<table>
<thead>
<tr>
<th>Feature Article</th>
<th>Referrals and the Importance of Communication</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Whether it relates to the most basic service we provide, or the most complicated treatment plan, communication with your referrals helps to ensure the correct treatment is delivered. By: Jeffrey Stone, DMD, MD</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Board Message</th>
<th>OMSGuard® Policy: Enhanced Protection for the Specialty</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>An overview of the supplemental coverages included with the OMSGuard Policy including CBCT Endorsements, Data Defense, and Group Personal Excess Liability (Umbrella) coverages. By: Anthony Spina, DDS, MD</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Patient Management</th>
<th>Proper Documentation and Patient Care</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>This article discusses how comprehensive and contemporaneous notes will allow for better recall, better communication, and an improved doctor-patient relationship. By: Kimberly Gensler, JD</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Staff Corner</th>
<th>JAWS Insight: Office Risk Assessment Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>A Practice Administrator and JAWS Society Secretary shares her experience completing the OMSNIC Office Risk Assessment. By: Audra Lansdown</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Closed Claim Summary</th>
<th>Informed Consent: Accommodating Non-English Speaking Patients</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>This summary illustrates how to effectively accommodate non-English speaking patients when procuring appropriate consent prior to treatment. By: Justina DeGrado, JD</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Regulatory Matters</th>
<th>Awareness of State Rules and Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Not staying current with state and federal laws and regulations can result in an untoward action against your dental or DEA license. By: Josh Larman, JD</td>
</tr>
</tbody>
</table>

Also in this issue:

| 10 | RM Courses |

Safety is in the Details

Effective patient communication, documentation, and staying current with laws and regulations can help increase patient safety and help ensure compliance. Your OMSGuard policy offers additional layers of protection.
Referrals and the Importance of Communication

Jeffrey Stone, DMD, MD - Member, OMSNIC Patient Safety and Risk Management Committee

Within the Patient Safety and Risk Management Department of OMSNIC and at our live seminars, we routinely emphasize the importance of communication. A notable study from Rochester University found 71% of liability cases are initiated because of a communication failure between the doctor and the patient.

Communication is equally important with referring doctors. The ability to have and maintain open communication with referrals is essential to managing risk and ensuring the best possible care for our patients. Whether it relates to the most basic service we provide, or the most complicated treatment plan, communication helps to ensure the correct treatment is delivered. This is the proverbial “two-way street.”

The referring dentist ought to provide proper radiographs (when applicable), and accurate, clear written referrals to specialists. It is the responsibility of the OMS to confirm the requested procedure and its appropriateness. It is also our responsibility to discuss the treatment plan with the referring doctor if our findings suggest a different diagnosis, or if we feel a different treatment plan might be worthy of consideration. The OMS should have such a discussion with the referring doctor before expressing a difference in opinion to the patient. You want the patient to understand that their well-being and safety is your top priority and that you are communicating with their dentist to ensure that you are both “on the same page.”

Communication with referrals is especially important in collaboration on complicated treatment plans. Examples include, but are not limited to, serial extractions for orthodontists, plans where prosthetics may be involved, orthognathic surgeries, and implants.

Regarding implants, the patient should be informed of the need for collaboration between the dentist and the OMS in determining proper implant placement. Likewise, the restorative dentist needs to be aware that they have a voice in the overall management of the case.

Often, this will require meeting with the dentist to review models, X-rays, and computer simulated implant positioning. This communication may enhance outcomes for the patient, and will give you the ability to explain to the dentist why grafting may be necessary prior to, or concurrently with, implant placement; or why a certain implant may be more suitable; or why implants may not be a feasible option.

Your interaction and communication with referring doctors does not end with establishing a treatment plan, or completing treatment. Postoperative communication with the referring doctor is also important. If there were any issues with the procedure, or divergence from the plan, this communication should be done early on, both in writing and with a personal call.
Referrals and the Importance of Communication

continued from previous page

This type of communication can often mitigate a potentially negative situation between you and the referring dentist, and may afford the opportunity for the dentist to support your treatment decisions in subsequent conversations with the patient.

Communication also involves keeping your referrals informed about patient appointments, no-shows, or failures to keep follow-up appointments. This communication will support needed continuity of care and customer service efforts, while also supporting your relationship with your referring dentists.

Developing good communication with your referrals makes it easier to have frequent, frank and open discussions with them. It affords the OMS the opportunity to discuss the necessity of clear and accurate referral requests, as well as suitable radiographs or other supporting materials.

In the end, this “two way street” is all about enhancing the care and safety of our patients.
OMSGuard Policy: Enhanced Protection for the Specialty
Anthony Spina, DDS, MD - OMSNIC Director, Underwriting Committee Chair

While OMSNIC is recognized as the leader in providing medical liability insurance to OMS, it is important to understand that the OMSGuard policy also provides other coverage features relevant to protecting the OMS practice. OMSNIC Committees and the Board of Directors constantly look for ways to enhance existing products and services for our policyholder members. Some of these added features arise from discussions with the OMSNIC Advisory Board - a group of OMS representing OMS Societies across the country. The OMSNIC Board meets with this group once or twice a year. During the meetings, we solicit their feedback on the current practice environment in their areas, and ask for suggestions as to how we can improve. We are always appreciative of the candidness and ideas we receive from this group of OMS.

CBCT Coverage
For example, when the use of CBCT created new dimensions of imaging for the OMS, it also created the need for specific coverage provisions for the OMSGuard policy. In response, OMSNIC identified perceived gaps in coverage and provided the necessary protection through policy enhancements. The majority of OMS use CBCT in their offices for their own patients only. For those who expand this function and provide the service of taking images for patients other than their own, an endorsement or stand-alone policy is available to provide needed coverage for an additional premium charge.

Data Defense: Cyber Liability Protection
We continue to hear about the expansion of Cyber Liability issues in OMS practices. A cyber-attack or data breach of any significance could effectively shut down a practice without warning. In acknowledgement of this growing risk, OMSNIC added up to $100,000 for Cyber Liability defense costs to the OMSGuard policy. OMSNIC policyholders also have access to a host of risk management tools and resources on OMSNIC’s website, specifically geared to helping an OMS practice proactively manage this risk. This coverage includes:

- **BrandGuard®** - Coverage for lost revenue directly resulting from an adverse media report and/or notification to customers of a security or privacy breach.
- **Multimedia Insurance** - Coverage for third party claims alleging copyright or trademark infringement, libel or slander, or plagiarism. Covers both online and offline media.
- **Security and Privacy Liability Insurance** - Coverage for third party claims alleging liability resulting from a security or privacy breach, including the failure to safeguard online or offline information, or the failure to prevent virus attacks, denial of service attacks or the transmission of malicious code.
- **Privacy Regulatory Defense Penalties** - Coverage for defense costs and regulatory fines/penalties incurred in defending against regulatory investigations of privacy or security breaches.
- **PCI DSS Assessment** - Provides coverage for the fines and penalties levied by the Payment Card Industry Data Security Standards council (VISA, Mastercard, AmEx, Discover, and JCB) against merchants who are not PCI DSS compliant.
OMSGuard Policy: Enhanced Protection for the Specialty

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Group Personal Excess Liability (Umbrella) Coverage

Group Personal Excess Liability (Umbrella) Coverage* was introduced in 2012, to address the risk of personal liability lawsuits (i.e. when you injure other people or property) - yet another potential threat to the well-being of an OMS practice.

Most OMS have some personal liability coverage through a homeowners, auto, or watercraft policy. However, the liability coverage with these types of policies may be very limited. Each year, as your practice and, perhaps your family, continues to grow, the question becomes do you have enough coverage to sustain a significant loss?

Recognizing the important benefits of this coverage, every OMSNIC policyholder automatically receives $1,000,000 in personal excess liability coverage through the OMSGuard Policy.** Policyholders can purchase additional limits up to $25,000,000 for Excess Liability Insurance and up to $5,000,000 for Uninsured & Underinsured Motorist Protection at a discounted rate. OMSNIC provides Group Personal Excess Liability Coverage through Chubb, a well known and well respected carrier in the industry.

If you currently carry a personal umbrella policy outside the OMSNIC program, you are encouraged to review it with your agent, who can help you determine if you have any duplicate coverage. If so, you may not need it. It is important to understand that the Chubb Umbrella policy does not add to any existing umbrella. For example, if you currently have a $1,000,000 umbrella policy and $1,000,000 through the Chubb Umbrella, your total limit remains $1,000,000.

Look for new added features to the Group Personal Excess Liability (Umbrella) coverage in next quarter’s OMSGuardian.

OMSNIC continues to look for ways to assure that the OMS and his/her practice are protected. We thank you for your continued trust and confidence.

* It is important to note that the Group Personal Excess Liability coverage does not provide additional coverage over your professional liability limits.

**Claims reported under the personal excess coverage will not influence your underwriting profile with OMSNIC.
Proper Documentation and Patient Care

Kimberly Gensler, JD - Claims Manager

As practicing OMS, you are focused on providing the best possible care for your patients. While it may not always be apparent how proper and complete documentation can contribute to that goal, it is important for numerous reasons. Careful documentation is helpful to referring doctors and others involved in the care of a patient. Detailed notes can also assist the doctor who wrote those notes, providing a better continuity of care and allowing for better organization of that doctor’s thoughts and findings. Most doctors may find it difficult to independently recall, with detail, all of their examinations and interactions. Comprehensive and contemporaneous notes will allow for better recall, better communication, and an improved doctor-patient relationship.

Documentation Do’s

A patient’s medical record should include:

- documentation of the patient’s history;
- physical examination findings;
- assessment and diagnosis, including differential diagnosis;
- all discussions, including the informed consent process before a procedure;
- the treatment provided;
- any plan for follow up, including discharge instructions given to the patient and;
- note any images taken, and the results/review of the images.

Documentation should be entered into a patient’s chart contemporaneously with the treatment provided. This will allow for better recollection of what occurred during the appointment. If a doctor waits several days to enter a note into a patient’s chart, the note will likely not be as complete or as accurate. In the event of litigation, it may also offer a plaintiff’s attorney an avenue to attack the doctor that would not otherwise be available had the record been complete and timely. Such practices can be used in an attempt to paint a picture of the OMS as careless. Whatever the intentions, a patient record should never be altered after the fact.

In addition to improving patient care and communication, complete and careful documentation will also assist OMSNIC and OMSNIC’s defense attorneys in defending you in the event of litigation or a licensing complaint. In some circumstances, good, careful documentation may even prevent a claim from being filed in the first place. Attorneys typically review a patient’s records before deciding whether to pursue litigation. If they find clear documentation of a doctor’s findings, assessment, and communication with the patient, such documentation can act as a deterrent from litigation. When an attorney finds sparse documentation, or detects any discrepancies that may be perceived to be alterations, litigation may be more likely as it provides additional ammunition to the plaintiff.

Although the practice of oral and maxillofacial surgery is demanding, it is important that a focus on careful recordkeeping does not get lost in the shuffle. Documentation should not be seen as distracting from the goal of providing excellent patient care, but rather an aid to enhance the ability to provide such care and improve the doctor-patient relationship.

Risk Management Tip

The “SOAP” format for notes is easy to follow and captures subjective complaints (history), objective findings (examination), assessment, and treatment. All entries must be legible, and financial information should be kept separate from clinical notes.
JAWS Insight: Office Risk Assessment Benefits
Audra Lansdown - Practice Administrator and JAWS Society Secretary

Have you ever thought of the benefits of evaluating your practice with your staff’s point of view? You may be thinking, “Who has time for this?” or “They already know our office policies and procedures, I don’t need to discuss them AGAIN.” Establishing a culture of safety and education within our practices supports treatment success and patient satisfaction. Maintaining a culture of safety and education can be challenging; however, there are resources readily available in OMSNIC’s e-Learning Center.

A library of complimentary online resources to help managers and doctors educate staff is just a click away. One resource that has proven to be especially helpful is the online Office Risk Assessment. The Risk Assessment is completed by both doctors and staff, takes approximately 30 minutes to complete and presents questions like “Is the telephone answered promptly?” and “Are emergency drugs and supplies inspected monthly for expiration dates?” and much more. There is ample insight to be gained in assessing your office from multiple points of view.

The assessment is filled out by all the participants, and the results are compiled by OMSNIC Patient Safety & Risk Management staff. Two reports are created. The first report includes sixteen graphs, each representing a section of the Risk Assessment, and addresses general themes such as communication, emergency procedures, and social media. This report may identify areas in the office that require attention. The second report details how each participant answered each question. It will also identify the “I don’t know” responses which may be an indicator of familiarity with policies and practices within your office.

Reviewing the results of this assessment with your staff creates dialogue. It also allows you to reinforce expectations and plan for future strategies and procedures within your office. A review of what is working well and what needs improvement is always worth your time. It will benefit you, your staff and ultimately, your patients and their safety. Take the time to cultivate your office culture. Visit omsnic.com and get started on your personalized risk assessment today.

How to Access the Risk Assessment
1. Log on to [www.omsnic.com](http://www.omsnic.com).
2. Click on “Risk Management” in the bottom left corner.
3. Click on the “Office Risk Assessment link” on the right side.
4. Follow the instructions.

If you have questions about the Risk Assessment, please call Patient Safety and Risk Management at (800) 522-6670 or email us at rm@omsnic.com.
Accommodating Non-English Speaking Patients

Justina DeGrado, JD - Claims Analyst

The Background

A fifty-five year old man presented to our insured’s office with pain and swelling in the lower right side of his face. The patient spoke only Spanish and all communications between the OMS and the patient were done through an office staff member or the patient’s family. The OMS prescribed amoxicillin and pain medication and the patient was told to return after the swelling subsided. The patient returned about a week later and the OMS was able to evaluate the area and determined that #32 required extraction. The patient signed an English consent form for the extraction, which included the risk of infection. The tooth was extracted under local anesthesia without complication. The patient followed up and the sutures were removed. The patient did not return to the OMS office thereafter, but continued to see his general dentist. The general dentist told the patient that he had an infection and was referred to a different specialist. The patient was diagnosed with osteomyelitis which required a significant jaw resection. The patient later filed suit against our insured.

So Here’s What Happened

The plaintiff alleged in the complaint that he did not have informed consent, specifically because the consent form was in English. The plaintiff further alleged the OMS was aware the plaintiff did not speak English because an interpreter was needed to discuss the treatment plan. Although the OMS stated he had a thorough conversation with the plaintiff through an interpreter about the proposed extraction, alternatives, and risks of surgery, there was no documentation in the record of such discussion.

The Analysis

In this claim, the lack of documentation regarding the use of an interpreter and the discussions between the doctor and the patient compromised the defense of the claim. It is important to remember that plaintiffs’ attorneys will always review the patient’s records for consent forms and consent discussions.

The Outcome

The case was settled before trial.

Resources on omsnic.com

• February/March 2016 OMS Guardian article
• Consent forms and patient information documents written in Spanish
• Language Interpretation and Translation Services Agreement

Risk Management Tip

Provide a qualified interpreter* when needed, and be sure to document the use of an interpreter, as well as what information was discussed with the patient. If the consent form is not available in the patient’s native language, the interpreter can assist in translating the treatment, risks, benefits and alternatives to the patient.

* “A qualified interpreter is an individual who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any specialized vocabulary required by the circumstances….when important information is being conveyed and providing interpretation is a reasonable step for providing meaningful access to a program by a person with LEP it is the provider’s responsibility to provide competent interpreter services at no cost to the person being served. A person with LEP can always decline using an interpreter provided by a recipient.”

(HHS Website)
Staying current with the most recent industry trends, laws and regulations, both state and federal, can feel like an impossible task. However, the cost of not doing so could result in an untoward action against your dental or DEA license. For example, as a convenience to patients, in lieu of them obtaining their prescriptions at a pharmacy, some OMS dispense prescribed medications to their patients. Do you know that while this is an acceptable practice in most states, there are some states that apply certain restrictions, or do not permit it at all?

Checking with your state board before engaging in this or similar activities is a good idea to be sure you know the current law. In the event that your office and/or practice is audited and deficiencies are found, “I didn’t know” is likely not an acceptable response.

Occasionally, OMSNIC publishes relevant industry information to our OMS readers through the OMS Guardian. While we do our best to provide general updates, there are still many other outlets that you can access. How does one stay current?

Consider setting aside a block of time, maybe 10-20 minutes each day, to peruse various industry sites and publications. Maintaining a folder of new information is a great way to keep track of and monitor current issues that may affect your practice.

There are several sites, specific to OMS that can be helpful. The AAOMS website contains an Advocacy E-Newsletter and Government Affairs section, where you can find legislation and regulatory activity on both state and federal levels.

The ADA website includes an Advocacy page, another great resource providing links to current government and regulatory issues. It is also important to review the various OMS trade journals and your local dental society publications. For issues that may be more challenging or of concern, utilizing local legal counsel is always an option for further review and analysis. Taking the extra step to stay informed will only serve to help you have a successful practice and avoid unnecessary pitfalls.
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

This is a robust risk management education library that provides OMS and 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, 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.

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<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

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