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Preventive Action

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Avoiding Abandonment Claims

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Terminating the Dentist/Patient Relationship

The dentist-patient relationship is one that is based on the law of contracts. This relationship obligates the dentist to continue treating the patient until the patient's condition no longer warrants treatment; the patient discharges the dentist; or the dentist unilaterally withdraws from treatment providing that the patient is given appropriate notice of the physician's intent to withdraw and afforded an opportunity to obtain a suitable replacement. Improperly severing the dentist-patient relationship (contract) exposes the physician to a potential claim of abandonment.

While a dentist has the right to withdraw from the care of a patient,

appropriate measures must be taken to avoid an allegation of abandonment. The more commonly encountered situations are non-payment of a bill by the patient, failure by the patient to keep follow-up appointments or follow dental advice, or the threat of a legal action by the patient or family member. Under these circumstances, it may be prudent for the dentist to terminate the relationship.

Avoid Abandonment

Abandonment may be defined as the unilateral severance of the dentist-patient relationship at a time when there is still a need for treatment. *Actionable* abandonment occurs only in the absence of notice to withdraw or a failure to provide adequate dental attention. Generally, there is no legal cause of action when evidence that adequate dental treatment was available within a reasonable time frame after the dentist has withdrawn from care or if no injury or damage resulted. Before severing the dentist-patient relationship, first consider the patient's dental condition and if the severance will result in a break in the continuity of care which in and of itself could unfavorably impact the patient's condition. Depending on the dental condition and treatment requirements, terminating the dentist-patient relationship could be unwise from a liability standpoint. If the patient requires treatment at the time, the dentist should render care, stabilize the patient and only then consider



withdrawal. This does not mean completing all of the patient's dental care, but rather stabilizing the immediate dental condition. To withdraw from a patient who needs immediate care risks not only injury to the patient, but also a suit for abandonment and possible disciplinary action from the Board of Dentistry.

If the patient is in a non-emergent condition, the dentist should provide the patient with notice of intent to withdraw. The notice must inform the patient of the need to follow-up care, provide sufficient time to obtain the

Continued on page 2



FREQUENTLY ASKED Legal Questions

(ADA) has been very supportive of efforts to eliminate wrong site surgery, including wrong dental extractions. However, the ADA acknowledges that there does not appear to be a practical or reliable method to actually mark the teeth that are intended for extraction. Therefore, dental procedures will be considered exempt from the site marking requirement. In lieu of directly marking the teeth, the ADA recommends reviewing the dental record including the medical history, laboratory findings, appropriate charts and dental radiographs. Indicate the tooth number(s) or mark the tooth site or surgical site on the diagram or radiograph to be included as part of the patient record. Ensure that radiographs are properly oriented and visually confirm that the correct teeth or tissues have been charted. Conduct a "time out" to verify patient, tooth and procedure with assistant present at the time of the extraction (two person rule).

May a dentist condition providing a copy of the patient records upon the satisfaction of an outstanding bill ?
NO. A dentist cannot withhold copies of the dental records from a patient with an outstanding balance. The dentist may, however, charge the patient for a copy of the record.

Are x-rays considered the property of the dentist's office or the patient?
X-rays are considered part of the original record and remain the property of the dentist's office. By law,

the patient is entitled to a copy of the record. A dentist may charge the patient for the cost of making the copy as well as the ancillary costs involved in copying x-rays.

Does a dentist have the right to have legal counsel present when being deposed?

Yes. A deponent has the right to legal counsel at the time of deposition. Always contact FPIC's Claim Department or Risk Management Department before providing a deposition in order to determine if legal counsel is necessary and will be assigned to represent you at the deposition.

Do HIPAA privacy rules impede EMT services?

No. Emergency response teams can disclose patient information as needed to quickly find patients and get them to the hospital.

What action should be taken when a summons and complaint is received?

Immediately notify FPIC by calling the Claims Department at 800-741-3742, ext 3293. If you are served, FPIC only has a limited number of days to assign a defense attorney and prepare a response to be filed on your behalf. It is important to not discuss the case with the patient, the patient's attorney or other parties involved in the care and treatment of the patient. You should gather and secure the patient's records immediately.

TABLE OF CONTENTS

- Page 1 *Avoiding Abandonment Claims*
- Page 3 *Risk Management Products & Services*
- Page 4 *Frequently Asked Legal Questions*

Is a specific timeframe set forth when withdrawing professional services to a patient?

NO. Although statutes do not specifically set forth the amount of time a patient must be given, managed care contracts and Provider agreements may contain language that does. Generally, a 30-day notice period is sufficient, however, depending on the circumstances, a lesser time period may be appropriate. If the patient terminates you, there is no further obligation to treat the patient. Always review the language of applicable managed care plans before terminating the dentist-patient relationship.

Do the Universal Procedures for marking one's surgical site apply to dental procedures?

No. The American Dental Association



FPIC publishes Preventive Action on a quarterly basis as a service to its policyholders. Information in this publication does not establish a standard of care, nor is it a substitute for legal advice. The information and suggestions contained in this newsletter are generalized and may not apply to all practice situations. FPIC recommends you obtain legal advice from a qualified attorney for a specific application to your practice. The information should be used as a reference guide only.

For comments, questions, or to obtain additional copies contact the FPIC Risk Management Department at 800-741-3742, ext. 3016, or rm@fpic.com.

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Continued from page 1

care, and the potential consequences of foregoing such care. The length of time will vary according to the circumstances. In the interim, the physician should remain available to treat the patient should the condition deteriorate.

The notice to withdraw should always be documented. The best method is to discuss it with the patient verbally and follow-up with a certified letter. If it is not possible to discuss the matter with the patient, then the letter should provide sufficient protection. Review the applicable provider contract or the patient's managed care plan for any limitations or prohibitions for discharging the patient.

The following elements need to be addressed in the letter to the patient:

1. A statement of intent to withdraw from treatment.

2. A designated time frame and date for the withdrawal.
3. An agreement that the dentist will continue treatment through the withdrawal date.
4. The potential consequences to the patient of foregoing continued care and treatment, when necessary.
5. An offer to refer the patient to an appropriate source where the patient can find a new dentist.
6. An offer to furnish a copy of the medical record upon patient authorization.

"The notice to withdraw should always be documented."

The letter should be sent by certified mail, return receipt requested as well as via regular mail, indicating, "copy sent via regular mail." If the patient refuses the certified letter, the regular mail letter will then serve as proper notice. A copy of the letter and return receipt should be filed in the patient's chart.

TO PATIENT WHO FAILS TO FOLLOW ADVICE

Dear _____:

This will confirm our conversation on mm/dd/yy wherein I informed you that I was unable to determine without X-rays whether ___(condition)_____. I strongly urge you to permit me or some other dentist of your choice to obtain the necessary X-rays without further delay.

Your failure in not permitting a proper X-ray examination may result in serious consequences if in fact a _____(condition)_____ does exist.

TO CONFIRM DISCHARGE BY PATIENT

Dear _____:

This will confirm that you discharged me as your dentist on _____. In my opinion your condition requires continued treatment by a dentist. If you have not already done so, I suggest that you employ another dentist without delay. At your request, I will provide your new dentist with information regarding the treatment which you have received from me and a copy of your dental records.

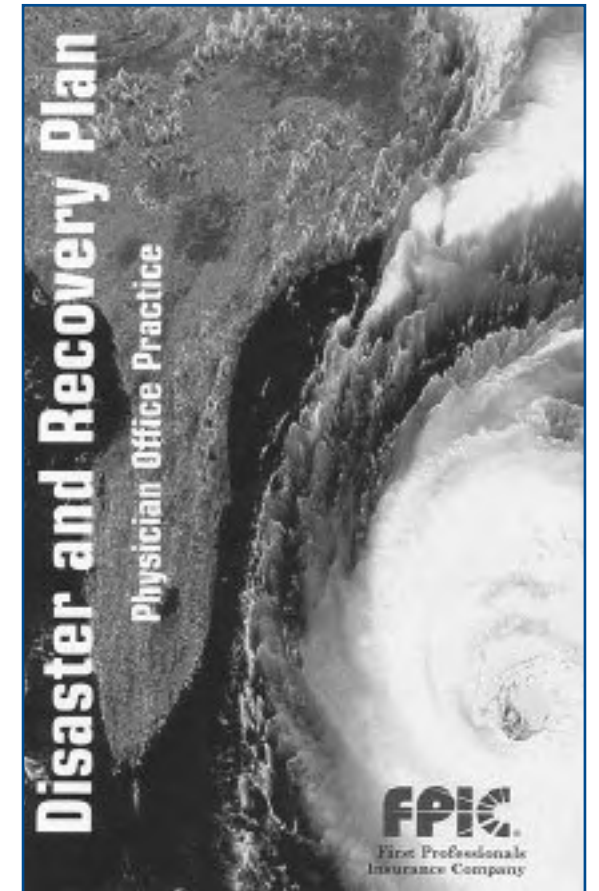
Risk Management Products & Services

Disaster & Recovery Planning For Physician/Dental Office Practices

Anticipating and preparing contingency plans for coping with natural and manmade disasters can make a significant difference in how well your practice survives. Now is the time to evaluate preparedness procedures, meet with your staff and address these issues. The use of a disaster and recovery plan checklist is an efficient loss prevention measure. An hour or two spent discussing these questions with your staff can help avoid chaos and confusion, reduce your exposure to loss and maintain patient safety if and when faced with a disaster. This booklet contains a model for disaster and recovery planning designed specifically for the dental office. An extensive checklist format covers things from protecting patient records to third-party billing measures - all designed to help mitigate loss and facilitate recovery.

FPIC has available a number of highly effective, risk management products and services. These comprehensive products are designed to avoid claims and disciplinary actions and encourage physician participation. All risk management products and services are available at no cost to our policyholders.

To obtain a copy of the *Disaster & Recovery Plan* or other risk management reference material, contact the Risk Management Department at 800-741-3742, ext. 3016 or rm@fpic.com. The materials are also available on the FPIC website at www.firstprofessionals.com



Risk Management Guidelines: Disaster & Recovery Planning

- Over 25% of businesses that close following a disaster do not reopen.
- 80% of businesses having an extended disaster are out of business within five years.
- 50% of businesses having a disaster without a plan go out of business within two years.
- A private practice is a business and has both tangible and intangible assets.
- Without a pre-defined plan to protect and recover service operations, most practices will be unable to survive a business outage.