The National Society of Dental Practitioners

RISK MANAGEMENT Newsletter

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How dentists can avoid risk when assuming care

Patients may choose to transfer to another dentist after a routine visit or even after starting a treatment plan. For example, a patient may have to suddenly relocate, or they may be unhappy with the treatment results to date.

Dentists who assume the care of a patient from another dentist have the same professional obligations as for all their patients. Failure to meet those obligations could result in legal action. Consequently, dentists should take steps to ensure a safe transfer of care and meet their responsibilities.

Establishing professional responsibility

Once the dentist examines the patient, a professional relationship is initiated, with the dentist having an ongoing professional responsibility to the patient. The dentist is bound by ethical guidelines and standards of practice throughout the relationship.

The Michigan Dental Association notes that this relationship exists until both parties agree to end it, the patient leaves the dentist, or the dentist terminates the relationship. In the latter case, the dentist must safely transfer care to avoid patient harm and charges of patient abandonment.

Ensuring a safe transfer

In any situation, a safe transfer begins with the receiving dentist ensuring they have copies of the patient's dental records and radiographs. The patient normally asks their current dentist to send this information to the new dentist. HIPAA rules state that a physician does not need the patient's written authorization to send a copy of the patient's medical record to another healthcare provider who will be treating the patient, but most dentists require written permission to release records. (Note: Some states may require written permission.)

The transferring dentist has ethical responsibilities related to the transfer. The American Dental Association Code of Ethics states that when asked by the patient or the patient's new dentist, the transferring dentist is obligated to provide dental records and any information that will be beneficial for treating the patient. Receiving dentists should direct any questions to the previous dentist, not office staff, to avoid miscommunication. Details of the communication should be documented in the patient's dental record.

The receiving dentist should ask the new patient what they were told by the previous dentist about them and their practice so that any misinformation can be corrected. For example, the transferring dentist may not have clearly explained the services provided by the new dentist.

The receiving dentist should treat the transferred patient as a new patient, which means obtaining consent, checking insurance coverage, outlining expectations, and conducting a thorough assessment. Assessment results should be compared to the patient's records from the transferring dentist. It may be necessary to obtain new radiographs if the previous ones are unclear. If the receiving dentist uncovers an error made by the transferring dentist, appropriate action should be taken. [sidebar; see below after the article]

After the assessment, the new dentist should develop a treatment plan. The dentist should minimize risk factors related to any planned treatment, particularly if they are following a treatment plan developed by the transferring dentist. For example, factors contributing to the treatment of the wrong tooth include inaccurate review of dental records and miscommunication of a referral.

If the new treatment plan differs from the one the previous dentist developed, the receiving dentist should clearly explain the new approach, including the reasons behind it, and disclose any impact on costs.

When treatment plans differ, the patient may question their previous dentist's approach. In this case, receiving dentists should not guess about how the plan was developed, since they do not know the full circumstances. The dentist could suggest the patient contact the previous dentist with any questions.

As is the case with all patients, documentation, including a detailed treatment plan and patient communication, is key to reducing the risk of liability.

Building the dentist-patient relationship

Establishing a positive relationship early on with the new patient may reduce dissatisfaction, which could result in a lawsuit or a complaint with the state dental board. The new dentist should establish trust with the patient by being honest and recognizing that every communication matters. One negative conversation can quickly undo a trusting relationship.

Patients also need to know upfront the expectations related to treatment approaches, missed appointments, and fees. Failure to set expectations can result in patient dissatisfaction and, depending on the situation, legal action.

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A smooth transfer

Receiving a patient from another dentist can be advantageous for business, but must be handled appropriately. Building the dentist-patient relationship from the start will help ensure a smooth transfer, increase satisfaction, and reduce the risk of litigation.

Sedation dentistry offers immense benefits but carries risks that demand meticulous planning and preparation. Dentists and their teams must prioritize patient safety by understanding potential complications, accommodating high-risk individuals, consulting physicians when needed, and maintaining emergency readiness. By adopting these strategies, dental professionals can minimize liabilities, improve patient outcomes, and foster trust in their practices.

Discovering an error

In rare instances, the receiving dentist may discover that the transferring dentist made an error. The following actions may be helpful in this situation.

- Keep in mind that the patient's welfare must come first.
- Conduct a complete assessment to uncover the extent of the error.
- Determine whether a true error exists or if there is simply a variation to treatment approach. The ADA Code of Ethics notes that differences in approaches should not be communicated to the patient in a way that implies mistreatment. Contact the original dentist to obtain their perspective.
- If an error has been made, avoid attaching blame to the previous dentist; it is best to remain neutral and factual. Blaming the previous dentist could result in charges of slander.
- Be honest and transparent with the patient. Keep to the facts and offer solutions. For example, "It looks like this permanent crown is too large for the tooth. Here's what we can do moving forward."
- Thoroughly document the findings (including written notes, relevant radiographs, and patient communication). Note discrepancies with the dental record received from the previous dentist, but do not state to the patient that the dentist made an error.
- The dentist may want to verbally share the findings with the previous dentist as a professional courtesy.
- If an egregious error occurred, the dentist has an ethical responsibility to report it to the applicable state dental board and/or any other appropriate state agency. (ADA, 2023)

Sources: American Dental Association. Principles of Ethics & Code of Professional Conduct. 2023; CNA, Dentist's Advantage. Dental professional liability: Risk management program. 2023.

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REFERENCES

American Dental Association. The doctor/patient relationship. n.d. https://www.ada.org/resources/practice/practice-management/the-doctor-patient-relationship

American Dental Association. Principles of Ethics & Code of Professional Conduct. 2023.

U.S. Department of Health and Human Services. Summary of the HIPAA privacy ruling. 2022 (date of last review). https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html

CNA, Dentist's Advantage. Dental professional liability: Risk management program. 2023.

Michigan Dental Association. Abandonment. n.d. https://www.michigandental.org/legal-article/abandonment/

Failure to Evaluate or Refer Patient Allegedly Results in Delayed Oral Cancer Diagnosis and Treatment

CLAIM CASE STUDY

Practitioner: Insured general practitioner dentist (GP) and a periodontist

Claimant: 50-year-old male patient, reportedly a light drinker with no tobacco use history, no significant medication history.

Risk management topics: Patient assessment, oral cancer screening/examination, documentation

Facts: A 50-year-old male patient presented to the GP's office for urgent care complaining of pain. He reported no significant medical conditions or medications but noted he hadn't had a physical in four or five years.

A limited exam revealed deep decay under a restoration on the mandibular left side on tooth 19. The GP discussed treatment options, and the patient chose to save the tooth. The GP referred him to an endodontist due to the complexity of the case. The endodontist completed the root canal therapy (RCT) without incident.

Two weeks later, the patient scheduled a comprehensive exam and radiographs with the GP. However, after the radiographs were completed, he rescheduled the examination due to a work emergency. The comprehensive examination was then completed about five weeks after the initial visit.

Over the next year, the patient received restorative care and was referred to a periodontist for periodontal issues in the mandibular right quadrant. Treatment and follow-up spanned approximately three months, followed by alternating hygiene visits at both offices every three months for preventive care and to monitor his response to periodontal treatment.

Just before his one-year recall visit with the GP, the patient rescheduled due to a family matter. The new appointment was set to take place approximately 15 months after the initial urgent care visit.

Shortly before the rescheduled recall visit, the patient consulted an ENT physician for throat pain. While the throat exam was within normal limits, the patient mentioned a persistent sore on the left side of his tongue, which he stated had been present for over a year. The ENT, though not alarmed by its appearance, recommended a biopsy due to its duration. The patient initially declined the biopsy referral to an oral surgeon and took no immediate action.

At the rescheduled GP visit, the patient mentioned the ENT consultation. The GP examined the lesion and agreed with the biopsy recommendation. After further discussion, the patient consented.

At the initial visit, the oral surgeon suspected trauma but proceeded with the biopsy due to the lesion's persistence.

The biopsy confirmed a diagnosis of squamous cell carcinoma, and the patient was referred to a head and neck cancer specialist. Treatment included hemi-glossectomy with neck dissection (three positive lymph nodes), chemotherapy and radiation. The final diagnosis was stage IVa squamous cell carcinoma.

Following treatment, the patient filed a lawsuit against both the GP and the periodontist, alleging failure to diagnose or refer for oral cancer over the course of more than a year while under their care.

Key allegations: Inadequate cancer screening and examination, failure to diagnose or refer for further evaluation, delayed diagnosis leading to advanced cancer and more aggressive treatment

Alleged injury/damages: Progression of cancer leading to extensive and aggressive treatment, surgical disfigurement, physical and emotional pain and suffering, medical expenses and loss of wages. Initial demand: $600,000.

Analysis: The patient (plaintiff) alleged that, despite multiple visits to both the GP and the periodontist, neither practitioner identified nor addressed the tongue lesion. He claimed to have informed the GP about the sore during the comprehensive exam. Although unsure if he mentioned it to the periodontist, the lawsuit emphasized that a full periodontal exam was performed before proceeding with recommended treatment. Interestingly, the endodontist was not named in the lawsuit.

Defense experts reviewing the GP's records noted a lack of documentation regarding oral cancer screening or any mention of tongue pain. While it's possible the lesion wasn't present during the comprehensive exam, the absence of documentation weakened the defense. Without a record of screening, the plaintiff's claim that it didn't occur gained credibility.

Subsequent GP restorative visits also lacked mention of the lesion or patient complaints. Hygiene notes from both offices did reference oral cancer screenings. The first hygiene visit post-periodontal treatment (at the periodontist's office) documented the tongue sore but recommended no action. Three months later, the GP's hygiene notes stated the exam was "within normal limits" — a finding inconsistent with the ENT's referral for biopsy shortly thereafter. Given these findings, inconsistencies and documentation gaps, the defense team recommended pursuing settlement before proceeding with additional discovery.

Outcome: The periodontist settled separately for an undisclosed amount. The total incurred (settlement plus claim expenses) for the GP was $250,000. The patient survived and was cancer-free at settlement.

Risk management comments and resources:

This case highlights the critical importance of comprehensive documentation and consistent oral cancer screening practices. Several key points emerge:

1. **Document All Screenings Clearly**

   Even if a screening is performed, failure to document it can be interpreted as failure to perform. Notations such as "oral cancer screening" alone are insufficient. Include details of the findings—whether normal or abnormal. This critical part of any examination (oral cancer, radiographic, periodontal, etc.) is very often missing from dental records.

2. **Document Methods and Consider Standardized Terminology**

   Many dental offices use oral cancer screening adjunct technologies as part of their examination process. Use of such devices should be documented. However, use of an adjunct screening device alone does not comply with current clinical guideline recommendations. The ADA 2017 clinical guidelines recommend an intraoral and extraoral conventional visual and tactile examination (CVTE) be performed for all adult patients during evaluation for potentially malignant disorders. Incorporating this terminology into records can help standardize documentation and support defensibility.

3. **Follow Up on Patient Complaints**

   Persistent lesions, even if they appear benign, warrant follow-up or referral. In this case, the lesion's duration should have triggered earlier concern and action.

4. **Coordinate Across Providers**

   When patients receive care from multiple providers, communication and documentation consistency are essential. Discrepancies may result in oversights that impact patient care and safety, as well as undermine defense efforts in the event of a claim.

5. **Educate Staff on Documentation Standards**

   Ensure that all team members understand the importance of documenting findings and recommendations accurately and thoroughly.

   Consider accessing and reviewing current clinical guidelines and additional information available at the following websites:

   - Evidence-based Clinical Practice Guideline for the Evaluation of Potentially Malignant Disorders in the Oral Cavity (2017)
   - Head and Neck Cancer on ADA.org
   - Oral Cancer Resources on AGD.org
   - About Oral Cancer on CDC.gov

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