

**STATE OF CONNECTICUT
CONNECTICUT STATE DENTAL COMMISSION**

RE: Declaratory Ruling: Teeth Whitening

FOR THE COMMISSION:

Jeanne P. Strathearn, D.D.S.
Peter Katz, D.M.D.
Lance Banwell, D.D.S.
Martin Ungar, D.M.D.
Elliot Berman, D.D.S.
Steven Reiss, D.D.S.
Barbara Ulrich, Public Member

DECLARATORY RULING

On September 8, 2010, the Connecticut State Dental Commission ("Commission") on its own motion initiated a declaratory ruling proceeding regarding whether "teeth whitening practices and/or procedures constitute the practice of dentistry as set forth in § 20-123 of the Connecticut General Statutes ("Statutes") and what teeth whitening practices and/or procedures must be performed only by a licensed dentist or persons legally authorized to work under the supervision of a licensed dentist" ("Petition"). Exh. 1. Additionally, the Petition seeks to declare "what substances, if used for teeth whitening purposes, must be used only by a licensed dentist, or persons legally authorized to work under the supervision of a licensed dentist" in the Connecticut. Exh. 3.

A Notice of Hearing was published on November 16, 2010, in the *Connecticut Law Journal*, scheduling a hearing for December 8 and 9, 2010. Exh. 4. Notice was sent to the Connecticut State Dental Association, the Connecticut Dental Hygienist Association, the Connecticut Dental Assistants Association, the American Dental Association, the Connecticut Department of Public Health, the Connecticut Department of Consumer Protection and the Council for Cosmetic Teeth Whitening. Exh. 17.

On October 15, 2010, the Connecticut State Dental Association ("Dental Association"), the Connecticut Dental Hygienist's Association, Inc. ("Hygienist

Association"), and the Connecticut Dental Assistants Association ("Dental Assistant Association") filed petitions for party status. On October 28, 2010, the Dental Association was denied party status, but granted intervenor status, and the Hygienist Association and Dental Assistant Association were designated as parties to the proceeding. Exhs. 5, 6, 7, and 8.

On November 5, 2010, Dental Association filed a second Petition to be Designated a Party. Exh. 11. On November 10, 2010, the Dental Association was granted party status. Exh. 12.

Dr. Jon Davis, D.M.D., appeared on behalf of the Dental Association; Robert Shea, Esq., and Gary Jacobs, R.D.H. C.D.H., appeared on behalf of the Dental Assistant Association, and Bradford Weeks¹ appeared for the Hygienist Association. Tr. 12/08/10 pp. 4, 46, 55.

The hearing was held on December 8, 2010. The parties provided exhibits and pre-filed testimony, which they adopted under oath during the hearing, and the witnesses were available for questioning and cross-examination. Exhs. 13-15; Tr. 12/08/10 pp. 12, 21, 46, 51, 55.

This Declaratory Ruling is based entirely on the record and sets forth findings of fact and conclusions of law. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. SAS Inst., Inc. v. S & H Computer Systems, Inc., 605 F.Supp. 816 (Md. Tenn. 1985). In addition to considering all of the evidence in this matter, the Commission relied on its own expertise in evaluating the evidence. Jaffe v. State Dept. of Health, 135 Conn. 339, 350 (1949), Jutkowitz v. Department of Health Services, et al, 220 Conn. 86, 110-111 (1991).

¹ Instead of Linda Kowalski who provided the pre-filed testimony for Hygienist Association, Bradford Weeks, an employee of the Kowalski Group, which represents the legislative interests of the Hygienist Association, appeared on behalf of the Hygienist Association. The Commission allowed Mr. Weeks to adopt the testimony of the Hygienist Association without objections from any of the parties. Tr. pp. 46-47.

FINDINGS OF FACT

1. Jon Davis, DMD, provided reliable and credible verbal and pre-filed testimony.
2. Jonathan C. Meiers, DMD, is an expert in the field of dentistry, and he has expertise in the field of teeth whitening. Exh. 14., Transcript, pp.19-45.
3. Dr. Meiers provided reliable and credible verbal and pre-filed testimony.
4. Tooth discoloration can be the result of numerous factors including smoking, coffee, tea or any other type of compound taken orally that can stain teeth. Exh. 13.
5. Metabolic disease, trauma to the tooth pulp and certain drugs taken when the teeth were being formed can also cause discoloration. Id.
6. Tooth whitening products contain potent oxidizing elements that, if applied incorrectly, can cause serious burns. Id.
7. Determining the cause of discoloration is a significant factor in determining whether attempting to alter the color of a tooth with chemicals will have any effect on improving the appearance of the teeth. Exh. 14.
8. The whitening of teeth generally relies on the use of hydrogen peroxide or carbamide peroxide as the active chemical source. Id.
9. Most of the over the counter tooth whitening products contain less than fifteen percent hydrogen peroxide. Id.
10. Teeth whitening performed by licensed dentists often uses concentrations of hydrogen peroxide in the range of fifteen to thirty-eight percent. Id.
11. Hydrogen peroxide and carbamide peroxide can cause tooth sensitivity and tissue burns. Id.
12. Professionally applied treatments attempt to prevent tissue burns by the use of tissue isolation by using a rubber dam and cotton roll or gauze isolation to prevent contact with the hydrogen peroxide. Id.
13. A custom tray for home use prepared by a licensed dentist attempts to minimize tissue burns by creating a custom fit tray that limits the contact of the oral tissue with the bleaching gel. Id.

14. Many of the publications which have analyzed the effect of light during office bleaching procedures have indicated that there is little or no difference in the effectiveness of the bleaching products with concentrated light. Id. There are however, risks associated with the use of light. Id.
15. There should be adequate eye and skin protection for the patient and the operator of the light if it is being used to enhance the product in a bleaching procedure. Id.
16. Pulpal irritation, tooth sensitivity and lip burns have been reported to occur at a higher rate with the use of bleaching lights. Id.
17. The decision of whether to recommend or apply bleaching agents and/or bleaching lights to a particular person's teeth requires significant diagnostic expertise and skills, in part, to allow the provider to distinguish between pathological versus non-pathological causes of tooth discoloration. The presence of existing tooth colored restorations, failing restorations, caries, ceramic crowns, cracks in teeth and exposed root surfaces all need to be identified and evaluated before such bleaching procedures are attempted. Id.

DISCUSSION AND LAW

By law, a declaratory ruling constitutes a statement of agency law, which is binding upon those who participate in the hearing and may also be utilized by the Commission, on a case-by-case basis, in future proceedings before the Commission concerning the practice of dentistry.

Section 20-123 of the Statutes defines the practice of dentistry as:

. . . the diagnosis, evaluation, prevention or treatment by surgical or other means, of an injury, deformity, disease or condition of the oral cavity or its contents, or the jaws or the associated structures of the jaws.

This section also lists certain activities that do not constitute the practice of dentistry. The performance of cosmetic surgery or other cosmetic procedures, other than those related to the oral cavity, its contents or the jaw are excluded from the practice of dentistry. Conn. Gen. Stat. § 20-123. However, the Commission finds that teeth

whitening, under certain circumstances as detailed in this declaratory ruling, are cosmetic procedures related to the oral cavity and also as detailed herein may involve the diagnosis, evaluation prevention or treatment of a deformity, disease or condition of the oral cavity and its contents. Conn. Gen. Stat. § 20-123, Exhs. 13 and 14.

Teeth whitening procedures constitute the practice of dentistry if the procedures involve the diagnosis, evaluation, prevention or treatment of an injury or deformity, disease or condition of the oral cavity (such as discoloration). When such evaluation, diagnosis, prevention or treatment is done by a person other than a licensed dentist, it violates section 20-123 of the Statutes unless a person is merely selling whitening products that are otherwise legal to sell. For example, the selling of teeth whitening gels of differing strengths by non-licensed persons is not, by itself, the practice of dentistry. It becomes the practice of dentistry when such unlicensed person either uses light in an attempt to enhance the product's effectiveness or a person conducts an analysis of that person's individual needs based upon an examination or other evaluation.

Although any case brought before the Commission will be judged based upon the totality of circumstances, as a general rule actual application of a tooth whitening gel to another person by a person or employee of a company constitutes the practice of dentistry. Evaluating, assessing, or diagnosing discoloration of teeth constitutes the practice of dentistry. Providing personalized instruction to a consumer and instructing a person based on an assessment or supervising the use and application of tooth bleaching or lightening fluids, pastes, gels, solutions, or other agents to that person's teeth to improve or change the color of the teeth constitutes the practice of dentistry. However, the selling of over the counter teeth whitening products of differing strengths does not constitute the practice of dentistry if the seller is not evaluating a particular patient and recommending products based upon an examination or evaluation of a particular patient/consumer.

Assessing, fabricating, customizing, selecting, or advising the selection of tooth trays used to apply products that lighten or whiten teeth constitutes the practice of dentistry. Applying a light source or other light assisted bleaching systems, including but not limited to light emitting diodes (LED), halogen lamps, plasma arc lamps, metal halide

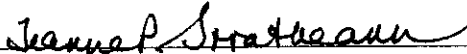
lamps, and lasers that result in lightening or whitening teeth to enhance the tooth whitening process constitutes the practice of dentistry.

Because the inherent risks associated with tooth whitening, it is important that a dentist perform proper examination of the dentition of the patient using appropriate radiographs in order to detect caries, defective restorations or pulpal pathology, which should be treated prior to bleaching. The Commission finds that all of the witnesses who testified at the hearing to be reliable and credible.

CONCLUSION

The Commission adopts the following Declaratory Ruling and has determined that teeth whitening services involve the practice of dentistry when they include: (1) assessing and diagnosing the causes of discoloration; (2) making recommendations of how to perform teeth whitening; (3) customizing treatment; (4) utilizing instruments and apparatus such as enhancing lights (5) selecting or advising individuals on the use of trays; (6) preparing or making customized trays for individuals; (7) applying teeth whitening products to the teeth of a customer; (8) instructing a customer on teeth whitening procedures or methods; or, (9) other activities as discussed in this declaratory ruling.

June 8, 2011



Jeanne P. Strathearn, D.D.S., Chairperson
Connecticut State Dental Commission