

Lifeline



Risk Management Advice Line

Where to turn when facing unfamiliar situations

No matter how much planning or how much preparation there has been, situations may arise in dental offices that baffle even the most experienced dentists. From addressing negative online reviews to handling demanding patients to combating cyberattacks, practice owners often find themselves in situations they're not quite sure how to handle.

continued on page 2

continued from page 1

The Dentists Insurance Company's Risk Management Advice Line helps dentists navigate unfamiliar situations. Trained, experienced analysts provide advice and guidance that may prevent incidents from escalating. Turning to TDIC's knowledgeable experts provides reassurance that a dentist has taken the right steps to avoid the risk of a liability claim down the road.

The Advice Line handled 21,431 calls between Oct. 1, 2017, and Sept. 30, 2018. The most common questions concerned billing discrepancies, patient refunds, employee termination, formal complaints, noncompliant patients and sharing patients. Following are summaries of actual Risk Management Advice Line calls that represent common situations and the recommendations provided by the analysts.

Call No. 1: Dealing with billing discrepancies

The billing coordinator of a dental practice contacted the Advice Line to discuss the best approach for collecting a patient's outstanding balance after a discrepancy over insurance benefits. In this case, a long-term patient underwent extensive treatment following an auto accident. She informed the office that her auto insurance would cover the cost of treatment. The office contacted the insurance company to confirm and was given assurance that the patient

According to a recent Advice Line analysis, the top professional liability concerns were:

- Billing dispute
- Issuing refund
- Termination
- Responding to Better Business Bureau
- Managing noncompliant patients

had more than enough to cover the recommended treatment.

The office manager drafted a treatment estimate and submitted it to the adjuster, who then authorized the treatment and requested the office send the bills directly to her for payment processing. The treatment took several months to complete and the office subsequently submitted the bills as instructed. However, no payments were ever received. Office staff followed up with the adjuster who informed them that funds were no longer available to cover the services.

Although the patient had signed the appropriate informed consent forms for her treatment, she did not sign a treatment estimate because the office believed the insurance company accepted the final responsibility for her treatment. However, the office never received any written reassurance from the insurance company and proceeded with the treatment based solely on a verbal agreement.

TDIC recommendation

The TDIC analyst advised the billing coordinator that it is essential to have the patient sign a treatment estimate. The office should have had a discussion regarding the total cost of the treatment, anticipated amount to be paid by the third-party payer (if applicable), any patient copays and method of payment. The patient should have been advised that ultimately, any unpaid balance would be her responsibility. These discussions should take place prior to initiating any treatment. They should be documented and the agreement should be signed by the patient.

When a dental office provides treatment, the office typically enters into a financial agreement with the patient. A signed formal agreement demonstrates that the patient was apprised of the charges and accepts responsibility for the payment.

The analyst suggested the financial coordinator reach out to the patient to inform her of her conversation with the adjuster. The coordinator could request that the patient either work with the insurance company directly to resolve the matter or provide the option of a payment plan. The analyst also advised that if they are unable to reach an agreement regarding payment of the balance, they could consider terminating the doctor-patient relationship as long as the patient was not in midtreatment. Dismissal should be done in writing and only after other methods of resolution have been exhausted.

Call No. 2: Issuing refunds

A periodontist called the Advice Line with questions about patient



refunds. In this case, he had extracted tooth No. 14 and placed a bone graft in preparation for an implant. The patient had signed an informed consent form and the surgery was performed without incident. The periodontist prescribed antibiotics for the patient to take after the procedure.

A week later, the patient returned with an infection on the extraction site. The dentist removed the grafting material, cleaned out the area and placed a new graft. Several days later, the site was still infected. The periodontist cleaned it out again and placed localized antibiotics. The patient's symptoms persisted and she eventually went to an ENT who noted that the sinus was clear. In an attempt to get the infection under control, the ENT prescribed a stronger antibiotic and requested to have the dentist remove the graft to allow the area to heal.

A few months later, the patient sent a letter to the dentist claiming that the infection was due to faulty dental treatment performed by him. She demanded a full refund, requested the dentist to pay a different periodontist to redo the treatment and to compensate her for pain and suffering. The patient felt the infection could have been avoided had the dentist prescribed a stronger antibiotic.

The periodontist was willing to provide a full refund for the treatment he performed, but was hesitant to agree to the additional amount requested by the patient. He asked the Risk Management analyst whether providing a refund would be perceived as admitting

Analysts advise dentists to consider waiting until an employee returns from leave before addressing any performance issues and to continue documenting them in the employee's file.

guilt and whether he should comply with the request for the additional compensation.

TDIC recommendation

The analyst explained that offering a refund is not an admission of guilt. It could mean that both parties have arrived at a mutually agreeable resolution. The key to issuing a refund is the communication between the dentist and the patient. It is important to phrase the reasoning as being "in the interest of goodwill and compromise."

Another consideration is whether an insurance company paid any portion of the treatment. If so, the dentist should contact the insurance company for guidance on how to handle the refund of its portion.

While a release cannot stop patients from filing a lawsuit nor relieve dentists of their professional responsibility to the patient, a signed document memorializes that both parties reached an agreement and the

agreement was satisfactory. However, in some cases, presenting the patient with a release to sign may inflame the situation to the point of litigation.

Prior to considering whether to agree to additional compensation demanded by a patient, dentists should perform an object assessment and consider the following:

- Was the treatment and follow-up care within the standard of care?
- Are there any areas that could be subject to criticism by another practitioner?
- Is the documentation in the chart comprehensive? Does it clearly outline the basis for treatment and reflect that the patient was apprised of the associated risk and any limitations?

Call No. 3: Terminating a pregnant employee

A dentist called the Advice Line with questions on terminating his pregnant hygienist who had performance issues and was getting ready to go out on pregnancy disability leave.

TDIC recommendation

The analyst acknowledged the difficulty of the situation and noted that terminating an employee who is temporarily disabled or pregnant could be interpreted as discrimination. Discrimination against an employee based on a physical disability or medical condition is prohibited by local, state and federal law.

In this situation, the analyst advised the dentist to consider waiting until the employee

continued on page 6

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.

Protecting dentists. It's all we do.®

800.733.0633 | tdicinsurance.com | CA Insurance Lic. #0652783

2018–2019 Risk Management Seminar Schedule

PAIN & PERCEPTION:

Reducing nerve injury risks

Friday, March 15
9:00 a.m. – 12 noon

Hilton Santa Clara
Santa Clara, CA

Thursday, May 16
9:00 a.m. – 12 noon
and 2:00 p.m. – 5:00 p.m.

**CDA Presents, Anaheim
Hilton Anaheim**
Anaheim, CA

Friday, May 17
9:00 a.m. – 12 noon
and 2:00 p.m. – 5:00 p.m.

Saturday, May 18
9:00 a.m. – 12 noon

Fees

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

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

Unable to attend a live seminar?

We offer a library of risk management seminars via eLearning options, including Online Reader with audio. Take the current seminar from the comfort of your home or office or choose from a variety of past seminars that are also C.E. eligible.

*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. Dentists who complete the seminar after April 26, 2019, will receive a revised invoice reflecting the discount. Alaska, Hawaii, Illinois, Minnesota, New Jersey, North Dakota and Pennsylvania dentists must successfully complete the seminar by October 25, 2019. Dentists who complete the seminar after October 25, 2019, will receive a revised invoice reflecting the discount. 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 C·E·R·P® | 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.

Endorsed by:

Alaska Dental Society
California Dental Association
Hawaii Dental Association
Idaho State Dental Association
Illinois State Dental Society
Nevada Dental Association
New Jersey Dental Association
Oregon Dental Association
Pennsylvania Dental Association
Washington State Dental Association

Also selling in Arizona, Minnesota, Montana, North Dakota, and Tennessee.

Dentists are professionally and ethically responsible to present treatment options that are most appropriate for a patient's clinical needs. Any time a patient declines a dentist's recommended treatment, it should be documented in the patient's chart.

returned from leave to address the performance issues and to continue documenting them in her employee file. The employee file is just as important as a patient chart, for different reasons. Having thorough documentation of employee situations is invaluable in the event of a lawsuit.

Further, the dentist must establish an office policy to address performance issues with staff as they arise and provide specific examples when meeting with employees. Not taking any actions will imply that the performance level has been deemed as acceptable and may set a precedent for the entire staff.

Should the dentist feel compelled to not want to wait until the employee's return, the analyst instructed him to contact an employment attorney prior to taking further action.

Call No. 4: Responding to the Better Business Bureau

A dentist contacted the Advice Line for guidance on handling a patient complaint from the Better Business Bureau. The treatment in question involved a full lower denture on a 75-year-old patient. Following the delivery of the denture, the dentist saw the patient for multiple

adjustments; however, the patient continued to complain that the denture was not fitting properly. At one point, the patient showed up to the office unannounced, threw the denture, used foul language and demanded a refund. The dentist instead offered to reline the denture at no charge. The patient stormed out of the office and later filed a complaint with the BBB. The dentist asked whether he was obligated to provide a response to the BBB.

TDIC recommendation

The analyst advised the dentist that only accredited members of the BBB are required to respond to complaints as required by the terms of their membership contracts. TDIC advises that nonaccredited members can send a written notification to the BBB advising them that they will not be responding on the basis of patient privacy concerns.

Responding to a complaint can put a dentist at risk because HIPAA prohibits any disclosure of confidential patient information, regardless of whether the patient disclosed his or her information first. Even acknowledging that the complainant was a patient of record is a violation of law and can set dentists

up for liability claims. Dentists who fail to protect patient information can be subject to disciplinary action. It is their responsibility to ensure patient information is only provided to those authorized to have access.

The dentist should still use this opportunity to reach out to the patient to determine if the matter can be resolved.

Call No. 5: Managing noncompliant patients

A dentist called the Advice Line regarding a patient who presented with decay on a tooth that had a large amalgam restoration. The dentist recommended replacing the restoration with a crown. The patient was resistant to having a crown placed on the tooth, claiming she was not experiencing any pain. The dentist showed her the radiograph and the intraoral photos; he even provided her with a pamphlet about how decay progresses. The dentist was concerned that the decay was approaching the nerve. The patient seemed receptive after the doctor's explanation, but when she presented to the front desk, she refused to schedule an appointment. She made a comment as she was leaving that the dentist just wanted to take her money.

The following day the dentist called the patient to address her comment, explain why the treatment was essential and to determine whether she had any additional questions about the recommended treatment. He left a message, but the patient did not return his call. The office staff made a final attempt without success.

Approximately four months later, the office received an emergency

phone call from the patient, stating she was having pain. The dentist was able to see her the same day. A radiograph of the area revealed periapical pathology and decay into the nerve. The dentist provided a prescription for antibiotics and a referral to an endodontist. A week later, the office contacted the patient to follow up on the referral. The office discovered that the patient had not followed up with the endodontist referral. She expressed that she was only interested in keeping her cleaning appointment the following month. The dentist was concerned because the tooth still required treatment and the patient was now in danger of losing the tooth.

The dentist wanted advice on whether to continue to follow up with the patient.

TDIC recommendation

Dentists are professionally and ethically responsible to present treatment options that are most appropriate for a patient's clinical needs. Any time a patient declines a dentist's recommended treatment, it should be documented in the patient's chart. The documentation should clearly indicate that the decision is that of the patient, not the dentist.

The analyst advised the dentist to contact the patient both by phone and in writing. The letter should outline the reason for the recommended treatment, the consequences of delaying treatment and the timeline for compliance. If the patient fails to respond to the phone calls or the letter, the dentist

In doubt about how to handle a situation?

Call the confidential Advice Line and get one-on-one guidance. TDIC's dedicated Risk Management analysts can be reached at **800.733.0633**, Monday through Friday, 8:00 a.m. to 4 p.m. PST. Or visit tdicinsurance.com/RMconsult to schedule a call at a time that's convenient for you. Calling the Advice Line will not increase your policyholder premium.

should consider dismissing the patient based on her noncompliance. Allowing the patient to remain in the practice may put the dentist at risk for future allegations of supervised neglect.

Call No. 6: Sharing patients

A dentist contacted the Advice Line regarding a patient who wanted to have her cleanings performed by a friend who was a hygienist at another office while remaining under his care for restorative treatment. The dentist was uncomfortable about the patient's request and wanted to know how to communicate his concerns with the patient.

TDIC recommendation

The analyst advised the dentist to explain to the patient that while it's ultimately her decision to see

whichever hygienist she prefers, she must make a choice as to which office she wants to be treated in. It is within the dentist's rights to inform the patient that he does not feel comfortable with the arrangement because it does not preserve continuity of care.

■ **Dentists can be faced** with unfamiliar situations and unusual requests. When this happens, it's difficult to know which course of action to take. Turn to the Advice Line's dedicated analysts who can provide guidance on diffusing difficult situations and help you avoid the risk of a potential liability claim. The confidential, one-on-one Advice Line is available at **800.733.0633**, Monday through Friday, 8 a.m. to 4 p.m. PST. To schedule a call at a time that works best for you, visit tdicinsurance.com/RMconsult. Calling the Advice Line will not increase your premiums.





Liability Lifeline

Liability Lifeline is published by:
The Dentists Insurance Company
1201 K Street, 17th Floor
Sacramento, California 95814

©2019, The Dentists Insurance Company

Endorsed by:

Alaska Dental
Society

California Dental
Association

Hawaii Dental
Association

Idaho State
Dental Association

Illinois State
Dental Society

Nevada Dental
Association

New Jersey
Dental Association

Oregon
Dental Association

Pennsylvania
Dental Association

Washington State
Dental Association

Also in:

Arizona,
Minnesota,
Montana,
North Dakota,
and Tennessee

TDIC reports
information from
sources considered
reliable but cannot
guarantee its
accuracy.

Need one-on-one risk management guidance?

- Get answers to your critical questions through a confidential phone consultation with an experienced TDIC risk management analyst.
- Request a consultation at a time that's convenient for you at [tdicinsurance.com/RMconsult](https://www.tdicinsurance.com/RMconsult) or by calling **800.733.0633**.

Protecting dentists. It's all we do.®

Risk Management Advice Line | 800.733.0633 | [tdicinsurance.com](https://www.tdicinsurance.com)