

RISK MANAGEMENT ARTICLE

Managing Medication Issues, Part One

By Mark Buczko, CPCU, CIC, RPLU

You've heard the stories about "dentist phobia." A patient is so nervous about going to the dentist they skip treatment altogether. When thinking about having their teeth cleaned their body tenses with fear. They would rather endure the agony of a toothache than set foot in a dentist's office.

These types of patients are candidates for some degree of sedation. Whether your goal is to take the edge off their anxiety, or to relax them so you can more easily and safely perform your treatment, you should be aware of the exposures medications like sedatives add to your practice.

Part One of this article will help dentists recognize the increased professional liability exposure that patient sedation brings to your practice and provide steps you can take to minimize this exposure.

ADA Sedation Guidelines

The American Dental Association publishes [Guidelines for the Use of Sedation and General Anesthesia by Dentists](#). This document clearly sets the standard of care for dentists using sedation in their practice.

The differences between the four levels of sedation can be summarized as follows:

Effect on Patient	Minimal Sedation	Moderate Sedation	Deep Sedation	General Anesthesia
Depressed level of consciousness	✓	✓	✓	
Loss of consciousness				✓
Responds to verbal commands	Yes	Yes	No	No
Maintains airway	Yes	Yes	May be impaired	Often impaired
Ventilatory functions	Unaffected	Adequate	May be impaired	Often impaired
Cardiovascular functions	Unaffected	Usually maintained	Usually maintained	May be impaired

The ADA Guidelines also outline:

- The minimum levels of training for the use of sedation. All levels require a current certification in Basic Life Support for Healthcare Providers.
- Recommends the training required to effectively respond to medical emergencies.
- Minimal and moderate sedation require at least one trained person *in addition to* the dentist.

Deep sedation or general anesthesia requires two trained individuals in addition to the dentist.

- Describes the type of equipment needed for administering and monitoring sedated patients.
- Suggests appropriate documentation for the use of sedation.
- Recommends pre- and post-operative patient preparation and discharge responsibilities.

© Dentist's Advantage, 2017 © The National Society of Dental Practitioners, 2017

Risk Management services are provided by Dentist's Advantage and the NSDP to assist the insured in fulfilling his or her responsibilities for the control of potential loss-producing situations involving their dental operations. The information contained in this document is not intended as legal advice. Laws are under constant review by courts and the states and are different in each jurisdiction. For legal advice relating to any subject addressed in this document, dentists are advised to seek the services of a local personal attorney. The information is provided "AS IS" without warranty of any kind and Dentist's Advantage and NSDP expressly disclaims all warranties and conditions with regard to any information contained, including all implied warranties of merchantability and fitness for a particular purpose. Dentist's Advantage and NSDP assume no liability of any kind for information and data contained or for any legal course of action you may take or diagnosis or treatment made in reliance thereon.

RISK MANAGEMENT ARTICLE

Safety Checklist for Office-Based Procedural Sedation/Anesthesia



American Dental Society
of Anesthesiology

Procedure Room Set Up	Pre-operative Encounter	Post-operative Recovery	Records
<p style="font-size: x-small; margin: 0;">Before patient is brought to procedure room</p> <ul style="list-style-type: none"> <input type="checkbox"/> Monitors functional <input type="checkbox"/> Oxygen Source and delivery <input type="checkbox"/> Scavenger operational <input type="checkbox"/> Suction <input type="checkbox"/> Airway adjuncts <input type="checkbox"/> Defibrillator / AED <input type="checkbox"/> Emergency medication / equipment <input type="checkbox"/> Fire hazard precautions with oxygen <input type="checkbox"/> Necessary instruments, devices and materials present <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____ 	<p style="font-size: x-small; margin: 0;">With practitioner and patient</p> <ul style="list-style-type: none"> <input type="checkbox"/> Correct patient and date of birth <input type="checkbox"/> Correct radiographs present <input type="checkbox"/> Correct procedure / side / tooth <input type="checkbox"/> PMH, Physical exam, Meds reviewed <input type="checkbox"/> Allergy / adverse drug reaction <input type="checkbox"/> Essential medication maintenance <input type="checkbox"/> Blood glucose evaluation <input type="checkbox"/> ASA status / Mallampati class <input type="checkbox"/> SBE / joint prophylaxis <input type="checkbox"/> Pregnancy / lactation <input type="checkbox"/> Escort present <input type="checkbox"/> NPO status <input type="checkbox"/> Informed consent <input type="checkbox"/> Pre-operative vital signs <input type="checkbox"/> _____ <input type="checkbox"/> _____ 	<ul style="list-style-type: none"> <input type="checkbox"/> Patient awake and breathing well <input type="checkbox"/> Hemorrhage controlled <input type="checkbox"/> Airway self-maintained <input type="checkbox"/> Vital signs within 10% of baseline <input type="checkbox"/> Aldrete / pain score assigned <input type="checkbox"/> Ice available <input type="checkbox"/> Post-operative Rx <input type="checkbox"/> Post-operative instructions <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____ 	<ul style="list-style-type: none"> <input type="checkbox"/> Operative notes written / dictated <input type="checkbox"/> Anesthesia record complete <input type="checkbox"/> Drug log complete <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____
<p style="margin: 0;">Patient Name: _____</p> <p style="margin: 0;">DOB: _____</p> <p style="margin: 0;">Patient Number: _____</p> <p style="margin: 0;">Date of Procedure: _____</p>			

This [checklist](#) developed by The American Dental Society of Anesthesiology is a useful risk management tool you can fill out with your patient *before* going through the sedation process. When creating your own version, add a section where you and your staff can sign and date. Should something go wrong it could prove useful in your defense.

Informed Consent

Similar to informed consent for a dental procedure, your patient needs to provide informed consent for sedation. In order to provide informed consent a patient must be in full control of their faculties and be legally capable of giving such consent.

Make sure you document how you reached the decision that the patient was capable of providing informed consent, such as you held a conversation with patient and that the patient was lucid. You do not have to discuss every possible drug complication, only those that are likely.

The National Society of Dental Practitioners and the Dentist's Advantage Insurance Program for Dentists

RISK MANAGEMENT ARTICLE

Case Study #1

A 5-year old male patient under the care of his grandmother was prescribed premedication sedatives for four appointments. Prior to his next appointment, wanting to ensure the child was not in any distress, his grandmother gave him all four doses 30 minutes prior to the appointment.

Prior to initiating treatment, the dentist failed to ask the grandmother if the premedication had been given as directed. The dentist started nitrous oxide and immediately noticed that child was unresponsive. Resuscitation efforts failed and child was pronounced dead upon arrival at the hospital. The dentist was sued for malpractice and a dental board complaint filed.

The child's grandmother obviously did not understand the premedication instructions. Whose fault is that? Did the dentist not make it clear at the previous appointment? Why didn't the dentist double-check with the grandmother how much medication was given?

Although a defense verdict was rendered at trial, the dentist lost his license to practice for three months as a result of the dental board complaint.

Pre-Treatment Sedation Safety Issues

It's not your patient's responsibility to provide you with a complete medical history. It's *your* responsibility. In case study #1, a quick review of the patient's health history may have prompted the grandmother to tell the dentist about the dosage she gave her grandson.

Before you prescribe or administer any sedation, antibiotic or narcotic review your patient's current health history. All it takes is a quick conversation regarding any expected drug concerns. This will give you an opportunity to talk about how they have taken any premedication, drug interactions, and can help reassure your patient that you are concerned about their well-being.

Case Study #2

A 37-year old female received a prescription from her dentist for Percocet following an extraction. Upon getting home the patient took the medication as prescribed. Thirty minutes later her husband found her non-responsive on couch. She was pronounced dead at the hospital.

The coroner's report indicated death from anaphylactic allergic reaction to acetaminophen (from the Percocet). The dentist's records revealed that the patient's health questionnaire indicated allergy to acetaminophen. Pharmacy records also showed the same allergy information.

Both the dentist and the pharmacy were sued for malpractice. There was also a board complaint filed against the dentist.

There was no indication that the dentist reviewed the patient's health history before or after the extraction. The dentist or his staff should have placed an allergy alert on the patient's file. The pharmacy erred similarly.

© *Dentist's Advantage, 2017* © *The National Society of Dental Practitioners, 2017*

Risk Management services are provided by Dentist's Advantage and the NSDP to assist the insured in fulfilling his or her responsibilities for the control of potential loss-producing situations involving their dental operations. The information contained in this document is not intended as legal advice. Laws are under constant review by courts and the states and are different in each jurisdiction. For legal advice relating to any subject addressed in this document, dentists are advised to seek the services of a local personal attorney. The information is provided "AS IS" without warranty of any kind and Dentist's Advantage and NSDP expressly disclaims all warranties and conditions with regard to any information contained, including all implied warranties of merchantability and fitness for a particular purpose. Dentist's Advantage and NSDP assume no liability of any kind for information and data contained or for any legal course of action you may take or diagnosis or treatment made in reliance thereon.

The National Society of Dental Practitioners and the Dentist's Advantage Insurance Program for Dentists

RISK MANAGEMENT ARTICLE

The dentist lost his license to practice for six months. He was also found negligent and his professional liability insurer paid a \$1 million settlement. The pharmacy was sued as well, and reached an out-of-court settlement for an undisclosed amount.

Post-Treatment Sedation Safety Issues

Literacy issues are just as important after the procedure as they are before a procedure. Does your patient understand the reason for the medication you prescribed? Do they understand the home care you have outlined? Did you understand all of their questions or the questions of their escort or caregiver?

Case Study #3

The patient was treated at a facility that can prescribe and dispense non-controlled pain medications. After an extraction the patient was given analgesics in a small white pill envelope. Oral instructions given to the patient were to "take one pill four times a day for pain."

The name of the medication was not placed on envelope. The only notation on the envelope was "4X/day." The patient took all four at one time and had an immediate syncope reaction requiring hospitalization.

The patient recovered and stated afterwards that he was upset when he left the dental facility and didn't understand the dentist's instructions. The dentist and facility were sued. The dentist was put on six months' probation and the facility lost dispensing privileges.

The doctor and his staff let this patient leave the practice without confirming that he understood the post-procedure medication. They didn't tell him what medication he was taking. The patient did not understand the notation on the pill envelope and thought it meant to take all four at once.

The fact that there was no malpractice claim does not diminish the seriousness of this case. One of the requirements of a successful malpractice claim is documentation of damages. Since the patient did not suffer long-term injury, chances of a successful malpractice lawsuit were minimal.

The Impaired Patient

If you sedate a patient, complete the procedure and realize they do not have an escort to drive them home: what should you do?

First, talk to the patient. See if there is someone they can call for a ride. If that fails, offer to call a taxi. If the patient insists on leaving without an escort, legally you cannot stop them.

At this point you have to decide whether you have a moral or ethical duty to call the police. No state or federal law imposes any duty on you to take such action. HIPAA law protects confidential patient information, even from law enforcement. If you believe the danger to the patient or to others is "serious and imminent" then HIPAA is satisfied and you can contact the authorities.

© *Dentist's Advantage, 2017* © *The National Society of Dental Practitioners, 2017*

Risk Management services are provided by Dentist's Advantage and the NSDP to assist the insured in fulfilling his or her responsibilities for the control of potential loss-producing situations involving their dental operations. The information contained in this document is not intended as legal advice. Laws are under constant review by courts and the states and are different in each jurisdiction. For legal advice relating to any subject addressed in this document, dentists are advised to seek the services of a local personal attorney. The information is provided "AS IS" without warranty of any kind and Dentist's Advantage and NSDP expressly disclaims all warranties and conditions with regard to any information contained, including all implied warranties of merchantability and fitness for a particular purpose. Dentist's Advantage and NSDP assume no liability of any kind for information and data contained or for any legal course of action you may take or diagnosis or treatment made in reliance thereon.

The National Society of Dental Practitioners and the Dentist's Advantage Insurance Program for Dentists

RISK MANAGEMENT ARTICLE

If you fail to act, there is a chance of being sued for negligence. In Massachusetts a physician prescribed a drug that, when used in combination with the other medications, caused the patient to lose consciousness when driving. The patient hit and killed a ten-year old boy. The parent sued the doctor for negligence.

The Massachusetts Supreme Court decided that the doctor owed a duty to "all those foreseeably put at risk." The patient sued for *failure to warn*, and the parents sued under common negligence. Both cases were settled out-of-court for an undisclosed amount.

In Conclusion

When assessing patient sedation:

- Always consider your patient's safety
- Use appropriate informed consent
- Confirm your patient understands your medication instructions
- Consider using a checklist to enhance your documentation
- Review the [ADA Sedation Guidelines](#)

In Part Two of this article, we will discuss issues that arise when you are faced with a drug-seeking patient. We will also briefly examine the impact of implementing an electronic prescription protocol. As with Part One, dentists should have a clear understanding of the liability exposure created when using medication in their practice as well as risk management techniques to minimize this exposure.

Resources

¹Injury Prevention & Control: Opioid Overdose," Centers for Disease Control, www.cdc.gov, March 16, 2016.

²Weber, Steph, "Why Physicians Must Confront Drug-Seeking Patients," www.physicianspractice.com, December 8, 2014.

³Vestal, Christine, "States Require Opioid Prescribers to Check for 'Doctor Shopping,' Pew Charitable Trust, May 9, 2016.

⁴Frail, Caitlin K.; Kline, Megan; Snyder, Margie E., "Patient perceptions of e-prescribing and its impact on their relationships with providers: A qualitative analysis," *Journal of American Pharmacists Association*, November-December 2014.