

# DentalNotes

Medical Security Insurance Company, Member Company of The Medical Mutual Group Summer 2002

## How Do You Avoid Liability in TMD Cases?

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

For both general practitioners and specialists, the allegation that dental treatment can potentially cause temporomandibular joint disorder (TMD) is an increasing source of professional liability claims. While cause and effect arguments are debatable, it is far more likely that the condition was preexisting and was inadvertently exacerbated by the treatment. In many cases, the practitioner being sued did not perform a complete exam and failed to recognize preexisting TMD. These cases, many of them alleging iatrogenic disability and chronic pain, are difficult to defend and have the potential for high indemnity payout whether by settlement or jury award.

Studies suggest that approximately five in every 100 adults exhibit clinical signs of some form of TMD. Women are twice as likely to report symptoms as men. Since the condition is common, it is a disorder that all dentists frequently encounter. Most of the time patients are not aware they have the condition because they have never experienced any significant symptoms or, if symptoms did occur, the condition went into remission without any treatment.

TMD cases may be very challenging for the following reasons:

- ❖ A definitive diagnosis may be difficult to make;
- ❖ Symptoms often improve without treatment;
- ❖ Many cases have a psychological component;
- ❖ Chronic pain syndrome may be involved.

Since most general dentists only identify and then refer patients with this condition, the most common liability risk for this group of practitioners is failure to

diagnose TMD. In this risk class, TMD liability issues typically involve the following situations:

- ❖ TMD symptoms are missed during initial and/or subsequent recall exams;
- ❖ TMD symptoms are exacerbated by long or invasive procedures;
- ❖ TMD symptoms appear or worsen after patient begins wearing an occlusal appliance.

A second risk class involves general dentists who treat TMD patients and market themselves to the public as a "TMD expert." These practitioners attract more difficult patients with higher treatment expectations and a greater probability of unsatisfactory outcomes. This patient population represents a greater risk to the practitioner. The following recommendations are important for all practitioners treating TMD:

- ❖ No TMD treatment should be prescribed without a detailed history and exam;
- ❖ Initial therapy should be palliative and reversible;
- ❖ No irreversible treatment should be instituted until the response to initial therapy has been evaluated;
- ❖ A detailed plan of treatment should be documented and followed;
- ❖ Any deviations from the plan should be noted and the rationale for change explained;
- ❖ Patient's response to TMD treatment should be thoroughly documented;
- ❖ All verbal or written instructions given to patient should be charted;
- ❖ Patient non-compliance should be thoroughly documented;
- ❖ Beware of repeated prescriptions of pain medications for chronic pain syndrome;
- ❖ Over-prescribing narcotics can lead to allegations that the practitioner contributed to the patient's drug dependency;

❖ Consider using a medication flow sheet to log every prescription chronologically for easy and quick review;

❖ Document the reason a prescription for pain meds is indicated along with complete script instructions, i.e., drug name, dosage, number, frequency, and number of refills;

❖ Refer to an appropriate specialist in a timely fashion if the patient's condition does not respond to treatment.

The use of occlusal splints and night guards presents another area of TMD liability risk because these appliances may have a negative impact on patients with an underlying TMD condition. With the use of these appliances comes the potential for serious claims alleging that the occlusal appliance caused TMD or caused worsening of the undiagnosed condition. In many of these cases, patients were not routinely monitored while wearing an appliance. Patients for whom occlusal appliances are prescribed should have frequent follow-up assessments as appropriate to their treatment regime. The patients' treatment progress and their compliance with wearing the appliance should be carefully documented.

All patients should be screened for TMD and the results of the exam thoroughly documented, dated, and signed. It is advisable to include this screening at every recall examination. As with oral cancer screenings, jurors judging malpractice actions against practitioners are generally of the opinion that because the screening is fairly simple and inexpensive to perform, the practitioner should have done it.

From a liability perspective, documentation of the clinical findings of the exam provides important information to support

*Continued on Back*

## \$5 Million Verdict Sets State, National Records

A Durham County jury of 12, following a three and a half-week dental malpractice trial, returned a verdict in favor of the patient for \$5 million. The verdict is the highest in state history against a dentist, the highest that we can ever find reported in the nation against a dentist, and serves as compelling evidence of just how severe the litigation climate is against healthcare providers in North Carolina.

The patient, a 39 year-old, self-employed hair stylist earning about \$18,000 per year, had four wisdom teeth extracted by a general dentist in May of 1992. The procedure was uneventful and, post operatively, the patient was treated for a dry socket at the site of one of the four extractions. Over the next two years the patient experienced varying levels of "TMD-type pain." Another dentist recommended surgery, which was performed by an out-of-state oral surgeon. Her facial related pain there-

after increased to the point that the patient claimed total, permanent disability, physically and vocationally.

The patient alleged that: (1) the wisdom teeth did not need to be extracted; (2) no informed consent was obtained for the extractions; (3) the extractions were performed improperly; (4) she suffered a TMD injury from the extractions. The evidence for the dentist refuted all of the allegations and demonstrated that the pain from which the patient suffers is not TMD pain and is not related to the extractions. Damages claimed for medical bills and expenses were approximately \$44,000. The plaintiff asked the jury to return an award of \$3 million.

Jurors interviewed post-verdict indicated that several on the panel wanted to return a verdict for \$10 million.

*--David Sousa,  
Senior Vice President and General Counsel*

the diagnosis of TMD as a preexisting condition. From a clinical perspective, it also provides important baseline data upon which future treatment decisions can be based. Failing to recognize preexisting TMD can cause exacerbation of symptoms or reinjury during routine procedures. Thus, if a positive history of TMD is identified, steps should be taken to prevent recurrence or reinjury by planning to limit the length of the appointment and periods of jaw opening. Following up with the patient after the procedure to assess postoperative discomfort is also important. All TMD "safety precautions" used during treatment, as well as the patient's postoperative status, should be carefully documented.

In all cases with patients who display active TMD symptoms, caution is advised about beginning any extensive dental treatment. Professional liability claims are more likely when treatment does not go as planned, and TMD can play a significant role in poor treatment outcomes. Treatment of chronic TMD pain involves a carefully planned course of treatment that may be best left to specialists in this field. When faced with these cases, the best risk management motto may be, "When in doubt, refer them out."

## The Value of Consulting an Expert

**By Barbara Anne O'Neill**  
**Account Service Representative**

I'm a little hesitant to admit that I haven't been to the dentist in two years. What's that? Why haven't I? I brush every day. Floss, too....at least when I remember. And, let's face it, it's just teeth, right? How can they possibly change so much in six months that I need to consult with a professional that often?

Does this sound a little ridiculous to anyone out there? I mean, how can I be so sure that my dental health is sound without consulting a dentist? How can I be sure I am not putting myself at risk for a dental problem sometime in the future?

The same concept can and should be applied to your insurance coverages. How long has it been since you reviewed your existing coverages with a licensed professional? Are you sure that you have the right coverages for your practice if you experience a loss?

Insurance losses vary by type and severity—a malpractice claim, burglary,

fire, an unusual workers' compensation claim, a dishonest employee—and usually occur when you least expect them. These and other losses are not situations you think about on a daily basis; however, they are always a possibility. As an experienced insurance agent, it's my job to help you determine if you have the right coverages to protect your practice should you be faced with a loss.

Please consider taking the time to review your existing insurance coverages, and should you have any questions or concerns, call me at 800-662-7917, ext. 7572.

Certain changes in your life and/or practice can have a direct affect on how well you are or are not protected. Prompt notification to us of any changes in your practice along with a yearly assessment and review of your insurance coverages can give you greater piece of mind. It also provides us with the opportunity to serve you the best possible way - proactively rather than reactively.

### Essentials of the TMD Screening Exam

- ❖ Measurement of the interincisal mouth opening
- ❖ Any deviations of the mandible on opening or closing
- ❖ 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