

Preventive Action

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Defining Supervisory Requirements

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Although in dental care, there is no substitute for the professional judgment of a dentist, there are duties that are safely delegated to dental assistants and hygienists. Duties that present a low potential for harm and have a highly predictable outcome are routinely delegated in the dental practice. However, the dentist remains responsible for adequate supervision, interaction, and feedback when utilizing the skills of assistive personnel. Florida Statutes and Administrative Codes clearly define the levels of supervision required and delineate duties and tasks that may be delegated.

Generally, irremediable tasks may not be delegated. Florida Statute (FS) 466.003(11) defines irremediable tasks as “intraoral treatment tasks which...are irreversible and create unalterable changes within the oral cavity or the contiguous structures which cause an increased risk to the patient. “



Remediable tasks are “intraoral treatment tasks which are reversible and do not create unalterable changes within the oral cavity or the contiguous structures and which do not cause an increased risk to the patient“ FS 466.003(12). Remediable tasks are expanded duties that may be delegated to dental assistants and hygienists. Florida Administrative Codes 64B5-16.005 and 16.006 define duties that may be delegated to dental assistants and dental hygienists and the level of supervision for each task as required by law. For instance, a dentist’s direct supervision is required when dental assistants remove sutures or remove temporary restorations with non-mechanical hand instruments. The Administrative Codes also provide disciplinary guidelines for failure to provide requisite supervision of a dental hygienist or dental assistant that include Board-imposed probation, restriction of practice, and/or licensure suspension.

Florida regulations are specific regarding the personnel requirements for managing patients undergoing general anesthesia and deep and conscious sedation in the dental practice. There are also specific supervisory regulations regarding dental radiography.

Florida Statute 466.003 and Florida Administrative Code 64B5-16.001 also include definitions of the levels of supervision required for various tasks as listed below:

Supervision Definitions

DIRECT SUPERVISION – Requires that a dentist: examine the patient, diagnose a condition to be treated, authorize the procedure to be performed, remain on premises while the procedure is performed, and approve the work performed prior to dismissal of the patient.

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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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INDIRECT SUPERVISION – Requires that a dentist: examine the patient, diagnose a condition to be treated, authorize the procedure to be performed, and remain on premises while the procedure is performed.

GENERAL SUPERVISION – Requires that a dentist: examine the patient, diagnose a condition to be treated, and authorize the procedure to be performed.

Dentists should become familiar with the regulation of delegable duties and the required levels of supervision when utilizing assistive personnel. Title XXXII Chapter 466 of the Florida Statutes provides regulations for dentistry, dental hygiene, and dental laboratories and may be accessed at www.flsenate.gov/Statutes. Florida Administrative Code Chapter 64B5 provides laws pertaining to the practice of dentistry and may be accessed at <http://election.dos.state.fl.us/fac/index.shtml> or you may call FPIC's Risk Management Department for assistance.



LOSS PREVENTION

Consider the case involving a 41 year-old male who underwent extensive dental work in September 1997 to completion June 2000. In February 2001, the patient transferred all dental care to a different dentist due to a change in his insurance plan. In October 2001, a radiolucent lesion of the right mandibular ramus was noted in routine x-rays. The patient was referred to an oral surgeon who diagnosed the lesion as an ameloblastoma. It was then determined that the x-rays taken in 9/97 showed the presence of a radiolucent lesion in the mandibular ramus. The patient subsequently underwent marginal resection of jaw. Further evaluation revealed microscopic ameloblastoma in the mandible with a prognosis for reoccurrence. Suit was subsequently filed alleging diminished prognosis as a result of the four year delay in diagnosis. Experts were unable to support the standard of care rendered or a causation defense given the insured's misinterpretation of the September 1997 x-rays which clearly evidenced the lesion.

Consequently, settlement was necessitated in the amount of \$240,000.

Effective Communication: Regional Differences

A risk management consultant was in a clinic and overheard a physician speaking with his patient about the proper times to take his medicine. The physician reiterated to the older gentleman the importance of taking the medication before breakfast and before dinner. The patient indicated that he understood. The physician, to assure compliance, asked the gentleman when he was supposed to take his medication. The gentleman replied, "I take it in the morning and at noon." The doctor corrected the patient and said, "No, don't take it at noon." The patient then asked when he should take it. The physician reiterated his initial instructions. This exchange went on for several minutes until a seasoned nurse walked up and asked, "What's the matter?" When the physician explained the situation and his frustration, the nurse turned to the patient and said, "Take your medication before breakfast and before supper." "Ah," said the elderly patient to the doctor, "Why didn't you say that in the first place?"

Regional differences affect communication. Make sure you know and use the *language* of your patients. You may not be communicating as well as you think you are.

Adapted with permission from *The Risk Manager*, published by Medical Assurance Company of Mississippi

The Dental Record – Document, Document, Document

Cliff Rapp, LHRM,
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In light of the increasing frequency and severity of malpractice claims, the need for a well-documented chart has never been more important. Unfortunately, many dental practices remain lax in their record keeping procedures.

In evaluating a potential liability claim, one of the first steps taken by a plaintiff attorney is a thorough review of the dental records. Many times good dental records prevent the case from ever going beyond this stage. Dental records that indicate that the course of treatment given to the patient was justified, or that the result complained of was merely a risk inherent to the procedure performed, are cases that are generally not pursued by plaintiff attorneys. Complete and accurate dental records, written at the time you have contact with a patient, are your best defense against a malpractice action. Document. Document. Document.

Conversely, incomplete or inaccurate records may not only precipitate a lawsuit that could have been avoided (through proper documentation), but will often undermine an otherwise defensible case. The dental record often becomes the most important piece of evidence in a malpractice defense. Good records can unmask the nonmeritorious claim, often before it reaches the courtroom. An incomplete or poorly documented chart creates not only a question of fact, but can make even a nonmeritorious claim impossible to defend. Document. Document. Document.

The importance of good dental records is obvious notwithstanding liability concerns. The volume of patients and the length of time between their visits make good records essential to the continuing care and treatment of patients. In terms of content, dental

records must serve two purposes: communicating essential information among the healthcare team, and providing a permanent written record of treatment and the facts and reasoning behind the chosen treatment.

Guidelines to maintain in each dental record profile include:

- The patient's name must appear on every record page.
- The day, month, year and time of day of the appointment must be on all entries.
- All entries must be permanent.
- Be specific - avoid generalizations and characterizations.
- Be objective - use facts only. Record what actually occurred and what is clinically relevant. Personal comments on a patient's characteristics are not appropriate.
- Double-check accuracy. A misplaced decimal point or inadvertent use of the wrong term can, and has, precipitated dental disaster. Take the time to double check your accuracy.
- Write exactly what you mean and use precise terms. Encourage a healthy skepticism within the healthcare team so that illogical instructions will not be followed blindly.
- Be complete. If in doubt, write it down.
- Be timely. Record events as they occur, write or dictate notes immediately after seeing each patient.
- Write legibly; use standard abbreviations. Good records are useless if no one can read them. If you cannot write legibly, dictate your office notes before signing them.
- Do not skip lines or leave spaces between entries.

- Make alterations carefully. If you make an error while writing notes, do not erase or use *White Out*. Draw a line through the error, write the correction above it, and date and initial the correction.
- Never destroy any part of a dental record. This raises the presumption that records were destroyed to conceal damaging evidence and will result in almost certain disciplinary action.
- Be consistent in your notes. Once a pattern has been established, avoid deviating. This is especially important in long-term care.
- Assure that your global procedures pertaining to dental records are HIPAA compliant.
- Document all patient contact – both phone and office conversations. Note the date and time of the conversation and any important details.

Wrong Site Procedures

The Florida Administrative Code has been revised to include a provision that requires medical doctors to take a "time out" prior to commencing surgical procedures. During this time out, the patient's identity, surgical procedure, surgical site, and body part to be operated on are verified prior to starting the procedure. The process must be documented in the surgical notes and the identity of the surgical team member(s) participating in the process must be noted.

While this process has not yet been formalized by the Board of Dentistry for dental procedures, it is recommended that a similar process be followed when performing extractions, invasive procedures and oral surgery.



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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.

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

What procedures should be followed when actual or suspected biological/chemical exposure is encountered?

Dentists should follow current guidelines issued by the Department of Health, Centers for Disease Control, and County Medical Societies. Carefully document in the patient's chart the severity of symptoms and your clinical examination and findings.

What action should be taken when a "Notice of Intent" letter is received?

Immediately notify FPIC by calling the Claims Department at (800) 741-3742, ext. 3293. FPIC only has a limited number of days to prepare a response on your behalf to the notice of intent and assign a defense attorney, if necessary. 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.

What is the appropriate way to make charting corrections?

Errors or mistakes in charting should be corrected by drawing a single line through the incorrect portion, initialing, and dating the correction. Additions to the chart should be dated contemporaneously with the entry and when appropriate, an explanation given for the addition.