### Board Message

**2018 Defense Counsel Seminar (OMSNIC Law School) Recap**
The 13th biennial defense counsel seminar reinforced OMSNIC’s commitment to “defend the specialty.” Read a recap of the two-day event and learn more about what’s behind it. By: James Q. Swift, DDS

### OMSNIC Events

**OMSNIC Events and Booth Schedule at the AAOMS Annual Meeting**
Please join us and stop by the OMSNIC booth #1424 to meet with your OMSNIC agent and OMSNIC staff throughout the week.

### Guest Author

**Cybersecurity in the OMS Practice**
Hackers are targeting healthcare entities, including OMS offices. Learn about a holistic approach towards cybersecurity to help protect OMS practices from emerging threats. By: Gary Salman, CEO, Black Talon Security

### Legal Matters

**What to do When Faced with a Board Investigation**
A State Dental Board Investigation could result in certain sanctions or even the suspension or revocation of your license. Learn how OMSNIC can help protect you and your practice. By: Seth Kirschbaum, JD

### Closed Claim Summary

**Prepare for an Unanticipated Office Inspection**
This closed claim summary illustrates how a complaint made to the dental board can expose your practice to an unanticipated office inspection.

### Patient Management

**Communication Best Practices**
Read about suggested best practices related to various communication opportunities between doctors, staff and patients.

### Also in this issue:

**14 Live Seminar Calendar**

**Report Your Good Catch Here**

**Good Catch!**

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**CHICAGO**

**OMSNIC Events and Booth Schedule**

OMSNIC will hold numerous business and networking events during the AAOMS Annual Meeting this October in Chicago. Please join us at these events and stop by the OMSNIC booth #1424 to meet with your OMSNIC agent and OMSNIC staff throughout the week. **Booth Schedule**
2018 Defense Counsel Seminar (OMSNIC Law School) Recap

James Q. Swift, DDS - Chair of the OMSNIC Board

For the past 26 years, OMSNIC has devoted substantial resources to host a biennial seminar in Chicago to educate our lawyers about the latest trends, problems and medical issues facing the OMS profession. It is a worthy investment, and our hand-picked defense attorneys come away from the two-day event with invaluable sightlines on how to protect you when confronted with the most challenging claims. Since the educational focus of this meeting is so profoundly based on OMSNIC’s unrivaled experience with OMS based claims and data, we decided that renaming the event to “OMSNIC Law School” (OLS) was fitting.

The architect of OMSNIC Law School is the Claims Department, and the painstaking preparations for the event begin two years in advance. Countless hours are invested in the methodical review of data from claim files, Claims Committee reviews, internal department meetings, trials and closed file reviews to ensure that the most frequent and relevant claim threats are addressed. Speakers are selected with the objective of assembling thought-leading oral and maxillofacial surgeons, skilled lawyers and relevant litigation professionals, all of whom are firmly dedicated to defending the specialty. Indeed, for the first time, all of OMSNIC’s OMS Board Members participated in OLS, which highlighted the importance of the undertaking to the defense lawyer participants.

Our esteemed panelists provided in-depth modules addressing the most prevalent medical issues confronting the OMS in the claims world. Topics included:

- “Opioids: Issues to Consider when Defending Dentists and OMS”, presented by Dr. Michael Stronczek & Dr. Michael Ragan,
- “Medical Considerations for Defending Dental Implant Claims”, presented by Dr. Robert Guyette,
- “Imaging: Considerations for CT Scans and Technology in Defending Nerve Injury Claims”, presented by Dr. Nicholas Bournias and Dr. Ashok Balasundaram, an OMS radiologist,
- “Anesthesia and the Oral and Maxillofacial Surgeon”, presented by Dr. Vincent Perciaccante, a member of OMSNIC’s Claims Committee, and Mr. Michael Barkley, one of our defense attorneys,
- And, I presented “Medical Considerations for Defending Failure to Diagnose Cancer Claims”.

Other, non-clinical presentations included:

- “EMRs: Considerations for Defending the Electronic Medical Record from the Legal, Technical and Medical Perspectives”, presented by Dr. Anthony Spina, Mr. Gary Salman, CEO of Black Talon, a leading cyber-security firm, and Mr. Clark Hudson, one of our defense lawyers,
2018 Defense Counsel Seminar (OMSNIC Law School) Recap

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• “ABOMS – Board Certification Process - What it takes and what it means to become a Diplomate of the American Board of Oral and Maxillofacial Surgery”, presented by Dr. Colin Bell,

• And, “Social Media . . . The Good, The Bad, and the Funny”, presented by Mr. Paul Manion and Mr. Matthew Thomas, two of our defense lawyers.

The seminar closed with the awards ceremony. This year, three attorneys were nominated for the Attorney of the Year Award (named after Victoria Sterling, the Company's long-time claims Vice President who retired several years ago). This award recognizes attorneys who continuously demonstrate excellence in practice as well as their commitment to aggressively defend the OMS specialty. I am pleased to announce Mr. Alan Fumoso, a New York defense attorney, was awarded the honor this year. Honorable mention was awarded to Mr. Michael Flynn (Maryland) and Ms. Ellen Epstein Cohen (Massachusetts).

Our defense attorneys demonstrated their commitment to OMSNIC and the OMS profession by matriculating into OMSNIC Law School and further educating themselves on how to successfully combat the many threats facing the specialty. Their determination to seek clinical and non-clinical insights to better defend us is admirable. You, as the doctors they defend, must do your part by actively participating in your own defense. OMSNIC offers several complimentary courses through our Patient Safety and Risk Management program, and resources to assist you both before and after a claim is filed against you. All are available on the website www.omsnic.com. I would encourage you strongly to make use of these complimentary educational and practice management tools.

OMS FOUNDATION’S FUNDRAISING EFFORTS

OMSNIC’s $100,000 gift matching challenge helped the OMS Foundation raise $300,000 by April 30 towards their $1 million goal, in honor of the AAOMS’ centennial year. OMSNIC thanks all of those who have donated in support of the Foundation’s continued mission to improve the quality and safety of patient care by advancing innovation in oral and maxillofacial surgery research and education.
OMSNIC Events at the 100th AAOMS Annual Meeting

October 10-13, 2018 - Chicago, IL

OMSNIC will hold numerous business and networking events during the AAOMS Annual Meeting this October in Chicago. Please join us at these events and stop by the OMSNIC booth #1424 to meet with your OMSNIC agent and OMSNIC staff throughout the week. View the Booth Schedule >>

OMS PATIENT SAFETY AND RISK MANAGEMENT SEMINAR

Hilton Chicago
Room: Continental Ballroom A&B
8:00 am - Noon

Deadline: September 28, 2018
Complimentary Registration

The course will explore topics including emergency preparedness, nerve injuries, medication management, infection, and failure to diagnose through a comprehensive analysis of closed oral and maxillofacial surgery claims.

Earn 4 CE credits, and OMSNIC policyholders earn a 5% Premium Credit for three policy periods!

STAFF PATIENT SAFETY AND RISK MANAGEMENT SEMINAR

Hilton Chicago
Room: Continental Ballroom C
10:00 am - Noon

Deadline: September 28, 2018
Complimentary Registration

Topics include creating a culture of patient safety by empowering staff in the OMS office to work as a team through the intake and discharge process, communication, documentation, emergency preparedness, informed consent, and HIPAA.

Earn 2 CE credits.

ANNUAL MEETING OF SHAREHOLDERS

Hilton Chicago
Room: 4 A
1:30 pm

OMSNIC Shareholders may vote on the formal business presented at the meeting in person or via proxy. Proxy statements and voting materials were mailed by August 24, 2018, to all Shareholders of record as of August 15, 2018.
ANESTHESIA SAFETY PROGRAM: CLOSED CLAIMS & NEAR MISSES

Moderated by Anthony M. Spina, DDS, MD, OMSNIC Director
McCormick Place West
Room: W375 e
10:00 am – 11:30 am
Closed-case examples provided by OMSNIC will be used to illustrate patient safety and risk management principles related to ambulatory anesthesia. This program will explore components used in patient selection, emergency management planning and preparedness, while emphasizing appropriate ways to apply patient safety and risk management principles.

To register, please visit the AAOMS Annual Meeting website: https://www.aaoms.org/meetings-exhibitions/annual-meeting/100th-annual-meeting

ROAAOMS DISASTERS FROM THE MASTERS

McCormick Place West: Room: W184 b-c
Complete Program: 10:30 am – 2:00 pm

11:50 am – 12:10 pm: Complications and Management in OMS Anesthesia
Jerry L. Jones, DDS, MD, FACS – Retired OMSNIC Director
Dr. Jones is one of three leading surgeons who will present closed surgical cases, and the audience will be asked to respond to their preferred treatment of the clinical case. Respondents will discuss how to treat the emergency and what could have been done differently to prevent the adverse event.

12:50 pm – 1:50 pm: OMSNIC Closed Claim Review
Moderated by James Q. Swift, DDS, FACS – OMSNIC Chair
Presented by: Drs. Tommy Burk and Michael Border
Legal Perspective by: Ms. Anne Oldenburg, Esq.
Dr. James Q. Swift will act as the moderator and cases will be presented by Dr. Tommy Burk and Dr. Michael Border. Audience respondents will have the opportunity to participate in discussion related to the treatment rendered in each clinical case via an audience response system. Ms. Anne Oldenburg, Esq. will provide a legal perspective and comment on the defensibility of each case.

To register, please visit the AAOMS Annual Meeting website: https://www.aaoms.org/meetings-exhibitions/annual-meeting/100th-annual-meeting
Cybersecurity in the OMS Practice

Gary Salman - CEO, Black Talon Security

Over the past 20 years, an evolution in computer technology has taken place in the OMS practice. In the beginning, computers were used simply for recordkeeping and billing. Then came the progression from billing to appointment scheduling, digital radiography, EMR/EHR, and now, digital dentistry. As the amount of data stored in systems has increased, so has the frequency and sophistication of cyber-attacks. The days of simply relying on a firewall and antivirus software to protect the practice's network and patient data are over. The reality is, if these devices were so effective at protecting networks from breaches, there would be no data breaches.

The technology landscape has shifted dramatically in the past 12 to 18 months, and hackers are setting their sights on healthcare entities, now more so than ever before. OMS practices across the country are being impacted by ransomware and malware attacks that shut down and compromise networks. To combat these sophisticated attacks, practitioners need to consider a holistic approach towards cybersecurity.

As the landscape shifts, it is important to understand that IT companies are not cybersecurity firms. Cybersecurity firms deploy very sophisticated tools, technologies and human resources to identify weaknesses and vulnerabilities on your network that would allow hackers to compromise your patient data. It is critical that your network security is independently audited by a cybersecurity firm to evaluate the effectiveness of your current security technologies. Note that having your IT company perform their own audit, is not a substitute, and further, is not considered industry standard.

To properly guard against attacks, additional attention must be focused on the computers themselves. Cybersecurity firms have the ability to run highly sophisticated tools against every device on your network that identifies weaknesses, vulnerabilities, improper configurations, etc. that allow for exploitation of the device. The results of this analysis are then turned over to your IT firm so they can work on reducing your risk and exposure.

The first step in reducing exposure and threat risk is to carefully evaluate the OMS practice’s systems. These “systems” are not limited to IT; they also include you and your staff, office policies and procedures, and training. A holistic approach enables careful analysis of every aspect of the practice’s infrastructure and identification of risks and vulnerabilities that might enable a hacker to gain access to the practice’s network. Implementing effective security measures requires buy-in from all the practice stakeholders, including you and your administrators.

Perhaps the most vulnerable components of a secure network are the people using it - you and your staff. Social engineering, often referred to as “hacking the human,” is the most prominent threat vector impacting practices yet it is often the least discussed. As advancements are made in security and prevention, hackers will rely increasingly on human error. For example, most ransomware attacks are initiated via “spear phishing”, which is designed to fool an email recipient into opening an email that appears to be coming from someone they know or trust.
Once the recipient clicks on a link or opens an attachment, the ransomware attack executes and encrypts some or all the files on your computer, making them inaccessible.

To combat social engineering attacks and as part of the HIPAA Security Rule, covered entities (ie, your practice) are required to undergo cybersecurity awareness training to help mitigate the risk of human errors and minimize the chances of being exposed to an attack. Recent data points to a 50% to 75% reduction in cyber-attacks against healthcare entities that properly train their staff.

What is the risk of inaction to your practice and your patients? The US Department of Health and Human Services has strict guidelines in place regarding what needs to be done to protect your patients’ records. In the event of a data breach, the Office of Civil Rights is notified and will conduct an investigation. The practice would be asked to demonstrate that complete HIPAA documentation is in place, and that HIPAA and cybersecurity training has been provided. The practice will also be asked to explain what has been done to secure the practice’s network. Also, 49 states now have their own breach notification laws, some of which are more stringent than those maintained by the federal government.

The cost for mitigating a breach can run into the hundreds of thousands of dollars and may further result in a significant loss of patient and referral trust. Imagine not being able to access your images, EMR notes or treatment history for days or weeks. Practices that have reported data breaches to the Office of Civil Rights have indicated that there is also a major public relations component to the breach. Referrals may struggle with sending patients your way, because their patients question negative publicity that exists in your community due to the breach. In addition, from a business continuity standpoint, what would the financial impact be on your practice if a cyber-attack left your systems inaccessible for several days?

Fortunately, by implementing sound cybersecurity solutions, staff training, and raising awareness about security, almost all attacks can be thwarted.

OMSNIC Data Defense Coverage

Your OMSNIC policy includes coverage for Data Defense. Contact OMSNIC to report a cyber related event.
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 OMSNIC. Let OMSNIC 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 OMSNIC, 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

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 OMSNIC for guidance on how to proceed and obtain legal representation.

Will my attorney review my records before the State Dental Board?
OMSNIC 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 OMSNIC 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.
Prepare for an Unexpected Office Inspection

A sixty-four year old man presented to our insured's office with a referral and a periapical radiograph from his primary dentist. The image revealed tooth #12 was fractured at the gum line and was in need of an extraction of root tip #12. Informed consent was obtained, and the extraction was performed. He was discharged with three prescriptions, including one for Amoxicillin. Two months later, the patient called and reported that he had concerns related to the bill for treatment and as a result, sent a letter to the dental board demanding they investigate the matter of alleged jaw infection as a result of an extraction performed by our insured. The patient also alleged the office was an unsanitary environment.

In response to the complaint, the office received a request for health records from the dental board. A staff member failed to recognize the importance of the request, and the office did not comply within the timeframe requested. Three months later, the office had an unannounced visit from the Board of Dentistry related to allegations of malpractice and billing fraud.

The office inspection went well; however, minor deficiencies and noncompliance were identified in three areas: presentation of licenses and certifications, drug management and sterilization management. Specifically, the inspection noted that licenses and certifications of the OMS and the staff were not publically displayed. The office was also found to be non-compliant with drug security, inventory, and recording, when a number of expired medications were found. The inspection also identified sterilized packages that were not properly labeled with an expiration date, and instrument trays covered but not sealed. Aside from the aforementioned deficiencies, the environmental condition of the facility was noted to be clean and well run. After the visit, a formal report was delivered to the office outlining the minor deficiencies, and a formal response was requested. Although the initial complaint of an unsanitary environment and possible infection were without merit, the report to the Board of Dentistry prompted an investigation, and subjected the office to an unannounced and unexpected visit. The inspector was able to observe this office in areas identified by the complainant, and also those areas that were not identified.

In response to the inspection report, the office took steps to be in compliance with all deficiencies noted. A formal response was submitted to the Dental Board with details on the actions taken and future preventative measures. Assistance was provided by a defense attorney assigned by OMSNIC. A follow up report from the Dental Board noted the inspection was complete with no outstanding deficiencies.

Risk Management Tips:

- Train your staff to inform you of any request for records
- Be aware of state specific professional and facility obligations
- Be prepared for an unannounced Board of Dentistry visit by performing regular office audits to ensure your office is in compliance with state regulations
- Inform OMSNIC of any Board Investigations and/or visits
Communication Best Practices

The key principles of patient safety and risk management are communication, documentation and informed consent. Evaluation of claims data has historically revealed that a lack of appropriate doctor-patient communication may lead to an increase in malpractice allegations. Consider the following preventative measures related to communication that may increase patient safety and mitigate malpractice claims.

In-Office Communication

Evaluate medical history forms for completeness and ask follow up questions related to positive or blank responses. Use the medical history form as a springboard to gather more information about your patient and their medical status.

Empower staff to speak up prior to or during a procedure to ensure patient safety. Use “Time Outs” to verify daily procedures, patient information and avoid adverse events. Watch a Time Out performed in an OMS office.

Review all prescriptions before providing to patient or escort. Ensure any allergies are addressed and patient education related to potential medication abuse is discussed.

Prepare for in office emergencies. It is recommended that you conduct quarterly practice drills. Consider involving your local EMS annually. Assign roles to each staff member during each emergency drill. Evaluate equipment, office space, medication and personnel availability during these drills. Once a drill is complete, evaluate areas for improvement. For more information, please see the 2017 Q4 OMS Guardian article, “A Perspective from an OMS Office: Preparing for In-Office Emergencies.”

Develop policies for how calls of a clinical nature will be handled in your office. If a patient has post-operative concerns and/or complications, who should these calls be directed to day or night and after hours? Additionally, create policies for how clinical staff will communicate patient concerns to front office staff. For example, if a patient is unhappy with treatment due to esthetics or experiences an adverse event, front office staff should be notified of the situation so that conversations regarding future appointments and/or billing can be tailored for the patient and the situation.
Communication Best Practices

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Out-of-Office Communication

- Develop a plan for how out-of-office communication with patients, whether via phone, text or email, will be documented. Document all relevant patient communication in a timely manner.

- Ensure all communication with patients outside of the office is secure. Cell phones and email should be encrypted.

- Assess your office website regularly. Update office, doctor and staff photos as necessary. Additionally, evaluate statements made on your website that may negate consent or set unrealistic expectations, such as “painless dentistry” or “guaranteed results”.

- Avoid communication with patients through social media. This form of communication may lead to HIPAA violations and state board actions. Encourage patients to contact you via phone with any questions or concerns.

- Evaluate your options related to online reviews. Online review responses have the potential to lead to claims of HIPAA violations. If you feel you must respond to an online review, consider the following statement: “We appreciate your feedback. Our office strives to provide an excellent experience, and we work hard to constantly improve our practice. In order to protect the privacy of our patients or potential patients, we do not address specific comments made online. Please contact our office to discuss any concerns that you may have.”

- Develop a plan for after-hours access for patients of record and ensure that they know how to reach you in the event of an emergency or complication.
Communication Best Practices
continued from previous page

Communication With Referrals

Ensure all patient referrals are accurate and legible. Contact the referral and communicate details of patient care over the phone or in person. Avoid reliance on a patient to relay referral recommendations to other providers.

Update referrals on relevant information related to patient care. Changes to a patient’s medical history, allergic status, decision making abilities, current prescriptions or treatment plan are valuable details for all team members to be apprised of. Ask the same of your referrals in return.

Discuss any concerns related to patient care with referrals or other treatment providers in order to ensure evaluation of past, current and future treatment/diagnoses can be made objectively.

To summarize, allegations of malpractice often arise from a breakdown in communication. A review of current practices and evaluation of office policies may reveal areas for improvement. This improvement in communication within, outside, and between offices has the potential to increase patient safety and reduce liability.

New Patient Safety YouTube Minute Video! >>
Watch our new Patient Compliance video on YouTube to learn about risk management strategies and resources available to you to help mitigate challenging situations.

References

Patient Safety and Risk Management Courses

OMSGuard Patient Safety and Risk Management Education
A wealth of complimentary education, training, and other custom resources are available. Member policyholders and staff can take online courses or attend live seminars for CE credits and premium discounts. Login to omsnic.com to access these resources.

e-Learning Center
A robust risk management education library that provides you and your staff with courses on demand that are free of charge and designed to be completed at your own pace. The curriculum covers patient safety and risk management as well as emerging issues. Content is written and presented by OMS and legal and insurance experts well versed in oral and maxillofacial procedures.

Get CE Credit: Earn CE credit upon successful completion of any e-Learning Center course.

Live Seminars
In a collaborative learning environment, OMSNIC’s team of speakers integrates case examples with nonclinical issues commonly seen in OMS claims. Check our online calendar for an upcoming seminar in your area and registration information. Member policyholders who attend a live seminar earn a renewable 5% risk management premium credit that is applicable for three policy periods.

Can’t Attend a Live Seminar? RMC 413 - Patient Safety and Risk Management for the Oral and Maxillofacial Surgeon available in the e-Learning Center, is a recorded version of the live seminar. Complete RMC 413 to earn 4 CEs and the 5% premium credit.

OMS National Insurance Company, RRG (OMSNIC) is an ADA CERP Recognized Provider.
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ADA CERP does not approve or endorse individual courses or instructors, nor does it imply acceptance of credit hours by boards of dentistry. Concerns or complaints about a CE provider may be directed to the provider or to ADA CERP at www.ada.org/cerp.

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