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THE SCOPE

DENTAL EDITION

ISSUE 13
THIRD QUARTER 2023

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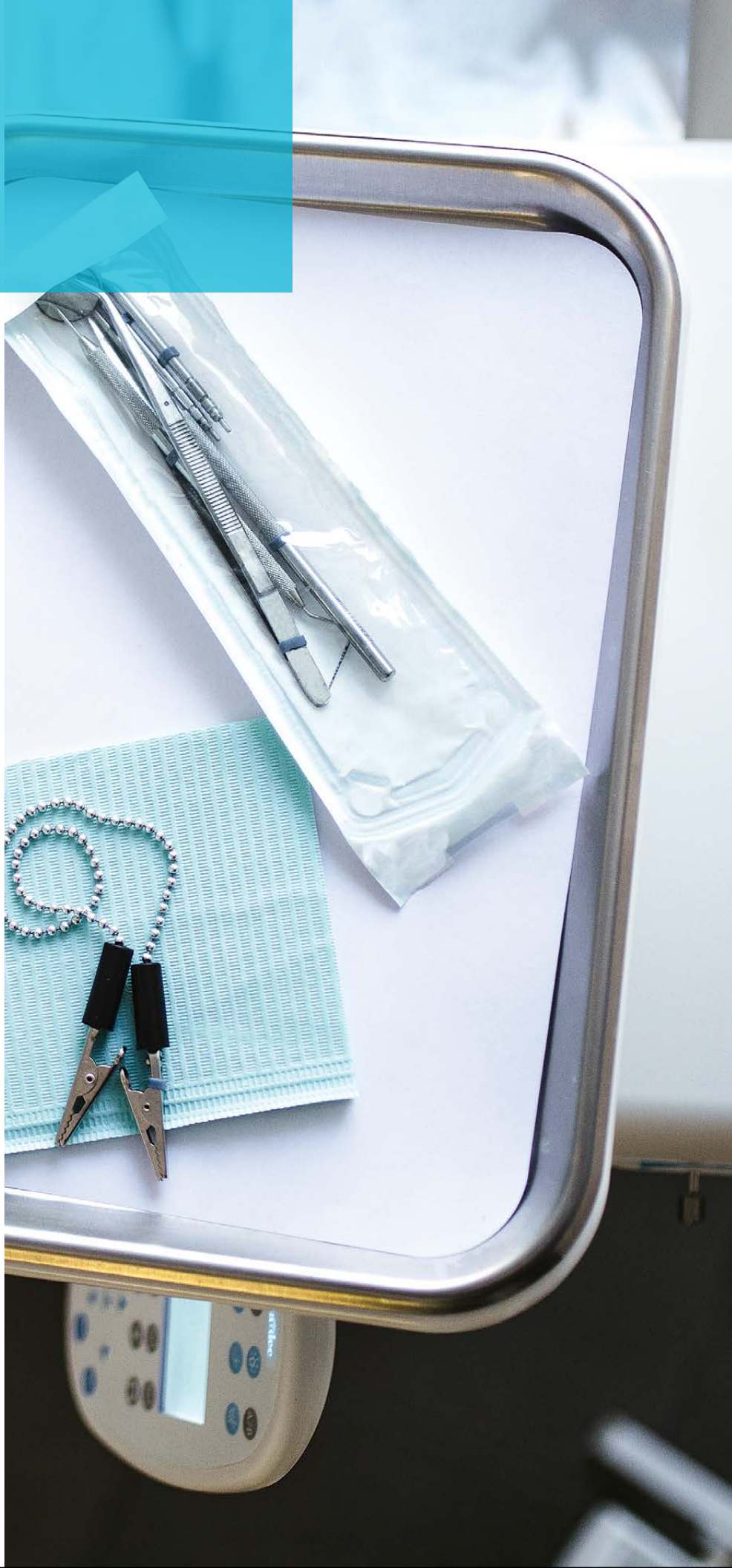
INSIDE



EXECUTIVE MESSAGE

Dear Colleagues,

Welcome back! It's been a brutally hot summer, and I hope you found time for some much deserved rest and relaxation.

I wanted to take a moment to tell you about my own dentist, Rosalie Castano, DDS, in Bay Ridge, Brooklyn. I wanted to share my thoughts and feelings, in part because all of you have patients, like me, who are eternally grateful for the care you all provide.

Dr. Castano has been my dentist for many years, and she has seen me through cavities, root canals, implants, crowns, cleanings, whitening, and a lot more. When I was in pain, she took it seriously and always made room in her schedule for me. Her staff is always warm and welcoming.

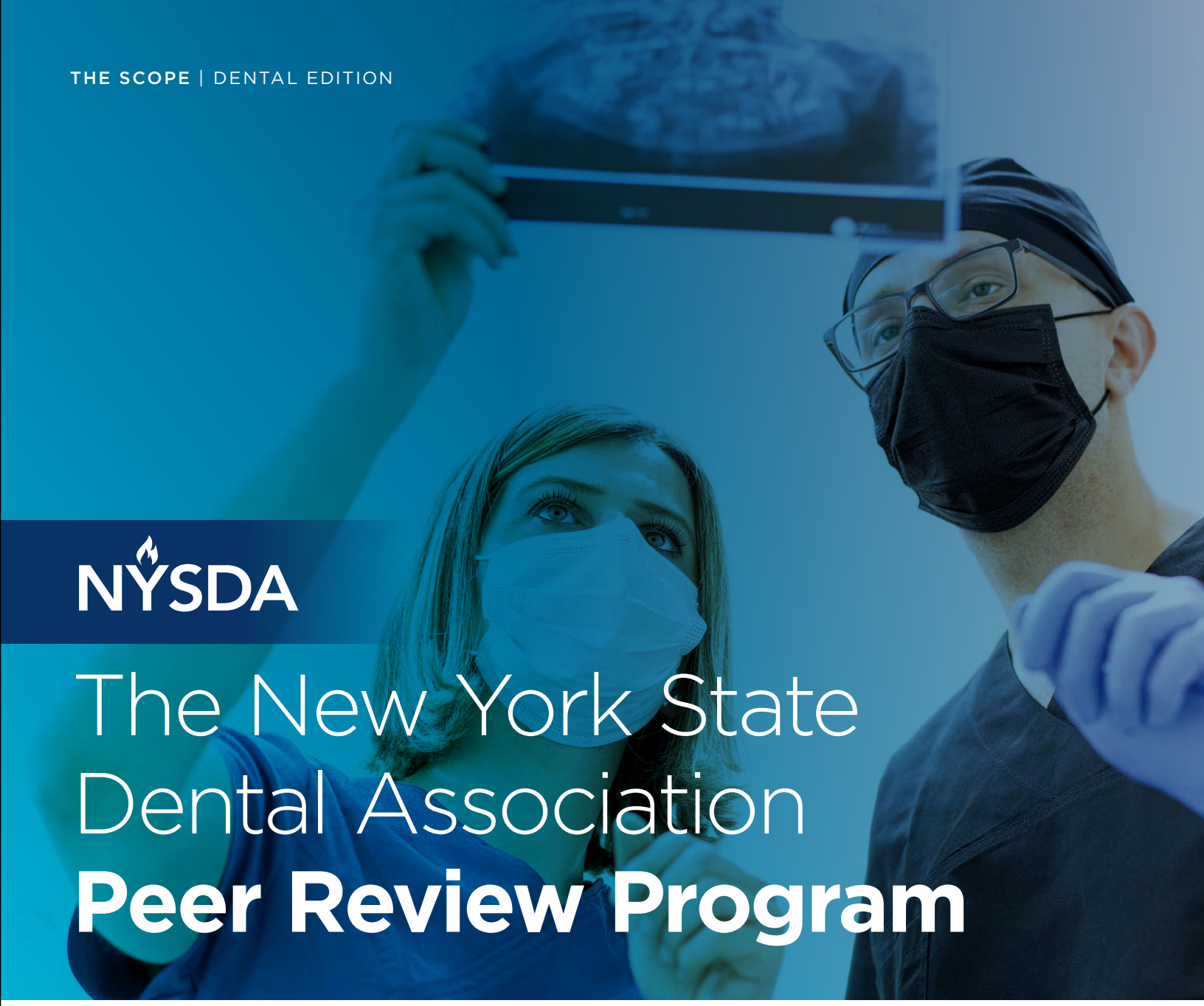
In writing this, I realize the care you provide for your patients is, far too often, taken for granted. Patients may not always think of you until the next crisis they experience. I realize I am guilty of this also.

There are thousands of dentists out there just like Dr. Castano, and I think it's important to stop and recognize the efforts you make to help us, your patients. We are bombarded with surveys telling us that doctors and dentists are not held in the high esteem they once were. I, for one, don't believe or accept this for a minute. All I can assume is that these surveys were administered to people who were not currently ill or in pain! In some people, gratitude can be short-lived or nonexistent, and we need to rely on our own belief in the good that we do, whether or not our patients share this feeling with us. Sometimes, the practice of dentistry is, literally, a thankless task. In my opinion, that doesn't change at all the fact that it is among the highest of callings.

Thanks for all you have done for this patient and all the others. Please feel free to contact me with any thoughts or comments, and as always, MLMIC Insurance Company is always available to help in any way we can.

Sincerely, your colleague,

John W. Lombardo, M.D., FACS
Chief Medical Officer, MLMIC Insurance Company
jlombardo@mlmic.com



NYSDA

The New York State Dental Association **Peer Review Program**

What Is NYSDA Peer Review?

The New York State Dental Association (NYSDA) offers to its Membership and their patients a binding arbitration program, known as Peer Review, that results in the conclusive resolution of dentist–patient disputes.

Peer Review is administered locally by NYSDA's 13 component dental societies, with oversight by the NYSDA Council on Peer Review and Quality Assurance, and participation is an obligation of NYSDA membership.

Participation in Peer Review precludes litigating the same issue in court, though its results are fully enforceable in court, if necessary. The financial amount in controversy is limited to the amount of the fees paid to the dentist for the treatment in

question and/or the amount of fees owed to the dentist for the treatment in question.

Why Is Peer Review Effective?

Although some dentists may look at Peer Review as someone looking over their shoulder and second-guessing their decisions, it is a valuable membership benefit. It is an efficient method of resolving disputes between patient and dentists. By having an agreement signed by both parties, it avoids lawsuits and limits damages to the cost of the original treatment. Therefore, even if the Peer Review Committee should find in favor of the patient, the dentist benefits by having the damages limited. If the Peer Review Committee finds in favor of the dentist, that generally leads to the end of the complaint.

How Does NYSDA Peer Review Work?

Peer Review will hear cases of any dollar value but will not hear a case between a dentist and a patient where there is no money at all in controversy. Peer Review adheres to a statute of limitations for cases of 2½ years from the last date of the treatment about which the patient is complaining and will not hear cases that fall outside that statute of limitations.

As opposed to litigating in court, the process is relatively quick and simple. The long-term average of cases shows an approximate 50 percent split among patients and dentists prevailing in a full Peer Review hearing, though many cases are settled through mediation, and the parties are always free to settle the case on their own outside of Peer Review.

A patient may initiate a Peer Review arbitration by filing a complaint against a dentist with the local component dental society where the dentist treated the patient and signing the formal arbitration contract known as the *Agreement to Submit to Peer Review*.

The dentist then responds to the complaint and also signs the *Agreement to Submit to Peer Review*. The amount of fees in controversy paid to the dentist are placed in escrow by the dentist, and the amount of fees in controversy owed by the patient are placed in escrow by the patient.

Once the escrow monies are collected, Peer Review commences with an initial mediation process conducted by the local component dental society. The Chair of the local component dental society Peer Review Committee serves as the non-voting administrative Chair for the hearing panel. If mediation is successful, the Peer Review proceeding is closed with a formal mediation decision letter that is binding on the dentist and the patient. If agreement cannot be reached during mediation, the case is sent to a hearing panel of three dentists.

> **If mediation is successful, the Peer Review proceeding is closed with a formal mediation decision letter that is binding on the dentist and the patient.**

The three-member Peer Review hearing panel considers the evidence presented, which includes patient records and other materials, and also conducts its own clinical examination of the patient. The hearing panel then issues a written decision to the parties and orders distribution of the escrow funds in accordance with the decision letter.

Appeals

The patient and the dentist each have 30 days in which to appeal the decision of the hearing panel to the NYSDA Council on Peer Review and Quality Assurance. The only bases for an appeal are either a significant procedural error that deprived a party of due process or new material evidence being presented that was not available and not capable of having been presented at the original hearing. Both grounds for an appeal are narrow and relatively rare, and no appeal is granted just because a party disagrees with the decision of the Peer Review hearing panel.

If an appeal is granted, the case is sent back for another round of mediation, and if mediation is not successful, a hearing is held before a new, different three-member Peer Review hearing panel.

Duties of the NYSDA Council on Peer Review and Quality Assurance

The duties of the NYSDA Council on Peer Review and Quality Assurance in overseeing the Peer Review arbitration program are as follows:

1. To develop recommendations to the NYSDA House of Delegates for policies relating to Peer Review as NYSDA's quality assurance mechanism.
2. To develop a *Peer Review Manual* for the use of component society Peer Review Committees and component staff.
3. To develop an educational and training program for the members of component society Peer Review Committees and component staff.
4. To provide technical assistance to component society Peer Review Committees.
5. To promote Peer Review to NYSDA members and the public.
6. To coordinate the activities of component society Peer Review Committees.
7. To oversee the maintenance of statistical information regarding NYSDA Peer Review activity.
8. To consider appeals of decisions of component society Peer Review Committees in accordance with criteria set forth in the *Peer Review Manual*.

The Types of Cases Addressed by Peer Review

Peer Review cases can cover any topic in general or specialty dentistry where the complaint alleges that the proper standard of dental care for the treatment under review was not met by the dentist. Cases involving dental specialists are heard by three-member hearing panels primarily drawn from the specialty involved.

The three most common types of cases heard involve:

- poor crown and bridge work;
- failed implants; and
- ill-fitting and/or painful prosthodontic appliances.

Case Studies Involving **Peer Review**

#1 The Importance of Effective, Clear Communication

While there are some cases where there simply has been poor treatment, and some cases where the patient is being unreasonable and expects a refund simply because they are not satisfied with the outcome, many of the cases addressed by Peer Review are more complicated and could often have been avoided through better communication between the dentist and patient.

NYSDA Peer Review had a case in which a patient broke a maxillary first bicuspid that had been previously treated endodontically. The treating dentist referred the patient to a periodontist to help determine if the tooth was restorable. Both the periodontist and the treating dentist felt the tooth had a guarded prognosis, but attempting to restore it was a better option than extracting it and placing an implant. The dentist restored the tooth with a post and core and a crown. Both were well done.

Both the periodontist and the treating dentist felt the tooth had a guarded prognosis, but attempting to restore it was a better option than extracting it and placing an implant.

Nevertheless, the restoration failed within two years and the patient was told by another dentist that she now needed an implant. The patient then filed a complaint and wanted the money back that she had paid for the post and core and crown. While failure of a restoration doesn't necessarily mean that a Peer Review Committee will find in favor of the patient, in this case, the Committee found in favor of the patient because the dentist failed to inform the patient of the guarded prognosis and why he concluded that attempting to save the tooth was the preferred option.

Had the dentist fully explained to her the complications that might occur in placing an implant in that area, i.e., possibly missing a tooth in the esthetic zone for eight months waiting for the implant to be fully integrated into the bone, she might have agreed to try to save the tooth and understood why the effort was made. The dentist also would have had the benefit of her sharing the responsibility for the decision.

There was no doubt that the dentist did what he would have done in his own mouth, which could be considered the gold standard, but the Committee felt that the patient should have been adequately informed about her options. This was a case in which there was well-thought-out and executed treatment, but it was the poor communication that led to the dispute and did not meet the standard of care.

#2 The Importance of Proper Documentation

The importance of proper documentation cannot be overemphasized. Recently, a case involved an All-on-4 restoration and a patient who was unhappy with the results. The patient was disappointed that his prosthesis only went back as far as the first molar and was acrylic rather than zirconia, but the chart clearly showed that he approved a trial set up, and when given the option to have a final restoration made of zirconia rather than acrylic over a metal framework, he declined because of the additional cost.

The Committee saw no fault in the restoration and found in favor of the dentist.

#3 Managing Expectations

Finally, it is important to manage expectations and not to overpromise. In this case, a dentist advertised on his website that he makes premium, full upper dentures, that the need for

denture adhesive is indicative of an ill-fitting denture, and that his patients never need denture adhesive to help retain their dentures.

> **Dentists should be careful in what they promise.**

Not surprisingly, the Peer Review Committee addressed a case in which a patient responding to the advertisement subsequently complained that the new denture made by that office was not any more retentive than his original denture. When the Committee examined the new denture, they found it had been overextended on the peripheral borders and relined in attempts to make it more retentive. These measures did not help, and the new denture did not seem any more, and was perhaps even less, retentive than the patient's original denture.

While the use of denture adhesive may indicate a poorly fitting denture, some patients find the added retention of using an adhesive beneficial, even with well-fitting dentures.

Dentists should be careful in what they promise. What applies to the average patient does not necessarily apply to the individual. In this case, the Committee found in favor of the patient.

Peer Review in Action for 50 Years

Having stood the test of time for close to 50 years now, both patients and dentists find NYSDA's Peer Review to be a convenient and effective alternative dispute resolution mechanism that keeps cases out of litigation and often away from the New York State Office of Professional Discipline (OPD) — although, unlike with litigation, Peer Review does not prohibit OPD from taking action. However, Peer Review is confidential and does not maintain evidentiary records capable of being subpoenaed, and no Peer Review records are ever shared with OPD.

Should you have any questions regarding NYSDA's Peer Review program, call Patricia Marcucia at (518) 465-0044, ext. 242, or email pmarcucia@nysdental.org.

Barry Sporer, D.M.D.
Chairman of New York State Dental Association (NYSDA) Peer Review and Quality Assurance Council

Dr. Sporer received his D.M.D. from the University of Pennsylvania. After graduating with honors, he completed residencies in both general practice and prosthodontics. He has practiced in Manhattan for over 20 years. He is active in a variety of study clubs and has been interviewed by Fox News regarding the use of the NTI appliance.

His past memberships include the St. George Oral Cancer Society, the Academy of General Dentistry, the American College of Prosthodontists, the American College of Oral Implantology, and the International Congress of Oral Implantologists. Dr. Sporer is currently chairman of New York State Dental Association Peer Review and Quality Assurance Council. In the past, Dr. Sporer has served as a trustee of the incorporated village of Woodsburg and on the Board of Directors of the New York County Dental Society. He remains dedicated to his practice and patients.

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FROM THE BLOG

JUNE 28, 2023

What Healthcare Providers Need to Know to Protect Themselves from Advertising Liability

There are many positive aspects to marketing and advertising in the healthcare industry. However, there are also risks associated with advertising as a healthcare provider. Understanding the additional liability risks associated with advertising is crucial to protect yourself from professional liability claims, contractual claims, and violations of the Federal Trade Commission Act, New York State Education Law 6530(27), and NYS General Business Law. A provider has a non-delegable duty regarding advertising liability and will be held accountable for material appearing in internet advertising, including on websites and social media.

READ MORE >

JULY 10, 2023

HIV Confidentiality in Dentistry: Answers to Dentists' FAQs

Dentists know the vital importance of patient confidentiality, but it's valuable to revisit how standard confidentiality and patient protections are heightened when it comes to HIV status.

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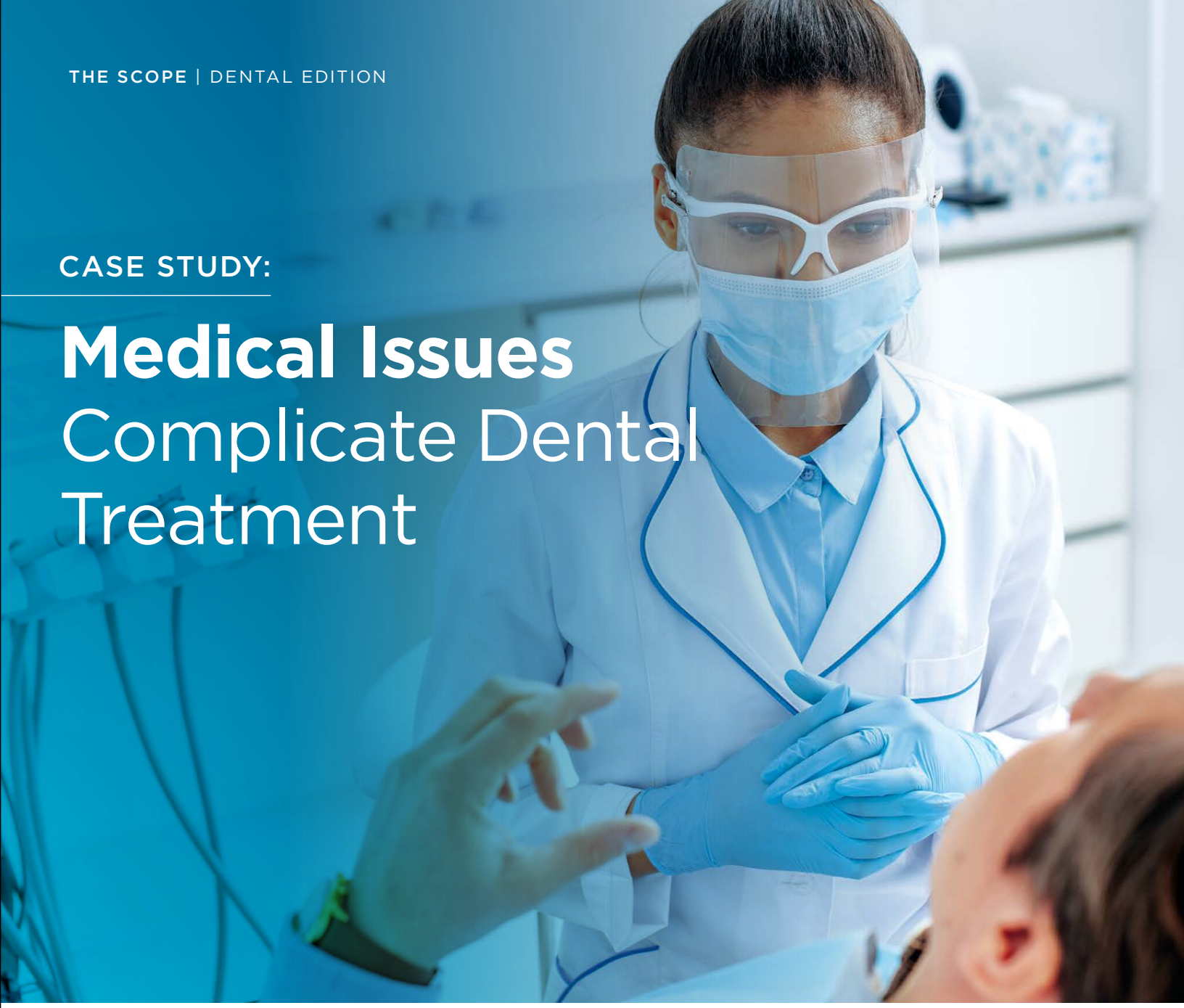

CASE STUDY:

Medical Issues Complicate Dental Treatment

Initial Treatment

A 68-year-old male with only twelve natural teeth and a Class 3 malocclusion presented to the dentist's office complaining that he was very unhappy with upper and lower bridges made two years earlier by another dentist.

The dentist discussed treatment options with the patient. While he removed the old bridges and made temporaries for him, the patient elected not to have implants placed at that time. The patient was sent to the laboratory for assistance in properly correcting his malocclusion.

Eleven months later, the dentist took new impressions and inserted new temporaries to obtain a Class 1 occlusion.

The following year, the patient underwent a root canal on tooth #19, with a post and crown to be inserted at the next visit. However, the patient expressed his discontent with the temporary bridges.

Four months later, the patient returned complaining of pain in tooth #11. At this time, he informed the dentist that he had been diagnosed with Stage IV liver cancer. The following week, the post and core were placed in tooth #19, and an impression was

taken for the crown. In addition, the dentist began a root canal treatment on tooth #11.

The following month, the dentist took new lower impressions, and the root canal on tooth #11 was completed. By the end of that month, the old bridges were removed. Over the course of the next two weeks, new temporaries were recemented.

One month later, since the patient still had a Class 3 occlusion, new impressions were taken. The notes of the dentist reflect that the patient was advised that his expectations for correcting the malocclusion were unrealistic. However, the patient refused to have a removable prosthetic.

The following month, a new temporary was inserted. When the patient returned three months later, he appeared to be happy with the new temporary, so it was cemented permanently.

Medical Illness Interrupts Treatment

Due to surgical procedures related to the patient's physical illness, work on the bridges was temporarily halted. By the following month, which was almost 2½ years since the patient had started treatment, the dentist reprepared the post and cores on teeth #s 8 and 11 and realigned the temporary bridge. Four months later, the upper teeth were inserted with temporary cement. The dental notes reflect that when the patient was reevaluated the following month, he had no complaints with either the upper or lower bridges.

The patient did not return to the dentist for almost two years due to his cancer treatment. He complained of pain in teeth #s 27 and 28, with some looseness. A CBCT indicated that a root canal and possible extraction were indicated. There was also reference to periapical pathology on tooth #29 and that the bridge was still loose. Over the course of the next two months, the patient underwent root canals on teeth #s 29 and 10. Three days later, the porcelain bridge broke from the root canal. The dentist told the patient that it would be necessary to remake the bridge when the patient returned after his health improved following a liver transplant.

Two months later, the bridge was tightened by the dentist, but within a month, the patient returned advising that it had broken again and that part of the bridge near teeth #s 10–13 fell out. The dentist recemented the fractured part of the bridge temporarily and recemented it twice more within a month.

> **Four months later, the upper teeth were inserted with temporary cement.**

After undergoing a liver transplant, the patient returned. It was now more than five years since his initial visit. The dentist removed the upper bridge, made a temporary, and noted that root canals were needed on teeth #s 6 and 7 with a rebuild of tooth #11, as well as impressions. All of this was done the following week.

When the patient returned from North Carolina two months later, the dentist recemented the temporary bridge and inserted posts in teeth #s 6, 7, 10, and 11. By the end of that month, he had also inserted the upper bridge. After 2 months, the dentist made a new lower temporary bridge, which was inserted several months later. At that time, the patient did not want to pay the dentist's fee. Unfortunately, the upper bridge was loose within two months. However, because the patient was leaving again for North Carolina, the dentist recemented the bridge with temporary cement.

When the patient returned in December of that year, he complained to the dentist that the upper bridge #s 3–13 was loose. The loose bridge was removed and reinserted, and they began to discuss implants. The patient indicated that he would attempt to get clearance from his doctor, after which he would be referred for a consultation. This was the last visit to the dentist's office.

After Treatment by Subsequent Dentist, Lawsuit Filed

Shortly thereafter, the patient presented to another dental practice. Over the course of several months, he had numerous procedures performed, including the recementing of his bridges, a root canal on tooth #2, removal of the post and cores of teeth #s 6–11, crown lengthening and new posts and cores placed on many teeth, root canals, and implant insertion. Ultimately, the patient had seven implants inserted, as well as a denture.

> **Ultimately, the patient had seven implants inserted, as well as a denture.**

The patient filed a lawsuit against the original dentist alleging negligent dental treatment over the course of 8 years, including claims of improper restorations of teeth #s 3–13 and 20–30, improper root canal treatments of teeth #s 10, 11 and 19, negligent periodontal treatment, and lack of cleanings. As a result, he claimed that this led to decay and periapical pathology that necessitated full mouth rehabilitation.

The notes of the defendant dentist reflected that the patient did not want dentures and could not afford hybrid implants while he was going through cancer treatment. At his deposition, the dentist stated that he did the best he could to keep the bridges in the patient's mouth while the patient was undergoing cancer treatment.

Expert Review and Settlement

The case was reviewed by an expert dentist who felt that while the lack of cleanings and periodontal examinations were weaknesses in the dentist's case, the cause of the failure of the patient's bridges, the fracture, and the ultimate loss of teeth was biomechanical. The occlusal forces were too great, and there was no posterior support to sustain the bridge. He also pointed out that the patient had poor oral hygiene at home, which contributed to the decay and the poor condition of his teeth.

The case was settled on behalf of the defendant dentist for $175,000, despite the plaintiff patient's demand of $350,000.

A Legal and Risk Management Analysis

The patient in this case was experiencing a great deal of stress due to extensive liver cancer treatments that consumed a lot of his time, focus, expense, and energy. Those treatments may have impacted his dental care by affecting his ability to heal properly. Therefore, it may have been advantageous for the dentist to consult with the patient's treating physician as some cancer therapies may affect the treatment a dentist provides, as well as the healing ability of a patient.

It is clear that each time the dentist treated this patient, a good result was unsustainable for any length of time. It is speculative as to whether this was due to repeated failures related to the skills of the dentist, that the patient was receiving chemotherapy, or both. Perhaps the safest approach for this patient to have maximized the potential for a more favorable outcome would have been to wait until cancer treatment was fully completed prior to the provision of much of the dental care he received.

> **It is speculative as to whether this was due to repeated failures related to the skills of the dentist, that the patient was receiving chemotherapy, or both.**

Another causative factor in the deterioration of the treatment provided by the dentist was that the patient was unavailable to receive continuous care at regular intervals for extended periods of time, which very likely had a negative impact on his dental health. Repeated instances of procrastination may have also exacerbated his injuries. The patient repeatedly refused to have a removable prosthetic or implants, and he clearly failed to comprehend that a satisfactory result was not possible due to the treatment decisions he was making. Again, it may have been in the patient's best interests to have received only temporizing treatment until the completion of his cancer therapy when the ability to heal quickly was more likely.

Documentation was lacking as to the risks the dentist should have disclosed to the patient from his persistent delays in receiving cleanings, periodontal probing, root canals, and implants. The patient's financial constraints may have played a role in his decision-making and procrastination, but there is nothing in the record that addressed the likely impact of his poor choices and repeated refusals on his overall dental health. The dentist went along with appeasing the patient for years without addressing the patient's unreasonable expectations of a favorable outcome.

The dentist and the patient displayed a great deal of patience with one another. The dentist empathized that the patient needed to place dental treatment on hold while confronting a serious medical condition. The patient entrusted the dentist for an extended time frame despite the numerous disappointments and failures of treatment received. The combination of these two individuals' interactions produced significant issues for both parties.

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USE OF TECHNOLOGY CHECKLIST

MANAGEMENT OF NEGATIVE ONLINE REVIEWS

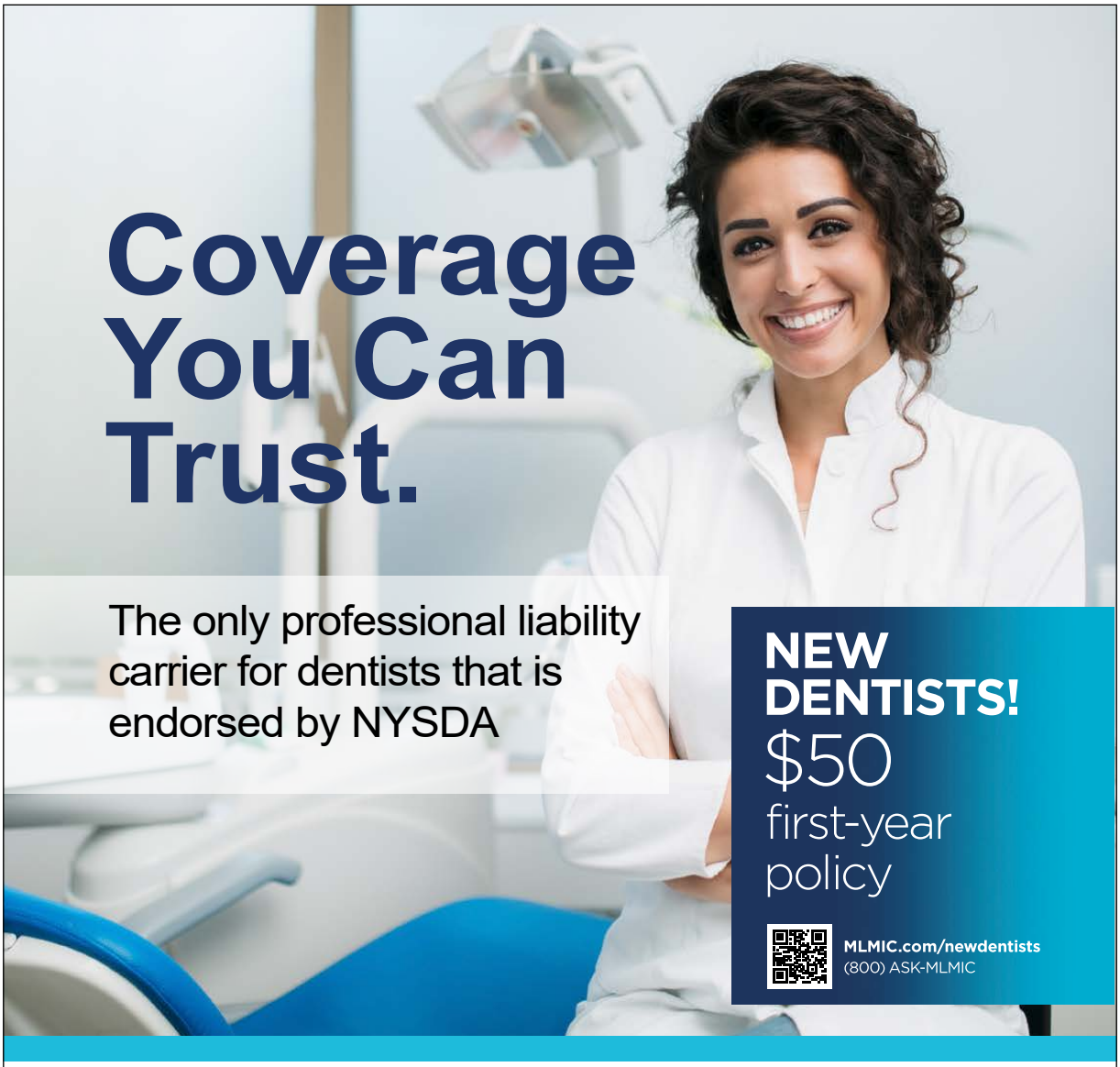
Dentists recognize that along with their practice websites, public websites such as Yelp, Healthgrades, and Rate MDs and social media sites like Facebook and Twitter can be used as marketing tools to inform the public of their services. The online community, however, is afforded an opportunity to respond, rate, and, at times, complain about those services. These statements and reviews are readily accessible to anyone with an internet-ready device.

While there is a basic instinct to immediately respond to negative online reviews, dentists must remember that privacy rules make a complete response via social media inappropriate, and responding directly to an online post puts the provider at risk of disclosing protected health information (PHI). Your response may not contain any identifying statements, but the mere recognition of a patient-provider relationship is a potential HIPAA violation.

	YES	NO
1. All social media posts are critically reviewed for accuracy and authenticity. While some negative statements regarding the performance of the dentist(s) or staff may be difficult to read, these reviews are evaluated to determine if there is any opportunity for learning or process change.	☐	☐
2. We do not engage in online arguments or retaliation — especially if the comments made are particularly negative and potentially detrimental to the reputation of the practice or dentist(s).	☐	☐
3. In order to protect patient privacy, all patient concerns and complaints are resolved by our practice through direct patient contact and not through social media.	☐	☐
4. A standard response, which also serves as a marketing opportunity for our practice, is used for social media responses. Some examples include: •"[Insert name] Practice is proud to have been providing dental care in the community since [insert year] and takes the treatment of our patients and their privacy seriously. Because federal privacy laws govern patients' protected health information, it is not the policy of [insert name] Practice to substantively respond to negative reviews on "ratings" websites, even if they provide misleading, unfair, or inaccurate information. We welcome all our patients and their families to address any concerns/requests or information about their care with us directly, as we strive to continue to provide individualized care in our community." •"At our practice, we strive for patient satisfaction. However, we cannot discuss specific situations due to patient privacy regulations. We encourage those with questions or concerns to contact us directly at [insert phone number]."	☐	☐
5. Local authorities are notified if at any time the safety of the staff is threatened or at risk.	☐	☐

If the patient's complaint has disrupted the provider-patient relationship, discharging the patient from your practice is considered. This action may be viewed as retaliatory by the patient and may set off a new series of negative posts. Attorneys at Mercado May-Skinner* are available to assist with this process. They can be reached by calling **(844) MMS-LAW1** (844-677-5291).

* The attorneys of Mercado May-Skinner are employees of MLMIC Insurance Company.



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