Legal, Insurance and Risk Management Considerations

ADA American Dental Association®
America's leading advocate for oral health

As with any access program, Give Kids A Smile® raises legal, insurance and risk management considerations. The good news is that these considerations can be managed with thoughtful planning. Here is a discussion of several key issues, along with some ways you might wish to address them.

Overview

With most access programs, the key risk is the same as in any practice setting: someone getting hurt. This could be a patient being injured as a result of receiving care; it could also be a patient, family member, treatment team member, access staff or volunteer sustaining an injury in connection with the program, such as a "slip and fall" incident on the way to or from treatment. Abandonment issues may also arise, particularly if there is any need for follow-up care after an "access day" visit. In addition, access programs and participating volunteers need to adhere to all applicable laws, such as those regarding antidiscrimination, record keeping, privacy, security, and fraud and abuse.

The potential malpractice risks associated with a dentist's participation in an access program, including Give Kids A Smile ("GKAS"), are generally insurable under professional liability insurance policies. Allied dental employees or volunteer staff members working at the direction of the dentist are also typically insured. For specific information about your personal coverage, including any limitations or requirements, it is advisable to discuss your plans with your insurance agent or company representative. We trust you'll find that your policy affords protection for you and your team members — so the opportunity is yours to simply volunteer!

Beyond insurance, it is worth noting the following with respect to managing the risks associated with access programs:

- Dentists routinely manage all of these risks in their daily practices.
- If an access program is properly structured, charitable immunity and volunteer protection laws may afford some liability protection to dental team volunteers.
- Dental access programs report they have effectively managed their risks (see below).

Safely Navigating the Dental Society's Role

What may be new with an access program is the dental society's role and potential liability exposure. In addition, the society's involvement may trigger additional legal and/or tax considerations, especially if the society wishes to incorporate its program as a non-profit organization. With the right help and planning, this situation also is readily manageable.

A dental society wishing to develop, promote and/or operate an access program can be well served by seeking legal counsel and insurance advice for its program from the very beginning of the planning stages. This can help the society avoid future challenges with respect to legal exposure, insurance and indemnity considerations, incorporating as a nonprofit organization and

other issues. The extent of the society's involvement may affect its legal exposure. Then again, state law may provide some protection for access activities (see below), or the society may simply decide that the benefits of a well-run access program outweigh any legal risks.

Although liability considerations regarding access programs cannot be absolutely extinguished, a lawyer can help a dental society structure its access program to minimize potential risks, and an insurance advisor can help identify the appropriate coverage. For example, a lawyer might suggest ways to structure the program to minimize the society's liability exposure and the likelihood of being sued for a dentist's malpractice. This would include, for example, participation agreements, and consent and release forms. Similarly, an insurance agent could recommend coverage to be held by the society and any additional insured requirements. An agent may also recommend requiring participating volunteer dentists to submit evidence of their own malpractice insurance.

Patient Privacy

Patients' dental records and other patient information are subject to applicable state and federal laws and regulations, such as state dental practice laws and privacy and confidentiality laws (which may include state law or HIPAA or a combination of the two). Reviewing applicable legal requirements, implementing any necessary compliance program, and providing appropriate training are all important elements of the GKAS planning process.

HIPAA Covered Entities. The HIPAA Security, Privacy and Breach Notification Rules apply to "covered entities" and their "business associates." The definition of a "covered entity" includes a person, business or agency that furnishes, bills, or receives payment for health care in the normal course of business, and that either (1) has transmitted a covered transaction (such as submitting a claim to a health plan) electronically, or (2) used another entity, such as a clearinghouse, to conduct electronic transactions on its behalf.

A "business associate" is generally defined as an individual or entity that performs a service involving identifiable patient information for a covered entity. Examples of business associates include billing firms, consultants, and data storage firms.

Covered entities must comply with HIPAA as well as with state laws that are not contrary to HIPAA and state laws that are contrary to HIPAA but are more stringent than HIPAA. Health care providers that are not HIPAA covered entities or business associates must comply with applicable state privacy, confidentiality, and data security law.

HIPAA requirements in GKAS events will depend largely on whether the organization hosting the event meets the HIPAA definition of a covered entity. If the host is covered by HIPAA, volunteers are generally considered the host's "workforce members." HIPAA defines a workforce member as a person whose work is under the covered entity's direct control, whether or not the covered entity pays them, including employees, volunteers, trainees, and others. A covered entity host is responsible for training the volunteers on the host's privacy policies and procedures.

However, if the host is not a HIPAA covered entity, even the volunteers who are covered by HIPAA in their own practices should generally be allowed to follow the host's privacy policies at the event. To help protect patients and volunteers, non-covered hosts should take care not to develop and implement privacy policies that are in direct opposition to HIPAA.

Volunteers should generally leave any identifiable patient information with the host when the event is over, and should generally avoid disregarding the privacy and security laws that apply to their practices outside of the access event, even if those laws may not apply to the event itself.

HIPAA Business Associate Agreements. A covered entity host should determine which, if any, individuals and entities meet the HIPAA definition of a "business associate" and enter into HIPAA-compliant business associate agreements with those individual and entities. Business associates and their subcontractors who have access to patient information are directly responsible for HIPAA compliance. A non-covered host must comply with applicable state laws when sharing patient information with vendors (such as document storage firms).

Photographs. Hosts and volunteers should be prudent when taking photographs of patients and others at access events, and when disclosing such photos, because they may be protected by federal and/or state patient privacy laws. For example, under HIPAA, full face photographs and comparable images of patients, their relatives or household members are HIPAA "identifiers," so covered entity hosts, their business associates, and volunteers should treat such photos as protected health information covered by HIPAA and should not disclose or publish such photos unless the necessary HIPAA valid authorization forms have been signed. Whether or not the host is covered by HIPAA, a release form should also be signed by patients and others pictured in the photograph (see "Photography" below).

Gkas Patient Services	Covered Entity Dentists *(already subject to HIPAA)*	Non-Covered Entity Dentists *(not subject to HIPAA)*
Dentist provides patient care in his or her private office	Extend the practice's HIPAA compliance efforts during the access event, including compliance with non-contrary and more stringent state laws.	Although a non-covered dental practice is not required to comply with HIPAA, the practice must comply with any applicable state privacy, confidentiality, and data security law.
Dentist volunteers at a covered-entity operated facility	If the facility is a HIPAA covered entity, covered entity volunteers should follow the facility's HIPAA policies and procedures at the event, and should leave identifiable patient information at the end of the event.	A non-covered entity dentist volunteering in a covered entity facility will probably be asked, and should be ready to follow, the facility's HIPAA policies and procedures. The facility should train volunteers on its policies and procedures and can advise the dental society of the facility's requirements. Volunteers should leave identifiable patient information at the end of the event.
Dentist volunteers at a non-covered entity facility	A covered entity dentist should follow the facility's privacy policies and procedures, and should leave identifiable patient information at the end of the event.	A non-covered entity dentist volunteering at a non-covered entity facility should comply with the facility's privacy policies and procedures, and should leave identifiable patient information at the end of the event.

Summary. Dental societies promoting GKAS should raise the issue of compliance with HIPAA and any applicable state privacy and security laws, and encourage volunteers to ensure that they are in compliance with all applicable federal and state laws. Dental societies may facilitate compliance by taking steps such as developing sample compliance materials. Covered entities and their business associate must enter into appropriate business associate agreements and comply with applicable HIPAA provisions.

Other Compliance Issues

Fraud and Abuse. Qualified legal counsel should be consulted to make sure that the program is structured appropriately to avoid noncompliance with federal and state fraud and abuse laws, such as the anti-kickback statute and beneficiary inducement prohibition in the Social Security Act. For example, under certain circumstances, offering free services to Medicare or Medicaid beneficiaries may risk violating these laws. Certain health care providers donating goods or services to a Federally Qualified Health Center may be required to meet the requirements of an anti-kickback safe harbor.

Open Payments (Sunshine Act). Depending on the circumstances, manufacturers donating money or goods for an access event may be required to report the transfer to Open Payments in compliance with the Sunshine Act provision of the Affordable Care Act.

Photography. Anyone who intends to photograph a GKAS participant (including a dentist, patient, family member, or visitor) for publication or publicity purposes should secure a release in order to avoid a breach of privacy claim. If a patient is photographed by a covered entity or business associate (or their workforce member or agent), a HIPAA written authorization should also be secured permitting the disclosure of the image. A parent, guardian, or other legal representative generally must sign an authorization on behalf of a minor child.

Resources. For additional information:

- Federal and state laws pertaining to dental records, see ADA publication Dental Records: **ADA.org/resources/practice/practice-management/documentation-patient-records**
- FQHCs contracts with private dental practitioners for dental services, see **http://www.cdhp.org/resource/FQHC_Handbook**
- A Roadmap for New Physicians on avoiding Medicare and Medicaid fraud and abuse, see **https://oig.hhs.gov/compliance/physician-education**
- Advisory Opinion examining certain charity care arrangements, see **http://oig.hhs.gov/fraud/docs/advisoryopinions/2011/AdvOpn11-05.pdf**
- HIPAA Privacy, Security and Breach Notification Rules, see **http://www.hhs.gov/ocr/privacy/index.html**
- Open Payments website (Physician Payment Sunshine Act): **https://www.cms.gov/openpayments**

Charitable Immunity Protection

One piece of particularly good news is that dentists who volunteer their services may have some protection against liability under state and federal laws. Many states have enacted charitable immunity laws that offer some legal protection to health care volunteers. Also, the Federal Volunteer Protection Act protects certain volunteer clinicians from claims of simple negligence. If the GKAS program involves a federal free clinic, volunteers at the clinic may or may not be afforded some protection under the Federal Tort Claims Act[1]. The ethical responsibilities of participating dentists must also be considered when analyzing the applicability of immunity laws. Risk management planning should involve an assessment of applicable laws and the impact on potential liability of the society and volunteers.

State Charitable Immunity Laws

According to a 2003 summary and analysis of those statutes prepared by Volunteers in Health Care (VIH), "Understanding Charitable Immunity Legislation: A Volunteers in Health Care Guide," charitable immunity laws in most states afford some protection for routine care provided by "clinician volunteers." Many of the state statutes refer specifically to health care provider volunteers and some states have legislation with specific reference to "dentists or dental care" (laws in other states may also apply to dentists, depending on their wording).

According to the VIH analysis, most states choose one of two routes to provide protection. Some change the negligence standard of care — that is, they raise the standard from simple negligence to gross negligence. Often called a "willful or wanton" or "reckless" standard, this approach makes it more difficult to prove negligence. Other states indemnify the volunteer clinician as if he or she were a government employee. Under this model, referred to as the "state tort claims act," the state establishes a legal defense fund to cover monetary damages as well as legal defense costs. Often these statutes cap the total compensation that can be paid for claims. Certain conditions may be specified, such as the setting in which the care is delivered or the existence of a formal agreement between the clinician provider and the state. Several states combine aspects of both models.

VIH recognizes that neither of these approaches limits a patient's right to initiate a liability action against a volunteer or ensures that a lawsuit will be easily dismissed. But changing the negligence standard raises the bar for plaintiffs, and indemnity under a state tort claims act can help protect against financial loss.

Some states allow volunteers to purchase malpractice insurance through the state, or to purchase liability coverage at a discount. Certain states have passed legislation specifically to encourage retirees to volunteer.

State laws may impose conditions in order for volunteer protection to apply. For example, there may be restrictions on the type of care provided, the care may need to take place in a certain setting, or patients may need to be notified of liability limitations. A dental society's lawyer can help assess the extent of available protections for an access program in a given state.

Dentists need to rely on qualified legal counsel for legal advice on applicable federal and state charitable immunity laws.

1 For information about the application of the Federal Tort Claims Act to health centers, see U.S. Department Of Health And Human Services Health Resources And Services Administration (HRSA), *Federal Tort Claims Act Health Center Policy Manual* (Jan. 3, 2011), available at **https://bphc.hrsa.gov/sites/default/files/bphc/ftca/pdf/ftcahcpolicymanualpdf.pdf**; see also Federal Tort Claims Act, 28 U.S.C. §2671.

Volunteer Protection under Federal Law

The Volunteer Protection Act. The federal Volunteer Protection Act (VPA)[2] protects a volunteer clinician acting within his or her scope of duties in a government or nonprofit organization from liability for simple negligence. There are exceptions for misconduct related to crimes of violence, sexual offenses, civil rights violation, volunteers acting under the influence of alcohol, and other offenses. If a volunteer is held liable for gross negligence, the VPA limits the award of punitive damages to those cases in which there is clear and convincing evidence of willful or criminal misconduct or conscious, flagrant indifference to the rights or safety of the individual harmed. The VPA also limits awards for non-economic damages (pain and suffering) to the proportion of harm caused by the volunteer. The VPA preempts state laws that are inconsistent with the federal statute but does not preempt any state law that provides additional protection. The VPA permits states to pass laws that declare the VPA inapplicable in state court if all parties are citizens of the state. Like most state statutes, it does not limit the liability of the nonprofit organization through which the volunteer provides services. The VPA does not limit a plaintiff's right to bring suit, so a health care volunteer may still be exposed to legal defense costs.

Ethical Considerations

Statutory charitable immunity protections may not necessarily extend to a claim of abandonment. Consider, for example, the provision of preliminary care on an access day that specifically contemplates follow-up care to complete a procedure, or care with unexpected outcomes that require correction. The most prudent course is to make such care available to those who need it, even if that means providing care at the dentist's private practice for free and relying on malpractice coverage for protection. Situations like these can be anticipated in advance in consent and release forms that patients in access programs may be asked to sign; such forms should be shaped to protect the dental team to the extent possible by taking advantage of any charitable immunity protections afforded in the state where care is being provided.

Before considering to how to invoke state and federal legal immunity protections, participants in access programs, as in all patient care, need to keep in mind their ethical responsibilities in the ADA Principles of Ethics and Code of Professional Conduct (the ADA Code). By their very nature, access programs that serve vulnerable populations work to fulfill ethical responsibilities. Among other things, the ADA Code calls on dentists to promote patient welfare and embodies the concept of a single ethical standard, as reflected in Section 3, Beneficence:

> *... The dentist has a duty to promote the patient's welfare. This principle expresses the concept that professionals have a duty to act for the benefit of others. Under this principle, the dentist's primary obligation is service to the patient and the public-at-large. The most important aspect of this obligation is the competent and timely delivery of dental care within the bounds of clinical circumstances presented by the patient, with due consideration being given to the needs, desires and values of the patient. The same ethical considerations apply whether the dentist engages in fee-for-service, managed care or some other practice arrangement. Dentists may choose to enter into contracts governing the provision of care to a group of patients; however, contract obligations do not excuse dentists from their ethical duty to put the patient's welfare first.*

2 Volunteer Protection Act of 1997, 42 U.S.C. § 14501.

Without a doubt, access programs serve to promote patient and public welfare. Dentists participating in access programs utilize their professional knowledge, skills and experience to improve the dental health of the public and elevate esteem for the profession. This fulfills the ethical obligation of community service as expressed in Section 3A of the ADA Code. Moreover, access programs advance the ethical principle of justice, which in its broadest sense calls on the profession to seek allies throughout society on specific activities that will help improve access to care for all (Section 4 of the ADA Code). Dentists must simply keep in mind the need to satisfy the "single ethical standard" contemplated in the Code even if they wish to rely on charitable immunity law protections.

Summary

Charitable immunity protections typically protect only volunteers acting within the scope of their responsibilities at the nonprofit organization (or governmental entity) at the time of their alleged acts or omissions, although some may extend protection for volunteers who are not part of an organized effort. For this reason, state or local dental societies sponsoring access programs may wish to register dental team participants and define their scope of responsibility. It addition, state statutes have various conditions that must be met to trigger immunity. For example, some may not provide protection for care in a dentist's own office. Some laws may restrict the type of care to which protection applies. Some may impose patient notification of liability limitations, with state variations requiring written notice, specific language in the notice, language easily understood by individuals with limited education (e.g., 6th grade level), or even a posting of a notice. Assessing the impact of applicable laws should be part of the GKAS risk management planning process.

Forms

Exactly what forms should be used to obtain consent and, to the extent possible, release from liability?

Due to differences in state law, there is not a one-size-fits-all form that can be suggested for national use. There are, however, some things that can be kept in mind by access programs seeking to develop forms, including state-specific information on:

- **Informed consent** — whatever typically may be required as a matter of state law for paying patients, unless your state requires less for access programs. Be cautious about requiring written consent if it would not be required of the typical paying patient.
- **Malpractice** — release in accordance with any applicable state charitable immunity protection (some states may require notice to patients, for example, how their rights and remedies may be limited in comparison to a typical malpractice case). Think through whether unintended consequences of a release form effectively saying "Dear Patient, by getting care here you're waiving many of your rights …" and ask whether it is worth any protections your state charitable immunity law may provide, especially if the risk can be managed in other ways, (for example, through insurance).
- **Abandonment** — same as malpractice, plus any information about how any follow-up care will be provided. It may be prudent to establish in the form that the provision of limited care at an access program does not establish a continuing doctor-patient relationship for other purposes.

Sample forms used by access programs in various parts of the country are attached to facilitate the development of forms for your access program. Of course, you will need to tailor your forms to your program design and needs and to satisfy the laws of your state.

Forms used in an access program, along with records reflecting patient care, should be completed and maintained in accordance with applicable laws. At a minimum, generally accepted record-keeping practices should be followed, unless state law allows for a lesser requirement for access programs; even then, good risk management may dictate following generally accepted practices.

Case Studies

As noted above, each access program is different, will raise its own set of legal and insurance issues, and is likely to be governed in certain respects by its own state law. Thus, there is no one-size-fits-all legal approach to managing those issues. Rather, each access program should be tailored to meet its own needs and objectives and to invoke legal and insurance protections as appropriate. With that in mind, let's take a look at how some highly visible access programs have reportedly managed their risks.

St. Louis, Missouri Give Kids A Smile Program: All dentist volunteers are licensed in the state of Missouri and have their own malpractice insurance. Give Kids A Smile, Inc is a functioning not-for-profit 501 (c) (3) that provides event liability insurance at the St. Louis University facility within its own insurance coverage costs. As they exit the facility, parents and caregivers are given a letter with an emergency contact number that is also included in the Give Kids A Smile office phone answering service. In addition, follow-up procedures for the care of their child are included with the walkout statement of procedures placed in each child's take-home bag. Children needing more extensive dental procedures are given information about our Smile Factories program and also given a list of Medicaid providers in the area.

Virginia, Missions of Mercy (MOM Project): The Virginia Dental Association (VDA) advises its members to contact their malpractice providers to notify them that they are providing care in a different setting and under different circumstances. In addition, all patients/guardians sign a consent and waiver release prior to treatment. Local dentists in the MOM Project geographic area are asked to provide follow up care for a period of one week. In November of 2000, the VDA received an Attorney General's opinion from Mark Earley, then Attorney General of the Commonwealth of Virginia: "Therefore, it is my opinion that dentists who provide free dental services for the Mission of Mercy project are only liable for civil damages when their acts or omissions result from gross negligence or willful misconduct." In addition, the VDA sought an opinion from its personal attorney who agreed that the statute's meaning (54.1-106(A)) was clear in its intent and that under the MOM Project, licensed providers would be covered. Finally, the Missions of Mercy clinic takes advantage of a voluntary liability plan available to Virginia's free clinics as defined in § 2.2-1839 of the Code of Virginia. This program offers coverage for a variety of exposures including general liability, errors and omissions and medical malpractice. VDA submits the names of licensed volunteers to the state office of risk management, which oversees the liability plan program.

Conclusion

Potential risks associated with access programs are real but can be effectively managed. Securing sound professional advice, including advice from your attorney or malpractice carrier as appropriate, can help shape a successful program for all concerned. Keep in mind that both federal and state law will play a key role in decision-making. Among the factors to consider, think about whether the program sponsor wishes to invoke the protections of charitable immunity laws and, if so, assess whether the benefits and state law obligations make doing so worthwhile, particularly if the potential liability risk can be insured.

While this guidance attempts to provide dental societies planning an access event with information to help them develop compliance and risk management plans, it should not be treated as legal advice. Dental access programs vary widely, and each should adapt the suggestions in this guidance to meet applicable state and federal laws and regulations and the circumstances they are likely to encounter. Dentists and dental societies should seek legal advice from qualified attorneys on specific matters affecting their program, such as risk management, patient records, privacy, confidentiality, and data security laws and regulations (including state law as well as HIPAA as amended by the HITECH Act), and state and federal charitable immunity protection.

We've included some links to non-ADA websites that we think you might find helpful. Since the ADA does not own or control them, we're not endorsing them or making any representation as to their content. The websites listed in this document were current and valid as of the date of publication. However, webpage addresses and the information on them may change at any time. The user is advised to perform their own general web searches to locate any site addresses listed here that are no longer valid.

ADA American Dental Association®
America's leading advocate for oral health

The Ethics of **Temporary Charitable Events**

Authors

Thomas E. Raimann, D.D.S.
Elizabeth Reynolds, D.D.S.
Emily Ishkanian, D.M.D.
Puneet Kochhar, D.M.D.
J. David Moss, D.M.D.
A. Roddy Scarbrough, D.M.D.
Robert A. Shekitka, D.M.D.

With special thanks to the American Dental Association's 2014 and 2015 Council on Ethics, Bylaws and Judicial Affairs and ASDA consultants: Halee Hyatt (2014) and Niveditha Rajagopalan (2015).

Background

The Council on Ethics, Bylaws and Judicial Affairs (CEBJA) is the ADA agency dedicated to enhancing the ethical conscience of dentists by promoting the highest moral, ethical and professional standards in the provision of dental care to the public. In keeping with this mission, CEBJA has authored a white paper addressing and providing guidance on ethical issues that may arise during temporary charitable events such as Missions of Mercy (MOMs) and Give Kids a Smile™ (GKAS).

The white paper is intended to illuminate potential ethical challenges that may be presented by short-term charitable events so that they can be addressed and/or avoided. The paper concludes with questions to be considered by both providers and patients in order to minimize the potential ethical risks of such events while maximizing their benefits. The concluding checklists are intended to be a starting point that can be tailored to issues arising at individual events as determined by the hosting organization(s).

Introduction

Temporary charitable events raise a number of ethical questions. The temporary nature of these events precludes development of an ongoing relationship with patients and does not afford the opportunity to collect as detailed a history as one might obtain in a more permanent setting. Additionally, many of the patients seeking care at these events have urgent dental needs and no access to necessary dental services or care.

While these events serve a tremendous need, consideration of the ethical implications is an important a part of the projects and essential to the ability to provide care. This paper attempts to assist project coordinators in identifying the ethical issues that must be addressed and offers suggestions for addressing them. The paper is organized by the subsections of the American Dental Association *Principles of Ethics and Code of Professional Conduct* (the *Code*).

Autonomy

Under the Principle of Patient Autonomy ("self-governance"), "the dentist's primary obligations include involving patients in treatment decisions in a meaningful way, with due consideration being given to the patient's needs, desires and abilities…" More specifically, patients should be informed about their dental condition, proposed treatment and any reasonable alternatives and then be actively involved in the treatment decision process. Discussion of risks, benefits and alternatives are the elements that are essential to Informed Consent. Patients need to have an understanding of all of the treatment options available to them in the given setting and make treatment choices accordingly. Patients also need to have information that the treatment available in the current setting may very well differ from that which can be provided in a more permanent dental home.

Treatment Planning

Many factors play into treatment choices, but the provider must take responsibility to ensure that the patient understands the options available and the risks and benefits of each option. For example, a patient may opt to have root canal treatment to save an abscessed tooth but not realize that this treatment option also requires a crown to protect the now brittle tooth. If the patient cannot afford to complete the treatment and have the crown placed, the tooth could break later, resulting in an emergency surgical extraction. In this example, the patient perhaps should have opted for an extraction as a more definitive, less risky treatment. Conversely, a patient may opt to have restorable teeth extracted without considering or understanding the long term consequences, both social and medical, of edentulism.

Access to and Maintenance of Patient Records

Access to and maintenance of patient records are other issues that need to be considered. Patient records are usually kept by the sponsors of the events rather than the treating dentist. This could present a problem for follow-up if a problem with the treatment provided arises after the event. Patients should be clearly informed about how to obtain the record of the treatment provided to them at the event and about how to schedule any necessary follow-up care. This can be easily done by ensuring that the patients have the phone numbers of the organization or person in charge of the records and of the emergency contact responsible for post-operative care.

Confidentiality of Patient Records

"Dentists are obligated to safeguard the confidentiality of patient records."[1]

At events like Mission of Mercy and Give Kids a Smile™, it can be a challenge to adhere to this requirement of the *Code*. Typically many of the volunteers are local and may be friends or neighbors of those being treated. Records, both treatment and health, change hands many times as the patient works his or her way through the system and that may compromise patient confidentiality. One way to lessen the chance of a breach is to put the patient in charge of his or her chart or record. Having the patient hold the chart while moving from area to area thereby only allowing those involved in treatment access to it is one way to protect the privacy of the patient. It is especially important that the volunteers who enter the information at the end of treatment be informed of the importance of patient privacy and confidentiality of the patient record.

1 American Dental Association. *American Dental Association Principles of Ethics and Code of Professional Conduct, with Advisory Opinions* revised to April 2012. **ADA.org/sections/about/pdfs/code_of_ethics_2012.pdf**. Accessed February 2015.

Nonmaleficence

Nonmaleficence is the ADA ethical principle that states a dentist has an ethical duty to refrain from harming a patient. Nonmaleficence is comprised of several key components. The first is the dentist's professional obligation to keep his clinical skills and knowledge current,[1] which means practicing dentists must recognize their clinical limitations and abilities. Dentists should not be performing services for which they are inadequately trained. At these temporary charitable events student volunteers or dental auxiliaries may be performing dental procedures or educating patients about specific dental topics such as home care or nutrition.

Use of Auxiliary Personnel

The *Code* specifically states that *"Dentists shall be obliged to protect the health of their patients by only assigning to qualified auxiliaries those duties which can be legally delegated. Dentists shall be further obliged to prescribe and supervise the patient care provided by all auxiliary personnel working under their direction."*[1] If volunteers at these outreach events are properly trained, credentialed, and supervised, as well as legally authorized to perform the duties then the subsequent treatment and advice is appropriate. When dental students or auxiliary students participate in providing direct care, it is particularly important that they be versed in the ethics related to the treatment they provide and that their treatment is closely monitored and supervised. The event coordinator must continually monitor the event to ensure that this principle is being upheld and be aware of any specific requirements imposed by the locality in which the event is being held.

Consultation/Referral

A second component of nonmaleficence requires a dentist to know when to seek consultation for advanced treatment or referral to a specialist for services the patient may need. Many of the charitable events have specialists who provide needed care within their realm of expertise. The treating provider must recognize when referral is appropriate and utilize these volunteers.

Patient Abandonment

Nonmalfeficence also speaks to patient abandonment. As addressed earlier, this is a primary concern at temporary outreach events. It is imperative that the patients be provided with the contact information of the person providing follow-up care. If a patient has a temporary restoration placed at the event or even has a root canal completed but is not afforded the chance to have the final restoration placed, the patient has, by the definition of the *Code*, essentially been abandoned. If the patient is given the opportunity at a later date to have the work completed, the providers have ensured that the patient has been well treated and have eliminated the potential for abandonment.

Infection Control

Lastly, these charitable mission sites should be subject to all the regulations required of a conventional dental practice, meaning they should comply with OSHA, HIPAA and Blood Borne Pathogen regulations and standards, as well as any other state and local laws and regulations. Infection control and barrier techniques should be utilized to minimize disease transmission and cross contamination in order to protect patients, staff and providers.

Beneficence

Section 3 of the *Code* addresses the principle of beneficence.

"This principle expresses the concept that professionals have a duty to act for the benefit of others. Under this principle, the dentist's primary obligation is service to the patient and the public-at-large."[1]

One way to meet the requirement of "doing good" is through community service, which is specifically addressed in the *Code* in Section 3.A. Community Service which states:

"Since dentists have an obligation to use their skills, knowledge and experience for the improvement of the dental health of the public and are encouraged to be leaders in their community, dentists in such service shall conduct themselves in such a manner as to maintain or elevate the esteem of the profession." [1]

Community service is the purpose of temporary charitable events and one of the motivations for dentists to participate in them. These outreach projects allow local providers to show how proud they are to be a part of the community that they serve by serving those in need at no cost.

Temporary charitable events are an opportunity to not only increase access to care for those who are underserved, but are also an opportunity to provide meaningful oral health education which is a primary component in the prevention of dental disease.

These events also provide an opportunity to stress the importance of having a dental home and maintaining one's dental health on a regular basis.

Justice

The principle of justice implies that the provider has a duty to treat each patient fairly. In the charitable arena, as in private practice, it is imperative that the dentist continues to maintain the concept of *"delivering dental care without prejudice."*[1] Justice is applicable from many perspectives. First, the dentist needs to be comfortable with the care he or she is providing, be it a difficult extraction on a healthy patient or a simple procedure on a patient who is medically compromised and may require follow-up care that is not available in the charitable event environment. If the provider feels that he or she cannot in good conscience treat the patient or if the student assigned to the case feels that he/she cannot treat the patient based on his/her training and the scope of work that he/she is able to perform, the dentist is responsible for finding appropriate specialty care, ideally within the realm of the charitable event. The patient must be made aware of any limits in the scope of care the dental team feels they are able to provide.

Secondly, the care provided at these projects is often emergency care or palliative care. Temporary charitable events are not intended to provide comprehensive care but rather to provide limited preventive and restorative care; they are not intended to usurp the need for a dental home. The organizers have the obligation to be absolutely vigilant in educating the patients on the necessity of a dental home and to be certain the patients understand the different nature of the care provided at events such as these. Also, as discussed earlier, the project managers are obligated to make the treatment records easily accessible for the patients as well as for the patients' dentists of record or any dentist who may be following up.

Veracity

Honesty and trustworthiness, the values defined by the principle veracity, are paramount in the context of temporary charity events.

"Under this principle, the dentist's primary obligations include respecting the position of trust inherent in the dentist-patient relationship, communicating truthfully and without deception, and maintaining intellectual integrity."[1]

Primarily, this principle reminds us to honestly educate our patients about their treatment options and the unique characteristics and limitations of a temporary charitable event. With veracity in mind, patients need to know they can trust the information and treatment being provided and respect the motivation for providing the charitable care. Veracity can be applied to the provision of charity care in a number of ways.

First, the dentist must accurately represent the purpose and cost of the proposed treatment and the qualifications of the provider. This means explaining the limitations of emergency care and the fact that dental disease cannot be cured or prevented at a single outreach event. The care that is provided will frequently be free, but the fees associated with potential follow-up care must be represented accurately. In the case of endodontic treatment, for example, a canal may be debrided and medicated during an outreach event, but the cost of the obturation and definitive restoration that follows must also be communicated to the patient in a way that the patient understands the possible risks involved in not following up on the care. The patient must also understand who is providing care — a student, specialist, general dentist, or other provider. For example, students should inform the patient of their year/qualifications and that their work will be overseen by a supervising dentist. Even in emergency situations at charity events, specialists must be careful to declare the limitations of their practice.

Charity organizers should be careful not to provide care that is unnecessary even though the treatment may be free. It may be tempting to find a problem to treat at outreach and charity events — the providers are eager and available and the patients may have traveled a long distance for this infrequent access to care. However, the principle of veracity also expects truth in diagnosis — the patient expects that the proposed treatment is appropriate for the diagnosis. A patient may be present, expecting care, and have providers available, but without a diagnosed problem, providing unnecessary care would be dishonest and unethical.

Another element of veracity is the requirement of the health care provider to provide all relevant information for the patient to make an informed decision about the alternatives to the proposed treatment. The patient may not understand options for receiving care elsewhere, if treatment is available closer to home or in the context of comprehensive care. For event organizers, it may be tempting to attract as many people as possible to an event to have the greatest impact, but patients should still be informed of other options and how to establish a dental home if that information exists.

Conclusion

In conclusion, the charitable events which dentists so selflessly provide offer a parameter of care to patients who may not have access to that care elsewhere. It is imperative, however, that the providers ensure that the care being provided is of a standard that will stand up to the *ADA Code*. As with any work of this nature, dentists have to be aware of unintended consequences.

- If these events are too successful is it possible that patients will utilize temporary charitable events as dental homes?
- Is the success of temporary charitable events reported in an appropriate manner?
- Are dollars and cents the best way to define the success of the projects?
- How about definitions of success through amount of comprehensive care?
- Is one necessarily indicative of the other?
- What about care within an appropriate purview?
- Is someone watching to be sure that these projects do not become a platform for heroics by providers who may not be proficient in a specific area of expertise?
- These charitable events are one answer to access to care and they work well; are they the only answer, however?
    - Are there other options which might work better?
    - Perhaps permanent clinics staffed by volunteer and student doctors?
    - DDS (Donated Dental Services) programs which offer the benefit to the provider of being able to work in his or her environment? Is some care better than no care?

These are the very questions that make temporary charitable events ripe for ethics discourse and potential ethics breaches.

Patient Checklist

- ☐ Does the patient understand that the treatment being rendered is in a less than ideal environment?
  - ☐ Does the patient understand that he or she is receiving limited care?
  - ☐ Does the patient understand that the treatment received is not comprehensive, cannot address all problems, and may not prevent more care from being needed?

- ☐ Does the patient understand the risks, benefits and alternatives of both treatment and non-treatment?

- ☐ Is the patient involved in his or her treatment decisions? Does the patient understand the need for treatment?

- ☐ Does the patient understand and respect that this is the equivalent of emergency care and that he or she needs to find and establish a dental home?

- ☐ Is the patient aware of possible alternative sites for care, i.e. local clinics or providers?

- ☐ Does the patient know who is providing his care, including name, status (e.g. student vs. dentist, active practice, etc.), and specialty?

- ☐ Has the patient been forthcoming about all medical conditions?

- ☐ Does the patient understand the potential cost of needed follow-up treatment, even though the treatment provided at the event is at no cost?

- ☐ Does the patient have follow-up information?
  - ☐ Whom should he or she call?
  - ☐ Will there be a charge?
  - ☐ Does the dentist responsible for the follow-up care have access to the record of treatment provided?
  - ☐ Does the patient know how to get his or her records?

- ☐ Does the patient feel comfortable that his or her records will be kept confidential?

Dentist/Provider Checklist

- ☐ Is the treatment I am providing necessary and appropriate?
- ☐ Is the treatment I am providing within my scope?
- ☐ What are my supervisory responsibilities if I am delegating care?
- ☐ Am I comfortable providing treatment in this less than ideal environment?
- ☐ Is my patient fully informed?
  - ☐ Does he/she understand that this is not comprehensive dental care and that establishing a dental home is paramount?
  - ☐ Does he/she understand the risks, benefits and alternatives of both treatment and non-treatment?
  - ☐ Does the patient understand how to get his/her treatment records?
  - ☐ Does the patient understand how and when to seek follow-up care?
- ☐ Is my patient medically compromised? Am I comfortable with the existing medical conditions, and treating the patient without the ability to follow-up?
- ☐ Is the confidentiality of patient records respected?
- ☐ Are only those involved in diagnosis and treatment reviewing the records?
- ☐ Is the treatment necessary or is it being done to give the provider more experience?
- ☐ Does the provider's specialty preclude him or her from performing this procedure (e.g. oral surgeon doing endo)?