



Novel Coronavirus (COVID-19)

Health Law

June 2020

Brave New World: A Lawyer's Suggestions for Dentists in the COVID-19 Era

By Neil M. Abramson

In merely a few short months, life as we know it has changed dramatically. Since the beginning of the COVID-19 pandemic, the way in which we do virtually everything has changed. It is hardly surprising, then, that the same is true of the practice of dentistry.

At the outset of the pandemic, dental offices were effectively closed, save and except for those practices which remained open to treat urgent and emergent cases. Even then, only a limited number of offices were in operation and only when they implemented very specific protocols. However, as the economy begins to open and society adapts to a new normal, dental practices, under strict controls, are once again being permitted to resume regular patient care.

The questions that then emerge are how it is that dental treatment can be provided safely for staff and patients alike, how the practice can still maintain some degree of profitability under these conditions, and how the practitioner may be best positioned to withstand the College investigations and new patient complaints regarding COVID-safety compliance which will inevitably follow.

Short of permanently closing one's office, there is obviously no guarantee that regulatory scrutiny can be either avoided or result in a favourable outcome for the dentist.

However, there are a number of steps which dentists and the profession as a whole can take in order to mitigate these risks:

1. Review, indeed be well familiar with, the RCDSO's current policies and guidelines. These protocols are very detailed and are specifically designed with the safety of all concerned being the primary consideration. If you are unclear on what may be legally required of you, discuss any issues with colleagues and consult with study clubs, the ODA, or your specialty association.
2. Ideally, the RCDSO would perform safety and COVID compliance audits without there being any possibility of harm or repercussion to the dentist. Unfortunately, at present, having RCDSO

investigators attend at a dental office can result in potentially very serious outcomes, even including prosecution for professional misconduct. Therefore, lobbying your elected representatives to the RCDSO in order to ensure that such an entirely risk-free audit program is created would only be of assistance to the profession and to the public at large.

3. The fact is that there is a financial cost to renovating a dental office to ensure compliance with all new pandemic safety requirements. Moreover, the pre-pandemic volume of patients who were treated in any given dental office will now be dramatically reduced. This will no doubt have a potentially significant impact upon the practice's "bottom-line". So as not to run afoul of the governing professional misconduct Regulations, or provoke patient complaints and RCDSO investigations, the ODA may have to give serious consideration to increasing the fees set out in its suggested fee guide. Lobbying the ODA in this regard, again, can only be in the profession's interest. Moreover, if an increase in the guide's fees means that more dentists will be able to stay in practice and provide patient care, this will no doubt advance the public interest as well.
4. Consideration should be given to amending informed-consent protocols. Even with the best effort toward compliance with all RCDSO safety guidelines, there always remains some risk of a patient contracting the virus. Informed-consent forms could be updated to reflect the fact that the patient knowingly and voluntarily assumes that risk. This will not guarantee that a patient who becomes infected with COVID-19 and blames the dental office will not complain to the RCDSO (or start a lawsuit). However, it certainly makes it less likely and could, at the very least, provide a defense of the dentist's conduct. Certainly, a discussion of this issue with the dentists' malpractice insurer, the PLP, would be in order.
5. Last, also on the subject of the PLP, it is extraordinary that dentists' and dental specialists' malpractice insurer exists as a branch of, and is located in the very same building as, the RCDSO—the professional regulator whose job it is to investigate complaints and to prosecute dentists. Every other profession, physicians, lawyers, and pharmacists as but examples, maintains a complete separation between the profession's liability insurer for malpractice claims and its professional regulator. So why is it not the same for members of the dental profession? The usual response has been that it has been ever thus. However, there are imminent changes coming to the very top of the RCDSO. This then should be the ideal time to lobby your elected RCDSO representatives, perhaps with support from the ODA and specialty groups, to affect much-needed change. It is long overdue.

As dentists and dental specialists navigate the pandemic, they must now learn to practise their profession within the confines of society's new "normal". Patient, staff and personal safety will be paramount. The above suggestions may go a long way toward promoting safety, ensuring practice profitability, and reducing the likelihood of regulatory complaints and investigations.

About the Author

Neil M. Abramson is the Head of the Litigation Department at **Torkin Manes LLP**. He is double certified as a specialist in health law and civil litigation and he routinely represents dentists and other health professionals before their professional Colleges and in hospital privilege disputes. If you have any questions about rights and obligations as a dentist during the COVID-19 pandemic, we encourage you to contact Neil M. Abramson at nabramson@torkinmanes.com.

This article originally appeared in Oral Health.

Author

Neil M. Abramson
Partner

Tel: 416 777 5454
nabramson@torkinmanes.com

The issues raised in this publication are for information purposes only. The comments contained in this document should not be relied upon to replace specific legal advice. Readers should contact professional advisors prior to acting on the basis of material contained herein.