



Reducing liability from cosmetic dentistry

Cosmetic dentistry procedures, such as whitening, bonded restorations, veneers, implants, crowns, bridges, and full dentures can make a significant difference in patients' lives. However, they can also lead to significant patient dissatisfaction that can result in payment disputes or legal action. Even when procedures are not specifically defined as "cosmetic," changes in appearance from dental procedures can reduce patient satisfaction, especially if he or she was not prepared for the potential results. By taking a few key steps, dentists can protect themselves from potential liability related to cosmetic dentistry procedures.

Screen patients carefully

Some patients may arrive in the office with unrealistic expectations that may set the dentist up for failure. Early on, dentists should discuss options and possible outcomes of cosmetic procedures. Asking patients about their motivations for wanting the procedure and their expectations will also help identify any misalignment between likely outcomes and the patient's anticipated outcomes.

Screening should include risk assessment for caries and periodontal disease, along with medical risk factors that would make the patient a poor candidate for a cosmetic procedure. For instance, veneers may not be appropriate for patients with severe or advanced periodontal disease.

Note any mental health issues that could affect a patient's response to a procedure. For example, a 2015 survey conducted by the American Academy of Cosmetic Dentistry noted that the most common reasons patients cite for wanting cosmetic dentistry procedures are improvement of physical attractiveness and self-esteem. However, those with low self-esteem will likely not see the improvement they desire. The dentist should also be alert for any indication that the patient expects the dental procedure to correct personality issues. Dentists should know that patients may be more forthcoming with staff members, such as front desk personnel, hygienists or assistants, than with them, so obtaining input from others is important.

Manage patient expectations

What a dentist feels is a successful whitening procedure may fall short of a patient's expectation. Before the procedure, talk with the patient about what results are reasonable to expect. Use good communication skills to set clear procedure goals and avoid making any statement that gives—or implies—a guarantee of success. For procedures such as whitening, it is particularly important to discuss the longevity of the procedure results.

Before-and-after photographs of past procedures may help patients better visualize possible results; however, be sure to note that the images are for illustrative purposes and do not guarantee actual results.

For patients who are not requesting a cosmetic procedure, but for whom the procedure may affect appearance, discuss potential changes they may notice after the procedure. For example, periodontal root planning and scaling may result in gum recession so teeth appear longer.

Provide patient education

In addition to information about the procedure, patients need to understand their responsibilities after the procedure. For example, patients who are having whitening done should avoid tobacco and stain-causing food and drinks for at least several days after the procedure (and ideally, longer). Education should also include possible side effects of the procedure and guidelines as to when to contact the dentist if problems arise.

Education materials need to be available in the patient's preferred language. Printed material should be in a large font size.

Document fully

Documentation can be burdensome, but it is key to protect the dentist from potential liability. Document the informed consent discussion, including review of procedure options; note that questions were answered and the patient expressed understanding. (See Informed consent.) Keep the signed form in the dental record and give a copy to the patient.

Be sure that the consent form clearly outlines risks in language the patient can understand. For example, the risk of chipping or breaking should be listed for veneers, and the risk of allergic or painful reactions to whitening, bleaching, or bonding agents should be noted (even though such reactions are uncommon). A general statement such as "no guarantees have been given regarding the procedure to be done" can be stated and/or included in the consent form.

It is also important to include the procedure goals, ideally signed by the patient, in the dental record, as well as patient education given, along with a note that the patient expressed understanding of the material. The latter can be particularly valuable should patients fail to follow post-procedure instructions and return with complications. Retain any images (X-rays, photographs, etc.) obtained for assessment before, during, or after the procedure.



This newsletter is prepared by the staff of the National Society of Dental Practitioners, Inc.

Senior Editor:

Jennifer L Flynn, CPHRM and President of the Society.

Associate Editor:

Margaret Surowka Rossi, J.D.

The opinions expressed are not intended to provide legal advice, but are attempts to summarize general principles and emerging trends in the law. Legal matters should be referred to an attorney.

Reproduction without permission of the publisher is prohibited.

© 2017 by the National Society of Dental Practitioners, Inc.

The NSDP
1100 Virginia Drive
Suite 250
Fort Washington, PA 19034
800.237.9429

Optimize skills

Dentists should be sure they have the necessary skills to perform procedures they offer patients. A large number of digital and photographic programs exist to communicate with remote labs and to make changes that a patients can approve of or make suggested changes. Keep a file with evidence of continuing education, such as certificates of attendance. Dentists whose practice contains a high percentage of cosmetic procedures may want to consider accreditation through a professional organization.

Improving patient lives

Cosmetic dentistry can improve a patient's life. For example, correcting tooth damage in victims of intimate partner violence can be one small step in recovering physical and mental health. Correcting tooth discoloration and chipping so that someone is no longer reluctant to smile can result in a warmer demeanor that attracts friends. However, dentists need to screen patients carefully, establish expectations, provide education, document fully, and optimize their skills so patients are satisfied

Article reviewed by: Dr. Kenneth W.M. Judy, DDS, FACD, FICD, PhD
Article by: Cynthia Saver, MS, RN, President, CLS Development, Columbia, Maryland

RESOURCES

American Academy of Cosmetic Dentistry. Cosmetic dentistry: state of the industry, survey 2015. www.aacd.com/proxy/files/Publications_and_Resources/AACD_State_of_the_Cosmetic_Dentistry_Industry_2015.pdf.

Little JP, Pollack BR. Esthetics and dental jurisprudence. In: Aschheim K W. Esthetic Dentistry: A Clinical Approach to Techniques and Material. 3rd ed. Philadelphia, PA: Elsevier; 2015: 520-531.

with outcomes, keeping in mind that satisfied patients are unlikely to engage in legal action and may refer other patients to your practice.

Informed consent

Obtaining informed consent is an important step before any dental procedure. Here are the conditions to be met for informed consent to be valid:

- The consent must be freely given.
- The proposed procedure and its prognosis must be described.
- The patient must be informed of the risks and benefits of the proposed procedure.
- Reasonable alternative procedure(s) to the one suggested (including no procedure), and their risks, benefits, and prognosis, must be described.
- The patient must be given the opportunity to ask questions and have them answered.
- All communication with the patient must be in the language the patient understands.
- The consent must be obtained from a person legally authorized to grant consent.

Source: Little JP, Pollack BR. Esthetics and dental jurisprudence. In: Aschheim K W. Esthetic Dentistry: A Clinical Approach to Techniques and Material. 3rd ed. Philadelphia, PA: Elsevier; 2015: 520-531.



NSDP Risk Management Hotline

As a Dentist's Advantage client and member of the NSDP, you have access to Risk Management counseling services by calling the toll-free number at 800.237.9429. The Risk Management Hotline is available 24/7. The Hotline is staffed by experienced dentists, dentist attorneys and dentist risk managers able to assist you with your questions or concerns, including the following professionals:



Philip R. Barbell, DDS, FAGD, FACD, FICD

Philip R. Barbell, DDS practiced general dentistry in New Jersey for 38 years. After graduating from the University of Pennsylvania School of Dental Medicine in 1963 he served for two years in the United States Army

before entering private practice in N.J. He also was a clinical instructor in restorative dentistry and oral medicine at his alma mater for six years. He was Director of Dental Consulting/Risk Management for the Redwoods Dental Malpractice program for 4 years and then for the "Dentist's Advantage" malpractice insurance program for 5 years and now runs their Malpractice Hotline. He also serves on the board of The National Society of Dental Practitioners.

He has been involved in organized dentistry at the local, state and national levels, having served as President of Southern Dental Society of New Jersey and New Jersey Dental Association. He has been involved in the insurance arena for his entire professional career. He has served as either a board member or officer of several dental insurance entities including Delta Dental of America, New Jersey Dental Service Plan and The Benecare Dental Plan. Dr. Barbell has been directly involved at the state and national level on dental association committees dealing with dental insurance plans for over 25 years. He has also held leadership positions in the dental liability insurance arena for over 30 years, having served for 11 years as President and Chairman of the Board of a national dentist owned and controlled malpractice insurance company, National Dental Mutual Insurance Co, RRG.

Dr. Barbell is a member of the Southern Dental Society of New Jersey, New Jersey Dental Association, American Dental Association, Academy of General Dentistry and Pierre Fauchard Academy. He is also a Fellow of the Academy of General Dentistry, the American College of Dentists and the International College of Dentists. He has been active in the American Dental Association in various capacities and has served as co-chairman and chairman of the American Dental Association's National Advisory Committee on Health Literacy in Dentistry for 7 years.

He has authored several articles on dental insurance and dental risk management, has lectured at many dental meetings and dental schools and has produced several Webinars on dental insurance, third party dental care financing, dental malpractice insurance and dental risk management.

Dr. Barbell currently owns a Dental Risk Management consulting service in Coral Springs, Florida. He also volunteers for "Seniors vs. Crime", a special project of the Florida Attorney General.



James R. Nemeth, DDS

Dr. James R. Nemeth, DDS received his dental surgery degree from New York University College of Dentistry in 1974. Following his service as a U.S. Army Captain, including a two year general practice program, he started in private practice. In 1976, he began working as a

dental consultant for the municipalities of Hempstead, NY and Oyster Bay, NY in Long Island, New York.

In 1985, he became a member of his local dental society's Professional Liability Committee. This committee was established by a New York State-endorsed malpractice insurance carrier (Fanwich & Rubin), to aid in the defense of their dental clients. As a member of this committee, Dr. Nemeth reviewed the legal papers and records of dentists involved in litigation, then interviewed the dentists and determined whether their case should be settled or defended based on the information given to the committee. In 1997, Dr. Nemeth became Chairman of the Professional Liability Committee and continued to serve as chairman until 2013. During his time as Chairman, he reviewed over 1,000 dental liability cases, reviewing a wide variety of scenarios.

During his career, Dr. Nemeth has also consulted for various companies such as Weicholz, Peters and Goldstein (Brooklyn), St. Paul Fire and Marine Insurance Company, Smith Elliot and Garmey PA (Maine), Croutier and Ryan, Esqs. (New York), and Maxson Young Associates, Inc., and has acted as an expert witness in several court cases.

In 1987, Dr. Nemeth began operating the National Society of Dental Practitioners' (NSDP) hotline, advising dentists about difficult issues they are having in their office. Dr. Nemeth retired from general practice in 2014, and has since continued to run the hotline, and serves as a Director on the Board of the NSDP.

Dr. Nemeth finds assisting dentists who contact the hotline to be particularly satisfying because he gets to help many dentists from around the country avoid litigation through the information he provides them.





The National Society of Dental Practitioners **RISK MANAGEMENT** Newsletter

Volume 32 | No. 4

IN THIS ISSUE

Reducing liability
from cosmetic
dentistry 1-2

NSDP Risk
Management Hotline 3



Did you know...

...that there is a full library of Risk Management information available to NSDP members on the Dentist's Advantage website?

As a member, you have access to a full range of helpful information that you can use everyday in your practice. They include:

- **Dental Office Forms** – Our Dental Office Forms system represents one of the valuable and useful tools we provide to assist you in managing your practice in the safest way possible. Included in this library are dozens of Record Keeping Forms and Consent Forms. Some examples are:
 - Record Keeping Forms
 - Chart Review Checklist
 - Post Extraction Instructions
 - Consent Forms
 - Consultation/Biopsy Request
 - **Articles** – Browse through our articles index for a specific risk management-related topic.
 - **NSDP Newsletters** – Read past issues of the NSDP newsletters.
 - **Risk Management Webinars** – Our webinars are open to all dentists to learn about risk exposures they might face in their daily practice. Our free web-based-seminars feature presentations made by industry leaders in the insurance and healthcare fields.
 - **Risk Management Alerts** - Periodic alerts to recent changes in dental practice, dental regulation and trends in dentistry.
- Need Advice?** Call the Dentist's Advantage/NSDP hotline at 1.800.237.9429. Expert advice from licensed dentists and other risk professionals.

To take advantage of this value-added benefit available exclusively to NSDP members, visit www.dentists-advantage.com and click on the Risk Management section.