

Risk Management Issues Pertinent to Today's Dental Practices

by Donna Mack, DDS, Vice President - Dental Operations

Every day I receive numerous phone calls from dental practices requesting advice and information on a variety of problems and risk management issues pertinent to today's busy practice. Here are two good questions that I recently received. Have a pop quiz at your next staff meeting and assess your practice's risk management IQ in these areas.

I suspect one of my patients has stolen a prescription pad from my office and is using it to obtain more of the narcotic I prescribed for him in the past. Should I report him? Can I warn other dentists about him?

Reporting the patient

Though North Carolina law requires pharmacists to report patients to the Medical/Dental Board who forge prescriptions or otherwise try to fraudulently obtain controlled substances, it does not require the same of physicians and dentists. Physicians and dentists in North Carolina may (but are not compelled to) alert pharmacists to patients whom they suspect of substance abuse. When practitioners suspect a patient of substance abuse, they may (but are not compelled to) contact other practitioners to whom they have referred the patient to compare notes. They may discuss what drugs the patient has been given and in what amounts in order to determine whether the patient is fraudulently obtaining a narcotic. Any other release of information by a practitioner regarding a possible substance-abusing patient, except as described below, would violate the dentist-patient privilege.

Releasing patient information

The North Carolina General Statute, at section 90-107, allows dentists and physicians to release "[p]rescriptions, order forms and records" to federal and state officers, and to authorized employees of the Department of Human Resources, to aid them in their prosecution of patients who have falsified prescriptions or otherwise violated the law pertaining to controlled substances. Such a record release will not violate dentist-patient confidentiality. However, the access allowed by the statute is not unlimited. The practice may give out information regarding the drug, conversations regarding the drug, and medications lists: information essential to ascertaining whether the patient is forging prescriptions and/or giving incorrect information to the practitioner.

If a state or federal officer or employee of the Department of Human Resources should contact an office seeking patient information, the office should take these steps:

- Validate the identity of the requesting party. Request a card with his or her name and place of employment and a driver's license.
- Only release that information directly related to the prescribing of the controlled substance (copies of prescriptions, medication profile listing the controlled substance, refill dates with amount, phone contact from the patient requesting refills or scripts, etc.). Any other information on the same pages should be covered before copying.
- Have the requesting party sign a form indicating his or her receipt of the information. The form should state that the named party is receiving information directly relating to the use of controlled substance by the named patient and should indicate the date it was received and the staff member who released it. The signature should be witnessed. Once signed, the form should be placed in the patient's record.

How long do we have to retain our dental records? Does this also apply to records of deceased patients?

Medical Security's first and best advice on record retention is that all dental records from all sources should be maintained in their original form forever. However, as this is not practical for many dental practices, we recommend that 1) charts be kept for ten (10) years after the last time the patient was seen by the dentist, 2) charts be kept until the patient is 28 years old if the patient was a minor when he or she was treated, and 3) charts be kept for two (2) years from the date of death for patients who have expired. Since radiographs are not legally different from other forms of patient records, the foregoing advice applies to them as well.

This advice is based on the North Carolina statute of limitations for civil actions, N.C.G.S. § 1-15(c); 1-17(b). The purpose of this recommendation, from a risk perspective, is to assure that, should a claim of dental malpractice be brought against the practice, the chart upon which the claim is based will be available to assist in defense of the claim. With varying statute of limitation periods available to a plaintiff, the longer you retain your records the better!

It is important to remember that records can be made into microfilm or microfiche, but such copies do not always carry the same legal weight as the original form. For reasons of patient confidentiality, original records being sent for record destruction must not leave the office in a readable form. Therefore, discarded records should be shredded or incinerated. If you contract with an outside firm to remove and dispose of your records, choose a bonded service. The service should provide the practice with a guarantee that the information contained in the records will be kept confidential and that the records will be destroyed completely. All records leaving the dental office, including billing and demographic information regarding patients and even employment records, should be disposed of in this way.



Dr. Donna Mack is Presented with the NCDS Special Recognition Award

At the North Carolina Dental Society (NCDS) Annual Meeting, held on May 18, 2006, our own Donna Mack was presented with the Special Recognition Award. This prestigious award is given to an individual who deserves recognition for a specific achievement or an extraordinary deed related or unrelated to dentistry. Donna was recognized for her outstanding service to dentists in North Carolina both in her role at Medical Security and also in her role as a volunteer with many NCDS activities.

Donna is Vice President of Dental Operations for Medical Mutual Insurance Company of NC. She serves on the PIAA Dental Programs Committee. She is responsible for conducting Dental Risk Management Seminars throughout NC. Donna has served on the Operative Dental Faculty at UNC and Emory, and the Department of Prosthodontics at the University of Pennsylvania. She also served as a registered lobbyist for the NCDS during the 1993-1994 legislative sessions and was a member of the NCDS Legislative and Insurance Committees. Donna was in private practice in Atlanta, GA, Philadelphia, PA, and Waynesville, NC.

“Consent to Settle” Protects Dentists

by David Sousa, JD, MBA, Senior Vice President and General Counsel

Several years ago at a District Dental Society meeting, it was reported that another professional liability insurance carrier serving North Carolina dentists may have misled its insureds regarding its “consent to settle” clause.

Apparently, this carrier maintained it would settle a claim only after obtaining the insured’s permission. However, it failed to mention that if it wanted to settle the claim and the insured refused to consent, then, if the matter was tried resulting in a verdict against the dentist, the company would only pay that dollar amount which it could have paid to settle the matter pre-trial.

This provision in a professional liability policy is known as a “hammer clause” and greatly diminishes the benefit to the dentist of having a “consent to settle” clause. In this situation, the insured could be personally responsible for the difference between the verdict and the pre-trial settlement amount that the carrier could have paid to end the matter.

Medical Security will only settle a claim with the insured’s written permission. You are assured of that right because it is part of our policy contract. If you do not wish to settle and you elect to have your case tried in court, Medical Security will use all the resources necessary to defend you. Even if the amount of the judgment exceeds the amount for which Medical Security recommended the claim be settled, **Medical Security will pay the entire judgment up to your policy limits.**

It is also important to remember that Medical Security pays for investigation and defense costs of your claim, above and beyond your limits of liability.

If you have any questions regarding “consent to settle” or any other feature of your dental professional liability policy, please feel free to contact Medical Security at (800) 662-7917.

Contact Info.

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