

## **SPECIAL EDITION RISK MANAGEMENT Q&A**

### **Novel Coronavirus (COVID-19) National Public Health Emergency FAQs for Dentists and Dental Practice Owners**

On a daily basis, state and local governments are issuing shelter-in-place and stay at home orders, except for activities that are deemed essential. As of March 30, 2020, [about three out of every four](#) Americans live in an area where business owners may or may soon be subject to fines for keeping open a business that is not deemed to be “essential”. Under these types of orders, businesses such as grocery stores, healthcare facilities, pharmacies, gas stations, and laundromats are designated as “essential”. Nevertheless, questions remain about how healthcare offices and providers should respond to these orders.

Dental settings have unique characteristics that warrant additional infection control considerations. According to the CDC's [Interim Infection Prevention and Control Guidance for Dental Settings](#), healthcare facilities and clinicians should postpone elective procedures, surgeries, and non-urgent dental visits, and contact patients prior to emergency procedures for the foreseeable future. Taking these actions can ensure staff and patient/client safety; conserve critical resources, including healthcare staff, personal protective equipment, and patient care supplies; as well as expand available hospital capacity during the COVID-19 pandemic. The CDC recommends that clinics and healthcare facilities:

- Delay all elective ambulatory provider visits
- Reschedule elective and non-urgent admissions
- Delay inpatient and outpatient elective surgical and procedural cases
- Postpone routine dental and eyecare visits

#### **Q: If I am mandated to close or limit the care/treatment being offered by my practice by my state/local government, or if I decide to take these precautions based on my assessment of the situation in my community, what should I communicate to patients/clients?**

**A:** We recognize that you are on the front lines of this healthcare crisis and wish to thank you for your dedication to patient care. We recognize that we must all do our part to help slow the spread of the disease. The health and safety of patients and staff is your highest priority at this time. We recommend following [CDC's Interim Infection Prevention and Control Guidance for Dental Settings During the COVID-19 Response](#) and your state/local government to help protect patients, staff, and the community-at-large. Continue to check the CDC's website for this information as it becomes available and as it may be updated. You also may wish to consult dental-specific information issued by the [American Dental Association](#) (ADA), the [Academy of General Dentistry](#) (AGD), the [Organization for Safety and Asepsis and Prevention](#) (OSAP), or dental specialty organizations.

When communicating practice closure to patients, be sure to include the following information:

- A message reinforcing that the health and safety of your patients and staff is the highest priority.
- A message reinforcing that the practice is diligently monitoring updates from the Centers for Disease Control and Prevention (CDC), professional associations, and governmental officials in order to ensure that all necessary precautions are being taken.
- Inform patients of the timing of the closure. If the timing is unknown, offer your estimate of the anticipated length of the closure based upon most up-to-date information from your state/local officials.
- Include what will happen to those appointments which were scheduled during the closure period, such as, “If you have an appointment scheduled between <<X Date>> and <<Y Date>>, the appointment will automatically be cancelled. It is not necessary to call the office at this time. When we return to regular office hours, our team will contact you to reschedule.”

- Consider contacting patients who may be a higher risk of COVID-19-related complications (e.g., elderly, those with medical co-morbidities, and potentially other persons who are at higher risk for complications from respiratory diseases, such as pregnant women) to ensure adherence to current medications and therapeutic/oral healthcare regimens, confirm that they have sufficient medication refills, and provide instructions to notify their healthcare provider by phone if they become ill or experience a dental emergency.
- Inform patients that you and your staff are available to see emergency and urgent care patients. Provide examples of what an emergency or urgent care may involve, such as, “If you are experiencing an emergency (bleeding, swelling or uncontrollable pain), call our office/emergency line.” This information may vary based upon state guidance or mandates.
- Guidelines also note that if emergency/urgent treatment is necessary, providers must determine appropriate precautions to take on a case-by-case basis to avoid spreading diseases among patients, visitors, and staff. Inform patients that all patients and family members visiting for an emergency appointment will be screened for COVID-19, including completion of a travel/exposure/symptom questionnaire and a temperature assessment. Practices must take every precaution to keep each other, and the community, safe.
- Promote the increased use of telehealth. Healthcare facilities can increase the use of telephone management and other remote methods of triaging, assessing and caring for all patients to decrease the volume of persons seeking care in facilities. For more information on telehealth, consult the following resources. Note that some states are relaxing licensing requirements related to telehealth, which may simplify and speed implementation for practitioners:
  - [Healthcare Perspective: Telemedicine: Risk Management Issues, Strategies, and Resources](#)
  - [Dentist's Advantage: Coronavirus \(COVID-19\) Resources](#)
  - [HHS: HIPAA for Professionals](#)
  - [HHS: Emergency Situations, COVID-19 and HIPAA](#)

### **Q: How should I inform my patients/clients about office closures?**

**A:** Communicate about COVID-19 with your patients by providing updates about changes to your policies regarding appointments, emergency treatment, care, and evaluations, and the availability to provide non-urgent patient care by telehealth technology (if able/available). Proactively communicate frequent updates via multiple methods – email, website/Facebook page, and text/phone to ensure that patients are notified about changes to your practice. With all patient communications, be sure to adhere to HIPAA best practices to protect the privacy and confidentiality of patient information, including health information, contact information, and other personal details. For more information on telehealth, consult the following resources:

- [Healthcare Perspective: Telemedicine: Risk Management Issues, Strategies, and Resources](#)
- [Dentist's Advantage: Coronavirus \(COVID-19\) Resources](#)
- [HHS: HIPAA for Professionals](#)
- [HHS: Emergency Situations, COVID-19 and HIPAA](#)

### **Q: Guidance is coming from multiple sources, including the CDC, professional associations, and state/local health departments – what guidance are we supposed to follow?**

**A:** Generally, dental healthcare providers seeking information on COVID-19 response should follow the guidance, goals, and strategies issued by the CDC. The CDC released [Interim Infection Prevention and Control Guidance for Dental Settings](#) on March 26, 2020. Dentists should consult this guidance and continue to check the CDC's website regularly for updates and new information as it becomes available.

Professional associations and state/local governments typically follow the CDC recommendations on COVID-19 response. However, recommendations may vary by state/locality, and state/local governments and health departments may choose to take more stringent action than strategies suggested by the CDC due to local conditions. When recommendations differ, dental healthcare practices and providers should adhere to the most conservative recommendations in order to protect the health and safety of patients, staff, and the community.

Further, since information is being updated rapidly, dental practices should ensure that they are adhering to the most up-to-date information on COVID-19 regarding testing, medical care, protecting healthcare personnel and non-COVID-19 patients accessing healthcare. Dental practices and providers should work with local and state public health organizations, dental and healthcare coalitions, and other local partners to understand the impact and spread of the outbreak in their area.

**Q: According to the CDC, healthcare providers should prioritize urgent and emergency visits and procedures now and for the next several weeks. What is considered “urgent” or “emergency” treatment/care?**

**A:** It may be difficult to distinguish between urgent and emergent. Some states may define urgent or emergency care and/or provide examples in executive orders or other state documents. For dental healthcare providers, the ADA has provided guidance in this area. The information may be accessed on the [ADA COVID-19 webpage](#), or download the [one-page PDF document](#) issued by the ADA which offers guidance. Ultimately, dentists know their patients best and must take these recommendations into consideration to determine on a case-by-case basis what constitutes “urgent” or “emergency” treatment/care. The following definitions may help guide healthcare professionals when they are making decisions about whether and how to proceed with treatment/care on a case-by-case basis:

- **Urgent** can be defined as treatment needed within 24 to 48 hours (e.g., minor injuries and cuts, backaches, sore throats and earaches).
- **Emergent** can be defined as treatment needed immediately to prevent serious jeopardy to health (e.g., severe, persistent bleeding, major broken bones and head injuries, severe fever and violent vomiting).

The CDC recommends delaying all elective ambulatory provider visits, rescheduling elective and non-urgent admissions, delaying inpatient and outpatient elective surgical and procedural cases, and postponing routine visits such as dental and eye care visits. Taking these actions can help conserve the valuable resources of staff, personal protective equipment, and patient care supplies; ensure staff and patient safety; and expand available hospital capacity during the COVID-19 pandemic. For further guidance, please refer to the [CDC's Interim Infection Prevention and Control Guidance for Dental Settings During the COVID-19 Response](#) and continue to check the CDC's website for this information as it becomes available and as it may be updated.

**Q: What should I do if a patient/client does not want to follow the advice of the CDC or state/local governments, and is insisting on scheduling an in-person appointment?**

**A:** Refusal of care typically occurs when the healthcare provider recommends necessary treatment and the patient refuses to proceed. Each patient is unique, and healthcare providers should seek to fully understand the patient's perspective and wishes.

However, in view of the ongoing public health emergency, refusal of care by *the dentist* may be a viable approach, notwithstanding the patient's insistence. The dentist's agreement or refusal will depend on many factors and considerations, including certain healthcare restrictions implemented by gubernatorial executive orders in a number of states. Responses provided to insistent patients should be documented in the dental healthcare information record as noted in the following recommendations:

- Triage of the patient's condition or complaint: does the patient have an urgent or emergency need, or is the patient insisting that the dentist schedule an appointment for non-urgent care under a current treatment plan?
- Does the patient fully understand the personal risk, as well as the risk to dental office personnel from COVID-19 to proceed with non-urgent care, as has been communicated by CDC, professional organizations and/or state government agencies?
- If appropriate, inform the patient of any state executive order, regulatory action, or public health directive that may apply, its scope and/or penalties that may impact the patient, the dentist, or both?
- If the patient does not experience an emergent or urgent need, delaying /rescheduling treatment is supported by current recommendations issued by CDC and others, and may be legally required in some states. CNA recommends following federal and state guidelines or requirements.

- Dentists may wonder if “patient abandonment” is a risk in the current crisis. Abandonment is typically defined by the state practice act. Dentists, therefore, should consult their state licensing board, state law or legal counsel. CNA does not provide legal advice to its insureds. However, in view of the COVID-19 pandemic and public health emergency, delaying elective care is unlikely to result in a finding of patient abandonment. Dentists should, however, remain vigilant in addressing emergency needs for their patients of record and recommend/provide care when appropriate.
- **Dentists are in the best position to determine if the patient does/does not have an emergent or urgent need.** Due to variation from state to state, dentists should review executive orders, regulatory actions and other state information that may apply. For example, an “elective” surgery or procedure in one state [New Jersey] is described as a procedure that “can be delayed without undue risk to the current or future health of the patient as determined by the patient’s treating physician or dentist.” In another state [Oregon], an exemption to delaying care is possible if a delay in care will “put the patient at risk for irreversible harm.” Several examples are provided, such as delays that may result in a “threat of permanent dysfunction of an extremity or organ system,” or a “threat of irreversible harm to the patient’s physical or mental health,” but other examples not listed may also apply. Dentists should routinely monitor communications from state/local regulators for guidance.
- Note that state officials have the power to amend professional scope of practice restrictions, which means that executive orders may expand or limit professional scopes of practice in response to public health demands (for example, allowing for increased utilization of telehealth). Remain up to date on state licensing board actions that may restrict or otherwise modify treatment recommendations or your professional duties to your patients. Note that state actions will vary, and that any changes to the professional scope of practice would be limited to the public health emergency period.
- Importantly, irrespective of the scenario or circumstance, fully document the dentist-patient discussion, the decision, recommendations and the rationale in the dental healthcare information record.

For further guidance, please refer to the [CDC’s Interim Infection Prevention and Control Guidance for Dental Settings During the COVID-19 Response](#) and continue to check the CDC’s website for this information as it becomes available and as it may be updated. Dentists may wish to consult local/state professional organizations regarding other guidance on urgent/emergency procedures, including those [published by the ADA](#).

### **Q: What about informed consent during the COVID-19 pandemic?**

**A:** By definition, the informed consent process involves a practitioner/patient communication about the benefits of treatment, associated risks and reasonable alternatives to treatment. According to [OSHA’s Guidance on Preparing Workplaces for COVID-19](#), dental care (especially aerosol-generating procedures) places dental healthcare workers in the “very high exposure risk” category,

Although patients would not be exposed to the same extent as dental healthcare workers, seeking treatment in the dental office environment may increase the patient’s risk of exposure to COVID-19 compared to no dental treatment. The risk would vary depending upon a number of factors, including the prevalence of the disease in the local community.

Dentists customarily inform patients about the risk of infection as part of the informed consent process, such as for the risk of post-surgical infections, or infections that may result from untreated dental caries. The informed consent process should be documented in the dental healthcare information record. With respect to COVID-19, current recommendations issued by CDC, professional organizations and other authorities include delay of elective/non-urgent care. What if a dentist were to provide non-urgent care after obtaining informed consent from the patient? What if that patient is later diagnosed with a COVID-19 infection and sues the dentist?

It is important to remember that informed consent does not represent a release of liability. Dentists and other healthcare providers must meet the standard of care. Is providing non-urgent care to a dental patient against CDC and other professional guidance and allegedly resulting in a COVID-19 infection, a breach of the standard

of care? The standard of care is a legal term, often described as what a prudent practitioner (dentist) would do under the same or similar circumstances. In the scenario described here, it seems plausible, if not probable, that a prudent dentist would not have undertaken an elective/non-urgent procedure.

Emergency care raises other issues: The risk of COVID-19 infection may be less important in view of the potential patient harm to delay urgent/emergency dental care. Assuming the dentist is complying with state law or other state requirements to provide emergency dental care, a prudent dentist would discuss the benefits, risks and alternatives of that care through the informed consent protocol. The discussion may well include the risk of COVID-19 infection given the current public health emergency. That discussion also may include the steps taken in the dental office to mitigate various treatment risks, such as office compliance with infection prevention and control procedures. The dentist may be taking additional risk mitigation steps during the COVID-19 public health emergency, such as limiting aerosol production during treatment, when feasible, and when it does not increase the risk for other adverse events. An excellent and free webinar resource on COVID-19 infection control protocols and procedure became available on March 20, 2020. This webinar is a collaboration between the ADA and OSAP. The one-hour CE program may be [accessed on the ADA website](#).

The dental practice may take additional risk mitigation measures during the COVID-19 public health emergency, such as:

- Rescheduling non-urgent visits as necessary;
- Consider contacting patients who may be a higher risk of COVID-19-related complications (e.g., elderly, those with medical co-morbidities, and potentially other persons who are at higher risk for complications from respiratory diseases, such as pregnant women) to ensure adherence to current medications and therapeutic regimens, confirm they have sufficient medication refills, and provide instructions to notify their provider by phone if they become ill;
- Considering acceleration of the timing of high priority screening and intervention needs for the short-term, in anticipation of an influx of COVID-19 patients overwhelming the healthcare system in the weeks to come;
- Asking symptomatic patients who must be seen in a clinical setting to call before they leave home, so staff are ready to receive them using appropriate infection control practices and personal protective equipment; and
- Eliminating patient penalties for cancellations and missed appointments related to respiratory illness (see: [CDC's Interim Infection Prevention and Control Guidance for Dental Settings During the COVID-19 Response](#) and continue to check the CDC's website for this information as it becomes available and as it may be updated.

In all cases, thorough documentation of the informed consent process is an important aspect of safe and effective healthcare, and is a critical requirement for effective risk management, in the event of a claim or lawsuit.

Adherence to the recommendations presented in the resources noted above will help to guide your decisions regarding professional dental practice during this unprecedented pandemic.

#### **Disclaimer**

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