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Litch's Law Log

COVID-19 AAPD Public Policy Actions and Legal and Ethical Challenges

There are many issues impacting pediatric dentists and their patients due to the COVID-19 pandemic. This column discusses some of the most pressing issues and how the AAPD, working closely with the ADA and other dental and medical associations, have advocated for and provided critical information to our membership. Making sense of it all is indeed a challenge, given new regulations, guidance, edicts, and other information flowing from the federal and state governments and private organizations on an almost daily basis. Hence, future columns will address additional issues as needed, including efforts to access relief for Medicaid providers. See the Coding Corner in this issue about our efforts with the 3rd party payer community on issues such as teledentistry.

Rest assured, your AAPD leadership and staff diligently search, evaluate and post valuable resources to help you manage the pandemic. While you can certainly check online with key sources like the CDC, ADA, and OSHA on your own, we put the best and most accurate information on infection control, treating emergencies, federal and state mandates, small business loans, and more on one page.¹ Perhaps most important, you will find out what tomorrow may bring in terms of testing, PPE, and emerging science about the virus. If you have not done so already, please bookmark the AAPD's COVID-19 page.² The resources described below are all available on this page.

Latest recommendations for providing emergency/urgent dental care and minimizing risk to dental health professionals

There is excellent guidance from the ADA in terms of minimizing risk via infection control practices, as well as defining emergency/urgent dental care.³

Guidance/directives from your own state regarding the safe practice of dentistry

As of this writing, the ADA recommended postponement of any dental procedures other than emergency/urgent cases through April 30, 2020. Many states have either government mandates or recommendations extending to this date or beyond. However, at least two state dental associations (Ohio and Washington) petitioned their state governments for a lifting of such restrictions. At the risk of reporting information that will be outdated by the time you read this column, please refer to the interactive state-by-state map maintained by the ADA.³ The AAPD's state Public Policy Advocates network has also done an outstanding job of keeping track of various state developments and working closely with their state dental associations.

Minimizing the risk of COVID-19 transmission while performing general anesthesia.

Our esteemed Chief Policy Officer (and past AAPD President) Dr. Paul Casamassimo offered the following guidance:

"Hospitals across the country are looking at elective surgeries and encouraging or mandating providers to triage those cases so that operating room resources are not stressed and OR personnel are not unnecessarily exposed to COVID-19. Pediatric dentists are encouraged to review pending cases to determine if children can be delayed access to the operating room until this crisis abates. Clearly, children in pain, with acute facial swelling, or with significant traumatic injury may require treatment under general anesthesia. Again, the decision to provide care is dependent on patient need, local restrictions, and available alternative care approaches such as antibiotics and pain medication."

Infection control updates

The most current CDC and OSHA guidance is accessible on the AAPD website.⁴ The AAPD's Safety Committee developed a return to practice checklist for members, which has also been shared with key stakeholders such as the ADA and CDC. This was discussed during the April 28, AAPD Town Hall with AAPD leadership. As noted during the Town Hall, AAPD will strongly advocate that N-95 masks are not necessary for every dental visit, and zero-pressure rooms are not necessary for every dental practice.

What to do about PPE shortages, especially N95 masks?

The AAPD strongly supports ADA efforts in this area, including their letter to Congress on this topic.⁵ The AAPD also sent letters to major dental suppliers, describing how critical children's oral health care is being delayed by these shortages. By the time you read this column we also hope to have more news about AAPD's initiatives for critical PPE.

SBA EIDL and PPP

The AAPD informed members that the Coronavirus Aid, Relief and Economic Security (CARES) Act included a significant increase in funding of \$349 billion to the Small Business Administration (SBA) to guarantee loans to small businesses to help alleviate economic injury directly caused by the coronavirus.

The CARES Act made the SBA COVID-19 Economic Injury Disaster Loan (EIDL) available to employers in all U.S. states,

Washington D.C., and territories. EIDL offered small business owners impacted by COVID-19 the opportunity to obtain up to a \$10,000 Advance on their EIDL. Advance amounts were determined by the number of employees as of Jan. 31, 2020, providing \$1,000 per employee up to a maximum of \$10,000.

The CARES Act also created a new Paycheck Protection Program (PPP) Loan. Starting April 3, 2020, small businesses and sole proprietorships could apply for and receive PPA loans to cover their payroll and other certain expenses through existing SBA lenders.

The AAPD provided a number of resources to assist members with understanding and applying for these programs, on our COVID-19 web pages. Especially helpful was a fact sheet prepared by the ADA and Academy of Dental CPAs.⁴

The ADA and AAPD strongly encouraged dentists to apply quickly for both EIDL and PPP, and then roll in the EIDL for better loan terms on any of the remaining balance from the combined loan after receiving assistance. There was also a successful advocacy campaign utilizing the ADA's and AAPD's Grass Roots networks to reverse SBA guidance that suggested if someone had not received an EIDL prior to April 3, they could not apply for PPP. We thank our advocates for their prompt response to this Action Alert!

The need for dentists to apply quickly for EIDL and PPP was based on the first-come/first-serve nature of these loans, and the concern that available funds might run out. This was emphasized in the April 1, 2020, Pedro Teeth Talk (AAPD podcast) episode where Dr. Joel Berg interviewed Mike Graham, head of the ADA Washington D.C., office. Indeed, the initial PPP funding under the CARES Act ran out on April 15, and the second wave of PPP funding (an additional \$320 million) ran out on April 30. There has also been controversy over the actions of some big banks and larger employers related to PPP.

For further information contact Chief Operating Officer and General Counsel C. Scott Litch at (312) 337-2169 ext. 29 or slitch@aapd.org.

This column presents a general informational overview of legal issues. It is intended as general guidance rather than legal advice. It is not a substitute for consultation with your own attorney concerning specific circumstances in your dental practice. Mr. Litch does not provide legal representation to individual AAPD members.

Recognizing the exact timeline for lifting of restrictions on dental procedures is uncertain, as discussed before, the AAPD continues to work with the ADA to obtain additional funding and modify the PPP legislation to allow for more flexibility in timing for use of the funds.⁷ As of this writing, a large dental coalition consisting of ADA, AAPD, other dental specialties, state dental associations, and state pediatric dentistry chapters, wrote Congressional leadership making this request. In addition to timing flexibility, the dental community is also advocating for dentists to be able to use PPP funds for PPE.

Ethical Issues

The ADA Council on Ethics, Bylaws and Judicial Affairs (CE-BJA) has offered guidance on some of the current ethical issues related to restricted dental practice.⁵

Key points from their essay are as follows:

- “By deferring or suspending procedures, we are protecting our patients and our communities from the coronavirus that causes COVID-19. Such measures allow us to, for example, reduce the aerosol in the office that is produced by high-speed handpieces, ultrasonic scaling units, and prophylaxis cups.”
- “We also are engaging in social distancing by reducing the close contact between other patients as well as staff members, thus limiting the risk of harm to patients, staff members, and ourselves.”
- “We also are conserving personal protective equipment (PPE) that can be used for patients with urgent needs . . . If you run out of PPE, you have an obligation to not continue business as usual.”
- “Although you may need to limit or even close your practice temporarily, it is not appropriate to send patients of record to the local emergency department, public health clinic, or dental school for treatment, as these settings may be overburdened already with direct disease response.”

¹ <https://www.aapd.org/about/about-aapd/news-room/covid-19/>

² https://www.ada.org/~media/CPS/Files/COVID/ADA_COVID_Int_Guidance_Treat_Pts.pdf
https://success.ada.org/~media/CPS/Files/Open%20Files/ADA_COVID19_Dental_Emergency_DDS.pdf?_ga=2.185628073.109987596.1584370627-326180306.1536252416

³ <https://success.ada.org/en/practice-management/patients/covid-19-state-mandates-and-recommendations>

⁴ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/dental-settings.html>

⁵ https://www.ada.org/~media/ADA/Advocacy/Files/200413_congress_leadership_covid19_ppe_nosig.pdf

⁶ https://www.aapd.org/globalassets/media/covid-19/ada-adcpa_sba_loan_info.pdf?utm_source=adaorg&utm_medium=covid-resources-lp&utm_content=cv-pm-sba-loans&utm_campaign=covid-19

⁷ <https://www.ada.org/en/publications/ada-news/2020-archive/april/ada-asks-congress-to-increase-funding-extend-dates-for-small-business-administration-loans>

⁸ <https://www.ada.org/en/publications/ada-news/2020-archive/april/ada-council-affirms-importance-of-code-of-ethics-during-covid-19-pandemic>