Legal Bite Question of the Issue

Botox and Dermal Fillers: Dentistry or Medicine?

By Frank Recker, DDS, JD

Q: I’m planning to attend the workshop on Botox at AAID’s upcoming Annual Meeting. I expect to be instructed on the proper use of Botox and dermal fillers on dental patients. But I don’t know how my state dental board feels about this issue. Is it legal to perform these procedures in a dental office?

A: Several dentist/clients have been charged by their respective dental boards with allegedly violating the state’s dental practices act because of the use of Botox and dermal fillers in the practice of dentistry. I believe the courts will ultimately decide that they are wrong if their statutory definitions are typical of most states.

Most dental practice acts define the practice of dentistry using terms such as “correcting defects, deformities or diseases” of the “teeth, jaws and associated structures.” First of all, no health care professional has inserted more needles into the oral cavity than a dentist. Both of these procedures involve the insertion of needles only. And both procedures are reversible.
As to the definition of the practice of dentistry, the language of most state statutes would encompass these procedures as within the practice of dentistry. If a Board passes a regulation or a policy determining that these procedures can only be performed by oral surgeons, such an action can reasonably be interpreted to constitute a “taking without due process” as such a rule or policy would appear to unlawfully constrict the statutory definition of dentistry, as well as appear to potentially violate the tenets of “equal protection” of the law.

As a general dentist, although I do not presently practice clinical dentistry, I support those states that have determined that such procedures are permissible to be performed by dentists, especially general dentists. From a liability standpoint, it’s hard to imagine any permanent damage that could flow from such treatments. Botox can be a great adjunct in treating symptoms relating to TMD or cosmetic dental procedures. Dermal fillers can also be very helpful in attaining a more pleasant cosmetic result in relation to smiling, anterior cosmetic dental procedures, or general enhancement (correcting a defect) of the teeth, smiles, etc.

In summary, check with your state dental board about their position on general dentists performing these procedures. As has often occurred in the past, some states base their position more on political pressure received from various quarters, than on a thorough legal analysis.