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Overview/Agenda:

- What is Malpractice?
- Dental procedures most frequently associated with professional liability claims
- Communication
- Documentation
- Managing Treatment Risks, Errors and Adverse Events







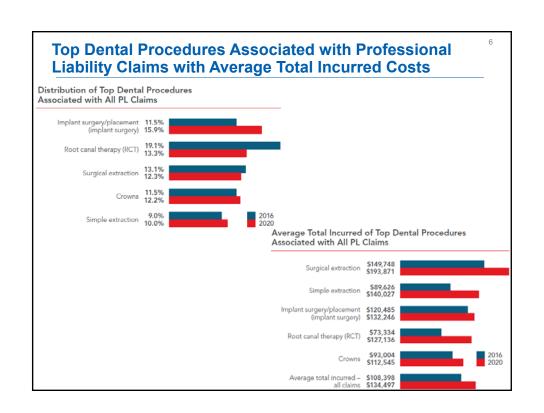
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What is Malpractice?

- *Definition*: Negligence or failure to provide the degree of care required of a professional under the scope of license resulting in injury, death or damage.
- Malpractice is a type of negligence that pertains to professionals.
- Dentists and other professionals can be sued for malpractice.

Elements of Malpractice





Frequent Allegation Categories - Similarities

- Failure to consistently implement risk management principles such as appropriate communication, effective documentation and adverse event management, also contribute to increasing PL costs.
- · Ask Yourself:
- Are you educating/informing patients well enough on the potential for failure and adverse outcomes?
- Are you thoroughly prepared/qualified to complete treatment to the standard of care (considering in many cases the specialty treatment SOC) that may apply?





Risk Management

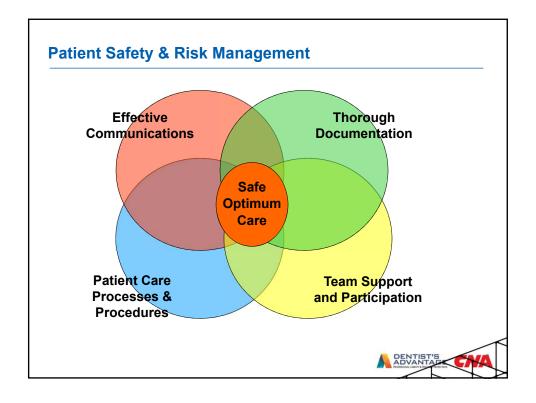
 The process of reducing liability exposure through loss prevention and loss control



DENTIST'S ADVANTAGE



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Check Your Progress: True or False?

1. Dentists who limit their extraction procedures to "simple" extractions are at low risk for serious professional liability claims, compared to dentist who perform "surgical" extractions.

- False. Based on the recent dental claim report data, claims associated with simple extractions may be very serious and costly, similar to surgical extraction claims.
- 2. Professional malpractice, a type of negligence, involves a breach of a professional's duty to a patient that is determined to be the cause of patient harm.
 - True. The statement above includes the elements of malpractice: duty, breach, cause and harm.







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Forms of Communication

- Verbal
 - Tone/volume
- Nonverbal
 - Body language
 - Expressions
- Written

- Website
- Email
- Texting
- Social media
 - Facebook
 - Twitter
 - Blog/newsletter





Social Media Risks/Scenarios

- A dentist who advertises the availability of cosmetic procedures "tweeted" that she achieves "outstanding results" without substantiating data to support the remarks. Some of her patients, who were dissatisfied with their treatment outcomes, complained to the state board of dental examiners. The board sanctioned the dentist for false and exaggerated representations under federal and state truth-in-advertising laws.
- While on his dental practice Facebook page, a dentist accepted a patient's online "friend" request and began communicating with the patient regarding her current course of care. The patient relied on the dentist's advice in lieu of seeking onsite care, eventually suffering serious complications from an apparent delay in treatment. Subsequently, a lawsuit was filed against the dental practice, asserting unethical conduct on the part of the dentist, among other allegations.
- · Under an adopted "username," a dentist blogged about why he preferred not to treat patients who carried a certain type of dental insurance. Shortly thereafter, a patient with the specified insurance coverage sued the dentist, alleging a missed diagnosis and negligence. The plaintiff's attorney was able to obtain and produce copies of the blog postings, making the case more difficult to defend.





Overcoming Communication Barriers

- · Improve communication skills
- Use plain language
- Confirm message through "tell-back" (closed-loop communication)
- · Use written documents to improve understanding
- Use interpreters when necessary or required
- If appropriate: decline to treat







A Good Communicator

- Understands communication differences
- Uses plain language
- Speaks/writes clearly
- Positive non-verbal cues
- Shows empathy
- Is respectful
- Listens attentively
 - Focus/tune out distractions
 - Listen for tone/feelings
 - Clarify/paraphrase







A Failure to Communicate?









Referrals and Responsibilities: Claim Scenario

- Dr. Smith, general dentist
 - Evaluates 13 year old patient--chief complaint: appearance
 - · Panorex, bite-wing radiographs, oral examination
 - Referred to orthodontist for evaluation and treatment.
- Dr. Jones, orthodontist
 - · Evaluation and treatment plan completed
 - Orthodontic care continued successfully over several years
 - Post-treatment records including new panorex radiograph: image sent to primary care dentist (Dr. Smith) for his records
 - · Retention phase ongoing





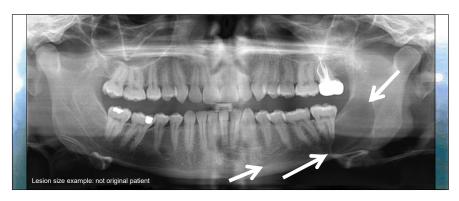
Referrals and Responsibilities: Claim Scenario

- Dr. Jones, orthodontist
 - New panorex radiograph
 - Returned image to Dr. Smith
 - Dr. Jones did not review
- Dr. Smith, general dentist
 - Image received...and filed in the patient chart
 - Dr. Smith does <u>not</u> see/review the image
- Patient returns to Dr. Smith 2 years later: complains of a "bad taste" in mouth





Your Findings?



- Odontogenic keratocyst
- Tumor removed: bone graft required (hip)





Odontogenic Keratocyst





• Failure to diagnose claim/lawsuit—total cost in mid-six figures





Communication—Referrals

- Referral (and follow-up) process
 - · Make a written referral
 - Direct communication as appropriate to case
 - Explain why the referral is indicated
 - · SBAR: situation; background; assessment; recommendation
 - Confirm referral information accuracy
 - Referral reports (chart notes); recommended actions
 - Patient follow up





Check Your Progress: Select Correct Responses

Select all correct responses related to patient communication barriers and improvements in the dental office.

- · Understand that communication · Use dental jargon to methods do not need be adjusted for individual patients. (N)
- · Show empathy. (Y)
- · If a phone call comes in for you while speaking with a patient, make sure to take the call, and make it as brief as possible to minimize the interruption. (N)
- · Listen for tone/feelings behind the patient's words. (Y)
- Clarify/paraphrase patient statements. (Y)

- impress the patient with your knowledge of dentistry. (N)
- · Ask the patient to "tellback" information provided, to confirm understanding. (Y)
- · Don't worry about written documents for the patient: verbal communication is all that is necessary. (N)







Sources of Patient Expectations

- Internet
 - · Your practice website
 - Rating websites
- Staff members
- Advertising
- Media
- Current patients
- · Personal patient experiences







Patient Expectations

- · A significant factor in patient (dis)satisfaction
- Unmet expectations are a major cause of claims
 - Unstated expectations
 - Unreasonable expectations
 - Changing expectations
- · Different expectations than clinicians
- Consumerist view of the American public
 - Dental care as a commodity
 - Cost often more important than service





An Approach to Problem Solving

If communication breaks down, re-assess>>take action

- Conflict: what was said and associated feelings
 - Empathy/El
- Analysis: who, what, when, where, why, how?
- · Focus on resolution, not fault or blame
- · Assess importance: mission-critical or ?
- Consider alternative solutions and possible outcomes
 - First request from participants: desired outcomes?
- Agree to a plan/implement
 - Agree to disagree? Part ways?
- · Follow-up and assess results





Informed Consent

- Informed consent is an educational process involving
 - Discussion
 - Documentation
- Manage patient expectations to treatment outcomes.
- Reduces the possibility of a misunderstanding.
- Reduces likelihood of a complaint; strengthens legal defense in the event of a claim.





Risk Management Recommendations - Informed Consent

- In order for patients to give informed consent, they:
- · Must be given knowledge that any treatment or diagnostic procedures is voluntary
- Must understand the potential risks of treatment (or no treatment)
- Must understand the potential benefits of treatment
- Must understand the alternatives to treatment
- · Must have an opportunity to ask questions
- Patient healthcare information records must include information. on each of these elements as well.
- Dentists are legally responsible for obtaining informed consent.





Informed Consent Discussion/Form

- · Nature of the proposed treatment
 - Necessity, benefits, prognosis, cost, time
- · Reasonable alternatives
 - · Specialty referral
 - · Other treatment options
 - No treatment
- · Foreseeable, material risks
 - · Reasonable likelihood of occurring
 - Significant factors influencing a patient's decision
- Detail appropriate to the risks and potential liability
- · Document the discussion
 - · Verifies the discussion took place
 - · Evidence the patient understands and agrees to the treatment

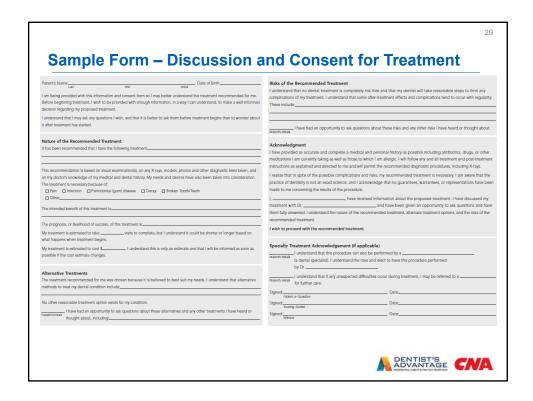
Suggested dental procedures for using a written informed consent form

We recommend written informed consent forms for procedure with high claim frequency, a significant risk of injury, and those having the potential for patient misunderstanding. This include: but is not limited to, procedures such as:

- Extractions
- Root canal treatment
- Crown and bridge
- Implants (both placement and restoration)
- Surgery involving incision and flap reflection (perio, endo, preprosthetic, etc.)
- Pediatric dentistry, including behavior management
- Cosmetic dentistry
- Orthodontics
- TMD treatment
- IV sedation or general anesthesia







Informed Refusal

• Explain the risks of refusing treatment.

- · Dentist has continuing duties:
 - Examination/diagnosis (new issues or disease status)
 - Inform the patient
 - Updated diagnosis
 - · Updated treatment recommendation
 - · Risks of continued refusal
- · Document in patient chart; use an informed refusal form
- Can be a basis for patient termination
- · At recalls: do not assume future refusal





Refusal of Radiographs

- · Remember that refusal of radiographs (or other recommended diagnostic tests) is not the same as refusing treatment
- Decline to treat patients who refuse radiographs
 - A patient cannot waive a dentist's professional duty.
 - Such a waiver would represent consent to professional negligence.
 - A negligent act will always be negligent.
- · Consider reasonable exceptions
 - Waiver of a recommended test must not be a routine practice.
 - Base exceptions upon individual patient conditions and history.
 - Document your risk assessment and rationale for exception.





Check Your Progress: Informed Consent

Scenario:

Dr. Smith sent a patient home with an extensive form that explains in detail all of the benefits, risks and treatment alternatives that apply to all dental implant patients. The patient returned for the first treatment visit and handed the signed form to the dentist's dental assistant. Let's get started with treatment!

Is Dr. Smith ready begin?

- Yes...all informed consent elements are in place.
- No...one or more crucial informed consent elements are missing. [Missing: no discussion, as required for consent
- Yes...while some elements are missing, the detailed form and patient signature provide adequate assurance of informed consent.









Importance of Good Documentation

• Poor/inadequate documentation: a major contributor to unfavorable judgments

- Patient records are legal documents
- Can provide evidence to support effective communication and patient understanding
- General rule: "Not documented, not done"
- A well-documented record can help to:
 - Demonstrate competence
 - · Keep you from being named in suit
 - Keep you out of court if you ARE sued
 - · Achieve a favorable lawsuit outcome

contemporaneous

objective





Take Note

- Document the events thoroughly:
 - · Treatment decisions made
 - · Actions taken and rationale
 - · Information given to the patient, parent or legal guardian
- Describe:
 - · What was heard, seen and thought
 - · Treatment performed and why
 - · Future care required
 - Include patterns of noncompliance







Record Elements

- Patient personal information
- Medical history
- Dental history
- HIPAA documents
- Examination records
 - o Perio: probing; other?
- Diagnostic records
 - o X-ray, photo, model
- Treatment plans

- Informed consent note/form
- Informed refusal note/form
- Progress notes
- Meds administered/prescribed
- Materials/products
- Referral letters
- Specialist reports
- Consultation reports
- Patient correspondence





Items to Document in Progress Notes

- Medical Hx review & findings
- Patient comments and complaints -"in their own words"
- Exam findings and observations...and resolution of findings
- Treatment plans and all clinical treatment
- · Pertinent directives and conversations

- Meds administered/prescribed
- Lack of compliance
- Informed consent and informed refusal discussions
- Complications and corrective actions taken
- Referrals and consultations
- Telephone, email or other communications
- · Clinical photos!
- And more...





Clinical Rationale—Explain Yourself

- · Rather than write "tooth might need endo," document why you believe RCT is needed
 - What do you see?
 - What other factors are involved?
 - Time projection/urgency?
 - · Under what circumstances?







Be Specific

- · "Appears pt. might have signs of infection"
 - "Draining fistula on #13 buccal: periapical abscess"
- "D caries #21"
 - "PA shows distal decay #21 within 1 mm of pulp chamber: likely to require RCT"
- "Ulceration of buccal mucosa at tooth 30 is bigger than before"
 - "Ulceration of buccal mucosa at tooth 30 is now 5mm in diameter; increased from 3mm at last visit" (Photo?)
- "Perio getting worse"
 - "Periodontal condition deteriorating: diagnosis is





DO NOT

- · Write disparaging or subjective comments
 - · About the patient
 - About the prior dentist
- Use language that suggests carelessness or negligence
- · Attempt to alter the record (When necessary, use acceptable methods to update records or correct record errors)





Check Your Progress: True or False?

1. Accurate and thorough records are one of the most powerful risk management tools.

- True. In the event that you become a defendant in a malpractice action, a comprehensive dental record is your chief defense weapon.
- 2. After thoroughly documenting all positive findings at the examination visit, it is unnecessary to document actions or proposed resolutions.
 - False. One common problem with dental patient records is a lack of documented action or resolution related to complaints or clinical findings.









What is an Adverse Event?

- Leads to (or potential for) a negative impact
 - · Patient injury
 - · Patient dissatisfaction
 - Dental board complaint
 - · Patient refund
 - Employee injury
 - Employee turnover
 - · Office discord
 - Dr. illness or injury
 - Negative publicity







Dentistry's "Never Events"

- · Breaking the patient's jaw
- · Extracting the wrong tooth
- Treating the wrong patient
- · Injecting the wrong anesthetic
- Injuring a patient's eye: failure to use eye protection
- · Leaving foreign objects behind in the surgical field
- Patient aspiration of foreign objects/instruments
- · Failure to obtain history of and document medication allergies

- Dental material used in a patient with known allergy to the material
- Patient Rx with known allergy to the drug
- · Reusing disposable items
- · Failure to refer for oral cancer assessment when lesion persists longer that 2 weeks
- Failure to implement oral cancer screening as part of the routine assessments
- · Rx: incorrect medication





Treatment Complications/Adverse Events

- No one is perfect: accidents can and do occur.
- Adverse events may also occur in the absence of an accident or error...treatment involves risk.
- Plan for foreseeable complications:
 - · Proceed with treatment? Refer?
 - If proceeding, protocol for adverse events beyond skill set?
- Clearly document diagnosis, clinical findings and event details.
- Immediately inform patients about adverse events:
 - · Wrong tooth treated
 - · Sinus exposure
 - · Fractured mandible
- What is in my patient's best interest in the current circumstance?





Medical Emergencies

- Prevention is key: pre-event planning and preparation
 - · Identify patients at risk
 - · Identify common/likely emergencies:
 - Syncope, swallowed/aspirated object; allergies; angina.
 - Written procedures/protocols
 - Staff member responsibilities/training
- Plan appropriately with respect to your practice
 - Patient population
 - Age, general health
 - · Procedures performed
 - · Invasiveness, risks, expected sequela
 - Duration of appointments
- Have the proper equipment and supplies





Emergency Medical Response

- Supportive oxygen
- Positive pressure oxygen o Bag, valve, mask
- · Latex-free equipment
- Blood pressure cuffs
 - o Manual/automatic
 - o Cuff size options
- · Ammonia inhalant
- Epinephrine
- Antihistamines
- Sugar/glucose source

- Aspirin (myocardial infarction)
- Bronchodilator inhaler
- Nitroglycerin
- Reversal agents
 - E.g.—naloxone; flumazanil







Emergency Medical Response

Medications/equipment

- Determine state requirements
- Assess local access to EMS (and consult EMS).
- Assess and determine: doctor/staff training; certification; comfort level
- Consider patient safety gaps: plan appropriate training.

Automatic external defibrillators

- Determine state rules/requirements
- Patient population/procedures
- If an AED is present: train EVERYONE (may be required).

Practice!



Note: Additional emergency response resources on ADA.org (Resource slide)







The Importance of the Team for Safety & Risk Reduction

- For patient/practice safety: must understand, "How are we doing?"
 - Patient/employee satisfaction/complaints—surveys
 - · Adverse event/incident tracking and assessment
 - Internal audit/self-assessment (records/documentation)
- Consider methods to encourage an overall "safety culture" approach
 - · A team effort to improve safety and effectiveness:
 - Planned improvements: failure modes and effects analysis (FMEA)
 - · Real time prevention: time-out; checklists; "stop-the-line"
 - Correction: root cause analysis (RCA) and corrective actions
 - One approach/methodology: TeamSTEPPSR
 - Further information: AHRQ/PSNet website; Institute for Healthcare Improvement website (Resource List)





TeamSTEPPS* INTRODUCTION

TeamSTEPPS

Team Strategies and Tools to Enhance Performance and Patient Safety

- Based on more than 30 years of research and evidence
- Team training programs have been shown to improve attitudes, increase knowledge, and improve behavioral skills



Team Strategies and Tools to Enhance Performance and Patient Safety

More on Safety Culture

- What is a "safety culture"?
 - · Shared beliefs, practices, and attitudes: the atmosphere created by those beliefs/attitudes which shape our behavior
- Safety culture factors:
 - · Norms, beliefs and attitudes
 - · Values, myths, stories
 - Policies and procedures
 - Doctor and staff priorities and responsibilities
 - Financial pressures
 - Quality and accountability
 - Managing unsafe behaviors
 - Corrective action process
 - Training, motivation and involvement or "buy-in"





The Need for a Safety Culture

- Patient safety involves:
 - · Prevention of treatment/therapeutic errors
 - · Many other risk-prone issues:
 - Scope of practice (treatment/referral; dental practice act)
 - · Regulatory compliance (e.g., HIPAA; OSHA, including bloodborne pathogen requirements and others)
 - · Dentist-staff-patient communication
 - · Chart documentation
 - · Patient education and informed consent
 - · Dentist staff proficiency and efficiency
 - Plus...non-clinical topics
 - · Mechanical safety/equipment
 - · Hazardous materials/chemicals
 - Environmental: weather, fire and flood







Resources

- CNA 2016 Dental Professional Liability Claim Report. https://www.dentists-advantage.com/Prevention-Education/Claim-Reports
- Institute for Healthcare Improvement. Along with resources on the AHRQ Patient Safety Network website (links in CNA manual) an excellent resource for tools and information to improve safety and team communication. (free registration to access many resources). http://www.ihi.org
- Communication resources on the AHRQ website: https://www.ahrq.gov/cahps/quality-improvement/improvement-guide/6- strategies-for-improving/communication/strategy6gtraining.html#6g2
- AHRQ's Consumer Assessment of Healthcare Providers and Systems (CAHPS®) program. Its purpose is to advance scientific understanding of patient experience with health care. https://www.ahrq.gov/cahps/about-cahps/index.htm
- Ramoni, R.B. et al. "From Good to Better: Toward a Patient Safety Initiative in Dentistry." *JADA*, September 2012, Volume 143:9, pages 956-960. https://psnet.ahrq.gov/issue/good-better-toward-patient-safety-initiative-dentistry
- ADA.org web content on Emotional Intelligence: https://success.ada.org/en/practice-management/dental-practice-success/dps-summer-2018/tapping-into-the-power-of-emotional-intelligence-at-work
- $\textbf{Dental Products Report on Emotional Intelligence.} \ \underline{\textbf{http://practicemanagement.dentalproducts report.com/article/what-emotional-products.general-produc$
- Emotional intelligence and empathy; its relevance in the clinical encounter, http://www.dovepress.com/getfile.php?fileID=10013
- Dentistry's "never events" (UK): https://www.dentistry.co.uk/2018/05/15/list-dental-never-events-published/; https://www.dentistry.co.uk/2018/07/13/million-brits-feel-theyve-harmed-avoidable-mistakes/; Article and graphichttps://www.dmdtoday.com/news/dentistry-finally-has-its-own-list-of-never-events-safety-protocol





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Resources (cont.)

- Culture of Safety Initiative: ADA News, 12/3/2019. https://www.ada.org/en/publications/ada-news/2019archive/december/ada-council-tasked-with-fostering-prioritization-of-safety-in-dentistry
- TeamSTEPPS® information and education resources. https://www.ahrq.gov/teamstepps/index.html
- Root Cause Analysis summary. https://psnet.ahrq.gov/primer/root-cause-analysis
- Detection of Safety Hazards (FMEA and other methods). https://psnet.ahrq.gov/primer/detection-safety-hazards
- FDA—unused medications: https://www.fda.gov/ForConsumers/ConsumerUpdates/ucm101653.htm
- FDA MedWatch—Reporting and Safety Alerts. https://www.fda.gov/safety/medwatch-fda-safety-information-and-adverseevent-reporting-program
- AAE: quick reference guide for antibiotic prophylaxis: https://www.aae.org/specialty/wp-2/2017/06/aae antibiotic-prophylaxis-2017update.pdf
- JAMA Open Network: antibiotic use in dentistry: https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2734793
- ADA guideline: antibiotic use for dental pain and swelling: https://ebd.ada.org/en/evidence/guidelines/antibiotics-for-dentalpain-and-swelling?utm source=EBDsite&utm content=guidelines (see "For Clinicians" for chairside guides)
- ADA website. Opioid crisis resources: www.ada.org/rxabuse; Medical emergency resources: www.ada.org/4737.aspx
- $AAP\ Clinical\ \&\ Scientific\ Papers: \underline{https://aap.onlinelibrary.wiley.com/doi/toc/10.1002/19433670.aap-clin-sci-papers;}\ Table-matter above the paper of the$ staging and grading periodontal disease: www.perio.org/sites/default/files/files/Staging%20and%20Grading%20Periodontitis.pdf; and the 2017 World

Workshop on Periodontal and Peri-implant Disease: https://www.perio.org/2017wwdc



