On the Face of Things
Dermal fillers in Massachusetts
Dental Practice

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What Does the Mass. Board of Dentistry have to say?

- Quite a lot!
- The Board is empowered by the legislature, through the Dental Practice Act in Chapter 112, to issue rules about the practice of dentistry
- The Act is very simple – the rules are not, and many folks never look at them
- In addition to the rules, there are Alerts and Policies
- These are all posted on the Board’s website at www.mass.gov/dph/boards/dn
- Posting is required legal notice
So, I can get fined or something, right?

- Yes, the Board has broad authority to discipline a dentist – including a fine, a reprimand, a suspension (or worse!) if you violate the rules

- BUT a violation of the Board’s rules can also be used by a patient’s lawyer to show you were negligent in a law suit
“Evidence of Negligence”

• Violation of law is “evidence of negligence as to all consequences it was intended to prevent”. Bennet v. Eagle Brook Country Stores, 408 Mass. 355 (1990)

• DBCH – four elements of negligence

• So – let’s look at what the Board has to say, and how that could play out . . .
What can I do with dermal fillers?

• Assuming you are a general dentist and not an oral surgeon
• IF you have completed appropriate training, you may:

“[U]se botulinum toxins and/or dermal fillers with patients so long as it is part of the delivery of the patient’s comprehensive dental treatment plan [and] is limited to the practice of dentistry”
Um, What does that mean?

- No one actually knows
  - Isn’t that helpful?
- There are some clues
“Comprehensive Dental Treatment Plan”

- The Board’s regulations don’t define that
- “Comprehensive” could be understood in the context of a comprehensive exam (as compared to a limited, problem focused exam)
- Treatment plan is a DENTAL treatment plan – a focus on something broader than fillers alone
“Limited to the practice of dentistry”

• That one has actual meaning, which I can’t fit on one slide:
• A person shall be deemed to be practicing dentistry if he/she holds himself/herself out as being able to diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity or other condition of the human teeth, alveolar process, gums or jaws, and associated parts, intra-orally or extra-orally, or if he/she either offers or undertakes by any method to diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity or other condition of the same; or if he/she, except on the written prescription of a registered dentist and by the use of impressions made by a registered dentist, directly or indirectly by mail, carrier, personal agent, or
by any other method, supplies, constructs, reproduces, relines, repairs, adds or directs the application of any substance, of a durable nature, to dentures, bridges, appliances or other structures to be used and worn as substitutes for natural teeth or solicits or advertises, except as permitted in M.G.L. c. 112 § 52A, to supply, construct, reproduce, repair, reline, add or direct the application of any substance, of a durable nature, to dentures, bridges, appliances or other structures to be used and worn as substitutes for natural teeth; of if he/she places such substitutes in the mouth or adjusts the same; or if he/she, except on the written prescription of a registered dentist, observes a patient's natural dentition for purposes of matching coloration or other aesthetic characteristic to aid in the fabrication or repair of a prescribed restorative appliance. 234 CMR 2.03
Clear?

- OK – glad we got that clear
- What does it mean?
- Contextually, at minimum, it likely means any use of dermal fillers by a dentist has to be tied in some way to:

  “[Treating a] condition of the human teeth, alveolar process, gums or jaws, and associated parts, intra-orally or extra-orally . . .”
Request for Advisory Opinion

January 10, 2014

Barbara Young, RDH, JD
Executive Director
Mass. Board of Registration in Dentistry
239 Causeway Street, Suite 500
Boston, Massachusetts 02114

Re: Advisory Opinion Request – Use of Botulinum Toxins and Dermal Fillers by Licensed Dentists

Dear Director Young:

This letter is a Request for Advisory Opinion concerning the Massachusetts Board of Registration in Dentistry’s Policy Advisory on the Use of Botulinum Toxins and/or Dermal Fillers by Licensed Dentists. Specifically, this letter requests an interpretation from the Board as to the meaning of the terms “part of the delivery of the patient’s comprehensive treatment plan” and “practice of dentistry” as they pertain to the use of botulinum toxins and dermal fillers by dentists . . .
Is on the Board’s Agenda

Board Agenda
Updated at 7:55AM, February 14, 2014
February 19, 2014

Agenda
8:30 a.m.
● Call to Order
● Review of General Session Minutes: Meeting of January 15, 2014
● DentaQuest

9:30 a.m.
● Complaint Resolution—Pending Board Case
  SA-INV-4500: Dr. XXXXXXXXXX
● Administrative Matters
  Regional/State Clinical Examination Requirements
  Legislation Updates
  **Request for Clarification of Botulinum Toxins/Dermal Fillers Policy**
  Good Moral Character Licensure Policy
  AADB Mid-Year Meeting: April 2014

Review of Enforcement Options Appropriate to the Different Stages of Complaints
So what do we do for now?

• Any new patient for whom you are planning to use dermal fillers should receive a comprehensive new patient exam, including oral cancer screening, perio charting, etc.
• DOCUMENT your exam results – ALL of them
• Prepare a treatment plan that includes ALL of their oral health needs
• The patient can of course CHOOSE which part of the plan to accept
Existing Patient?

- Easier
- Perform and document a focused exam
- UPDATE the treatment plan IN WRITING to include the plan for fillers
What procedures can I actually do?

• Definition of dentistry: “[T]eeth, alveolar process, gums or jaws, and associated parts, intra-orally or extra-orally . . .”

• The farther away from the mouth you get, the higher your risk of trouble

• How much are those crow’s feet worth?
What About Botox Parties?

• Don’t even THINK about it right now!
• “Practice of dentistry”
• Whatever setting you are considering, if you would not or COULD NOT, in that setting:
  – Take a periapical film
  – Obtain a bite impression
  – Extract a tooth

*Then DON’T USE FILLERS THERE!*
So, what if -

• One of your regular patients comes in for prophy/recall with your RDH. She mentions how unhappy she is with the bags under her eyes.
• Your RDH hands her literature about Juvaderm treatments in the office.
• You schedule her for a consult, obtain informed consent, and inject Juvaderm under both eyes.
• The patient claims you damaged a regional nerve branch, resulting in a permanent droop of her right eye.
• She sues you, and the practice.
Could have a problem here

- Her claim may have no merit
- You performed the procedure within the standard of care
- BUT how strong is the argument that these suborbital injections were within “the practice of dentistry”?
- Violation of the Board’s regulations is evidence of negligence as to all consequences it was intended to prevent
- If she files a Board Complaint, you may (MAY, not will) be subject to discipline
Take aways

• Use of fillers by general dentists should be tied to the practice of dentistry
• Treat the patient like a patient, NOT just a customer
• Document, document, document!
• The farther you stray from the mouth the more trouble you buy