

Preventive Action

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Effective Dentist-Patient Communication

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Communication is both a science and art. It is also a significant motivating factor upon which malpractice claims are pursued and avoided. Inadequate, inappropriate or ineffective communication increases the chances of diagnostic error, non-compliance, poor outcome and the likelihood of being sued. Conversely, effective communication improves diagnostic accuracy, enhances patient decision-making and increases the likelihood of adherence to therapeutic regimes. Essential for dentist-patient rapport, good communication prevents erosion in the dentist-patient relationship, a significant challenge since the advent of managed care. By establishing realistic patient expectations, non-meritorious claims can be avoided and patient satisfaction levels increased notwithstanding the constraints imposed by today's healthcare delivery system.

Professional liability closed claim data compiled by the PIAA (Physician

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Insurer's Association of America) confirms that unrealistic patient expectation is a primary factor for claims in the absence of performance error. Unrealistic expectation is often attributed to communication error. Admittedly, effective dentist-patient communication can be challenged by a number of factors such as diversity in age, intellect, education, ethnicity, and even gender. Communication experts indicate that males tend to emphasize talking rather than listening in conversation and use more commands while females tend to emphasize listening and sharing. Tangible factors such as the environment may also serve to compromise the ability to adequately communicate. It's difficult for most people to effectively communicate when in pain or under stress, particularly in a clinical setting.

Risk Management Techniques

The most important clinical encounter, in terms of establishing good rapport, is the initial patient contact. Experts point out that the initial clinical encounter, a one and one-half minute opportunity, profoundly affects all subsequent interactions. It may also represent your best opportunity to avoid a claim. According to PIAA claim data, the diagnostic interview, evaluation or consultation is the most prevalent "procedure" resulting in malpractice

claims. Both verbal and non-verbal signals create the initial impression. To establish a positive perception, avoid examining the chart or x-rays during your initial contact or while the patient is speaking. Failing to do so creates the impression that you are ignoring the patient. Clinical body language often sends powerful signals. Avoid folding arms together over your chest when the patient is talking. Such body language may be interpreted as being aloof or distant. Likewise, rapid and frequent head nodding while the patient is talking tends to send the signal that you are rushed or disinterested in what is being said. Clearly, such signals

"Inadequate, inappropriate or ineffective communication increases the chances of diagnostic error, non-compliance, poor outcome and the likelihood of being sued."

are purely perceptual, but that is what the initial encounter is all about. Positive non-verbal signals include adopting a slight upper torso forward lean towards the patient or person speaking, establishing eye contact, nodding your head to communicate understanding or empathy, reactive facial expressions and the use of physical contact,

such as shaking the patient's hand or patting their shoulder. Important verbal signals include use of the patient's name, open-ended questioning and prompters such as "So?", "And?", or "Such as...".

Techniques for Initial Contact

- Introduce yourself by name
- Use pleasing facial gesture



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For comments, questions or to obtain additional copies contact the First Professionals Insurance Company Risk Management department at 800-741-3742, ext. 3016.

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- Make eye contact
- Make physical contact (hand shake, touch arm)
- Use a positive opening phrase
- Ask patient how they wish to be addressed
- Use the patient's name
- Open discussion with a question
- Listen when the patient speaks - look at the patient
- Provide an explanation before performing

The last one to one and one-half minutes of the initial contact is also important. Ask the patient if they understand or have any questions. Look at the patient when being spoken to and avoid turning your back to the patient while anyone is speaking. Don't conclude your final conversation en route to the door or when walking away. Confirm the patient's treatment plan or follow-up - this will serve to reinforce "buy-in" by the patient and facilitates compliance. End the initial contact with reinforcing-type of physical contact. When appropriate, personally escort the patient to the reception area. At a minimum, use the patient's name at the beginning and at the end of interaction.

Techniques for Effective Communication

Developing listening skills is essential for effective communication. Listening may be categorized as active, reflective and empathic. Active listening entails the turning of your head or eyes toward the patient and nodding occasionally while using facial expressions of acknowledgement. Reflective listening entails repeating key words and phrases that the patient has used. Empathic listening entails acknowledging the patient's feelings or concerns. Developing these types of listening skills will facilitate good rapport and effective communication. As a loss prevention measure, unrealistic patient expectation can be minimized if not avoided.

Unexpected vs. Unacceptable Outcomes

It is important to increase your communication with the patient should a complication or unexpected outcome arise. It is at these times that many patients feel abandoned. Maintain rapport by explaining why the complication may have occurred. Avoid becoming defensive. Frequently, the primary motivating factor for litigation in the face of a complication is the patient's feeling that their questions have not been adequately addressed. This leads to frustration, disappointment and ultimately anger - often vented by visiting an attorney.

Staff Communication: Liability or Asset?

From a risk management standpoint, effective communication must extend to your staff. It is the office staff that represents the first, last and most durable impression of your practice. Often, it is through your office staff that the majority of information is exchanged. All levels of the office staff should be trained regarding the importance of effective communication and apply each form of communication entailing your practice appropriately. The same risk management principles pertain to communicating by phone, fax, e-mail, written correspondence, advertisements, promotional material, educational brochures and even your financial policy. Staff communication should be an asset to your practice and not a liability. Inform staff of the following practices that undermine rapport and cause patient dissatisfaction:

- Ignoring a patient standing at the reception desk
- Failure to answer the telephone by the third ring
- Not knowing or misspelling the patient's name
- Failing to apologize
- Admonishing others in front of the patient
- Sending mixed signals on fees and payment options

While there may be some truth in the adage that "nice guys finish last", from a liability standpoint they are also the least likely to be sued. Remember: 60-90% of clinical time is spent communicating with patients. Don't allow inadequate, inappropriate or ineffective communication to undermine your dentist-patient relationship or increase your chances of being sued. -

PREVENTING ANESTHESIA CLAIMS

According to a morbidity and mortality study of operator administered anesthesia recently published by the American Academy of Oral and Maxillary Surgeons, deep sedation/general anesthesia accounts for nearly 75 percent of all anesthesia-related dental claims. The most prevalent type of complication sustained in anesthesia-related dental claims is vein/nerve injury. Death and brain damage occurred in slightly over 25 percent of claims. Other prevalent complications and injuries include:

- Falls
- Inadequate anesthesia
- Allergic reaction
- Story emergence
- Arrhythmia/resuscitation
- Acute myocardial infarction

News Alerts

New Jersey Awards \$11 Million in Dental Professional Liability Case

A New Jersey jury awarded more than \$11 million to the family of a man who died after having his wisdom teeth pulled. The patient had a genetic condition that caused swelling as a reaction to the trauma. Twenty-one year-old Francis Keller suffocated in August 2005 after the surgery. The man's dentist was cleared of negligence while the oral surgeon was found at fault. The family's attorney said the award is believed to be the largest award in the state's history for dental malpractice. (*News Day*, 3/9/09) -

Doctors Who Deliver Bad News Should Do It Better

Many patients are unhappy with how doctors deliver bad news. According to Robert Buckman, MD, an oncologist and author of "How to Break Bad News," communication skills are glossed over in medical school and residency training, and most doctors are never taught how to deliver bad news. "It's a practical technique that doesn't take long to master," Dr. Buckman says. Empathy not only reassures patients that they are in good hands, but also helps them process the information provided. However, sometimes instruction and practice are not enough. Some doctors fall short because they are uncomfortable doing it. Experts in doctor-patient communication stress the importance of acknowledging patients' emotional response. "Do it and they never forget you. Don't do it and they will never forgive you," Dr. Buckman comments. (*Los Angeles Times*, 3/9/09) -

Caveats for Risk Reduction – Documenting Phone Calls

It is not uncommon for those who meticulously document their charts to discount the importance of phone calls and messages. Patients have been lost to follow-up, diagnoses gone unmade or delayed and indefensible care rendered because of the absence of a phone message.

What's the most important phone call you'll receive? From a risk management standpoint it's the phone call you or your staff forgets to document. All phone conversations need to be documented in the patient's chart. Such documentation is not only in the patient's best interests, but will support what you were told (or not told) by the patient (or others) and could prove to be the pivotal piece of evidence in a defense. Countless claims have been attributed to inadequate documentation and non-meritorious cases forced to settlement because of a lack of evidence as simple as a phone message.

Documenting phone calls is a basic – but important – risk management practice. As such, First Professionals has phone message pads available which are designed to enhance your documentation practices. Keep one in your lab coat pocket, near the phone in your office, at home, in your car, and even your bedside table.

To obtain a complimentary supply of phone message pads, contact First Professionals' Risk Management department at (800) 741-3742, extension 3016, or fax your request to (904) 358-6728. -

MESSAGE PAD

For: _____

Date: _____ Time: _____ AM PM

Caller: _____

Patient: _____

Phone Number: _____

Nature of Call: _____

Instructions/Orders: _____

Physician Signature: _____

Date: _____ Time: _____ AM PM

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Legal FAQs For information specific to your state of practice, contact First Professionals' Risk Management department



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

Yes. Most employers are responsible for the acts of their employees. While specific statutory provisions may hold the employee directly responsible, it is the dentist who is primarily responsible for all delegated procedures. Depending on the allegations made, a dentist may also be held vicariously liable for the acts of others, including the dental practice or professional association.

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 First Professionals' Claims 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.

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.

Does HIPAA Privacy Rule compliance establish Security Rule compliance?

No. However, many of the requirements set forth by the Privacy Rule satisfy those required by the Security Rule in terms of a covered entity having in place appropriate administrative, physical, and technical safeguards for the protection of protected health information. However, the Security

Rule contains 18 security standards that must be implemented. Moreover, there are 42 implementation specifications that are either required or addressable. If implementing a specification is not reasonable and appropriate, the covered entity must document why, and must implement an equivalent alternative measure that is reasonable and appropriate.

Is there a reference site for information, guidelines, and instructions pertaining to HIPAA Security Rule compliance?

Yes. The reference site is <http://www.cms.hhs.gov/home/regsguidance.asp>. Refer to the Educational Materials section of the HIPAA Administrative Simplification link and the relevant information is located within the Security Materials link. -