

DENTAL EXPRESSIONS®

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Dental Self-assessment: Addressing Risks, Managing Expectations

The process of improving risk management readiness begins with understanding and prioritizing potential sources of liability. This issue of *Dental Expressions*® offers a self-assessment form designed to focus attention on those aspects of dental practice that most commonly lead to patient complaints and litigation, based upon a review of CNA dental claims data and other relevant sources. By evaluating and improving performance in these areas, dentists can significantly reduce the likelihood of incidents, claims and losses (including refunds, legal fees, and settlements or indemnity payments).

Patient dissatisfaction can arise for many reasons. However, analysis of CNA's 2008-2012 closed claims database, as well as telephone calls to the dental risk control hotline, reveal that certain procedures present a higher level of risk. During this period, the following six procedures were associated with approximately 53 percent of dental claims and nearly 60 percent of indemnity payments:

- crowns
- root canals
- extractions (simple and surgical)

- clinical examinations
- composite restorations
- tooth-supported bridges

In addition, four "cause of loss" categories encompassed slightly more than half of both claims and payments:

- inadequate precautions to prevent injury
- treatment failure
- general patient dissatisfaction
- failure to diagnose

These findings demonstrate the importance of implementing practical, effective risk management procedures to address everyday clinical situations and basic office operations.

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Many calls to the dental hotline involve non-claim issues, such as patient requests for fee refunds. These requests may be due to the treating dentist's perceived failure to meet expectations, or a lack of trust in the dentist's recommendations and performance. These trust issues, in turn, often originate in advice or comments from a friend or relative, or solicited from or proffered by another dentist.

HIGHER-RISK PROCEDURES

The dental procedures most frequently associated with claims are grouped below into the following categories: clinical examinations, root canal therapy, cosmetic/restorative (crowns, bridges and composite restorations) and extractions (simple and surgical).

Clinical examinations. Claims involving examinations frequently include outcome-related allegations, such as failure to follow up on the chief complaint, failure to diagnose or improper treatment plan. These risks can be minimized by

- *enhancing continuity of care* through better written and spoken communication.
- *responding to all patient complaints and clinical findings with at least a provisional diagnosis*, as well as a treatment plan and/or referral recommendation.
- *creating clear, methodical progress notes* and reviewing them at each patient visit.
- *noting when each concern, finding or condition has been addressed*, and when the associated treatment is complete.

Root canal therapy. This procedure is the second most frequent cause of claims and the most costly in terms of total payments. A common allegation asserted in root canal claims is inadequate precautions to prevent injury, such as a swallowed or aspirated object. A recent journal article noted that although rubber dam isolation during root canal therapy is strongly recommended, less than half of the dentists surveyed utilize this technique on all root canals, and 15 percent never do.* Failure to use a rubber dam may result in claims for swallowed/aspirated objects, tissue injury, bacterial contamination or treatment failure.

Cosmetic/restorative dentistry. Cosmetic/restorative procedures, especially crowns and fixed bridges, can produce claims alleging inadequate precautions (e.g., aspirated/swallowed object, lacerations), treatment failure (various issues) and patient dissatisfaction (both cosmetic and functional). These three allegations comprise approximately 60 percent of single-crown claims.

To reduce these risks, ensure that informed consent discussions thoroughly address both functional and cosmetic benefits and risks. One effective strategy is to utilize procedure-specific informed consent forms. These can be customized and adapted to the type, extent and location of the composite resin, crown or other restorations to be placed.

Extractions. Many extraction-related claims allege inadequate precautions taken, inadequate consent, treatment failure, wrong tooth/teeth extracted, swallowed/aspirated object, failure to refer and/or infection. To minimize the possibility of error, consider implementing a verification protocol to confirm the right tooth and procedure. These days, anyone who undergoes surgery is likely to tire of repeated questions from surgeons and nurses about the planned surgical site. A similar process in the dental office can help prevent patient injuries and associated claims.

Informed consent represents a significant issue for all dental services. Specific informed consent forms are recommended for procedures associated with high claim frequency, significant risk of injury or possible patient misunderstanding. (Procedure-specific consent form templates and related documents are available for downloading on the Professional Protector Plan website, at <https://www.protectorplan.com/dentist-sample-forms/>. They also are included in the seminar manual provided at CNA Dental Professional Liability Program seminars and with the online, self-study Dental Professional Liability: Risk Management course, at <https://www.protectorplan.com/dental-risk-management/ce-course-online-self-study/>.)

Signed forms supplement but do not replace informed consent discussions. Even when a standard written consent form is used, always be sure to

- talk to the patient about the nature of the treatment
- describe benefits, risks and available alternatives
- answer any questions
- document this discussion

* See Anabtawi, M. et al. "Rubber Dam Use During Root Canal Treatment," in *Journal of the American Dental Association*, February 1, 2013, Volume 144:2, pages 179-186. Available at <http://jada.ada.org/content/144/2/179>.

COMMON HOTLINE ISSUES

Many dental risk control hotline callers ask for advice about managing patient discontent associated with unmet or unrealistic expectations. The distance between a patient's expectations – which may be unreasonable and/or unstated – and the dentist's ability to meet them constitutes a "malpractice gap." Reducing or eliminating this gap diminishes the risk of patient dissatisfaction, which may lead to losing the patient and/or eventual liability claims.

Another common and related dental hotline issue is loss of faith in the dentist. Recovering from a breakdown of trust in any relationship is difficult, and the doctor-patient relationship is no exception. Often, the scenario involves a patient receiving advice from a friend, family member or another dentist, which results in doubt regarding the original dentist's work and/or proposed treatment. Disapproving comments by another dentist are the most damaging type of criticism. In these situations, patients rarely allow their original treating dentist the opportunity to address their concerns or comments before demanding a refund or filing an "out-of-the-blue" lawsuit claiming negligence.

The following strategies can help reduce the potential for dissatisfaction and distrust:

Continuously assess patient expectations and satisfaction. Every dental office should consider implementing a structured approach to determine patient expectations for treatment outcome, payment and insurance, waiting times, urgent and after-hours response capabilities, staff courtesy, and office cleanliness and comfort. Patient expectations may change over time – sometimes even during the course of treatment. For this reason, periodic discussions and reassessments serve to prevent conflict and misunderstanding. In addition, practices should develop and consistently utilize surveys to assess patients' perceptions of quality and overall level of satisfaction with the practice.

Offer ongoing education. Patients' dental health literacy may be relatively low, impairing their ability to separate fact from fiction regarding dental information obtained from the Internet, mass media, promotional mailings, or friends or relatives. These "facts" and opinions can adversely affect their estimation of the treating dentist's competence and judgment. By talking to patients about oral care needs and serving as their major source of educational materials and treatment information, dentists can better manage expectations, strengthen rapport and reduce risk.

Provide sound after-hours care. Patients may receive conflicting oral healthcare advice or recommendations when obtaining after-hours urgent/emergency care from another dentist, potentially creating dissatisfaction. Every practice requires a well-defined urgent/emergency care protocol and backup plan, in order to better serve patients when they are most vulnerable and in need of prompt attention. Such procedures minimize feelings of abandonment, which may translate into complaints and claims.

Behave fairly and ethically. Dentists have a duty to protect their patients, the general public and the profession. Reconciling these responsibilities is not always easy, especially when one is asked to evaluate the care provided by a colleague. In such a situation, constructive courses of action include engaging in direct professional dialogue or initiating peer review through a professional organization. Negatively appraising others' work without first hearing their side of the story is inherently unfair, creates doubt among patients and often leads to a poor outcome for all concerned.

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Consider carefully whether to issue a refund. Almost every day, dentists contact the risk control hotline inquiring about how to correctly respond to a patient's request for a refund. Callers' scenarios are varied, and it is not possible to cover the full range of situations and suggestions in this publication. However, the following two questions are typical of many, and the general recommendations offered in response may help dentists navigate this complex terrain:

Hotline question #1:

"I did nothing wrong. Why should I refund the fee?"

A refund for anything other than "complete satisfaction" is a common promise today, and many patients come in expecting nothing less. Consider discussing the nature and limits of dentistry with patients at the outset, during the initial assessment of expectations. Explain to them how obtaining dental treatment differs from purchasing other consumer goods or services, and why perfect results cannot be guaranteed. This will help patients understand why a refund request may not be automatically granted.

Hotline question #2:

"If I refund the money, am I admitting that I have done something wrong?"

No – a refund is not considered tantamount to an admission of error. There are many possible reasons for refunding dental fees, including the desire to satisfy unhappy patients and retain them, their family members and their friends. Some dentists believe that refusing to refund fees may have adverse consequences, such as a malpractice claim, a complaint to the state dental board or negative reviews on social media sites. On occasion, dentists ask of patients demanding a refund that they first sign a release of claims form, in order to protect against future litigation. Before taking this step, consult with legal counsel regarding the benefits and risks, as such a request may actually escalate the incident and increase the likelihood of a lawsuit or board report. Every case must be considered individually, in view of the existing dentist-patient relationship, the type and outcome of the treatment, and the dentist's degree of risk tolerance.

DOCUMENTATION CONSIDERATIONS

Accurate and thorough documentation is the key to effective risk management, and documentation practices require regular and rigorous self-assessment. All information critical to ongoing patient care should be documented in the patient record, which serves three major purposes:

- enhancing continuity of care by "remembering" treatments given and patient history
- facilitating the sharing of vital information, both within and outside the practice
- recording decisions made, supporting rationales and patient consent

In the event of a malpractice claim, a comprehensive dental record becomes the major asset of the defense team, as an accurate and unaltered record is difficult to refute. Conversely, a deficient or altered dental record severely hampers the defense, however strong the supporting testimony from the dentist, staff members or clinical experts.

Because sound recordkeeping is so critical to preventing errors and enhancing legal defensibility, the self-assessment checklist included here examines numerous aspects of the documentation process. Given the frequency and cost of claims, every dentist should consider whether chart entries are sufficiently detailed, especially regarding safety procedures implemented and descriptions of patient contacts.

While this self-evaluation tool can help dentists recognize gaps or deficiencies in their policies and procedures, effective risk management requires a commitment to ongoing improvement. Dentists can support this effort by designating an internal risk control team leader, who is authorized to discuss safety and quality issues with dentists and staff members, recommend solutions and ensure that changes are implemented on a timely basis.

Of course, the self-assessment tool does not encompass every risk management issue. However, it can aid dentists and staff in identifying and addressing liability exposures associated with some of the more common procedures and situations. The final step is to share and celebrate success stories with the entire office, in order to raise morale and create an environment that supports safety, quality and patient satisfaction.

Dental Office Self-assessment Tool

This checklist is designed to help dentists evaluate their risk management readiness and take measures to reduce exposure. It focuses on more common liability issues, as revealed by CNA dental claims data. The resource is available for downloading in stand-alone form at <http://www.protectorplan.com/wp-content/uploads/documents/benefits/risk-management/dental-self-assessment.pdf>. For additional dental risk control tools and information, please visit www.protectorplan.com/dental-risk-management.

SELF-ASSESSMENT TOPIC	YES	NO	RISK CONTROL ACTIONS NEEDED/TAKEN
PATIENT SATISFACTION, SAFETY AND EXPECTATIONS			
Does the office have a process in place to monitor ...			
<ul style="list-style-type: none"> ▪ overall patient satisfaction? 			
<ul style="list-style-type: none"> ▪ satisfaction with office appearance/cleanliness? 			
<ul style="list-style-type: none"> ▪ satisfaction with professional staff? 			
<ul style="list-style-type: none"> ▪ satisfaction with charges and payment policies? 			
<ul style="list-style-type: none"> ▪ satisfaction with scheduling policies and hours of service? 			
<ul style="list-style-type: none"> ▪ satisfaction with urgent/emergency care protocols and availability? 			
<ul style="list-style-type: none"> ▪ other relevant patient satisfaction parameters, such as scheduling delays and appropriate follow-up? 			
Are patient satisfaction survey results reviewed regularly?			
Are low satisfaction levels analyzed for underlying causes, and are appropriate corrective actions taken?			
Are office safety issues and incidents discussed at staff meetings, and are security measures regularly reviewed and updated?			
Is a procedure in place to manage "angry patient" situations?			
Are patients informed promptly of schedule delays and given a choice between waiting and rescheduling the appointment?			
When working with a new patient or beginning a new treatment plan, is there a discussion of ...			
<ul style="list-style-type: none"> ▪ general expectations on both sides? 			
<ul style="list-style-type: none"> ▪ functional expectations? 			
<ul style="list-style-type: none"> ▪ cosmetic/esthetic expectations? 			
<ul style="list-style-type: none"> ▪ financial expectations? 			
Are unreasonable patient expectations identified, discussed and resolved to each party's satisfaction?			
Are patient expectations reassessed in the wake of job, health, family or other life changes?			

SELF-ASSESSMENT TOPIC	YES	NO	RISK CONTROL ACTIONS NEEDED/TAKEN
PATIENT SATISFACTION, SAFETY AND EXPECTATIONS (CONTINUED)			
Are patients given written information about, and/or do staff members routinely discuss ...			
<ul style="list-style-type: none"> ▪ realistic expectations about outcomes, to prevent inadvertent guarantees? 			
<ul style="list-style-type: none"> ▪ office business practices and the patient's financial responsibilities? 			
<ul style="list-style-type: none"> ▪ office infection control practices/procedures? 			
<ul style="list-style-type: none"> ▪ processes for managing patient concerns and complaints? 			
Does the office have a process or protocol to confirm at each visit the surgical/treatment site, procedure, tooth number(s), surface(s), etc.?			
Does the office recommend and/or provide patients with dental educational resources, both written and visual?			
When a patient requests a refund, does the dentist fully consider ...			
<ul style="list-style-type: none"> ▪ the doctor/patient relationship (i.e., history)? 			
<ul style="list-style-type: none"> ▪ the patient's perspective (i.e., empathic considerations)? 			
<ul style="list-style-type: none"> ▪ the "Golden Rule" (i.e., ethical considerations)? 			
<ul style="list-style-type: none"> ▪ possible outcomes/consequences if a refund is given or not given? 			
<ul style="list-style-type: none"> ▪ obtaining advice from a third party? 			
CLINICAL PATIENT CARE AND DOCUMENTATION			
Is the patient's chief complaint clearly documented (or "none" noted)?			
Do new patient and recall examinations include a diagnosis (provisional, differential or specific disease) for positive findings?			
Are all positive and negative (i.e., disease-free) findings documented?			
Are all plans documented, including diagnosis, proposed treatment and follow-up/reassessment needs?			
Are completed treatment plans and/or therapies fully documented?			
Is there an informed consent discussion with patients covering proposed treatment, alternative treatment options and foreseeable risks?			
Are informed consent forms specific to proposed procedures, including root canals, crowns, fixed bridges, extractions and cosmetic dentistry?			
Have CNA informed consent forms been downloaded for reference? (See https://www.protectorplan.com/dentist-sample-forms/ .)			

SELF-ASSESSMENT TOPIC	YES	NO	RISK CONTROL ACTIONS NEEDED/TAKEN
CLINICAL PATIENT CARE AND DOCUMENTATION (CONTINUED)			
For all written informed consent forms, does the dentist or a staff member ...			
<ul style="list-style-type: none"> ▪ give patients as much time as they need to ask questions? 			
<ul style="list-style-type: none"> ▪ answer all patient questions? 			
<ul style="list-style-type: none"> ▪ give the form to the patient prior to the treatment date (when possible), allowing the patient time to think about the decision? 			
<ul style="list-style-type: none"> ▪ conduct and document a face-to-face discussion with the patient? 			
<ul style="list-style-type: none"> ▪ document use of the form and file it in the patient record? 			
<ul style="list-style-type: none"> ▪ give a copy of the form to patients for their records? 			
Is rubber dam isolation used whenever possible for endodontic procedures, and if no rubber dam is used, is the rationale documented?			
Do patients receive written post-procedure instructions, when appropriate?			
Are all employees trained in sound recordkeeping methods?			
Does the practice have a written record release and retention policy?			
Are clinical records audited internally on a regular basis to assess documentation quality?			
If a record requires correction, is care taken to avoid obliterating the original notation?			
Are supplemental treatment notes entered in the next available space in the record, and does policy prohibit leaving blank spaces in the patient record?			
Is a formal patient recall system in place for implantable devices?			
Are recall notifications, appointment cancellations and no-shows documented in the patient record?			
Is the patient record checked for completeness and the dentist-patient relationship considered before the practice sends a patient to collection or initiates a court action to collect a debt?			

LOOKING FOR ADDITIONAL RISK MANAGEMENT INFORMATION?

Visit the Professional Protector Plan® for Dentists program website at www.protectorplan.com for additional resources. The site's Risk Management tab contains links to information about both our in-person CE seminars and our online self-study CE course.

Dental Risk Management Seminars

Dentists can obtain risk management information by attending any of the risk management seminars listed below, or by completing the CNA online self-study CE course (see above). For more information about our in-person seminars, please contact the nearest Professional Protector Plan state administrator agent.

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Upcoming Seminars

Jan. 17, 2014	Charleston, WV	May 1, 2014	Grand Rapids, MI
Feb. 2, 2014	Oxford, MS	May 2, 2014	Morgantown, WV
Feb. 28, 2014	Portland, OR	May 8 & 9, 2014	Ocean City MD
Feb. 28, 2014	Hattiesburg, MS	May 9 & 10, 2014	Phoenix, AZ
Mar. 15, 2014	Washington, DC	May 16, 2014	Coeur d'Alene, ID
Mar. 21, 2014	Seattle, WA	May 17, 2014	Meredith, NH



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