

John Vaselaney, D.D.S.

Assistant Vice President

CNA HealthPro

312-822-7386

john.vaselaney@cna.com

www.cnahealthpro.com

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Juggling Patients, Ethics and Risk

Considerations

- Legal
 - Statutes
 - Professional duty
 - Contractual obligations
- Dental practice acts
- ADA Principles of Ethics and Code of Professional Conduct
- Personal factors

Scenarios

- Patient Selection
- "I Only Want a Cleaning"
- The Unfinished Multi-visit Procedure
- Refund Request
- Managed Care Benefit Plan

Creating Records that Document and Support Your Care

What Should Be In The Record?

- | | | | |
|-------------------------|----------------------|---------------------|------------------------|
| • Patient personal info | • Exam records | • Informed consents | • Specialist reports |
| • Medical history | • Diagnostic records | • Informed refusals | • Consultation reports |
| • Dental history | • Radiographs | • Progress notes | • Pt. correspondence |
| • HIPAA documents | • Treatment plans | • Referral letters | |

Record Keeping Guidelines

- | | | | |
|------------------------|----------------------|--|---------------------------|
| • Pt. name every page | • Legible | • Non-judgmental | • Cosigned staff entries |
| • Note for every visit | • Comprehensive | • Corrected properly with single line, initial, date | • Pass the "Amnesia Test" |
| • Promptly written | • Proper terminology | | |
| • Don't skip lines | • Factual | | |
| • In ink | • Professional tone | • Signed entries | |

The “amnesia test”: If you were to *forget* everything you ever knew about each and every one of your patients, but you *remembered* everything you know about how to practice dentistry, would you be able to read any one of your patient charts, and quickly be able to 1) know what treatment the patient has had and why, and 2) perform whatever treatment is next for that individual and know why it’s necessary?

What to Document In Progress Notes

- Medical history review
- Patient comments – “in their own words”
- Exam findings and observations
- All clinical treatment
- Pertinent conversations and directives
- Lack of compliance
- Missed and failed appointments
- Informed consent & informed refusal
- Complications & corrective action taken
- Referrals and consultations

Documenting Treatment Rendered

- Patient preparation
- Premedication, rubber dam, blood pressure, etc.
- Local anesthesia - type, concentration, volume, vasoconstrictor, vasoconstrictor concentration
- Actual treatment performed
- Materials: buildup, restoration, cement, etc.
- Postoperative instructions
- Prescriptions and over-the-counter medications
- Plans for next visit

Choosing Your Words

- Document what you heard, saw, said, and thought

Accuracy Matters

- Clearly understood, unambiguous words
- Be specific rather than vague
- Cite the source of your information
- Explain changes
 - Clinical appearance; patient views
 - Your opinions, choices, assessments

The S.O.A.P. Format

- Excellent for documenting emergency treatment and changes in the treatment plan
 - Subjective - patient’s chief complaint
 - Objective - your evaluation
 - Assessment - your diagnosis
 - Plan - treatment rendered

Documenting Telephone Calls

- Cancellations, rescheduled appointments
- Medications
- Emergencies
- Referrals, consultations
- If unable to reach pt. when calling, note it: “No answer, left message on machine/voice mail.”
- Maintain confidentiality
- Document after hours calls at earliest chance

DO NOT . . .

- Use correction fluid to fix chart errors
- Block out chart errors
- Write disparaging or subjective comments about the patient
- Write disparaging or subjective comments about the prior dentist
- Use language that suggests carelessness or negligence

Protecting Patient Confidentiality

- No medical alerts on the outside of charts
- Keep day sheets from patient view
- Properly position computer screens
- Limit “office talk” breaches
- Release confidential records only upon a signed request from the patient (a documented phone call from the patient may be acceptable in limited circumstances)

How Long Should I Keep Records?

- Best choice: Forever
- Next best: retain well beyond any point of legal and/or administrative risk exposure
 - Statute of limitations for tort actions
 - Dental practice act requirements
- Records include: chart notes, consents, referrals, reports, Rx, lab orders, radiographs, models (orthodontics, implants, complex prosthodontics)

Claims, Disputes, and Other Assorted Misadventures

What Leads to Claims?

- Pursuit of money
- Poor communication
- Lack of empathy
- Unmet patient expectations
- Revenge or spite
- Collection action by dentist
- Treatment errors
- Accidents

Factors Affecting Claim Outcomes

- Injury: type, severity
- Damages sought
- Claimant
 - Age
 - Personal factors
- Expert witnesses
- Dentist
 - Credibility
 - Alleged misconduct
 - Personal factors
- Patient records accurate & complete
- Venue

Risk Management Goal: minimize adverse events and the effects of those adverse events

- Patient injury
- Patient dissatisfaction

The Risk Management Process

- Identify and assess risks
- Evaluate techniques
- Implement selected technique
- Reassess

Risk Management Techniques

- Avoid risks, control risks, transfer risks
- Control risks
 - Prevent adverse events – education & training, communication, documentation
 - Reduce the consequences of adverse events

Establishing Negligence

Acceptance of duty – creation of Dr. - patient relationship

Breach of duty – failure to meet the standard of care

Causation – link between injury & action/inaction

Damage – injury to the patient

Standard of Care

- What a reasonable and prudent practitioner would do in the same or similar circumstances
 - Determined by a jury based on information presented during trial: patient records, expert witness testimony

Collection Actions

- Can produce retaliatory malpractice allegations
 - Civil lawsuits
 - Dental licensing board complaints
- Before sending to collection:
 - Review the account status
 - Review the treatment outcomes
 - Review the chart for completeness and accuracy
 - Review the patient's attitude and level of satisfaction

Informed Consent

The process by which a patient is provided enough information to make an informed, reasoned decision regarding the proposed treatment

Informed Consent Discussion

- Nature of the proposed treatment
 - Necessity, benefits, prognosis, cost, time
- Reasonable alternatives
 - Other treatment
 - Specialty referral
- Foreseeable, material risks
 - No treatment
 - Reasonable likelihood of occurring
 - Significant enough to influence a patient's decision

Reducing Adverse Clinical Outcomes and Increasing Patient Satisfaction

Patient Expectations

- A significant factor in patient (dis)satisfaction
- Unmet expectations are a major cause of claims
 - Unstated, unreasonable, or changing expectations
- Different expectations than clinicians
- Consumeristic view of the American public
 - Dental care as a commodity
 - Cost often more important than service
 - “Satisfaction guaranteed or my money back”

Controlling the Risks of Patient Expectations

- Discuss patient expectations
- Educate the patient
- Involve your staff
- Only accept patients with reasonable treatment and financial expectations
- Reduce the “Malpractice Gap” between expectations and reality

Human Forgetfulness

- Researchers have found humans retain
 - 83 % of what we see
 - only 11 % of what we hear
- Emphasizes the importance of written
 - Information about your practice
 - Treatment plans
 - Informed consents
 - Postoperative instructions
 - Financial agreements

Scope of Practice – Know your dental practice act, must have a therapeutic dental purpose

The Medical History

- Review, discuss, and sign the medical history
- Investigate responses fully
- Take blood pressures
- Ask about changes at every visit
- Have patients review written form annually
- Refer for consultation when warranted

Ask 3 review questions at each recall exam

Since your last dental visit, have you

- Seen a physician or other healthcare professional for any treatment or consultation?
- Suffered any illness or injury?
- Stopped, started, or changed any prescription or over the counter medication or supplement?

Examinations

- Perform a comprehensive oral exam
- Examine related structures
- Document your findings
- Inform the patient of your findings
- Don't disparage prior dentists

Radiography

- The most common claim issues involving radiography:
 - Was a radiographic image obtained when clinically necessary?
 - Is the radiographic image of diagnostic quality?
 - Did the dentist interpret and use the radiographic image appropriately?

Infective Endocarditis & Late Prosthetic Joint Infection

- Most recent AHA Guidelines – April 2007
- Most recent AAOS Statement – 2009
- Read original reports at www.ada.org

Premedication Issues

- IE and LPJI guidelines will not prevent all infections
- Not all physicians follow the guidelines
- The documents are only guidelines and still require professional judgment
- Ask the physician to write the Rx
- Advise the patient to seek a second opinion
- Decline to treat

Nerve Injury Due to Injection

- Primarily due to direct trauma to the nerve
 - Most common in the mandible
- If the patient responds abnormally:
 - Withdraw the needle completely
 - Re-establish your correct position
 - Re-inject
- Document in the patient's record that you followed this procedure once the patient expressed discomfort

Periodontal Treatment

- Examine thoroughly
- Chart all findings
- Obtain appropriate radiographs
- Document dx and pertinent patient conversations

Crown & Bridge

- High frequency, low severity claims
- Consumeristic view by patients
- Obtain appropriate pre-op radiograph(s)
- Discuss expectations

Extractions

- Highest aggregate severity claims
- Select appropriate cases
- Obtain appropriate pre-op radiograph(s)
- Obtain patient's informed consent (always use a written form)

Endodontics

- Select appropriate cases
- Obtain appropriate pre-op radiograph(s)
- Obtain informed consent (use form)
- Use a rubber dam
- Verify the correct tooth
- Treat all canals

Implants

- Select cases within your expertise
- Obtain appropriate radiographs
- Plan the case – restoration, stent, surgery

Emergency Treatment

- Limit extent of treatment provided after hours
- Bring a witness after hrs. – staff member, family, etc.
- Have proper message on answering machine, v-mail

Inform the patient

- Diagnosis
- Recommended treatment
- Need for referral
- Invite patient to bring others to assist in decision-making
- Suggest written consent
- Evaluate your work thoroughly
- Verify the correct tooth
- Use a sterile technique (e.g., gloves, water)
- Manage any complications
- Give written post-op instructions
- Require patients to return for post-op evaluation
- Use proper techniques
- Disclose and manage adverse events
 - Separated instruments
 - Perforation
- Give written post-op instructions
- Retreat or refer poor results
- Use proper size fixture
- Obtain signed informed consent
- Use a sterile surgical technique
- Follow-up until resolution of problem
- Document using SOAP format

Additional resources for continued learning:

1. ADA/PDR Guide to Dental Therapeutics, Fifth Edition. ADA Publishing and Thomson PDR, 2009.
2. American Dental Association Internet Website Address: www.ada.org
3. American Dental Association Council on Scientific Affairs. "Office Emergencies and Emergency Kits." *JADA*, Volume 133, March 2002, pp. 364-365.
4. American Dental Association Council on Scientific Affairs. "Association Report: An Update on Radiographic Practices: Information and Recommendations." *JADA*, Volume 132, February 2001, pp. 234-238.
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6. American Dental Association, "A-Z Topics: Osteonecrosis of the Jaw." www.ada.org/prof/resources/topics/osteonecrosis.asp
7. Centers for Disease Control and Prevention Internet Website Address: www.cdc.gov
8. *Don't Be Scammed By a Drug Abuser*. U.S. Department of Justice, Drug Enforcement Administration, Office of Diversion Control publication. December 1999. www.deadiversion.usdoj.gov/pubs/brochures/drugabuser.htm
9. Graskemper, J.P. *A New Perspective on Dental Malpractice: Practice Enhancement through Risk Management*, *JADA*, Volume 133, June 2002, pp. 752-757.
10. HIPAA. US Department of Health and Human Services, Office for Civil Rights. Privacy of Health Records – Internet Website Address: www.hhs.gov/ocr/hipaa
11. Little, James W.; Falace, Donald A. Dental Management of the Medically Compromised Patient, Seventh Edition. Mosby Elsevier, 2008.
12. Malamed, Stanley F.; Gagnon, Suzanne; Leblanc, Dominique. "Articaine Hydrochloride: A Study of the Safety of a New Amide Local Anesthetic." *JADA*, February 2001; pp. 177-185.
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14. Malamed, Stanley F. Medical Emergencies in the Dental Office, Sixth Edition. Mosby Elsevier, 2007.
15. National Practitioner Data Bank / Healthcare Integrity and Protection Data Bank Internet Website Address www.npdb-hipdb.com
16. Organization for Safety and Asepsis Procedures (OSAP) Internet Resource Center: www.osap.org
17. Pollack, Burton R. Law and Risk Management in Dental Practice. Quintessence Publishing Company, Inc., 2002
18. *The Selection of Patients for Dental Radiographic Examinations*. Prepared by the American Dental Association and the U.S. Department of Health and Human Services (Public Health Service, Food and Drug Administration). Revised 2004. Available on the ADA website (www.ada.org) under Dental Topics A-Z: Radiography/X-Rays.

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Dr. John Vaselaney
CNA Center, Floor 26
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