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For additional information about Fortress’s pandemic responses, visit our COVID-19 Information and FAQ page or contact us at info@Fortressins.com

**Fortress’s COVID-19 Responses**

This Special Issue of the DDS Guardian is meant as a reference tool as practices reopen following COVID-19 pandemic mandated closures. It includes:

- Responsive efforts from our Claims and Underwriting Departments
- Friendly reminders of pre-pandemic risk management techniques which are still valid
- Links to COVID-19 documents including:

  - Updated! COVID-19 Patient Disclosures Form
  - New! COVID-19 Dental Treatment Notice and Acknowledgement of Risk Form

dd4dds.com
Understanding the Potential for Claims Against Dentists in the COVID-19 Crisis

Matthew Nielsen, JD, CPCU - Senior Vice President Claims and Underwriting

The impact of the COVID-19 pandemic on claims against dentists may not be fully realized for some time. Many courts are effectively closed with civil trials postponed, hearings continued, statutes of limitations tolled, and the pre-trial discovery process scaled down during the pandemic. Added to this are shelter-in-place orders and governmental guidance which temporarily narrowed treatment in dental offices to emergency conditions only, skewing the number and type of patients receiving dental care. Governmental proclamations also created a whiplash effect for dentists, obliging many to close their practices temporarily with resultant diminished access points for patients in need of emergency dental care.

Emergency dental treatment by dentists has provided many patients a safe alternative to visiting overtaxed hospital emergency rooms, while also preserving valuable resources for the treatment of COVID-19 patients. Those dentists that were able to meet this need should be commended and their actions should be remembered as we emerge from this crisis, particularly if litigation ensues.

Some unscrupulous plaintiff’s lawyers will not acknowledge the exigent circumstances of the pandemic when deciding whether a lawsuit should be filed against you and your practice. They will push ahead with a medical malpractice suit without properly considering: 1) the uncertainty of the applicable standard of care in an epidemic; 2) the potential that providers may have immunity protections; and 3) public sentiment which is overwhelmingly supportive of health care providers at present. Lawsuits will be pursued despite the challenge plaintiffs’ lawyers will confront locating experts willing to criticize their peers for acts or omissions during the COVID-19 crisis. Rest assured, the Fortress Claims team is prepared to defend you against the unique malpractice actions that will arise during this pandemic.

Provider immunity

It is also helpful for you to understand a few key concepts about immunity so that you can make decisions about whether it will apply to your care and treatment if you become embroiled in litigation. While the federal government and some states have provided immunity to healthcare professionals during this crisis, these protections apply almost exclusively to volunteers and the treatment of patients diagnosed with COVID-19. The reality is that both the federal legislation and most state executive orders are not all-encompassing enough, and these limitations may leave many dentists without immunity protection for non-volunteer dental care rendered to patients (even in emergencies) during the COVID-19 pandemic.

For those policyholders who have or are considering volunteering to treat patients diagnosed with COVID-19, federal and/or state immunities are more likely to apply. To ensure that you are appropriately protected, we recommend a review of the applicable immunity laws for your state as well the federal immunity laws in conjunction with the specific circumstances of your volunteer work. We have provided this information...
Understanding the Potential for Claims Against Dentists in the COVID-19 Crisis

on our website. And, if you become the subject of a claim as a result of your volunteer care to COVID-19 patients, you should know that Fortress will be there to assist you with the defense of the lawsuit even if the appropriate governmental attorney does not immediately take on the defense of your case. More specifically, Fortress will help you determine if any immunity protection exists and will also assist with the defense for your volunteer service.

Your Fortress claims department is monitoring COVID-19 litigation and filings around the country, assessing the potential impact of asserted allegations against others in the context of future lawsuits against dentists. Fortress’s vast experience in defending claims against dentists foretells a likelihood that plaintiffs’ lawyers will conjure new strategies and allegations to take advantage of the fluid nature of dental care during the pandemic. We have directed defense counsel to amass strategies for combatting potential COVID-19 claims, as the Company has done in the past for a myriad of unique legal challenges that have faced dentists.

Practice reopening
You have a part to play as well. As practices consider treating non-emergent patients, it is imperative for every dentist to use their clinical judgment to determine if they are ready and prepared to provide those services. An understanding of the latest guidance from the CDC, OSHA, state and local health departments, State Dental Boards as well as the ADA’s recommendations on reopening dental practices will assist in that determination. Considerations for this may include whether the practice has adequate PPE supplies, patient screening protocols, and specific infection control practices (e.g., in-office social distancing, sanitizing protocols, patient flow plans, constant masking) to name just a few. We also suggest that you remain vigilant in memorializing all aspects of patient care in the medical records, as well as documenting the steps your practice has taken to ensure patient safety during the pandemic. Fortress has prepared several new resources to assist with documenting these efforts. All of this will assist in providing valuable context for any claim that might arise in the future.

Rest assured, your Fortress Claims team stands ready to defend you in this crisis. Your commitment to appropriate patient care during the pandemic bolsters our resolve, while reminding us of the importance of Fortress’s goal to protect the profession of Dentistry.
Coverage Questions Amidst COVID-19

Frode Brudvik - Vice President Underwriting

The COVID-19 pandemic has placed many policyholders in uncharted waters. Fortress understands that coverage questions may arise as our policyholders practice during the pandemic. In this article, we’ll share common policyholder coverage questions and answers received to date.

As a reminder, the Fortress policy was developed to provide broad coverage to encompass your scope of practice as a dentist. The policy, subject to its terms and conditions, covers you for professional services which were provided, or which should have been provided to your patients, within the scope of your professional license. The policy does not contain a pandemic exclusion and it is Fortress’s intent to cover allegations of malpractice related to COVID-19. Like all insurance policies, coverage is triggered by specific allegations and can only be determined based on the facts of a claim.

During the pandemic, the scope of practice and treatment guidelines can change rapidly. In addition to following any rules or requirements established by your state dental boards, public health department, and other regulatory agencies, Fortress recommends that you follow the guidance of the CDC and your local, state and national professional associations and societies. Adhering to these guidelines may reduce the potential for allegations of gross or willful negligence which could impact coverage and may support the defensibility of a claim.

Below is a compilation of five common policyholder questions.

Am I covered:

... if a patient alleges they have contracted COVID-19 from my office?
Yes. The Fortress policy does not contain a pandemic exclusion. Coverage under professional liability policies is triggered by specific patient allegations and coverage can only be determined based on the facts of a claim.

... if an employee alleges they have contracted COVID-19 from my office?
No. The Fortress policy provides coverage for professional services which were provided, or should have been provided to your patients. Other coverages may exist under other insurance policies your practice has depending on the circumstances of the claim. Contact your local agent regarding any insurance coverage questions you may have.

... for teledentistry or virtual office visits?
Yes. If your patients are located in a state in which you are authorized or licensed to practice, and the treatment is rendered in accordance with local, state and federal laws, you are covered. To assist you in implementation of this technology, Fortress provides two forms. See page 7 for more information.
Coverage Questions Amidst COVID-19

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... for administering FDA authorized point-of-service COVID-19 tests to my patients?
Yes. If your patients are tested within the scope of your license and rendered in accordance with local, state and federal laws, you are covered.

... if I volunteer to perform treatment outside my scope of practice in response to federal or state requests for health care volunteers?
Fortress will be there to defend you if you are sued as a result of your volunteer activities. While working in an authorized volunteer capacity, it is also likely that you will be provided with federal or state-based immunity from civil lawsuits for your treatment to COVID-19 patients. As always, there are exceptions to the immunity for gross or willful negligence. If you plan to volunteer in response to a governmental request, we recommend you familiarize yourself with applicable federal and state websites to fully understand what is allowable under your license. If you volunteer, please notify us via e-mail to info@Fortressins.com so we can make note of the activity.

Fortress will continue to provide timely updates to our COVID-19 FAQs, and we encourage you to check the website often. Other coverage may also exist under other insurance policies your practice has depending on the circumstances of the claim. As always, please contact your local agent regarding any insurance coverage questions you may have.

We know these are challenging times and we will get through this together.
Clinical Documentation Remains a Prudent Risk Management Strategy

Stephen Pavkovic, RN, MPH, JD, CPHRM - Senior Risk Manager

Delivering care during the COVID-19 pandemic has raised new challenges for healthcare providers. No one can predict every source of potential, professional liability exposure or each patient allegation related to treatment during the pandemic. Despite this uncertainty, focusing on clinical documentation remains a prudent risk management strategy.

Given this dynamic clinical and regulatory environment, your clinical documentation may provide one of the key elements to respond to patient allegations arising during this period. This article will outline a few clinical documentation strategies and the Fortress resources that may assist in capturing your clinical decisions during the pandemic.

Clinical documentation strategies

In many ways, clinical documentation during the pandemic is the continuation of pre-pandemic good practices. Clinical documentation captures the presentation, examination findings, and a clinical differential diagnosis that forms the basis for a patient’s treatment plan. Previously published articles, Proper Documentation and Patient Care and Clinical Documentation for Dental Medicine, provide reminders of the importance of detailed clinical documentation.

Given the novel nature of the pandemic and the dynamic nature of clinical and infection control information, the potential professional liability exposures are unknown. However, including the basis for your treatment or delay of treatment decisions, the application of new clinical guidelines, and the utilization of additional resources in your documentation will help to memorialize your efforts to treat patients during this time.

Fortress offers resources to assist dentists in capturing additional patient information and documenting your clinical decisions during the pandemic. Below are a few examples of these resources.

During consultation and treatment, the Patient Disclosure form can provide you with information about a patient’s potential symptoms associated with the COVID-19 virus and their recent health history. The COVID-19 Patient Disclosure form along with the Health History form and prior records may help to determine the appropriateness of proceeding with treatment. Fortress forms can be edited to meet your local, state, and practice requirements. Many of these forms are also available in Spanish.

UPDATED! COVID-19 Pandemic Patient Disclosures

Updates were made to the Patient Disclosures Form released March 25, 2020. Download the latest version that includes:

- Updated symptoms
- Areas to document patient pre-appointment responses and assessments
Clinical Documentation Remains a Prudent Risk Management Strategy
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• The Patient Acknowledgement - Telehealth Consultation Services form can educate patients about the option of remote evaluation of dental health concerns and screening for dental emergencies while minimizing the risk of virus transmission for patient and providers.

As a reminder, the Fortress policy covers telehealth when your patients are located in a state in which you are authorized or licensed to practice, and the treatment is rendered in accordance with local, state and federal laws. The Telehealth Patient Safety Considerations is an informational document for policyholders considering the use of telehealth consultation services.

The COVID-19 Pandemic Dental Treatment Notice and Acknowledgement of Risk form can be used to document your patient education efforts about the increased risk of COVID-19 exposure with treatment during the pandemic.

NEW! COVID-19 Pandemic Dental Treatment Notice and Acknowledgement of Risk Form

Adapted from the COVID-19 Pandemic Emergency Dental Treatment Notice and Acknowledgement of Risk Form released March 25, 2020, this form is intended for use with any dental treatment.

Practice considerations
Providing care during the pandemic includes the evaluation of new clinical considerations and resources. By practicing within the scope of your license, adapting your infection control practices to meet the known COVID-19 risks, and utilizing Fortress resources, providers can support the delivery of patient-focused care. These approaches also establish a clinical record that memorializes the basis for your treatment decisions during the pandemic.
Your State Has “Reopened” - How Do You Move Forward?

Julie Goldberg, DDS - Education Coordinator

As dental providers plan to return to offering pre-pandemic services, the following questions may come to mind:

• Which procedures should I be limiting my practice to, if any?
• What changes will I need to make to the way I practice?
• My state now allows elective procedures. However, the CDC and OSHA continue to recommend only emergent dental procedures. Which recommendations should I follow?

Ultimately, the dental practice owner is responsible for the reopening decisions and implementing a plan to meet the demands of delivering safe care during the pandemic. A plan for reopening will include changes to current office policies and procedures based upon state regulations and recommendations as well as recommendations made by the CDC and the ADA.

After review of available resources, determine what is most appropriate for you, your staff, and your patients and document new protocols and training efforts. Given the evolving nature of information during this pandemic, a regular review of resources, an assessment of local conditions, and the application of your clinical decisions is necessary to determine when and how to treat patients during this time.

While the reopening steps for each practice is unique, the questions below are provided for illustration of opening considerations. The ADA has published the ADA’s Return to Work Interim Guidance Toolkit, which offers recommendations to address these questions and many other reopening decisions.

Prepare for the return to practice

• What are the current regulations in your state related to patient care? What are the current regulations related to PPE in your state?
• If telehealth is an option in your state, what are the current regulations related to telehealth? What is the best way to implement telehealth in your practice? Consider which procedures could/would be handled via telehealth. How will telehealth visits be documented?
• Is virus/antibody testing required of patients prior to dental care? If so, who is qualified to test? How are test kits obtained? How are results reported?

Prepare for seeing patients

• Consider how patients who were rescheduled/cancelled will be triaged for future appointments. How will this be communicated to patients? Are there special considerations for patients in a higher risk category?
• Consider which procedures your office will perform at this time. Will there be limits to appointment duration? How will this policy be documented and revised over time?
Your State Has “Reopened” - How Do You Move Forward?

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- Consider current infection control guidelines prior to reopening. How will these guidelines affect which procedures are provided at this time? How will updated infection control training, including donning and removal of PPE, for all staff members be documented?

- Will there be a screening process for doctors, staff, patients and/or delivery personnel who enter the practice facility?

- How will patient flow be managed in the office? Consider how patient escorts might be managed. Can a plan be developed to avoid patient to patient interaction in the office and maintain social distancing as defined by your state regulations?

- How will patient communication be updated? Consider communication of revised office hours, emergency contact information, screening and other updated policies and expectations prior to in-office visits.

Summary of Useful COVID-19 Resources

**Reopening**
- ADA Return to Work Interim Guidance Toolkit

**Legal/Regulatory**
- ADA State Mandates and Recommendations

**Patient Communication**
- ADA Return to Work Interim Guidance Toolkit
- Fortress COVID-19 Patient Disclosures
- Fortress COVID-19 Pandemic Dental Treatment Notice and Acknowledgment of Risk Form

**Infection Control**
- CDC Infection Control Guidance

**Telehealth**
- ADA Coding and Billing Interim Guidance: Virtual Visits
- Fortress Patient Acknowledgement - Telehealth Consultation Services Form
- Fortress Telehealth Patient Safety Considerations for Policyholders
Earn a 10% Premium Credit

Three-year premium credit course
Complete the course “Prioritizing Patient Safety” to earn three CE and a 10% premium credit on your policy for three consecutive policy periods.*

In this course, closed dental malpractice claims will be analyzed to identify how and when to implement risk management and ethical principles to enhance patient safety.

One-year premium credit courses
Complete any one-hour course online to earn one CE and a 10% premium credit on your policy for one policy period.* Complete a different course each year to renew your credit. Currently available courses:

- Implants and Impactions: What’s the Risk?
- Applied Ethical Principles
- Understanding HIPAA
- Treating Challenging Patients
- Anatomy of a Malpractice Suit

*All courses must be completed within 90 days of the effective date of the policy in order to receive the credit for that policy period. Maximum credit per policy period is 10%.

HOW TO ACCESS THE FORTRESS ONLINE COURSES
Log in to www.dds4dds.com
In the menu, click “Online Courses”

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