

## **RISK MANAGEMENT ARTICLE**

### **Providing Patients with Protective Eyewear: Is It Really Necessary?**

As you may know, Intercare Insurance Services handles the professional liability claims for the Dentists Advantage Program. The claims we handle vary from a simple patient complaint that he is unhappy with his new filling to serious lawsuits involving patient death. Most claims, however, fall somewhere in between. Over the past few years there has been an increase in the number of claims involving eye injuries to patients sustained during dental treatment. In each of these cases the patient was not provided protective eyewear during the procedure. This brings into question as to whether providing patients with eyewear is the standard in the dental community, and whether a failure to provide eyewear creates liability for the dentist when a patient suffers an eye injury while in the dental chair.

#### **Case Studies<sup>1</sup>**

##### **Dr. Garcia**

Dr. Garcia has practiced in a small suburban area outside a large metropolitan city for over 30 years. He runs a private practice where he employs two other dentists and four hygienists. His practice is relatively large and busy; however, he enjoys an excellent reputation in his community. Due to the size of his practice and the number of patients treated at his office, he has had a few minor claims, but each of the claims have been resolved successfully and involved minor grievances by patients such as complaints of ill-fitting dentures or a failed root canal. Unfortunately, Dr. Garcia is now faced with a lawsuit involving a serious injury: a patient has complete vision loss in her left eye.

On the day of the incident, the patient presented to Dr. Garcia's office to have a composite filling replaced on a maxillary anterior tooth. It was a cosmetic procedure to address the patient's complaint of staining. As expected, it was a relatively quick procedure as anesthetic was not necessary. Dr. Garcia has never required or even offered his patients protective eyewear, as it was not the norm when he went to dental school and he's never had a patient sustain an eye injury in his chair. Shortly after the old filling was removed, the patient complained of feeling like something was in her eye. Dr. Garcia didn't see anything in the patient's eye and after rubbing her eye for a moment the patient advised she thought she was fine. Dr. Garcia finished the procedure with no further incident.

A week later, the patient called Dr. Garcia's office complaining that her eye continued to bother her after her dental appointment and that she planned to go see her ophthalmologist. The patient suffered a corneal abrasion that did not heal normally, and eventually suffered a pseudomonas ulcer in her eye. The patient continued to have problems with her eye to the point that she completely lost vision and was advised it is permanent and inoperable.

The patient now brings a lawsuit. The case is valued at \$200,000 to \$400,000.

##### **Dr. Lee**

Dr. Lee practices in a small rural area and is only one of 3 dentists in his community. He has practiced in that area for about 25 years and knows all of his patients by first name. Dr. Lee has never been sued or even had a claim brought against him. Dr. Lee provides protective eyewear to his patients for those procedures which he expects flying debris, such as removal of an amalgam or old crown.

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In this instance, the patient presented to complete root canal treatment on tooth #15. Dr. Lee anesthetized the patient and started the procedure. He did not provide the patient with protective eyewear because he did not expect flying debris while filing the canals. When Dr. Lee accessed the palatal canal the patient felt pain. Dr. Lee advised the patient that he would need to give her an injection in the roof of her mouth and that it was probably going to hurt a bit, but it would be very quick. Dr. Lee then gave the palatal injection, but before the injection was complete the patient jumped and Dr. Lee immediately withdrew the needle from the patient's mouth. Before he was able to cap the needle the patient abruptly sat up in the chair and turned her head toward Dr. Lee. The patient's left eye got punctured by the needle. The patient ultimately suffers complete loss of vision in her left eye.

The patient's lawsuit is valued between \$300,000 and \$600,000.

### **Discussion**

Both of the claims above represent a rare occurrence, especially Dr. Lee's circumstance; however, the severity of the injuries make this issue an important one. Is a dentist liable for injury to a patient's eye when an unforeseen accident occurs? The answer in most cases, is yes.

In general, a dentist is only liable for a patient injury when his or her treatment fails to meet the standard of care, and that failure actually causes the injury. For example, if a dentist perforates the pulpal floor while performing root canal treatment (a standard of care violation), and the patient loses the tooth as a result (the violation caused the injury), then the dentist is liable for the loss of the tooth. Conversely, if the root canal treatment is done properly (within the standard of care) but the tooth gets reinfected and the patient loses the tooth, the dentist is not liable for the loss of the tooth. So, in most cases, the primary task in defending a dentist's treatment is to show that the dentist's treatment was within the standard of care. That means finding an expert (another dentist with the same qualifications) who will testify that the treatment was done within the standard of care, and that the injury suffered is due to something other than the dental treatment. The standard of care is the degree of skill and care of a reasonably competent dentist under the same or similar circumstances.

So, does the standard of care require that dentists provide protective eyewear to all patients for all treatment procedures, including administering anesthetic? The answer is, probably not. Determining the standard of care for any procedure is done by providing expert testimony, as only an expert can truly know the standards for any dental procedure. In both of the claims above we consulted with experts in the states in which the dentists were practicing; each of the consulting experts advised that the standard of care really does not require providing protective eyewear to patients. So, if the standard of care does not require providing protective eyewear, then how can the dentist be liable for the patient's injuries? The answer is that in some circumstances, a patient can sue a dentist for "general negligence" rather than "dental malpractice."

There is a distinct difference between dental malpractice and general negligence. Malpractice is the failure of a licensed professional to provide treatment within the standard of care. General negligence is the failure to exercise the care that a reasonably prudent person would exercise in like circumstances. Think of general negligence of situations such as when a driver of an automobile takes his eyes off the road to change the radio station and causes a collision. A reasonably prudent person does not take his eyes off the road when it is not safe to do so, and therefore the driver is negligent and liable for injuries he caused in the collision. Legally, the

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difference is significant because a claim of medical (or dental) malpractice requires that a patient produce his own expert who will testify that the dentist's treatment fell below the standard of care. It is a matter of medical judgment of which a lay person cannot attest. A claim of general negligence does not require expert testimony because the alleged facts are within the realm of a jury's common knowledge.

In the two cases discussed above, both patients are bringing claims of general negligence against the dentist, and they will therefore not be required to prove that the standard of care requires providing patients with protective eyewear. An injured patient's attorney can simply argue to a jury that any reasonable person would provide eyewear to a patient when sharp objects or flying debris are expected around the patient's face. It is more of a common sense argument rather than a professional judgment argument. In both cases the patients presented for routine dental treatment and now suffer lifelong blindness in one eye. It does not matter that the standard of care does not require the provision of eyewear, the dentists committed general negligence and will therefore be liable for the patients' injuries.

### **Conclusion**

These two cases are perfect examples of the age-old saying, "it is *always* better to learn from someone else's mistake than your own." Although the standard of care does not require dentists to provide protective eyewear to their patients, and the chances of a patient sustaining a serious eye injury are small, it is in your best interest to always provide protective eyewear to each and every patient, regardless of the procedure. If you find it important to be able to maintain eye contact with your patients, clear eyewear is available. The eyewear is inexpensive and easy to maintain. Keep one set of eyewear in each of your operatories and make it a policy to use them for every procedure, including administering anesthetic. Such a simple change in your practice may protect your patients from serious injury and can protect you from a potentially damaging lawsuit.

<sup>1</sup>The following case studies are two actual claims handled by our office. The names and some circumstances have been changed for confidentiality purposes.

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