



Advice Line analysis reveals trends and top concerns for dentists

A recent survey of calls to TDIC's Risk Management Advice Line showed positive trends and indicated an increased awareness of potential liability risks with nearly 12,000 new calls logged in one year.

The analysis also identified the top dental concerns of dentists and staff, confirming that policyholders increasingly seek answers, solutions and recommendations from

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ADVICE LINE TOP PROFESSIONAL LIABILITY CONCERNS:

- **Crown and bridge**
- **Patient dismissal**
- **Recordkeeping**
- **Root canal therapy and apicoectomy**
- **Noncompliant patients**



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professional Risk Management analysts available through the Advice Line.

The survey tabulated 11,944 first-time calls to the Advice Line from Oct. 1, 2011, to Oct. 1, 2012, which topped the previous year's calls by more than 1,000. This demonstrates an upswing in dentists and staff recognizing liability risks and actively seeking recommendations for the best course of action.

In another progressive trend, Risk Management analysts referred only eight percent of Advice Line calls to the claims department, a two percent decrease compared to the previous year when analysts transferred 10 percent of calls to the claims department. This is a key point as some dentists may mistakenly think that a majority of calls to the Advice Line result in claims.

The top concerns of Advice Line callers were crown and bridge, patient dismissal, recordkeeping, root canal therapy, apicoectomy and noncompliant patients. Of the calls, 79 percent related to professional liability and 15 percent to employment practices. Remaining calls related to property or general information questions. The analysis also showed February through May and August through November to be the busiest call times.

Risk Management analysts have access to a vast array of resources and knowledge to help policyholders successfully navigate the complexities of everyday practice. Through discussion and strategy planning, analysts assist dentists in managing situations and avoiding claims.

Here are a few examples of calls to the Advice Line and the recommendations

provided by Risk Management analysts:

Call No. 1

Crown and bridge: In this case, the dentist was concerned about a patient who called the office wanting a crown remade a year and a half after final cementation without incident on an implant in the area of tooth No. 11.

The dentist recalled the initial treatment discussion. The space was larger than normal. He offered the patient a choice between a bigger crown to close the space and a smaller crown that would leave a gap. The patient chose the larger crown.

After the dentist placed the crown, the patient returned to the office for regular cleanings and other treatment and had no complaints about the No. 11 crown. However, 18 months later, the patient claimed she did not consent to the restoration.

The dentist called the patient and asked why she did not mention her concerns about the crown during previous visits. She responded that she "had a lot going on" and did not think to bring it up. The dentist invited the patient to come to the office to discuss the situation. During the meeting, the dentist listened to the patient's concerns, but ultimately told her that he would not redo the crown for free because there was nothing clinically wrong with it. He reminded her that they had discussed the different options and that the option she chose was clinically sound. The dentist suggested the patient submit the case for Peer Review. This is not what the patient wanted to hear, and she left angry.

After the dentist had time to think over the situation, he decided that

it would be best to give the patient a full refund for the crown, and then dismiss her from the practice. He concluded that the patient's behavior was unusual — why would she trust him to do another crown if she believed the first one was done without her consent? Why had she waited so long to discuss the matter? He called TDIC's Advice Line.

■ **Recommendation:** Prior to giving an opinion, the Risk Management analyst asked the dentist if he had documented the initial treatment discussion. He had not. Additionally, the patient did not sign an esthetic approval form accepting the crown, nor was there an entry in the chart that the patient accepted the crown prior to cementation. The dentist insisted there was nothing clinically wrong with the crown.

While the Risk Management analyst did not doubt the treatment was within the standard of care, the weakness for the dentist was the lack of documentation. Without documentation, it is one person's word against the other.

The analyst agreed that offering a refund and dismissing the patient was the best way to move forward. She reinforced that the dentist must send a letter to the patient, via certified mail, reiterating the crown he provided was clinically sound and within the standard of care. He would provide emergency care while the patient found another dentist (usually 30 days) and note the specific date after which he would no longer provide those emergency services. An example of an emergency situation is the patient reporting pain or a broken tooth. The patient demanding a cleaning is not considered an emergency.

Based on the patient's behavior and refusal to go to his physician, he compromised the doctor-patient relationship. Abrasive behavior and attempting to dictate treatment are indicators that a dentist should consider dismissal of a patient from the practice.

Call No. 2

Patient dismissal: In this case, the dentist did everything right to manage an angry patient who had become abrasive toward staff. The dentist was treating the patient for a few months. When the patient arrived for scheduled restorative work, the dental assistant took his blood pressure and found the reading was alarmingly high. She told the dentist who determined the patient's blood pressure was too high and that he could not begin the restorative treatment that day. He told the patient he would need approval from his physician prior to starting any dental treatment. A staff member faxed the TDIC form, "Medical Clearance for Dental Treatment," to the patient's physician.

The physician's office called shortly thereafter. The treating physician instructed the dentist not to start any

treatment and recommended that the patient come in immediately. The dentist relayed the recommendation and told the patient he was sorry but without the physician's approval, he could not start the restorative work that day. The patient became angry and abruptly left the office.

Later that day, the patient called the dental office and said his blood pressure was not any of the dentist's business. He was angry and rude to staff. He called again the following day, still upset, demanding treatment and threatening legal action. The dentist was not available for either phone call. He called the Advice Line for direction once staff relayed the patient's reaction.

■ **Recommendation:** The dentist reviewed the situation with the analyst and said he would have treated the patient if he received medical clearance from the patient's physician. However, based on the patient's unreasonable behavior and his abusiveness toward staff, the dentist was no longer comfortable with having him as a patient of record.

The analyst agreed that dismissal was the best solution. The dentist did not refuse treatment. He told the patient that he cared about his health and would not be able to treat him without approval from his physician.

Based on the patient's behavior and refusal to go to his physician, he compromised the doctor-patient relationship. Abrasive behavior and attempting to dictate treatment are indicators that a dentist should consider dismissal of a patient from the practice.

The analyst reviewed essential elements to include in the dismissal

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letter to the patient. She recommended the dentist include the diagnosed treatment plan and risks of not getting it completed. She also offered to review the draft and recommended he send the final version via certified mail requesting the signed receipt. The dentist wrote the letter and the analyst reviewed it, finalizing a proactive response to a problematic situation.

Call No. 3

Treating an employee as a patient:

In this case, the dentist called about a situation that many would consider “double jeopardy.”

The dentist was providing treatment to an employee as a benefit of employment. The employee had a provisional crown placed by the dentist, but was not scheduled for a permanent crown because she had not paid the lab fees. Further complicating the situation, the dentist recently fired the employee for poor performance.

■ **Recommendation:** After hearing the situation, the analyst first advised the dentist to consider no longer providing dental treatment to employees. While this may appear to be a benefit to both the dentist and the employee, it can create problems for the employer dentist, as in this situation.

Rather than offering in-office dental care, the analyst suggested that the dentist work out an arrangement with a colleague where the colleague treats employees in the colleague’s office. The dentist could offer to treat the colleague’s employees in return. This prevents the employee from becoming a patient of record and averts a number of potentially problematic situations, such as confidentiality of dental and



When a dentist decides to offer dental treatment as an employee benefit, that dentist must be sure to approach employee patients the same way he or she approaches non-employee patients.

employment records. TDIC sees relaxed protocols when dentists treat staff including the patient/employee dictating treatment, absence of complete dental records and lack of documented informed consent. When the working relationship has dissolved, dentists have reported the employee’s treatment chart as suddenly missing.

Another issue for this dentist is failure to treat a patient due to lack of funds. As a healthcare provider, he cannot refuse treatment in this situation. The analyst also advised the dentist that the best practice would have been to deliver the permanent crown before terminating the

employee from the practice.

Since the dentist had already terminated the employee while she was mid-treatment, the analyst advised the dentist to contact the individual and offer to complete the work in progress. She emphasized the need for the dentist to carefully document any discussion with the patient including the offer to permanently cement the crown, risks of staying in a provisional stage and any remaining treatment that he had diagnosed but not started. Assuming the dentist was able to cement the crown permanently, he should then follow up with a dismissal letter.

If the patient refuses to return for permanent cementation, the dentist should send the patient a letter detailing the risks of remaining in a provisional crown. The dentist should ask the patient to call for an appointment to deliver the crown and give a reasonable response time. Two weeks is typically acceptable. If the patient still does not respond, it is generally acceptable to follow regular dismissal protocol based on noncompliance.

When a dentist decides to offer dental treatment as an employee benefit (regardless of the risks mentioned above), that dentist must be sure to approach employee patients the same way he or she approaches nonemployee patients.

The Advice Line is a service provided to policyholders and members of associations that endorse TDIC as their Professional Liability carrier. Analysts are available Monday through Friday from 7:30 a.m. to 5 p.m. PST at 800.733.0634.

“Even a Good Samaritan can have a bad day.”

CARLA CHRISTENSEN, Senior Risk Management Analyst for TDIC

Essential factors for effective volunteerism

TDIC has not had any claims related to dentists doing volunteer work. However, volunteerism is not risk-free. “Even a Good Samaritan can have a bad day,” said Carla Christensen, Senior Risk Management Analyst for TDIC. Dentists who assess the best volunteer opportunities become the most effective volunteers. At the same time, they help protect themselves from liability risks. Risk Management analysts say doctors may have the false impression that Good Samaritan or Charitable Immunity laws protect them from liability as volunteers. While such laws do exist, they vary from state to state and apply only in very specific situations. When volunteering, there is no substitute for a consistent standard of care and thorough documentation.

“You really can’t over-document situations like this,” said Christensen. “Our best advice to volunteer dentists is that there is no different standard of care when providing dental services as a volunteer. You can not scrimp on treatment or documentation.”

From events such as Give Kids A Smile to providing mouthguards for the local soccer team, there are proactive steps a dentist can take to help ensure the event goes smoothly. Experts say astute volunteers do a few key things, such as call and confirm, think and

document, understand and deliver. Let’s look at the specifics.

Call your Professional Liability carrier. This is a simple first step to confirm that your professional liability coverage is active and no limitations apply. Analysts are prepared to answer questions about volunteer dental services, or any other dental issue or concern, via **TDIC’s Risk Management Advice Line at 800.733.0634**. To inquire about TDIC coverage, ask the service department about a special TDIC policy available to eligible dentists who are working solely as volunteers.

Think it through and ensure documentation. Take the time to find a volunteer event that is well organized. Some volunteer events are more organized than others. A well-coordinated event will prearrange specifics such as patient privacy and provide necessary forms such as health

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history, medical clearance, informed consent or consent to treatment, radiographs and directions for follow-up care. Volunteers are advised to consult with the event coordinator or organization to ensure these details are covered.

Especially important is documented patient understanding (prior to performing any dental treatment) that care is limited to the volunteer event. “The patient should be made aware of and agree to these conditions and limitations,” said TDIC Assistant Vice President of Claims and Risk Management Sheila Davis. This essential step holds true for volunteer situations in community settings or clinics and when dentists provide pro bono treatment in their private offices for a one-time event such as Give Kids A Smile day.

Similarly, dentists volunteering to provide mouthguards for a community soccer or football team must take the same precaution. Christensen said it’s important to be very clear in this situation and have team members sign a consent form.

“This form will make it explicit that the individual receiving the service does not become a patient of record and establishes the parameters of the treatment provided,” Christensen said.

Dentists volunteering to conduct dental screenings at schools or in community settings can take advantage of TDIC’s “Consent to Dental Screening” form available at thedentists.com. The form documents that the screening is limited to diagnosis only and requires the patient or guardian acknowledge the need to

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SHEILA DAVIS, TDIC Assistant Vice President of Claims and Risk Management

secure the services of a dentist or dental clinic for further care.

Different from one-time volunteer events are situations in which dentists opt to provide free dental care, either on their own or through a program such as Donated Dental Services, in their private practices. When “adopting” patients or families into a private practice for pro bono care, dentists must be clear about which treatments will be free and specify this in the treatment plan. Patient abandonment issues can be avoided with complete documentation, including a signed treatment plan and documentation of the treatment options offered such as gold crown versus porcelain or root canal versus extraction. TDIC offers several consent form templates, including case completion and esthetic approval, at thedentists.com.

In short, pro bono patients require the same thorough recordkeeping as all other patients, including documentation of all communication about appointments, post-operative care and conversations with the patient about the risk of not finishing treatment or getting suggested treatment.

Understand your obligation.

Before volunteering, be sure to ask about follow-up care and if you have

any obligation to patients after the organized event.

“Patients should also be advised that any follow-up care will need to be addressed at a clinic or another dental office as the treatment provided will be limited at the event to the time allotted for each patient,” Davis said.

An organized event considers follow-up care. According to Robyn Alongi, who coordinates the large-scale CDA Cares free dental clinics in California, all patients received follow-up instructions and a toll-free number available for two weeks after the clinic to call if they experienced any complications or had questions. Volunteer dentists at CDA Cares were not responsible for post-event care, but follow-up care was prearranged and dentists were recruited for this specific purpose.

Deliver a consistent standard of care. Analysts remind dentists that the standard of care does not differ based upon the patient’s ability to pay.

“If you elect to treat a patient on a volunteer basis, it is no different than a patient who presents to your private practice, with the exception that you will prioritize the treatment that can be provided in the limited time you are available to treat them,” Davis summarized.

Volunteering can be very gratifying for the dental professional. Approach each volunteer opportunity with an open eye as to how the event is organized, what the expectations are of both the organization running the event and the patients attending the event. Finally, find out if it fits within your professional liability policy.

Online C.E. courses

Dentists and staff can earn C.E. by taking the following eLearning options available at thedentists.com/elearning.



Good Intentions – Bad Outcomes

This seminar addresses what to do when a bad outcome is the result of a dentist with good intentions. Through examination of actual cases, this seminar explores what to do when dentists encounter patients with unrealistic expectations or who dictate treatment, taking a team approach when multiple dentists treat a patient and facing employee embezzlement.

Framework for Positive and Effective Interactions

TDIC claims experience shows that the way a doctor handles interactions with patients and staff directly affects the outcome of claims. Miscommunication, unexpected outcomes and lack of information can lead to serious consequences. Using

actual claims as examples, this seminar gives participants practical methods for improving their interactions and enables them to avoid or mitigate potential claims. Examples that generate claims include encouraging staff to practice outside the scope of their license, firing a pregnant employee, disregarding patient complaints and not taking steps to remedy untoward results.

Charting the Course

Patient records are one of the most important tools for delivering continuous, consistent care and promoting positive relations with patients. They are vital for supporting diagnostic and treatment decisions. TDIC's claims experience reveals that the quality of patient charts often affects case outcomes. Using actual case examples, *Charting the Course* explores some of the significant features of proper recordkeeping and addresses how new technology is changing the way dentists document and maintain patient records.

Effective Employment Practices

TDIC analyzes dentists' employment practices and procedures, evaluating their exposures and establishing new systems for documenting and communicating with employees. Through the examination of actual cases, this seminar addresses some of the most common employment issues that dentists face: sexual harassment, pregnancy discrimination, wrongful termination and wage and hour issues. This seminar speaks to real-world issues, touches on pertinent laws and gives practical steps for the dental office.

These online C.E. courses are available for 3.0 units of C.E. only.



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