

Unexpected Results Increase Liability Risk

By Donna E. Mack, DDS, Vice President, Dental Operations

Whether or not you have ever been named in a malpractice suit, the ever present possibility of such an action probably strikes fear in your heart. Is there really anything you can do to prevent or reduce the chances of being sued? Here is some information that may offer significant insight to help answer this question.

Nationwide surveys indicate that when dentists and physicians are asked what they consider to be the greatest contributing factor to lawsuits, the most common answer is "unrealistic expectations by the patient." Armed with this information, you should develop your own plan to educate patients about what they realistically can expect. Here are some tips:

- ❖ Tailor the information to the patient's level of understanding;
- ❖ Use simple language;
- ❖ Keep the patient involved in the education process;
- ❖ Document all efforts at patient education.

A variety of educational methods, such as videotapes, written materials, "one on one" educational efforts, diagrams and/or models, may be used to demonstrate the procedure to the patient, and any printed materials generated by interactive educational computer-based programs. It is important to remember that these materials should be considered as adjuncts to and not substitutes for direct education from you. Handing the patient a brochure and instructing them to read it is not enough. The practitioner has a responsibility to make sure that the information is understood. And that means reviewing the brochure with the patient while providing a verbal explanation appropriate for the individual's level of education.

Many avoidable malpractice suits are initiated when the patient receives an unpleasant surprise. Surprises usually result from poor doctor-patient communications. The surprise is usually an outcome that the practitioner has anticipated as possible but failed to communicate to the patient. Sometimes, however, it is the practitioner who is surprised, because he or she failed to communi-

cate with the patient about his or her current medications, allergies, or other pertinent details in the medical history.

Patients can adjust to even the most dire diagnosis if they have been properly informed and educated in what to expect. When things go wrong, several factors should be considered. First, a properly informed patient and family already know that a poor outcome is possible. They also know that practitioners are human and can make errors or mistakes without being negligent. However, a bad outcome is still, at the very least, extremely upsetting. The patient and family will need to have two questions answered immediately by the practitioner: What went wrong and can anything be done to correct the problem?

How the practitioner responds to those questions and the patient's fears and concerns, will often determine whether the doctor-patient relationship will be strengthened or will deteriorate in anger, mistrust, and litigation. A bad outcome or accident is the time to clearly demonstrate that the patient's welfare remains the dentist's top priority. The practitioner should waste no time in letting the patient and/or family know what went wrong and what, if anything, is being done to correct it.

While practitioners are not expected to guarantee the outcome of a procedure, they are expected to anticipate the likely courses of treatment and the types of problems that may be encountered along the way. Simply sharing that information will go a long way toward eliminating a major cause of avoidable malpractice suits.

Mark Your Calendar

Join Us May 16 at the
North Carolina Dental Society's
147th Annual Session
in Myrtle Beach, South Carolina

Medical Security will sponsor a Risk Management Seminar, **Risk Management and Malpractice Avoidance**, presented by defense attorney Kenneth R. Jones, of Carruthers & Roth, PA, in Greensboro.

Kenny is a trial lawyer whose practice consists primarily of defending dentists and physicians in malpractice suits.

The seminar will be held on Friday, May 16th, in the Somerset Room from 7:30 - 9 a.m.

Seminar attendants will earn a five percent discount to be applied to their next professional liability premium following the seminar.

Update: Terrorism Risk Insurance Act of 2002

On November 26, 2002, the President of the United States signed into law the **Terrorism Risk Insurance Act of 2002** (the Act). This legislation creates a temporary risk-sharing mechanism among the Federal Government, insurers and insurance policyholders to share in the payment of “insured losses” caused by certain “acts of terrorism” (each as defined by the Act). The Program became effective in November, 2002 and is scheduled to terminate year-end 2005.

Last year, Travelers did not make a separate premium charge specifically for the terrorism coverage provided under their policies. The cost of such coverage was imbedded in the total premium. Because of the limited historical experience, unpredictable frequency, and unlimited severity of terrorism events, this exposure was contemplated in Travelers’ ratemaking and in prior years’ premiums **but not as a separate charge**.

This year, as indicated above, the Federal Act requires that all insurers show their insureds the premium charge for this coverage. **Passage of the Act has no impact on the coverage or premium charged for the existing Travelers policies.** All insureds received a disclosure notice from Travelers because the Act requires insurers to send notices to all commercial property and casualty policyholders.

Since the vast majority of existing Travelers policies do not exclude terrorism coverage, the charge for this coverage is already included in the total premium. Passage of the Act does not result in any change in coverage or premium under these policies, and there is **no additional premium charge** for terrorism coverage for the remainder of the policy term.

The types of terrorism covered by the Program are subject to a number of qualifications and limitations in the Act. The Federal Program covers “acts of terrorism” committed by or on behalf of “foreign persons or interests” that result in “insured losses.” The Secretary of the Treasury determines whether or not an act of terrorism meets the definition set forth in the Act.

Examples of terrorism **not** covered by the Program are acts of domestic terrorism (e.g., the Oklahoma City bombing). Also outside the scope of this Program are Acts of War, as declared by Congress—except with respect to workers compensation coverage.

Should you have any questions regarding this policy change, please call the Travelers Service Center at (888) 661-3938. As always, we want to keep you informed of significant changes in the law which may affect your insurance coverages.

TMD Exam Essentials

- ❖ Measurement of the interincisal mouth opening
- ❖ Any deviations of the mandible on opening
- ❖ TMJ noises and coordination problems
- ❖ Palpation of TMJ and major masticatory muscles
- ❖ Evaluation of occlusion and occlusal wear patterns
- ❖ Symmetry and alignment of the face and jaws
- ❖ Appropriate current radiographs
- ❖ Abnormal finding should always trigger further exam and/or referral

Premiums Waived for Insureds Called to Active Military Duty

Medical Mutual and Medical Security will waive professional liability insurance premiums for insureds called up to active military duty as part of Operation Iraqi Freedom.

Coverage will continue, but premiums will be waived from the time the insured is called up until his or her period of active duty ends.

“We insure a number of physicians and dentists who are part of the United States military reserve corps,” said A. Dale Jenkins, Chief Executive Officer. “Waiving their malpractice insurance premiums while they are serving our country is one way that we can show our support and thank them for their service.”

Policyholders insured through Medical Security and called to active military duty should call our Underwriting Department at (800) 662-7917 to make arrangements for their premium waivers.