RISK MANAGEMENT
STRATEGIES TO REDUCE DENTAL LIABILITY
Fortress Insurance Company welcomes you to our program, “Risk Management Strategies to Reduce Dental Liability.” Fortress is owned and operated by dentists, and we only insure dentists. For over ten years, we have built up a comprehensive database of claims specific to the dental practice. The information from these claims allows Fortress to use teaching points from actual claims to provide contemporary and relevant risk management programs.

In this course, risk management strategies are applied to situations such as abandonment, supervised neglect, patient selection, electronic medical records and HIPAA and HITECH regulations. Incorporating risk management into your practice can help support the delivery of higher quality patient care, which will in turn help you avoid litigation, or lessen the severity of a claim.

In addition to this live program, Fortress offers risk management education and resources online through our website, www.dds4dds.com. The e-Learning Center is a resource for online risk management education, uniquely designed for the dental office. Our online programs address basic risk management issues as well as emerging risks such as cyber liability, the use of electronic medical records and social media. All courses are free of charge, offer continuing education (CE) credit, and are available on demand. You can also access a library of informed consent forms and other practice management resources in the Fortress Resource Center. I encourage you to log on to www.dds4dds.com and take advantage of these complimentary resources.

Lastly, as an added benefit to our policyholders, upon successful completion of this course, Fortress policyholders will receive a 10% premium credit, applicable for three policy periods, on their next policy term.

Sincerely,

Lewis N. Estabrooks
Chairman of the Board
Fortress Insurance Company
The following live presentation is dedicated to the education and scholarship of the dental community. It is meant to provide you with information regarding risk management topics. Because federal, state and local law varies by location and situation and changes over time, nothing in this presentation is intended to serve as legal advice or to establish any standard of care. Legal advice, if desired, should be sought from competent counsel in your state. This presentation does not modify the terms and conditions of your Fortress Insurance Company Professional Liability Policy. Please refer to your Fortress Insurance Company Professional Liability Policy for these terms and conditions.

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Fortress Insurance Company

- Owned and operated by dentists
- Only insure dentists
- Nationwide carrier
- Risk Management Education
  - Live Courses
  - E-Learning Center

Objectives

- Implement learned risk management strategies that focus on or consider ethical considerations
- Understand the legal and ethical considerations in obtaining informed consent, withdrawing from care, patient abandonment, and supervised neglect cases
- Apply risk management strategies to help reduce EHR charting errors and potential liability
- Understand basic HIPAA Privacy, Security and HITECH regulations and how to apply risk management principles to reduce your risk and potential exposure
Goals of Risk Management

• To increase patient safety
• To reduce exposure to a claim
• To make a claim more defensible
• To minimize financial loss

Licensing Board Actions

Know Your State Regulations!

• All 50 states have a dental board
• State Dental Practice Acts (or equivalent) are freely available online.
• Role is to protect the public and ensure that only those who are qualified to practice dentistry
How Important are Patient Relationships in Avoiding a Board Investigation?

- Many Board claims stem from dissatisfaction with the treatment result.
- Others come from patients who suffered no injury, but still reported the dentist to the Board.

Sanctions Include

- Penalties and fines (not covered under insurance policies)
- License suspension or revocation
- Required additional training

All It Takes...

Is a simple letter to the dental board claiming, “My dentist did a bad job on my teeth. Please investigate Dr. X.”
Ethics

Professionals are held to unique legal and ethical standards in their chosen profession.

In addition to complying with the law, do the right thing to serve the patient’s best interest.

ADA Code of Ethics
http://www.ada.org/194.aspx

Characteristics Of A True Professional

- Specialized knowledge of value to society
- Intensive academic course of study
- Standards of practice
- Code of ethics
- Organized association
- Service orientation
Ethical Case Study: Insurance Fraud

• 39-year-old presents with the chief complaint she “hates her partial denture” and wants a porcelain bridge
• Fit and appearance of partial is poor, she has excellent perio health and her occlusion would tolerate a fixed or removable partial
• Explained to patient that she will not have occlusion on tooth #3 if a fixed partial denture is made. Patient wishes to proceed with fixed denture


Ethical Case Study: Perio

• 48-year-old patient presents with a chief complaint of “gaps” between his teeth
• Recently acquired dental insurance and wants “gaps” filled in with bridges
• Patient maintains very poor oral hygiene and feels his teeth are a “nuisance” and the dentist should take care of them
• Generalized chronic periodontitis with 4-6 mm pockets and generalized bleeding upon probing
Ethical Case Study: Perio

• Three appointments are scheduled with the dental hygienist, but the patient leaves during the second appointment stating “I don’t have time to brush and floss, that is why I pay you,” “Let’s skip the gum work and get on with the bridges”
• Patient offers to sign a “waiver” stating that he is aware of the gum issues, but chooses to have the bridges made
• You attempt to explain your concerns with the patient’s perio status
• How do you proceed?


Ethical Case Study: Perio

• Patient has been difficult and non-compliant from the start
• Is the dentist obligated to treat this patient?
• Is the dentist’s sole obligation to do what the patient requests?
• Is the patient making a reasonable request?
• Is it ethical to proceed with the patient’s request?

Ethical Case Study: Elderly Patients

• 79-year-old presents for exam, no health concerns, no medications
• Exam reveals several areas of missing teeth and moderate perio involvement (gen 4-5 mm probings with mild attachment loss)
• Oral hygiene is fair at best, #30 pulp necrotic with drainage and furcation involvement
• Patient states she has lost several “plates” and wants permanent bridges
Ethical Case Study: Elderly Patients

• Discuss need to extract #30, periodontal treatment, and pre-prosthetic treatment before the fixed prosthetics can be fabricated
• Patient agrees, but asks that you discuss treatment with her son
• Halfway through your case presentation, he stops you and states bluntly “Mom is losing it, take the rest of her teeth out.”

Ethical Case Study: Elderly Patients

• Son does not think his mother needs all this “expensive” dental treatment at her age. Requests that you make full dentures.
• How would you proceed? What are the issues?


Additional Legal and Ethical Considerations

• Informed Consent
• Falsification of Records
• Confidentiality
Informed Consent

- A dentist has a legal, ethical and moral duty to respect patient decision
- Disclose all information that enables the patient to evaluate all options available and weigh the risks
- Withholding information creates legal exposure
- Contributes to better treatment outcomes and reduces malpractice risk

Falsification of Records

- NOTHING destroys your credibility like altering a record!
- Generally sufficient to show actual malice
- Sends the wrong signal to jurors, can shatter credibility
- Creates the presumption of negligence
- Can lead to criminal charges (spoliation)
- Infers gross malpractice

Confidentiality

- Verbal and written communications
- Protected Health Information (PHI) should not be disclosed without patient’s permission
- HIPAA requires a signed Notice of Privacy Practices or authorization as appropriate
- Violation could incur liability
Conclusion

• Incorporating ethical principles can support sound judgment and good decisions
• Provide the best care possible
• Treat your patients as you would expect to be treated

Additional Resource
Fortress e-Learning Center: “ALL 201 - Ethics for the Healthcare Professional” course

Treating Challenging Patients

Challenging Patients

Effects
1. Doctor-Patient relationship
2. Completing care & treatment goals
3. Responsibility for outcome
4. Liability

Questions
1. Are you willing to remain involved?
2. Do you need to revise: plan, duties, responsibilities, expectations?
3. If yes, how?
Patient Duties

Patient Duties as treatment partners
- Provide adequate history, accept plan & risks
- Home hygiene, see specialists, comply, show up, complete care, pay

You may have to change the plan & shift responsibility if patient’s choices affect treatment results, risks

Dentist’s Options

- Gain compliance: Complete case as planned
- Add requirements: DDS will treat if patient complies
- Informed Refusal: Patient accepts risks of refused care
- Withdrawal: When risks are unreasonable

- Patients accept consequences of their actions
- Shift responsibility when justified

Dentists: Making a Decision

- Document the Foundation
  - Noncompliance and attempts to gain it, impact on plan and risks
  - Give notice of consequences, responsibility and choices
- Make the Decision
  - Q: Are unreasonable results or risks likely?
  - Options if yes:
    - Informed refusal, added conditions, or withdrawal
  - You cannot be responsible
  - Can’t serve patient’s best interests
The Abandonment Question:

ADA Ethical Code: Abandonment:
“Once a dentist has undertaken a course of treatment, the DDS should not discontinue that treatment without giving the patient adequate notice and the opportunity to obtain the services of another DDS. Care should be taken that the patient’s oral health is not jeopardized...”

Also consider state law for additional requirements.

When Patients Disappear

• Patient technically already ended the Doctor-Patient relationship
• Confirm closure
• Not a question of withdrawing from care
  – Clarifies responsibility

Components of Closure or Withdrawal letters, certified RRR

• You can’t serve patient’s best interests because of patient choices (summarize)
• You tried and failed to gain compliance
• You cannot be responsible
• Patient will be responsible for jeopardizing own health, results (summarize)
• Need to find DDS whose advise will follow to complete care
• Treat emergencies for limited time? No fee?
• Offer to forward copy of records, if authorized
Root Canal: Patient Leaves Practice

• Facts
  – Patient disappears after RCT #31 (pain gone)
  – Tooth temporized, needs restoration
  – No shows, doesn’t answer calls
• Options: If patient refuses to return & complete, establish closure:
  – Confirm patient’s choice to leave practice, accept consequences, establish closure if patient rejects treatment, assume completing elsewhere
• Document: Patient on notice of non-compliance, consequences and shift in responsibility: confirm with closure letter

RCT Case: Closure Letter

Confirm Patient already ended the relationship:
1. Treatment incomplete: Needs to return, restore #31
2. Patient failed to return & complete restoration
3. Patient will be responsible for consequences: infection, crown won’t fit, lose tooth, etc.
4. Assume seeing another DDS whose advice patient will follow: no intent to return
5. Wish patient well, but DDS cannot be responsible for risks the DDS can’t control

Considering Withdrawal

• When “Patient of Record” is jeopardizing health
• Is your care likely to result in:
  – Unreasonable results or risks?
  – If yes, patient should consider a new DDS whose advice patient will follow after X-rays?
  – Beware when patients have no other options:
    • Consider informed refusal
  – Consider patient’s best interest
• Document your assessment and reasoning
• Don’t withdraw from care over money only
Orthodontic Cases

Extended treatment plans
• Can you achieve acceptable results?
• Common risks including root resorption, de-calcification

Document
• Non-compliance
• Developing complications
• Parents accept responsibility, conditions or withdrawal option

Ortho Case: Extended Plan

Facts
• General DDS treats 14 year old girl
• 2 year treatment plan in 2003, but poor compliance for 4 years
• On 6-20-07, parents told about lack of progress due to no-shows, delays, and risk of root resorption in upper incisors (x-ray taken)
• Need to complete ASAP to reduce further harm
• Patient disappeared for 6 weeks after OMS exposed un-erupted tooth, appliance wasn’t attached
• Dentist couldn’t reach parents, elected to withdraw

Orthodontic Case

Compliance Letter
Advised parents:
• Recent root resorption, upper incisors
• Need to expedite and complete care
• Despite exposure of tooth, no-shows continued
• Long term prognosis remained questionable
• Offered to help parents find a new practitioner
Orthodontic Case

Letter: Good idea but not enough

- No notes about checking for complications for 4 years
- No earlier warnings of consequences of delays
- “Continued concerns” voiced at 4 years, but no earlier concerns, warnings, instructions to parents
- No shift of risk to parents if behavior didn’t improve: damage already done at 4 years

Risk Management Points

1. Spell out patient/parent duties at the start
2. Chart non-compliance along the way, consequences, and what is expected, who is responsible
3. Extended treatment plans require progress checks and revised plans
4. Shifting responsibility requires timely charting and notice: communication, non-compliance, consequences from choices
5. Attempt to withdraw at 4 years too little, too late

Informed Refusal: Parents accept responsibility for compromised results, risks

Periodontal Case Issues
**Periodontal Case: Supervised Neglect**

**Facts**
- 56 Yr old man seen over 50 times (1978 to 2007)
- 4-8-97: “prophy, exam, bleeding. Should see a periodontist”
- 10-16-00: “Prophy exam. Moderate bleeding, rinsed. Patient aware of perio problem”
- 2004: “perio status deteriorating, stressed 2 to 4 month recall or see periodontist or will lose teeth with neglect”

**Perio Case: Supervised Neglect**

**Facts**
- 2004 to 2007:
  - Returns inconsistently for “perio prophy”, has extractions.
  - In 2007 there are 15 notes about TMI referrals, bruxism, etc.
- 5-7-07:
  - Patient seeks new DDS for a perio exam, bone loss & bruxism
  - Referred to periodontist: Diagnosis: advanced periodontal disease

**Patient’s Response:**
- Unaware of perio until recently
- Lost several teeth the prior DDS treated
- Hired a lawyer

**Last Page of Chart**

- 2004: Recommends a periodontist or will lose teeth (but didn’t follow up)
- 2005: #10 looks better but:
  1. What was prior condition?
  2. No perio details
  3. No continued warning

By 2007: Patient leaves; Someone else diagnosed extent of problem

Fee: separate from progress notes
Incomplete Charting

Dental Chart
Perio details and progress not charted

Perio Case: Damages

2007 After seeing new DDS & periodontist
- Extract 14, 15; poor prognosis for 3, 8, 18, 19, 31 & 32
- Severe bone loss, advanced perio,
- $15,000 Plan: perio surgery all quads, tissue regeneration, extract 1, 3, 31, 32; 4 implants & bone grafts, replace bridge 7-9, guarded prognosis

Perio Case: Analysis

Charting is inadequate
- No baseline perio data, follow up:
  1. Did the DDS recognize and categorize perio disease?
  2. Did patient understand consequences?

Consequences not relayed until 2004
- DDS didn’t do enough to warn
- He was “supervising” but not addressing an evolving problem adequately
Risk Management Points

1. Documentation - Baseline Information is needed
   - Signs/symptoms, comprehensive exam, which teeth? Decision?
   - Follow up, treatment plan

2. More advice to patient needed:
   - Risks of refused referral from 1997
   - What are treatment options? What is plan, risks?
   - Notice to patient: Unacceptable deterioration is likely if patient fails to see periodontist, accept a plan, comply
   - “Being aware” of problems should include accepting consequences of choices

Risk Management Points

3. Informed refusal should include:
   - Patient accepts consequences of refused care
   - The DDS should list requirements for staying involved

Withdrawal option
   - If Patient fails to meet requirements
   - Use as tool to gain compliance, and when necessary, exercise it

Good Reference: “Management of the Non-Compliant Perio Disease Patient” Dr. Hughes, Fortress Guardian, January 2012, Vol. 12, No. 4

Shifting Responsibility

Foundation For Shift
   - Document when patient fails to comply with duties
   - Put on notice of risks and consequences
   - Patient choice:
     - Comply or accept responsibility for risks, face withdrawal
   - Propose mutual agreement to remain involved
     - Specify duties, consequences and follow through

Shift Responsibility
   - Closure Letters: when patients bail
   - Informed Refusal: if risks are reasonable
   - Withdrawal: when you can’t and won’t be responsible
Withdrawing

Last resort
• Unacceptable results or risks are likely
• Can’t serve patient’s best interests

Document reasons
• Chart + Withdrawal letter, Certified

Informed refusal may be only or best option
• No other reasonable treatment options, no money but care is needed

Steps to Resolving Problems
1. Understand the situation
2. Develop a plan
3. Reach an agreement with your patient when possible
4. Document your decision and reasons for it

Challenging Patients are not all the same
• Call Fortress claims professionals for help
• Go to www.dds4dds.com for sample letters, consent forms and other additional resources

Patient Selection
Patient Selection

- Practice within your comfort zone
  - Refer patients as appropriate
- Anticipate situations that might compromise care
- Provide patient centered care
- Meet our patient’s needs and expectations
- Develop good doctor-patient relationships

Subsequent Treater Case

- Patient visited general dentist for acute toothache with apical pathology in #19
- Tooth opened and pulp extirpated
- A file broke in the mesial canal but patient was not informed
- Patient didn’t experience further pain so did not return for completion of treatment

Subsequent Treater Case

- 2nd acute exacerbation of the pain and swelling at #19 several months later
- Doctor on vacation so patient sought treatment with another DDS
- Subsequent DDS informed patient the RC had not been completed and there was a broken file
- Subsequent DDS, “if you had only come to me first, this never would have happened”
- Litigation
Continued Treatment

- Subsequent DDS retreated the endo.
- Diagnosed and treated extensive perio and provided restorative treatment
- Patient complained of sensitivity in #30
- Attempted to access tooth through the crown
- Led to perforating through the furcation requiring extraction

Second Suit Filed

- Patient hired same plaintiff attorney from first lawsuit
- Subsequent DDS’s own statement now used against him, “if you had only come to me first, this never would have happened”
- Statements you make can be used against you

Risk Management Tips

- Be cautious with comments related to:
  - Necessity of referring to a specialist
  - Practicing beyond level of competency
  - Substandard treatment, misdiagnosed problems
- Avoid commenting on another’s work. We all have cases that have turned out less than perfect
- You can only comment on what you see today and propose a plan
Unrealistic Expectations Case

- Beauty pageant contestant presented for teeth straightening
- Suggested treatment: Invisalign
- Patient was told the treatment would be complete by the time of the pageant
- Teeth did not reposition in time

Resulting Litigation

- Lawsuit alleged that the orthodontic services would be completed before the competition and that it would help her win
- Since she didn’t win, patient requested a refund of the treatment, along with pain and suffering and loss of future income

Implied Warranty

- This was not a malpractice claim, but instead one of failing to meet the warranty or implied guarantee
- This is a contract law term for certain assurances that are presumed to be made in the sale of products and/or services
Risk Management Tips

• Do not tell a patient any treatment will last for X years
• Be careful quoting statistics
• Remind the patient that multiple factors may affect the longevity of dental work

Risk Management Tips

• Document all discussions, including alternative treatments
• If patient is unhappy with your treatment plan, suggest the patient get a second opinion
• Remember to work within your comfort level

Family Situation Case

• 10 year old presents with rampant decay
• Recommended extractions, endodontics, restorations and ortho treatment
• Mother requested and consented to hospital treatment under anesthesia
• The dentist treated the child per the mother’s request
Family Situation Case

- Dentist was unaware the parents were divorced
- Per custody agreement, the father was required to pay and give consent for treatment
- Following treatment, father refused to pay
- Several years in litigation with no amicable solution

Risk Management Tips

- Identify the patient’s legal guardian before you obtain informed consent and determine financial responsibility
- If necessary, require all parties to agree to consent and financial agreements
- Use forms to document this agreement

Treating Within Your Comfort Zone Case

- 40-year-old with a history of pericoronitis in #32
- Patient requested the tooth be extracted
- Deep vertical impaction with part of the crown exposed, x-ray did not show the apex of the root
- Procedure done under local, only ½ the tooth removed after an hour.
- The DDS referred the patient to an OMS
Treating Within Your Comfort Zone Case

• OMS saw the patient immediately
• Took new panorex and noticed apex of the root was only millimeters from the inferior border, involving the inferior alveolar canal
• Patient was given pain meds and antibiotics, further treatment was delayed to assess potential nerve damage

Treating Within Your Comfort Zone Case

• Next day, patient was still numb
• OMS removed the remaining root, repaired a severed nerve and reduced a fracture.

Litigation

• Patient never regained full sensation
• Patient filed suit
• At his deposition, DDS admitted he lacked experience to perform the surgery
• This case was indefensible
Risk Management Tips

- Procedures can become more difficult than expected
- Consider your comfort zone and refer the patient in a timely manner
- Ensure you have adequate radiographs before treatment

Pediatric Sedation

“Sedation is becoming more common in pediatric dental procedures because so many children are coming into dentist’s offices at younger ages with caries, and they sometimes need extensive treatment”
- Indru Punwani, D.D.S., M.S.D., a spokesperson for the AAPD

Headlines

“Are pediatric sedation deaths on the rise?”
In a 15 month period, “four pediatric patients have died in the U.S. after undergoing sedation prior to dental treatment - a tragic reminder of the need to ensure proper sedation training and emergency preparedness.”
- Donna Domino, Features Editor, www.drbicuspid.com
Headlines

“Chicago dentists settle out of court in sedation death”

“Two Chicago dentists who had their licenses suspended...because a patient died while under sedation in their office must now pay the patient’s family $3.9 million.”

- Kathy Kincade, Editor in Chief, www.drbicuspid.com

Pediatric Sedation Case

- Four year old
- Wt. 30 kg.
- PMH healthy
- Parents and doctor felt required sedation for “accurate and humane” completion of dental procedures
- Prescription for liquid Versed (midazolam)

Pediatric Sedation Case

- Versed Syrup 2mg/ml
- Disp: 30ml
- Sig: 1 tsp. po. on awakening, 1 tsp. po. on leaving for office, 1 tsp. po. when arrives at office.
Pediatric Sedation Case

• Mom stated the child would be unmanageable in the morning
• 30 minute drive to office
• Instructions reviewed with parent - DDS stated he would decide if the child needed the third dose at the office

Pediatric Sedation Case

• The appointment was for 8:00 am
• Mom got up late and was in a rush to dress the child and leave
• On leaving the house she gave the entire 30 ml of syrup
• The child was placed in the back seat in a car seat with a winter coat on

Pediatric Sedation Case

• When she arrived the child was asleep
• Had to wait for the office personnel to open the office
• Sat in the waiting room
• When she removed his coat she was concerned because he did not appear to be breathing
• Notified the receptionist
Pediatric Sedation Case

- The doctor was late to arrive
- Office staff went to get another doctor in the building
- Resuscitation equipment was not readily available
- 911 called

Pediatric Sedation Case

- Child pronounced at the ER
- Mom thought she was to give all the syrup
- Doctor gave enough for several visits so he would not have to write another prescription
- Doctor did not like to have to wait for the effects of the Versed

Pediatric Sedation Case

- Versed HCI syrup is indicated for use as a single dose (0.25 to 1 mg/kg with a maximum dose of 20 mg) for preprocedural sedation and anxiolysis in pediatric patients
- Versed HCI syrup must only be administered to patients if they will be monitored by direct visual observation by a health care professional
Pediatric Sedation Case

- Litigation ensued
- Settlement

Risk Management Tips

- Do not give sedation medications until the patient is in your office.
- In a designated area
- Patient needs to be under continuous supervision by staff person

Pediatric Sedation Concerns

- Lack of insurance coverage mandate greater number of office based sedation for patient behavior; especially Medicaid
- Doctors utilizing antianxiety/antianxiety meds for patients of all ages
- Clinical documentation; ASA classification; clearance from PCP; ventilation equipment
- Doctor must be aware of:
  - State Board of Dentistry permits/regulations concerning administration of sedation and training
  - Potential for over sedation and loss of patient airway
- ADA Recognition and Management of Complications during Minimal and Moderate Sedation CE course: http://www.adaceonline.org
Summary

- Practice within your comfort zone
- Do not hesitate to refer
- Consider potential complications and whether you and your staff are prepared to manage
- Pediatric Patient Sedation Concerns
- The treatment you provide will be judged to the level of a specialist

Electronic Medical Records

Issues with Paper Records

- Legibility
- Require storage space
- Difficult to backup
- Can be lost – vulnerable to being stolen or information mis-filed or missing

- A 500 GB hard drive can store the equivalent of approximately 51,000 such charts.
- Paper charts of a moderate size can equal 10 MB of data
FAQ’s

• After I convert my paper records to electronic, what do I do with the original record?
• How far back do I need to go when converting paper charts to electronic records?
• When sending personal health information over the internet, does that information need to be encrypted?
• My EMR system does not allow the patient to initial every complication on the informed consent form. Is one signature at the end of the form acceptable?
• What should I look for when choosing EHR software?

Benefits of EMR

• All team members have access which contributes to more coordinated care
• Patient Portal benefits
• Lab results
• Clinician’s notes assist with follow up care

Risks of EMR

• “ALERTS” such as Allergies, physical conditions can easily be overlooked
  – DDS and staff become de-sensitized and ignore them
• “Cut and Paste” is dangerous – prevents notes from being unique to the patient and breeds ‘short-cuts’ - Can result in incorrect information
• Don’t allow staff to complete “pull-down” selections for the provider in the spirit of “saving time for the doctor”
• Entries that appear deleted
Use Caution with Allergies

Pre-populated Statements in Templates

• Saves time
• Can be an accurate entry for most cases
• If the statement is not accurate it should be deleted!
• From a risk management perspective, if the statement is not accurate and not deleted, the record may appear confused

Example of Pre-Populated Entry

**Subjective/History of Present illness:** []
**Objective:** []
**Blood Pressure taken today:**
Oral mucosa within normal limits
Pharynx Clear
No cervical lymphadenopathy or masses
Objective:
Head and Neck Exam: No facial asymmetry. The neck is supple without any lymphadenopathy or masses appreciated.

Blood Pressure taken today: 139/76

Intraoral Exam:
The oropharynx is clear. She is completely edentulous and the dentures do fit rather loosely. 3 small 2 x 2 millimeter ulcerated areas right buccal mucosa with erythematous borders. The areas do not appear to be in an area that would be irritated by the denture. No erythema or ulcerations appreciated under the tongue or on the mandibular ridge.

Oral mucosa within normal limits
Pharynx Clear
No cervical lymphadenopathy or masses

This should be deleted

Deleted Record Looks Suspicious

Blank Entries
No Record if you delete after the prescription has been printed!

Be sure to check state requirements for prescription paper – may be stricter than the Federal requirements

Summary

• Whether you use conventional paper or EHR, your records need to be legible, accurate, and complete
• Another similarly trained professional should be able to understand and follow your thought process in regards to treatment
• ADA website for additional information on EHR  www.ada.org/news/4306.aspx
HIPAA
Privacy, Security, HITECH

Overview

- Privacy Regulations enacted in 1996 contains original privacy rules
- Security Regulations address the safety of electronic medical records
- HIPAA HITECH enacted in 2009 promotes adoption and meaningful use of health information technology

Who, What is Covered

- **Covered Entities:** healthcare providers, plans and clearinghouses
- **What is protected:** private healthcare information electronically maintained
  - All Protected Health Information (PHI)
  - State confidentiality laws also apply
PHI in the Dental Office

- Confidentiality in office
  - Front office: sign in (name only), schedules, etc.
  - Written charts: locked or secure within office
  - EHR
  - Oral conversations
  - Patient information anywhere in the office including on computer screens
- Give Patients Notice of Privacy Practices
- Business Associate Agreements

Rights and Duties

- DDS: Restrict access to only those who need it in the office
- Patient: Right to authorize disclosure
  - Exceptions: billing, other treaters, certain healthcare operations
- Conversations: Beware of the environment
- Back up: computers & secure system, off site
- Destroy records properly: (shred, hire service)
  - Beware of hard drives, scanners, fax machines, copiers
  - State law also addresses how to store, discard

Case 1: Insurance Appeal Disclosure

- Patient underwent extraction under sedation
- Insurance refused to pay for sedation
- Office manager drafted an appeal to email to the insurance plan
- Included examples of other patients whose sedation procedures were covered
- Patient was blind carbon copied on the email
Case 1: Insurance Appeal Disclosure

- Initial patient filed complaint
- Inadvertent disclosure
- The doctor was required to contact each patient, explain the PHI disclosure to patient, offer remediation measures.
- Staff was required to complete significant HIPAA education

Risk Management Tips

- Understand what is considered PHI and protect it
- You need permission from other patients before using their information to challenge an EOB
- Educate yourself and your staff to help avoid a violation

Case 2: Chart Sent to Ex-Husband

- A recently divorced woman moved out of state and hired a new dentist
- She requested her records be sent directly to her and her new DDS
- Office sent copies of her records to her old address, ex-husband received, opened it thinking it was a invoice
- Ex-husband discovered that she was pregnant two years ago and never disclosed to him
- Is this a HIPAA violation?
Assessing Breach and How to Repair

- Although unintentional, damage was done
- Each breach situation is unique
- Was the incident intentional or accidental?
- Are there systems that allow a breach?
- Are staff not properly educated?

Caution: Electronic Displays, Schedules

- In offices with several operatories and assistants, staff need access to schedules in several locations
- Daily posting of schedules in each operatory, along with procedures to be performed for each patient may allow patients to see PHI
- This could be considered a HIPAA violation

Common HIPAA Questions

Q: What if patient restricts disclosure to new DDS?
A: DDS may choose not to treat without needed records. Also, a warning sign of things to come?

Q: What if the patient asks you to amend his or her chart, but the correction is wrong?
A: You are not obligated to change a chart based on the patient’s request. You may choose to chart what the patient asked and why it is inaccurate. Charting information you know is wrong, even to accommodate a patient, could be considered a falsification of records.

Q: Can I ask a parent’s marital status?
A: Yes
Conclusion

• Each office should have a HIPAA compliance program
  – Written policies and procedures: educate staff, correct errors
  – Designate a compliance officer, complaints staff
  – All staff members must be educated and trained, and know procedures
• Ultimate goal is to ensure confidentiality and security of PHI

Course Summary

• **Objectives**: Review ethics, challenging patients, confidentiality and electronic records

• **Common themes**:
  1. What is in patient's best interest?
  2. Consequences follow patient choices
  3. When you can't provide professional services to patients - shift responsibility and establish closure
  4. Risk Management helps promotes patient safety (and protects DDS)

Course Summary

*We Are Your Team*

• **Agents**: insure things you can’t control
• **Risk Management**: address things you can control and understand how the courts assess dental claims
• **Claims Professionals**: guidance
• DDS4DDS and reference materials

Q & A?
Thank you for participating!
References

• www.dentalethics.org
• http://www.hhs.gov/ocr/privacy/
• http://www.hhs.gov/ocr/privacy/hipaa/administrative/securityrule/index.html
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