

Preventive Action

The Quarterly Risk Management Newsletter for FPIC Policyholders

Third Quarter 2006

Vol. 19, No. 3

Deposition Guidelines

by Joseph F. Putz, LHRM, FPIC RM Consultant

At some point every dentist will encounter a patient outcome that will become the basis of a claim or suit. The malpractice litigation process involves a number of steps, one of which is the development or “discovery” of factual information.

One of the methods used to develop and preserve this information is the question and answer session taken under oath, otherwise known as a deposition. Depositions are recorded by a court reporter, and attorneys for both sides in the legal action usually attend. Depositions are available for the medical experts in the case, as well as other fact witnesses, co-defendants and the jury to review.

Why am I being deposed?

Depositions are taken for several reasons. The process determines the knowledge and facts you possess regarding the issues in the case. Your testimony in the deposition provides to

all parties in advance, information about which you may be required to testify during trial. The deposition can also be used to limit or narrow the issues being litigated. If there are issues that you feel are troublesome, discuss them with your attorney prior to your deposition.

Tips for deposition survival

Giving a deposition can be stressful. The following basic recommendations can ease the process.

- Always tell the truth.
- Think before you speak. Make sure you listen to and understand the question completely before you answer.
- Answer the question asked; *only* that question.
- Never guess at an answer. Do not hesitate to say that you do not know the answer.
- Do not characterize your answers—avoid phrases such as “in all honesty” or “I’m doing the best I can.” Likewise, avoid restrictive terms such as “I never” or “I always.”
- Do not offer information voluntarily. It is not your role to educate the examiner.



How well you come across as a deponent is often pivotal in the litigation process.

- Do not let the examiner put words in your mouth. Do not accept his characterization of time, distance, personalities, or events. Rephrase the question into a sentence of your own, using your own words.
- Do not argue or express anger with the examiner. If you feel uncomfortable with the line of questioning, state “on the record” that the proceeding may be reconvened once you are represented by counsel.
- If you do not remember something,

Continued on page 2

TABLE OF CONTENTS

Page 2 *Revisions to Administrative Code*

Page 3 *Risk Management Products*

Page 4 *Legal FAQs*



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. 3100, or rm@fpic.com.

Cliff Rapp

Vice President of Risk Management, Editor-in-Chief

Linda Blythe

Risk Management Consultant

Ruth Lopes

Risk Management Consultant

Joseph Putz

Risk Management Consultant

Sandra C. Strickland

Risk Management Consultant

FPIC

1000 Riverside Avenue
Suite 800
Jacksonville, FL 32204

800-741-3742
Local 904-354-5910
Fax 904-354-6132

www.firstprofessionals.com

Copyright 2006 by First Professionals Insurance Company Inc. All rights reserved. No part of this publication may be reproduced or transmitted in any form.

Continued from page 1

say so. You may be asked if a statement or document refreshes your memory, and if it does, say so. If it does not, your answer remains that you do not remember.

- Avoid any attempts at levity. Likewise, avoid even the mildest obscenities or any ethnic slurs or references that can be considered derogatory.
- If an objection is made to a question, listen to the objection carefully. You may learn something about the question and how it should be handled.

- Mistakes can happen during a deposition. Do not become upset. If you realize you made a mistake during the deposition, correct it as soon as it is realized. Mistakes that you remember or recognize after the deposition ends may be corrected when you sign the transcript.

Whenever you are requested to give a deposition, either voluntarily or by subpoena, it is always advisable to consult with FPIC or your personal attorney for guidance.

Noteworthy revisions to Florida Dental Administrative Codes

In March 2006 there were revisions to Florida Administrative Codes 64B5-14.008, 14.009, 14.010 and 64B5-17.006. For additional information about these revisions or the Codes, visit www.leg.state.fl.us, Florida Administrative Code in Laws of Florida.

March 2006 Revision Highlights

64B5-14.008 Requirements for General Anesthesia or Deep Sedation

Revises or adds personnel training, recordkeeping, facility and equipment requirements for general anesthesia permit holders. (revised 03/23/06)

64B5-17.006 Work Order Forms

Revises the retention period for copies of work order forms from two years to four years. (revised 03/23/06)

64B5-14.009 Conscious Sedation

Revises or adds personnel training, recordkeeping, facility and equipment requirements for conscious sedation permit holders. (revised 03/23/06)

64B5-14.010 Pediatric Conscious Sedation

Revises or adds personnel training, recordkeeping, facility and equipment requirements for pediatric conscious sedation permit holders. (revised 03/23/06)

Risk Management Products & Services

Office Guide for Dental Risk Management

This comprehensive risk management reference tool, available on CD, was developed as a cooperative program with the Florida Dental Association and First Professionals Insurance Company. The manual covers topics such as:

- ✓ Communication
- ✓ Medical Records
- ✓ Informed Consent
- ✓ Managed Care
- ✓ HIPAA
- ✓ Incident Reporting

To obtain a copy of the *Office Guide for Dental Risk Management* or other risk management products and services, contact FPIC's Risk Management Department at 800-741-3742, ext. 3100 or rm@fpic.com. All reference materials are also online at www.firstprofessionals.com.



Dental Risk Management: Guidelines and Facts

- Improper performance is the most prevalent type of dental malpractice claim.
- System errors are the most common root cause of dental errors.
- The manner in which unanticipated outcomes are disclosed and managed is tantamount to claim prevention.
- A private dental practice is a business that has both tangible and intangible assets.
- The dental record is often the most important piece of evidence in a malpractice claim.

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. Such products and services are available at no cost to our policyholders.



Insurance Solutions for Healthcare Providers

P.O. Box 44033
Jacksonville, Florida 32231-4033
800-741-3742
www.firstprofessionals.com

PRESRT STD
U.S. POSTAGE
PAID
Permit No. 1729
Jacksonville, FL



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 Claims Department or Risk Management Department before providing a deposition in order to determine if legal counsel is necessary. If so we will assign someone to represent you at the deposition.

What is an "adverse event"?

An untoward, undesirable and usually unanticipated event, such as death of a

patient, an employee, or a visitor in a health care organization. Incidents such as patient falls or improper administration of medications are also considered adverse events even if there is no permanent effect on the patient.

What is an "error of commission"?

An error which occurs as a result of an action taken. Examples include an anesthetic administered at the wrong time, in the wrong dosage, or using the wrong route; procedures performed at the wrong site; and errors involving poor technique.

What is an "error of omission"?

An error which occurs as a result of an action not taken, for example, a delay in performing an adequate oral exam that results in a delay in diagnosis of oral cancer. Errors of omission may or may not lead to adverse outcomes.

What is a "root cause analysis"?

A process for identifying the basic or causal factor(s) that underlies variation in performance, including the

occurrence or possible occurrence of a sentinel event.

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

Immediately notify FPIC's Claims Department at (800) 741-3742, ext 3293. FPIC has only a limited number of days to prepare a response on your behalf to the Notice of Intent and to 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. Gather and secure the patient's records immediately.

Is a dentist responsible for the negligent acts of an employee?

Yes, pursuant to Florida Statute 466.024(5): "Notwithstanding any other provision of law, a dentist is primarily responsible for all procedures delegated by her or him." If the employer is the professional association or dental practice itself, it too can be held liable for the acts of the employee.