

Lifeline

Treating minor patients

It has been said that it takes a village to raise a child. This may be true when it comes to parenting, but not when it comes to dentistry. When treating minor patients, dentists should be aware of the regulations that govern who, exactly, has a say in treatment decisions. Well-meaning relatives, caregivers and other members of a child's "village" aren't always authorized to provide consent.

In most cases, there's little doubt who's in charge. Dad or mom brings in the child for a routine exam, signs off on a proposed treatment plan, pays out of pocket or through a dental benefits plan and everyone goes home happy and healthy.

But it's not always that simple.

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Sometimes determining who has the legal rights to make treatment decisions for a minor's dental care can be unclear. Factor in divorce, absent parents, stepparents, noncustodial caretakers and self-sufficient minors and it can be downright convoluted.

Informed consent

The Dentists Insurance Company's Risk Management Advice Line recently received a call regarding an informed consent concern for a 2-year-old patient. When the patient presented with her parents for a comprehensive exam, she had multiple teeth with carious lesions. Poor oral hygiene and lack of home care were noted. The patient's parents verbally consented to treatment, which included fillings and a pulpotomy under oral sedation. The patient was combative and uncooperative during treatment, but the dentist was able to complete the treatment.

The patient was then released to her mother. She was alert and appeared normal when she left the office. A few hours later, the office learned that the patient had been taken to the emergency room because she was lethargic. The ER doctors suspected the patient had been oversedated. They also noted she had sustained an injury on her lip that they assumed was due to biting while she was numb.

A few months later, the dentist received an intent-to-sue letter. The attorney alleged a lack of informed consent, oversedation, unnecessary treatment and aggressive handling of the patient, which caused the injury to her lip. The case ultimately settled in a low six-figure settlement. This case demonstrates the importance of having

a thorough informed consent discussion with parents or legal guardian prior to beginning treatment on a minor. Had the dentist had such a discussion, this case might have had a different outcome

TDIC reminds dentists of the necessity to obtain consent in writing prior to treatment. Informed consent discussions must be led by the dentist, not a staff member. For minor patients, consent can only be granted by parents or legal guardians unless that authority has been officially transferred. If the parent is unable to provide written consent, postpone treatment until written consent is obtained, but only if it is safe to do so. Informed consent discussions should include the following:

- The nature of the recommended treatment.
- The risks, possible complications and benefits of the recommended treatment, including the likelihood of success.
- The alternatives to that treatment, including performing no treatment.
- An explanation of the treatment plan's expected sequence of events.

TDIC Senior Risk Management Analyst Taiba Solaiman notes that it's important to allow the parents or legal guardian to ask questions during treatment discussions, weigh their options and make an informed decision about whether to proceed with the recommended treatment.

"Informed consent is a process, not a just a form, involving a face-to-face discussion between the dentist and the parent or guardian," she says. "The discussion should be conducted with sufficient time to address all of their questions and concerns."

Solaiman says dentists should document the informed consent

discussion in the patient record. The documentation should include the date, parties present, issues discussed, nature of treatment, risks, benefits and alternatives, if any. Using an informed consent form can expand and enrich discussions about more serious and invasive procedures. By signing a form, the parent or guardian attests that all aspects of the proposed treatment have been explained and his or her questions answered.

"A signed form can also be material evidence that the parent or guardian was informed of the diagnosis, treatment, risks, benefits and alternatives," Solaiman says.

In another case reported to TDIC, a minor patient fell out of the dental chair while in a temporary stabilization board. He had presented with extensive caries requiring multiple restorations including fillings, extractions, pulpotomy and crowns. Prior to the treatment, the patient was given 7.5 mg of Valium, which he spit out. The dentist was not sure how much Valium the patient spit out and how much he swallowed, so he did not attempt to deliver any additional sedatives.

While the patient was in the stabilization board, the dentist began making notes on the treatment chart with his back to the patient. The assistant was not directly observing the patient either. The patient thrashed around and managed to slide off the dental chair, falling to the floor of the operatory and striking his left ear.

The dentist did not immediately observe any injuries and therefore proceeded with the treatment. At the conclusion of the treatment, the dentist noticed a bruise on the patient's ear.

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He notified the parents, who were in the waiting room, and they became very upset. Concerned that their child may have been abused, the parents contacted the police and the dentist and staff provided verbal reports.

The dentist later attempted to call and speak with the parents. They refused to speak with him and informed him that he would be hearing from their attorney. The parents felt that the dentist should have immediately notified them when their child fell, rather than waiting until the end of treatment. The parents hired an attorney and the case was ultimately settled for several thousand dollars.

Solaiman said this case illustrates not only the need to have protocols in place to monitor sedated patients, but also to keep the lines of communication open at all times — before, during and after a procedure.

“If a patient injury occurs during the course of dental treatment, promptly explain to the patient’s parent or guardian what has happened and your recommendation on how to proceed. Expressing genuine sympathy to the parents can help diffuse an emotional situation. Also, taking immediate steps to resolve the situation will help sustain the doctor-patient relationship,” she says.

It is essential to document any incidents, as well as conversations with the patient or the patient’s family, in the patient’s chart. Should an injury occur midtreatment, conduct a thorough assessment prior to continuing with treatment and document the incident with photographs that clearly depict the extent of the injury. Be sure to involve the minor’s parents or guardians every step of the way.

Caretakers

TDIC Risk Management often receives inquiries from dentists about the documentation needed to treat a minor patient when accompanied by an adult other than a parent or legal guardian. In one situation, a grandmother brought her minor grandchild to an appointment. She produced a notarized document stating she was responsible for the child’s medical appointments and doctors’ visits. She further stated that the child’s parents were both out of state and could not be contacted.

TDIC advised the practice that the notarized document did, indeed, serve as sufficient documentation. However, the dentist could also ask the grandmother to sign an affidavit, which authorizes a qualified relative to provide consent for treatment if the parents or guardians are unreachable.

Oftentimes, children will present to their appointments with a caretaker who is not authorized to make treatment decisions, such as a nanny or older sibling. In this case, dental offices are advised to have parents sign an Authorization for a Caretaker To Accompany a Minor form in advance. This form allows nonlegal guardians to accompany minors to treatments previously consented to by parents. It does not, however, authorize them to consent to treatment.

Divorced parents

In cases of divorce, it’s not always clear which parent is responsible for treatment decisions. For parents with joint custody, many offices implement policies that designate one parent as responsible for both financial and treatment decisions. The parents must decide who will be the designated parent and the office

must keep a signed record of this decision on file.

In situations where only one parent has legal custody, consent by that parent is typically sufficient to begin treatment, especially if that parent is also responsible for payment. However, if the other parent is financially responsible, or if they share financial responsibility, then it is recommended, but not required, to have both parents consent to treatment. Please note a court order stating otherwise supersedes this guidance and serves as documentation for your records of the basis for your actions. If in doubt, request a copy of any relevant court orders. It is within your right to do so, it serves as documentation of your actions.

If one parent has remarried, the stepparent cannot provide consent unless he or she has adopted the child or obtained legal guardianship. Stepparents without legal guardianship do not have rights to a minor’s dental records, regardless of whether they provide dental benefits to the child. Rather, they are only able to access financial records.

Divorced parents will occasionally disagree about their child’s care. When this occurs, TDIC Risk Management recommends calling a meeting with both parents to explain the benefits and risks of the proposed treatment. If disagreements occur repeatedly and they prevent you from treating the child or impede you from performing treatment that meets the standard of care, it is appropriate to withdraw from care. Complete any treatment already begun and make sure withdrawing from care would not cause harm to the patient.

The reference guide *Treating Minor Patients Whose Parents Are Divorced*, available as part of Risk Management

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PAIN & PERCEPTION:

Reducing nerve injury risks



Unsure how to handle patients who are experiencing prolonged numbness following dental procedures? The Dentists Insurance Company's new Risk Management seminar is designed to build your confidence in these interactions.

TDIC identifies nerve injury claims resulting from extraction, endodontic treatment, implant placement and other invasive procedures as rating among the most severe and frequent. However, a complaint of paresthesia does not by itself indicate negligent treatment. Miscommunication, unexpected outcomes, insufficient documentation and failure to fully inform can all lead to unfavorable situations.

Participate in the Pain & Perception seminar and learn how to:

- Improve continuity of care by instituting communication protocols when multiple dentists are involved in treatment.
- Recognize the importance of complete and appropriate documentation.
- Communicate unexpected treatment outcomes to patients and know when to refer.
- Understand that informed consent is a process, not a form.

Get expert advice while earning **C.E. credits** and a **5% Professional Liability premium discount** for two years.

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Fall 2018 Risk Management Seminar Schedule

PAIN & PERCEPTION:

Reducing nerve injury risks

Thursday, Sept. 6

9:00 a.m. – 12 noon
2:00 p.m. – 5:00 p.m.

CDA Presents – San Francisco
San Francisco, CA

Must register through *CDA Presents*.
Visit cdapresents.com to register, reserve
guestrooms or for additional information.

Friday, Sept. 7

9:00 a.m. – 12 noon
2:00 p.m. – 5:00 p.m.

Friday, Sept. 21

9:00 a.m. – 12 noon

Doubletree by Hilton Chicago
Oak Brook, IL

Wednesday, Oct. 17

9:00 a.m. – 12 noon

Hale Koa Hotel
Honolulu, HI

Friday, Nov. 2

9:00 a.m. – 12 noon

Doubletree by Hilton San Bernardino
San Bernardino, CA

Friday, Dec. 14

9:00 a.m. – 12 noon

Marriott Mission Valley
San Diego, CA

Save your spot today at tdicinsurance.com/seminars
or explore convenient eLearning options.

Fees

- Dentist: **\$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.

**TDIC policyholders who complete a seminar or eLearning option will receive a two-year, 5 percent Professional Liability premium discount effective their next policy renewal. To obtain the two-year, 5 percent Professional Liability premium discount, Arizona, California and Nevada dentists must successfully complete the seminar by April 26, 2019. Alaska, Hawaii, Illinois, Minnesota, New Jersey, North Dakota and Pennsylvania dentists must successfully complete the seminar by October 26, 2018. Any eLearning tests received after the deadline will not be eligible for the discount. Non-policyholders who complete a seminar or eLearning option and are accepted for TDIC coverage will also be eligible for this discount.

C.E. Details

- **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 800.733.0633 or email risk.management@cda.org.

ADA CERP® | Continuing Education Recognition Program

The California Dental Association is an ADA CERP Recognized Provider. ADA CERP is a service of the American Dental Association to assist dental professionals in identifying quality providers of continuing dental education. ADA CERP does not approve or endorse individual seminars or instructors, nor does it imply acceptance of credit hours by boards of dentistry. CDA designates this activity for 3.0 continuing education credits. This continuing education activity has been planned and implemented in accordance with the standards of the ADA Continuing Education Recognition Program (ADA CERP) through joint efforts between CDA and TDIC.

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Also selling in Arizona, North Dakota and Minnesota.

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resources online at tdicinsurance.com, answers frequently asked questions on this topic.

Unaccompanied minors

Occasionally, minor patients will present without a parent or guardian. Sometimes, this occurs when minors walk to the dental office after school or are dropped off. Other times, teenagers drive themselves to appointments. Whatever the case, there are risks associated with treating children in the absence of a parent or responsible adult.

If you choose to allow minors to be treated without an adult present, it is crucial that the treatment has already been discussed and consented to by the parent or legal guardian. In addition, it is important to use caution not to perform any treatment that goes beyond the scope of the prior consent.

Dentists are encouraged to use their professional judgement when treating minors without a parent or guardian present. Even with prior consent, certain procedures are more complicated than others and present more risk. The age and maturity of the child should also factor into the decision to treat an unaccompanied minor. As there is no set age for which a parent/adult must accompany a minor child, each dentist must make that determination based upon practice experience. If you do not feel comfortable treating a child for any reason, it is acceptable to require a parent be present.

There are no official regulations specific to treating unaccompanied minors, but TDIC Risk Management recommends dental practices err on the side of caution and implement policies requiring parents or guardians to be present when treating minors. If parents

refuse to follow the stated policy, it is acceptable and wise to dismiss the minor patient from care, following formal dismissal protocols.

Dental records

Another issue that often arises in the dental office is whether a noncustodial parent or other adult can legally access a minor's records. TDIC Risk Management reports a scenario in which a minor patient's biological father requested

his child's records, including financial records. But it was the child's stepfather who carried insurance for the child, not the biological father. The dental office asked TDIC Risk Management whether they were required to release the records.

TDIC advised the dental office that no, they were not required – nor permitted – to share financial information with a parent, regardless of whether the parent is a biological

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Documentation: Get it in writing

The most important steps you can take to protect your patients and your practice are documenting every treatment decision in writing and keeping all documents as part of the patient record. TDIC Risk Management offers the following sample forms for dentists to use in their practices:

- **Authorization for Agents To Consent to Dental Treatment of a Minor (CA, AK, AZ, NJ, PA).** This form is used for parents or guardians with legal custody to assign authority to a noncustodial adult to consent to radiographs, examinations, anesthetics, dental diagnosis or treatment deemed advisable by a dentist.
- **Authorization for Caretaker To Accompany a Minor (all states).** This form authorizes a caretaker to bring a minor child to scheduled appointments for treatment that have been previously consented to by a legal guardian. It does not permit the caretaker to consent to treatment on behalf of a legal guardian.
- **Caregiver's Authorization Affidavit (CA).** This affidavit allows a "qualified relative" to authorize care under the following conditions: 1) when parents or legal guardians have been notified of the intent to authorize care and have voiced no objections or 2) when parents or legal guardians cannot be reached to notify them of the intent to authorize care. For these purposes, a "qualified relative" is a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, any person denoted by the prefix "grand" or "great" or the spouse of any of the above, even after the marriage has been terminated by death or dissolution.
- **Self-Sufficient Minor (CA, AZ).** This form certifies that a patient under the age of 18 meets the definition of self-sufficient minor as outlined under law and is therefore able to authorize his or her own dental treatment. Self-sufficient minors are typically defined as those who are under 18 and are either 1) married or divorced, 2) on active duty with the U.S. Armed Forces or 3) legally emancipated through the court. They must typically live separate and apart from their parents or guardians and manage their own financial affairs.

Question and Answer

TDIC's Risk Management Advice Line helps dental professionals navigate difficult situations when dealing with potential claims from patient or employee situations. The real-world call detailed below illustrates how the Risk Management analysts have helped more than 17,000 callers in the past year.

Q. I have many patients who come to my office for emergencies only, but go elsewhere for their routine care and treatment. Is there any liability if I continue to see these patients for future emergencies?

A. Patients may choose to go to many different general dentists for various reasons. For some, it's due to geographic convenience or cost. Others choose

dentists based on whether they are in-network providers under their dental benefits plan. As the "emergency" dentist, you are most likely performing more complex procedures, such as extractions or treating infected teeth. In doing so, your liability risks are higher. Because patients come to you on an as-needed basis and you are not performing routine exams or radiographs, it is difficult for you to ensure continuity of care, proper diagnoses, treatment and maintenance.

Good communication between the dentist and patient and between the two treating dentists is essential to combat this problem. Explain to the patient the importance of continuous care with one practitioner. If the situation continues, consider asking the patient to choose who will be his or her primary dentist and if the patient is not willing to cooperate, consider dismissing the patient from your care following a formal dismissal protocol.

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parent. In fact, they have a responsibility to protect confidential financial information they have on file including insurance information and Social Security numbers.

That said, parents are entitled to their children's treatment records – but only the treatment records. Generally speaking, a parent has the right to access the health records of his or her child regardless of custody status or financial responsibility. Dental practices can only deny access if they determine that providing access may harm the patient.

In addition, some health information can only be shared with the minor's consent, including:

- Pregnancy.
- Mental health.
- Sexual assault.
- HIV/AIDS status.

- Drug or alcohol abuse.
- Sexually transmitted disease.
- Infectious and communicable disease

There are many variables that go into providing dental care for minor patients. Clinical expertise aside, understanding the regulations and legalities of treating minors is a key component of any dental practice. Engaging in thorough informed consent discussions, documenting every decision in writing and clearly outlining the roles and authority of parents and guardians not only keep minor patients safe, they also help lower the risk of liability.

Children in foster care

Special consideration should be taken when treating children in foster care. Like all minors, children in foster care can only be treated once consent from the appropriate individual is obtained. But it can sometimes be difficult for

dentists to ascertain who the appropriate individual is at different stages of the juvenile dependency process. In California, even if a child has entered the dependency system, a parent retains the right to consent to his or her child's care unless a judge has ordered otherwise.

A judge can also grant rights to a third party without removing rights from a parent. This is common when a child is in temporary custody and has not been declared a dependent of the court. These rights are typically granted to a county social worker, the court itself, a licensed caregiver providing residential foster care, a relative caregiver or a legal guardian. If in doubt, request copies of any applicable court orders and keep them in the patient's chart. For complete details, refer to Consent to Medical Treatment for Foster Children: California Law at youthlaw.org.



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Regulatory Compliance Alert



State law required all dentists who are licensed prescribers to have registered for access to California's Controlled Substance Utilization Review and Evaluation System (CURES) by July 1, 2016 or upon issuance of a DEA certificate.

If you are a licensed dentist with DEA registration who has not registered for CURES 2.0, know that you are now out of compliance with California law.

Register today.

- Application to access CURES 2.0 is easy and fully automated.
- Visit oag.ca.gov/cures to apply now and achieve compliance.

Learn more.

For CURES guidance and opioid pain management resources, visit cda.org/opioid.

Manage your risk with online tools.

- Visit tdicinsurance.com/RM to access a resource library, including a sample employee manual and informed consent forms.

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