Coincidentally, the Georgia State Dental Board has issued a similar ruling under its dental practice act stating: “making impressions for the fabrication of the appliance, and evaluating the interaction of the appliance with the oral cavity [is within the scope of a dentist’s practice, but] evaluating whether a patient is a suitable candidate for the appliance, or monitoring the overall health of a patient fitted with the appliance is not within a dentist’s scope of practice.” (Action: The Journal of the Georgia Dental Association, October 2004: 1.)

There are other methods for weight loss that are being marketed by dentists to which the same rationale would apply, for instance, orthodontic jaw wiring. As with the retainer-like appliance, jaw wiring involves the oral-maxillofacial area. But when the method is used for the purpose of weight loss, it would appear to fall outside the scope of the practice of dentistry.

There is no debate about dentistry’s role in the over-all health of patients. The issue is finding the dentist’s role within the scope of the dental practice act. Certainly, educating your patients about the benefits of good nutrition is part of that role. Treating obesity with an oral device, however, opens up potential liability for the well-intentioned dentist.

Consider, for example, the possible consequences and civil liability that might result from prescribing such a device to an individual with an eating disorder, like anorexia. That is the exact scenario presented to a dentist “certified” to prescribe this oral device in a television interview. Of course, the dentist said the device would never be made for an individual with anorexia, but, therein, lies the danger. That is a diagnosis that must be made by a physician, and any treatment for the disorder needs to be closely monitored.

Weight loss is an issue that involves a multitude of factors—behavioral, psychological, physiological—that dentists are not adequately trained to monitor. Another issue that dentists must be mindful of in this respect is the use of any certification from a company. This could be misleading to the public, as it may lead someone to believe, erroneously, that such certification is sanctioned by the state.

Dentists must not overreach the scope of practice and risk losing their license in an attempt to help patients lose weight. Although the practice of dentistry is constantly evolving, with new products and procedures aimed at improving patients’ dental and overall health, dental professionals must always be cognizant of the limits and scope of the profession. ■

The material contained in this column is informational only and does not constitute legal advice. For specific questions, dentists should contact their own attorney.

