

Thousands tap into analysts' expertise via Advice Line

Dentists recognized potentially risky situations and asked for help

Ever wish you had a little additional help in your dental practice?

Could your office benefit from experienced staff ready to give 100 percent? How about someone who listens carefully and wants to make a positive difference? Or maybe you just need a bit of perspective on the patient who showed up wearing a Superman cape.

This extra help is at your fingertips via TDIC's Advice Line, where risk management analysts and specialists team up to offer more than 63 years of combined experience in handling a vast range of dental issues. Analysts use multiple resources to assess the

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situation in question and recommend strategies that can keep an issue from becoming a full-blown problem or lawsuit. They offer ready-to-use tools, smart recommendations and have a knack for listening. Plus, they can share a laugh.

Thousands of dentists and staff took advantage of this free service last year and dialed the Advice Line to discuss everything from crown and bridge restorations to angry patients. Stats show nearly 14,600 calls to the Advice Line between October 2013 and September 2014. This number indicates that more dental professionals recognize liability risks and seek advice on the best way to handle potentially tricky situations.

The majority of Advice Line calls are related to professional liability matters, and top concerns are record keeping, patient dismissal, crown and bridge, unhappy or angry patients, endodontic and apicoectomy, and orthodontic and Invisalign.

Risk management analysts were able to handle 75 percent of calls using Advice Line resources, with only 12 percent of calls escalating to claims. "Calling the Advice Line does not mean you are opening a claim," explained one analyst. Analysts referred about 9 percent of employment-related calls to an attorney for a free 15-minute consultation. These consultations are one of the tools TDIC uses to help policyholders avoid a lawsuit, if possible. Analysts referred the remaining 4 percent of calls between a variety of destinations including underwriting, member services, or the state dental board for assistance.

Analysts say there are a few key messages about risk management that

can help TDIC policyholders when faced with an uncertain situation.

These include:

- Don't be afraid to ask for help. When in doubt, call the Advice Line.
- Be proactive rather than reactive.
- Use the online resources TDIC provides. These include various forms that document patient interaction and include consent, esthetic approval and health history forms.
- Get your staff involved and invested in using these tools.
- Take steps to address an uncertain situation before it escalates.
- Listen to your inner voice.

Analysts also say there are a several recommendations they make again and again, including:

- Good communication is critical and includes active listening.
- Your best offense is a good defense, and that means documenting your recommendations, patient education, conversations and treatment. This applies to dentists and staff. If the incident or discussion isn't in the chart, then it didn't happen.
- Never underestimate the human condition; treat everyone with respect.
- Immediately address situations in which a patient is upset or angry. Do not put it off or delegate it to staff.
- Dismiss noncompliant patients, and do not allow patients to dictate treatment.

The toughest situations, according to analysts, occur when dentists do not promptly deal with a situation or fail to follow risk management advice. "An open mind is helpful in resolving sensitive issues," said one analyst. "It is difficult when a dentist calls for advice, but doesn't listen or has a list of reasons why our recommendations will not work."

On the flip side, there are many rewarding situations where dentists find relief and resolution through the Advice Line. "At the end of one call, the dentist said, 'you are my Mylanta,' meaning he found relief from his heartburn," said one analyst. Another analyst said the most rewarding thing is when a doctor calls to acknowledge the positive outcome of risk management advice.

Through it all, dentists and analysts share a few laughs, because funny things happen. A patient shows up in a Superman cape and it's not Halloween. An adult patient abruptly yells about needing a snack before dental treatment. A dentist admits that an employee had been on a "working interview" for more than a year. (Okay, maybe not so funny, but unusual.)

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Top Advice Line Issues

The majority of calls to TDIC's Advice Line are related to professional liability matters, making up 81 percent of calls. About 19 percent of calls concern employment practices and "other" categories, including advice on separating from a practice to security breaches to what should be in an emergency kit.

The top professional liability concerns of callers to the Advice Line are:

- Record keeping
- Patient dismissal
- Crown and bridge
- Unhappy or angry patients
- Endodontic and apicoectomy
- Orthodontic and Invisalign

The following calls are a few examples of TDIC's annual hot topics and savvy recommendations from the Advice Line:

Call No. 1: Disregarding records request and pending litigation

A dentist called the Advice Line and said she had received a request for records in 2013, but did not respond to the request. Later in the year, she received the records request again along with a letter from the patient's counsel notifying of pending litigation. Again, the dentist did not respond.

The dentist was served with a lawsuit in early 2014. She notified TDIC of the lawsuit more than nine months later.

Recommendation:

The analyst asked the dentist if she or her staff had used any of TDIC's tools,

such as calling the Advice Line to ask about handling a records request. The dentist confirmed she knew about the Advice Line, but had not called until this year. The analyst informed the dentist that the situation was advanced, which limited available options. A call to the Advice Line early on could have alleviated the situation.

Once TDIC knew about the situation, a claims representative was immediately assigned to the case and legal counsel began investigating the claim and strategizing the defense. By responding so late after the court had begun legal proceedings, the focus shifted to a reactive defense rather than managing the case proactively. At this stage, actions

or court decisions were entered and finalized. Attempting to set these aside so late into litigation was difficult, if not impossible.

Call No. 2: Noncompliant patient

A general dentist called about a 70-year-old patient. The dentist said she was "one of those patients" who came in only for emergency care. In 2009, the dentist diagnosed a deep cavity and recommended a filling on tooth No. 3. The patient disappeared until 2012, then arrived at the office complaining of pain in another area. The dentist treated that area, and the patient disappeared again. Recently, the patient reappeared complaining about tooth No. 3, and the dentist placed an amalgam filling. He said it was a large filling and told the patient that a root canal could be necessary depending on how the tooth responded.

Five weeks later, the patient arrived back at the office upset and claimed the filling "changed the appearance of her nose." The patient demanded a refund. The dentist said he was willing to give the patient a refund and thought that it would be best to dismiss her from the practice because of the nature of her complaints and her sporadic behavior.

The analyst and the dentist discussed the refund process then decided to issue a dismissal letter one week after the refund. The dentist gave the patient required notice of 30 days of emergency care. Three weeks later, the patient called the office screaming at the receptionist. She said she had pain in tooth No. 3 and wanted the dentist to fix it.

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The dentist said he was apprehensive about treating the patient. He thought the tooth probably needed a root canal. He would need to refer the patient to a specialist because of the complexity of the existing root canal system, not just because he thought she was difficult.

Recommendation:

The analyst acknowledged the difficulty of this situation. Unfortunately, the dentist did not help himself by allowing the patient to be seen on an emergency-only basis. She was a patient of record complaining about pain on a tooth the dentist had recently worked on.

The analyst asked the dentist about documentation. Were there documented attempts to get the patient in for regular preventative care? Was patient education provided and documented about the importance of seeing a dentist for preventative maintenance?

The dentist admitted his documentation was lacking, and he did not have a signed informed consent form. The analyst said this was a drawback for the dentist.

While the patient came to the office only when there was an emergency, the dentist allowed her to do so. Ideally, the dentist should have discussed the importance of regular care with the patient, and advised her that if she did not come in for cleanings on a regular basis and allow him to examine, diagnose and treat areas of concern, then he would have to dismiss her from the practice. If the patient did not comply with this request, she would be dismissed from the practice.

The recommendation was to invite the patient to return to the office to examine the tooth. If the dentist determined

a specialist referral was necessary, he should provide the referral and follow up to make sure the patient arrived for treatment. Because the dentist allowed the patient to come in for emergencies only, the analyst further advised the dentist to pay for this consultation. He should also remind the patient that he had discussed the potential for a root canal when he filled the tooth.

The dentist would need to address placement of a crown after the root canal. The analyst urged documentation of every interaction with the patient and of the recommendations provided by the dentist.

Call No. 3: **Providing a safe environment for staff**

An office manager called to report a situation between a patient and an employee. The patient was a 22-year-old



male. He and his family were established patients of the practice.

The patient had been in for a regular cleaning a few weeks prior. After the appointment was over, the patient hugged the hygienist and told her it was the best cleaning ever. The hygienist mentioned this incident to the office manager, saying it was a “thank you” sort of thing. She said it felt a little strange, but probably meant nothing. The office manager suggested the hygienist not see that patient again, and the hygienist agreed this was a good idea.

Twenty minutes after the appointment, the patient returned and asked the receptionist for the hygienist’s name and then left. However, two weeks later the patient returned. The office manager said she was in the parking lot and saw him go into the office. She knew he did not have an appointment that day, and she thought it was strange that the patient was back.

Once the patient entered the practice, he asked a staff member if the hygienist was working. She told him the hygienist was in the back. The patient proceeded through the lobby and into the back operatory. Several minutes later, the patient left the building.

According to the office manager, the hygienist was pale when she came out of the operatory. She said she was finishing up treatment when the patient entered and greeted her while walking toward her and stopping too close for comfort. The patient asked for her phone number and invited her to lunch. She told him she was flattered, but she was happily married with three kids. The hygienist would not give the patient her phone number. Upon hearing this, the patient turned around and left the operatory.

The hygienist told the office manager that she felt cornered by the patient. She requested the scheduling coordinator not place him on her schedule again.

What, if anything, should they do?

Recommendation:

The analyst agreed this was an uncomfortable situation. The patient's behavior appeared to be unusually bold, given that he entered the back part of the practice without permission or supervision. This cannot be ignored.

Further, an employee's discomfort cannot be discounted; she felt threatened by the patient's actions. Employers have an obligation to provide a safe work environment for employees.

The analyst advised the practice owner to follow dismissal protocol. The dentist could call the patient to explain why he was being dismissed. The analyst provided a sample script for the dentist to use: *"This is Dr. Jones. I want to let you know that staff reported feeling uncomfortable with your recent behavior while you were in the practice. As an employer, it is my responsibility to provide a working environment where everyone feels comfortable. Based on that, I am dismissing you from my practice."*

The patient had no pending treatment, so the dentist needed only to offer 30 days emergency care while the patient found a new dentist.

The analyst strongly recommended sending a letter reiterating the dismissal and giving 30 days emergency care. Because the patient was recently in the office for a cleaning, another cleaning would not happen within the 30 days. In addition, the dentist should alert staff to notify him immediately if the patient

returned to the office or called to report an emergency. If the patient happened to need an emergency appointment during this 30 days and the hygienist was in the office, she should be allowed to leave the practice while he was there.

Finally, the analyst recommended prohibiting staff to discuss this situation with the patient's family. If anyone asked, the response would be that staff was not at liberty to discuss any patient issues. The staff should inform the office manager or the dentist immediately if anything further developed.

Call No. 4: **Patient driving under the influence after surgery**

A periodontist called about a patient who was in the office for periodontal surgery. The periodontist administered Halcion to the patient. Prior to the appointment, the dentist and front office staff told the patient at separate times that the patient would not be allowed to drive after the appointment. The patient acknowledged this by signing a form indicating he would have a driver. The procedure was uneventful. During the recovery time, the patient attempted to stand up several times. Staff instructed him to remain seated. Once his ride arrived, the patient got up and tried to leave the practice unassisted. He stumbled a little, and the RDA reminded him that protocol dictated she walk him out to the car.

The RDA walked the patient outside, opened the passenger door and held it open while the patient got in. She reported having a "feeling" about this patient as she reentered the practice. She went to the back room and looked out the window to where the patient had

parked his car. She saw the patient get out of the friend's car, get into his own car and drive away.

What should the office do?

Recommendation:

The analyst advised that the patient was under the influence of a sedative and was legally prohibited from driving. He knew this. He knew he needed a driver because he had arranged for his friend to pick him up. The fact that the patient dishonestly snuck around back and drove himself home was grounds for dismissal.

More important, the patient was



driving under the influence after a procedure at the periodontist's office. The patient's blatant disregard for his safety and the safety of others was inexcusable. Office staff witnessed him driving away. The patient should have been reported to the police. In the event of an accident, the dentist would have documentation that he acted to protect the public.

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Call No. 5: A \$2,000 error

A dentist called about a patient who had been coming to the practice for years. The patient always questioned every procedure diagnosed and material used. She was not very pleasant in those exchanges. Recently, when the dentist was doing a procedure, he noticed a rough area on an unrelated tooth and smoothed it out. The dentist did not tell the patient, and she got upset. The dentist said he thought he was doing something nice for the patient.

The patient called the next day claiming that by smoothing out her tooth the dentist “ruined her life.” The dentist said he was surprised by the patient’s anger and tried to explain that he simply smoothed out a rough area. He told her it was a very minimal procedure. The patient said she did not give the dentist permission to perform this procedure. Frustrated, the dentist asked the patient what she wanted. Ultimately, the dentist agreed to give the patient \$2,000 to resolve the situation. The dentist asked for a release of liability and sent the patient a dismissal letter.

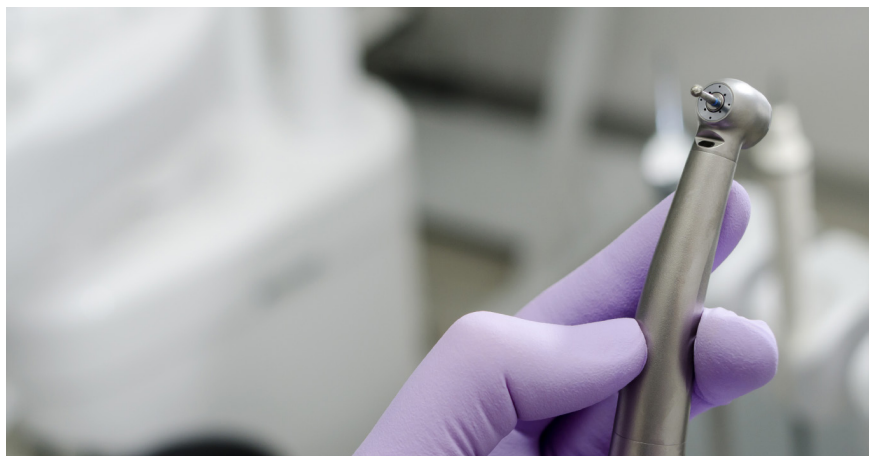
Recommendation:

The analyst said this certainly would not have been an issue with many patients. This was an unfortunate situation, especially because the dentist thought he was doing something nice. However, the dentist knew this patient’s demeanor and how she reacted to things.

The analyst said the dentist made a minor error by not telling the patient about the rough area and then offering to smooth it out before doing anything to the tooth. However, this was not a \$2,000 error. If the dentist had called the Advice Line first, the analyst could have provided a strategy that included tools to incorporate when talking to the patient and information about negotiating with the patient. Unfortunately, the dentist negotiated in haste and agreed to an amount that he was now obligated to honor.

TDIC risk management analysts can be reached at 800.733.0634.

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Risk Management in Action

Kudos to the following dentists for their proactive use of risk management resources and tools.

Situation:

A general dentist called the Advice Line to request assistance with dismissing a couple who had yet to receive treatment in his practice. The dentist told the analyst that the husband and wife were new to the office and they scheduled separate appointments. The husband was to present on a Friday and his wife the following Monday. When the office manager attempted to contact each prospective patient to obtain preregistration information including insurance data, neither individual responded to her requests. The husband failed his initial Friday appointment. He did not notify the practice that he would be unable to come in for the exam. The wife called early Monday to cancel and reschedule her appointment for the next day. She also demanded that the dentist use nitrous during her cleaning. The dentist told the analyst he was not comfortable initiating treatment on this couple. Did he have to dismiss them if they were not yet patients of record in the practice?

Recommendation:

The analyst praised the dentist for practicing proactive risk management and for listening to his inner voice. As he had not yet seen the husband or the wife, the analyst agreed that a doctor-patient relationship did not exist, therefore sending each a formal dismissal letter would not be necessary. The analyst recommended that the dentist call the

patients and inform them that “based on what had transpired (lack of response to office manager’s requests, failed appointment and cancel/reschedule situation), I am not comfortable providing your care, and I recommend you find another dentist.” She then recommended that the dentist document the conversation in the patient chart and let the staff know not to schedule further appointments for either individual.

Situation:

An office manager called the Advice Line wanting an analyst to review and approve a response addressing a negative Yelp review that the dentist intended to post online. Before the office manager shared the contents, the analyst confirmed she had not yet posted the response. The office manager verified she had not posted a response because the dentist instructed her to check with TDIC first.

Recommendation:

After thanking the office manager for calling prior to posting the response, the analyst explained why the dentist should not respond to an online review regardless of it being negative or positive in nature. Confirming or denying a person is a patient of record can violate that person’s privacy. Instead, the analyst offered three suggestions:

- No response. By not responding, the patient cannot claim a privacy violation.
- If you feel compelled to respond, write, “By responding to this review, I am neither confirming nor denying you are a patient of record in my

practice. However, if you would like to discuss your concerns, please call the office.”

- If the dentist can identify who the person posting the review is, call him or her. Many times people forget about the power of a direct conversation. Patients want to feel as if the dentist hears them, and that they matter.

Updated Resources

TDIC is pleased to offer sample informed consent forms and additional templates you can use as part of your informed consent discussions with your patients. By using informed consent forms to document key aspects of the doctor-patient relationship, you manage and reduce liability risks for common situations and procedures.

New and updated informed consent forms are now available at thedentists.com. These forms are available in the following languages: English, Traditional Chinese, Chinese, Spanish, Korean, Tagalog, Russian, Vietnamese and Japanese.

Under the Forms link, you will find useful templates such as Health History, Esthetic Approval and Fax Transmission for Medical Clearance.

Visit thedentists.com for a complete listing.



Beyond the Science: Patient emotions in dentistry

It's estimated that 75% of U.S. adults experience some degree of dental fear. But fear, as well as anxiety and worry, may not be easily identified by the dental practitioner, which can cause big legal issues down the road. Learn to correctly handle patients who exhibit these emotions so you can keep your practice, and your patients, safe.

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Spring 2015 Risk Management Seminar Schedule

Friday, Jan. 30
9 a.m. – noon

DoubleTree San Jose
San Jose, CA

Friday, Feb. 20
1:30 p.m. – 4:30 p.m.

**35th Annual MidWinter
Convention & Expo**
Sacramento District Dental Society
Sacramento, CA

Saturday, Feb. 28
1:00 p.m. – 4:00 p.m.

150th Midwinter Meeting
Chicago Dental Society
Chicago, IL

Thursday, Apr. 30
9:30 a.m. – 12:30 p.m.
2:00 p.m. – 5:00 p.m.

Friday, May 1
9:30 a.m. – 12:30 p.m.
2:00 p.m. – 5:00 p.m.

Saturday, May 1
9:30 a.m. – 12:30 p.m.

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Hilton, Anaheim
Anaheim, CA

Fees

- Dentist/staff: **\$50**
- Part-time*: **\$25**
- New TDIC Policyholder: **Free** (within the first policy year)

*Must have a TDIC part-time Professional Liability policy to be eligible for this discount.

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C.E. Details

- **3.0** AGD PACE hours
- **3.0** ADA CERP credits

To receive C.E. credit, registrants must be present for the entirety of the three-hour seminar. This seminar meets the Dental Board of California's requirements for 3.0 Core C.E. credits.

Special Needs

If you or someone in your group requires special assistance to fully participate in the seminar, please call TDIC at 800.733.0634 or email us at risk.management@cda.org.



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