

DDS GUARDIAN

A Patient Safety and Risk Management Newsletter from Fortress Insurance

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Patient Safety and Risk Management

In this issue, we share dental practice considerations, what to do when faced with a Dental Board Investigation, and highlights from an interview with our two summer externs.

The Golden Rule of Dentistry

Michael R. Ragan, DDS, JD, LLM - *Medico Legal Consultant*



At some point in time, you will likely inherit a patient from another provider. That patient's experience with the previous provider may or may not have been positive. Moreover, the condition of the patient's teeth or restorations may make you say to yourself, "What was the previous dentist doing?"

While your observations may seem accurate at the time, great caution should be taken when memorializing those feelings in either writing or conversation with your patient.

It Is Easy to Take Sides When You Only Know One of Them

Most would likely agree that a patient's recollection of events or treatment may be less than accurate. There may also be details left out, if your patient feels these details might paint them in a negative light. Details that may be omitted from the patient narrative could include:

1. The patient's level of compliance;
2. The perceived error was the result of the dental lab and not the DDS;
3. The DDS attempted to fix the problem and the patient refused; and/or
4. The DDS in question may have not performed the procedure in the first place.

Consider this scenario: "Mrs. Jones," a new patient, presents with moderate-to-severe

periodontal disease. You learn that her last dental appointment was six months earlier. She states that she received dental cleanings on a semi-annual basis from another dentist for three years prior to seeing you. You ask the patient if she has ever seen a Periodontist, and she replies, "No."

In addition to potentially being subpoenaed as a plaintiff's witness, if comments you make are found to be irresponsible or untrue, this may result in a complaint filed against you to the State Dental Board.

You realize that this patient will likely need extractions, as well as osseous surgery. You think to yourself: "How could your previous dentist let this go on for so long?" You explain your recommended treatment to the patient, give her a referral and blurt out at the end of the exam that the care from her previous dentist equates to supervised neglect.

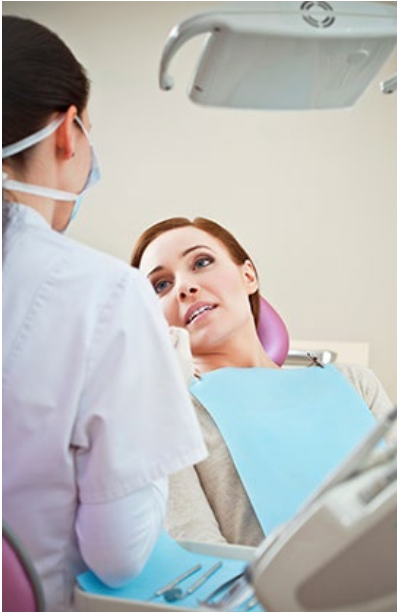
Do You Swear to Tell the Whole Truth and Nothing but the Truth?

Mrs. Jones took your statement about "supervised neglect" to heart and, approximately eight months later, is formally suing her previous dentist. Due to your prior comments, you receive a court subpoena to testify in the case. It is not until you cancel your work schedule for the day and arrive in court that you learn all of the facts of the case. From the beginning of care, the previous dentist had recommended that the patient consult with a Periodontist regarding her periodontal disease. Several referrals had been given over the three year period, and a non-compliance letter had been sent certified mail to the patient for which she refused to sign. She was finally dismissed as a patient by the previous dentist, and soon after walked into your practice.

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The Golden Rule of Dentistry

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Now on the witness stand, you are confronted with the facts and asked by defense counsel to substantiate your statement to the patient. You realize that you have made a huge mistake and that your assumptions about the previous dentist were all wrong. He actually did everything he could to encourage the patient to comply with recommended treatment.

Assume the Best

This dramatization was designed to remind our policyholders that oftentimes, we are not made privy to all of the facts in a case. Additionally, what you say or write can have lasting consequences. In addition to potentially being subpoenaed as a plaintiff's witness, if comments you make are found to be irresponsible or untrue, this may result in a complaint filed against you to the State Dental Board.

While the ADA Code of Ethics acknowledges that there may be instances when criticism is deemed justifiable¹, comments made should always be objective in nature. Only state what you know to be factual. Also, do not be afraid to admit to your patient that there may be details that you honestly do not know.

As stated at the outset, you will likely inherit a patient from another provider in the course of your career. In contrast, from time to time some patients you treat may end up in the care of other dental providers. So remember to practice the Golden Rule of Dentistry with hopes that your colleagues would do the same for you.

¹ADA Code of Ethics, Justifiable Criticism

4.C. JUSTIFIABLE CRITICISM. Dentists shall be obliged to report to the appropriate reviewing agency as determined by the local component or constituent society instances of gross or continual faulty treatment by other dentists. Patients should be informed of their present oral health status without disparaging comment about prior services. Dentists issuing a public statement with respect to the profession shall have a reasonable basis to believe that the comments made are true.

ADVISORY OPINION 4.C.1. MEANING OF "JUSTIFIABLE." Patients are dependent on the expertise of dentists to know their oral health status. Therefore, when informing a patient of the status of his or her oral health, the dentist should exercise care that the comments made are truthful, informed and justifiable. This should, if possible, involve consultation with the previous treating dentist(s), in accordance with applicable law, to determine under what circumstances and conditions the treatment was performed. A difference of opinion as to preferred treatment should not be communicated to the patient in a manner which would unjustly imply mistreatment. There will necessarily be cases where it will be difficult to determine whether the comments made are justifiable. Therefore, this section is phrased to address the discretion of dentists and advises against unknowing or unjustifiable disparaging statements against another dentist. However, it should be noted that, where comments are made which are not supportable and therefore unjustified, such comments can be the basis for the institution of a disciplinary proceeding against the dentist making such statements.

What to do When Faced with a Board Investigation

Seth Kirschbaum, JD - Partner, Fumuso, Kelly, Swart, Farrell, Polin & Christesen, LLP



A State Dental Board Investigation can have important implications on your ability to practice and could result in certain sanctions or even the suspension or revocation of your license. A dental board claim involves an investigation by the state Board of Dentistry or other professional agency (such as the state Department of Health) in your licensing state. Many times these investigations are time sensitive. If a complaint is made against you, call Fortress. Let Fortress take the next steps and provide a defense attorney in your area to protect you and your practice.

Working with Your Attorney

Providing a complete record to your attorney is crucial and should include anything related to patient treatment. Inform your attorney if you have previously given the patient a copy of their chart, as the Board will most likely already have a copy. Always copy and save any records that you provide to a patient including any cover letters. Maintain all copies in the patient chart. During an ongoing investigation, do not speak to anyone except your attorney about the investigation. It is imperative to resist any temptation to alter or add to your records. Any change to your record may undermine an otherwise defensible case. Moreover, the material alteration of a dental record submitted to a governmental agency may have serious legal ramifications.

The following Q&A is designed to answer some common questions about dental board investigations:



What are the grounds for dental board investigations?

Each state board specifies the governing of professional licensing investigations, so it is wise to check with the board in the state(s) in which you are licensed. Complaints involve both clinical and nonclinical actions, and can range from billing matters to criminal conduct. Some common allegations that may trigger an investigation include:

- Acts of negligence violating the standard of care
- Performing beyond the scope of your license
- Permitting or aiding an unlicensed person to perform care that requires a license
- Abandoning or neglecting a patient in need of immediate care
- Providing unnecessary or unauthorized treatment
- Overprescribing pain medications
- Releasing confidential health information without patient authorization
- Practicing under the influence of alcohol or other substances



What should I do if I receive a request for records from the State Dental Board?

After informing Fortress, secure all portions of the chart including progress notes, anesthesia records, surgery records, films, computer records, billing records, correspondence, e-mails and texts. Also, secure any pertinent internal documents such as crash cart checklists and internal logs.

What to do When Faced with a Board Investigation

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What if I am contacted by a representative of the State Dental Board?

Many practitioners feel they must answer an Investigator's inquiries or requests immediately. A Board Investigator often seeks to extract information in a seemingly benign way; however, any reply may be used against you. Exercise your right to be represented by counsel for your own protection. That said, the last thing you want to do is ignore a communication from a State Board representative in hopes the situation will go away. This will make things much worse and may place your dental license in jeopardy. Immediately call Fortress for guidance on how to proceed and obtain legal representation.



Will my attorney review my records before the State Dental Board?

Fortress will provide guidance and assign counsel to assist with your investigation. Provide all records to your attorney. All records and supplemental records will be disclosed to the State Dental Board at a later date. Never omit or alter any records.



Do I have to provide billing records?

If the billing records are requested, yes. Keep in mind that in many cases the board will scrutinize your billing. Ensure all billing is consistent, truthful and accurate.



Risk Management Tips

- Document wisely. Keep accurate records of patient treatment decisions and note in the medical chart any discussions with the patient regarding their care.
- Have a patient centric philosophy. Always do what is right for the patient within the bounds of ethical and legal best practices.
- Keep current. Continue to take advantage of continuing education resources and best practices and stay familiar with regulations and the Dental Practice Act in your state.
- Be attentive. You are held accountable for any employee's actions within the scope of their duties in your office.
- Should the Dental Board call, take it seriously. Call Fortress immediately to seek timely guidance on the next steps.

As a practitioner you have invested significant study, hard work, expense and time to become a professional. A dental degree without a license to practice dentistry is of little value. Practice with ethics and professionalism to protect your most valuable possession - your professional license.

An Interview with our Summer Externs: Shiyuan Mao and Stephanie Patterson



Shiyuan Mao (left) and Stephanie Patterson (right) in Chicago.

This past summer, two dental students from the University of Connecticut School of Dental Medicine were selected to participate in a Fortress externship, to research closed claims for trends and learn about medical professional liability insurance. Below are the highlights from an interview with our externs after their externship was completed.

Did you feel the work was a valuable experience in relation to your studies?

S. Patterson: The work was extremely valuable in relation to our studies because it emphasized all aspects of patient care. The claims data underscored the fact that a large part of doing a “good job” as a dentist is being a pleasant, thoughtful, and understanding provider. For instance, listening to your patients and answering their questions thoroughly is just as important as checking occlusion after placing a crown.

I also learned the importance of being honest with yourself about your abilities. Just because as students, we learn how to do extractions, implants, and root canals, that does not mean that we can automatically handle all cases presented to us once in practice. I think that this will be critical to keep in mind as we continue our studies.

S. Mao: Yes, it gave me a deep understanding about insurance policies, and how dentists should and should not handle claims brought against them.

What new skills, techniques and knowledge did you gain?

S. Patterson: I learned a wealth of knowledge about what medical professional liability insurance is, and the importance of having this insurance, and what risk management entails in the field of dentistry.

S. Mao: I gained a lot of knowledge researching the claim summary reports, such as characteristics of group and individual practices, what is relevant when a claim arises, and what to look for in a malpractice insurance policy.

During your externship, you were introduced to Underwriting, Claims, and Patient Safety and Risk Management Departments. What were your observations about each department?

S. Patterson: The Underwriting department at Fortress values each of its policyholders as individuals and not just “policies.” On the Fortress website, there is a folder entitled “Claims Defense” that policyholders can refer to if they have a claim brought against them. This folder contains information about the claims process, and resources to help the insured cope with the stress of litigation. To me, this folder shows that Fortress cares about its policyholders beyond most other insurance companies. Patient Safety and Risk Management at Fortress is offered through online courses to educate their policyholders about potential problems that could arise. Many dentists do not receive this information prior to entering practice which may leave them at a disadvantage.

An Interview with our Summer Externs: Stephanie Patterson and Shiyuan Mao

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S. Mao: I was impressed with the practical mindset of the Underwriting department. I observed that the Claims Department is sometimes willing to spend more on defending a claim than they would have to pay if they just settled it. This is good to know as Fortress is willing to invest in defending the doctor's care in the right circumstances.

During your externship, you worked for the office of Jewel Professional Insurance Agency, which is one of Fortress' contracted insurance agents. What did you learn about the importance of the agency-insured relationship?

S. Patterson: During our time at Jewel Professional Insurance Agency, we witnessed the volume of calls that the agents receive and we got a taste of the varying questions and demands that they handle during the day.

S. Mao: We witnessed interactions and calls while we were in the office. The agency serves as an intermediary between Fortress and the insured, and it is important that while the agency builds a rapport with the insured, they also have an understanding of the Company's policies and guidelines, so they can assist the insured in the best way possible. Their goal is to keep both parties (Fortress and the insured) satisfied.

Did your experience influence your future plans for practice in any way?

S. Patterson: I will be much more mindful of obtaining informed consent and documenting conversations with patients.

S. Mao: A small group practice sounds quite appealing and pursuing a specialty that I enjoy sounds good as well.

Do you feel you gained a greater understanding of the challenges practitioners may face when providing safe and effective care to patients?

S. Patterson: I have a new found appreciation for the field of dentistry after this externship. It is not enough to provide care to patients by just treating their ailments, but it is also important to be empathetic.

S. Mao: Yes, and I understand that a claim may occur at some point during my career.

(This interview has been edited and condensed).

Wrong Tooth Extraction-Confirmation is Key

Justina De Grado, JD - *Claims Analyst*



Although referral slips and treatment plans may be reasonably relied upon, a follow-up phone call to the referral should be considered before moving forward. Taking a couple of minutes to evaluate and confirm treatment for referrals can improve patient safety and reduce the occurrence of claims. See how removing the wrong tooth can lead to an entirely different treatment plan with significant financial obligations.

A 40 year old female presented to the OMS office with a treatment plan and referral slip from a prosthodontist for extraction of #8 and #12. The referral slip was incorrectly filled-out by an office assistant and stated extraction of #8 and #13. The extractions were part of a plan for the placement of a bridge. The insured reviewed the referral slip and extracted #8 and #13 without independently evaluating the treatment plan. Afterwards, the patient returned to the prosthodontist wherein the error was realized. The prosthodontist was no longer able to move forward with the bridge, and a new, more expensive treatment plan was needed in order to achieve similar results. Both the prosthodontist and OMS held the other responsible for the error. As a result, neither one agreed to resolve the matter and the patient filed suit against both the prosthodontist and the OMS.

The patient initially requested the doctors agree to pay for her new treatment plan, which included four implants. After the lawsuit was filed, the patient refused to agree to settle for the new treatment plan cost and demanded significantly more money for treatment, which was now supported by experts hired by her lawyer.

In the end, each doctor contributed to the settlement for their role in this wrong tooth extraction case. Had the prosthodontist reviewed the referral slip before it was sent or had the OMS independently evaluated the patient and communicated his concerns to the prosthodontist, this situation could have been avoided.



Risk Management Tips

- Avoid taking short cuts and double check referral slips.
- If you are sending referrals out, or receiving them, independently evaluate the treatment plan.
- If there is any question about how to move forward, discuss with the referring doctor before proceeding. This may take a little longer, but can prevent a problem before it is too late.



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