DENTAL Insights
Professional SOLUTIONS
PROFESSIONAL SOLUTIONS INSURANCE COMPANY BRINGS YOU PRACTICAL TIPS FOR AVOIDING A MALPRACTICE ALLEGATION FALL 2010

Dentist's Reliance on Computer System ...
Results in Risk Management Snafus

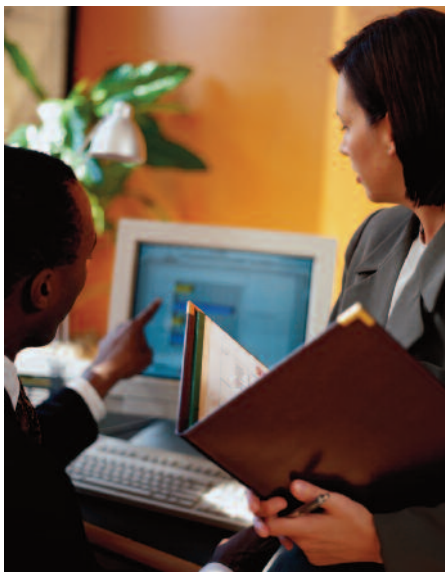
An electronic records system is only as good as the people who use it.

Bright and energetic, Dr. David Danson had a successful startup practice. He found his niche in general dentistry and experienced significant growth of clientele through word of mouth. Dr. Danson employed two dentists and was in the process of opening a second office in a great location.

Not only did Dr. Danson invest heavily to create a lavish office, he also installed the latest computerized programs so he and his staff could:

- Enter each incoming patient's health history form and questionnaire
- Digitally record patient films into the system
- View every patient room and dental office on a computer monitor
- Use up-to-date and comprehensive forms
- Eliminate the writing of lengthy narrative notes due to the system's point-and-click screens and drop down menus

Dr. Danson believed the new computer system would require very little oversight, enabling his practice to focus on providing quality patient care. What's more, it would free up his time to see more patients. However, in focusing on practice aesthetics and relying on the new computer system, Dr. Danson overlooked the importance of developing and implementing effective risk management protocols.



Visit by Elderly Patient

73-year-old Harold Hiller first saw Dr. Danson on July 17, 2008. Mr. Hiller filled out a standard dental and medical history form, which indicated Mr. Hiller was an insulin-dependent diabetic with a history of cancer, radiation therapy and headaches. However, there were no details provided about these conditions. Moreover, he failed to sign or date the form, and the following sections were left blank:

- Mr. Hiller's dental care history
- His physician and the time of his last visit
- Mr. Hiller's reason for seeing Dr. Danson

The informed consent form in the chart included eight paragraphs with Mr. Hiller's name, date of birth, signature and initials next to each paragraph. The form was dated July 16, 2008, and included blanks for work yet to be performed. While it contained many good informed consent points, it didn't identify the specific work Mr. Hiller had provided his consent for.

Dr. Danson's undated, computer-generated chart indicated that Mr. Hiller was missing teeth numbers 4, 5, 9, 10, 12, 13, 14, 18, 19, 30, 31. Teeth numbers 2, 3, 6, 7, 8 (which appeared from the diagram to have been crowned), 11 and 15, were x'd out on the computer diagram.

An additional form said, "Extract—erupted tooth or exposed root," and showed teeth numbers 2, 3, 6, 7, 8, 11, and 15 were extracted on July 17. Yet another form revealed a comprehensive oral exam was performed on July 17, and decay was found on teeth numbers 7 and 11. Computer-generated notes indicated an exam and a Panorex were

Continued on page 2

Dr. Danson said that Mr. Hiller wanted to have his remaining upper teeth extracted.

performed on July 17. A cryptic note read, "We will request an upper denture."

At this point, Mr. Hiller was scheduled to have a bone growth removed from the lingual lower right and lower left, as well as have a temporary put in for tooth number 8. However, Mr. Hiller didn't show up for appointments on July 22 and September 15 that were set aside for this.

On October 2, the chart indicated that Mr. Hiller had all his upper teeth removed surgically, and Dr. Danson had provided him with prescriptions for Amoxicillin, Tylenol #3, POI, pain killers and antibiotics.

Mr. Hiller was a no-show for the next appointment set for October 8, yet he received Amoxicillin and Tylenol #3 for dry sockets and pain on October 10. That day, a plasty was completed on the left side and two sutures were placed. The right side was scheduled to be completed on the next visit. Ibuprofen was prescribed.

The computer-generated chart for October 2 stated: "Surgical removal of an erupted tooth" for teeth numbers 2, 3, 6, 7, 8, 11, and 15. In addition, the chart included notes stating that alveoloplasties were performed on October 9 and October 10.

The next appointment set for October 12 was a failed appointment. A month later, Dr. Danson's staff called Mr. Hiller to request he complete his dental care, but there was no response.

Patient Initiates Lawsuit

A couple of months later, Mr. Hiller, acting as his own attorney, filed a lawsuit against Dr. Danson. The suit claimed:

- Dr. Danson extracted seven upper teeth on October 2 to prepare for an upper denture.
- Bone and tooth chips were left in his mouth, resulting in terrible pain.
- Pain and problems with his upper mouth caused him great difficulties in eating and also adversely affected his diabetes.

During the deposition, Dr. Danson didn't recall much about the care he provided to Mr. Hiller. He did remember Mr. Hiller's mouth was in bad shape and the patient wanted to have his remaining upper teeth extracted and replaced with dentures.

Dr. Danson said Mr. Hiller consented to the extractions, and the patient returned much later with dry sockets and exposed and dead bone, which Dr. Danson removed. Dr. Danson remembered he prescribed antibiotics, gave post-operative instructions and told Mr. Hiller to return for follow-up care. Dr. Danson also recollected talking to Mr. Hiller about his diabetes. According to Dr. Danson, it was only when the issue of money arose that a lawsuit was initiated.

When asked about the lack of detail on the informed consent form, Dr. Danson said it was their office's procedure to provide informed consent forms to patients along with the initial package of materials. Then, after the examination, the staff would check off the discussion and consent on the forms.

> No matter what the format, the records should assist in patient care and support a dentist's actions in a malpractice allegation.

Though it appeared that some of Mr. Hiller's allegations might have gained traction in court, the lawsuit ended up being dismissed due to his failure to follow a technical statute. Mr. Hiller never resurrected his claim.

See "What Can We Learn?" on the following page for risk management tips.

This case study was derived from the files of Linda Hay, J.D. All names used in *Dental Insights* case study are fictitious to protect patient privacy.

Linda J. Hay is a member of Alholm, Monahan, Klauke, Hay & Oldenburg, L.L.C., a law firm that is certified as a Women's Business Enterprise, located in Chicago, Illinois. Ms. Hay focuses her practice on the defense of professional liability cases, including dental malpractice. In addition to trial work, Ms. Hay frequently lectures and regularly publishes on risk management issues for professionals. Ms. Hay can be contacted at lhay@illinois-law.com.

What Can We Learn?

Had the case gone to court, Dr. Danson would have had to contend with some troubling issues.

- **Lack of detail in the records.** Despite the fact that the records were contained within a sophisticated computer-based program, they failed to show the whole story or sufficient detail about Mr. Hiller's care. For example, what did Dr. Danson mean by "surgical removal of an erupted tooth" (weren't all teeth erupted)? Was the flap involved? Were bone fragments removed, and if so, around which teeth? Was there sectioning? Any root tips fixed? Ideally, treatment notes should be tooth specific.
- **Reliance on testimony.** Dr. Danson would have had to recall and testify months later about what was not included in the charts. Perhaps Dr. Danson could have explained his thought process behind his care, communications with the patient, recommendations, and the difficulty presented by a patient who failed to follow recommendations. However, his explanations might have seemed suspect because they were not mentioned in the records.
- **Factual errors.** Another potential complication would be the fact that the form was dated (likely incorrectly by the patient) the day before the first examination. This type of error creates confusion and suspicion in the minds of potential plaintiff experts and juries.
- **Over-reliance on computer system.** Any system is limited by the capability of the people who use it. Though Dr. Danson's electronic records program seemed to have the ability to provide comprehensive dental records, it was not being used to its capacity. The system should have been a tool to provide the best possible patient care and to support the dentist's actions in any malpractice allegation.
- **Potential impact on patient's health.** Providers should document in the patient treatment records anytime there is a possible impact of planned dental services on a patient's medical condition. Notes should include the summary of the discussion with the medical provider and any applicable clearance.
- **Lack of informed consent.** The apparent failure to obtain Mr. Hiller's informed consent for the removal of his seven upper teeth likely would have been difficult to defend. Mr. Hiller's consent to remove the teeth was not documented, and there were no notes about discussions in the exam room, recommendations for extractions, alternatives to extractions and any potential complications.
- **Deficiencies in protocol.** There was no protocol to assure the informed consent process was properly and accurately completed, the patient had no questions after the oral consultation, or that the patient would only initial and sign the consent form after these steps were taken.

Requirements for Electronic Health Records (EHR) Incentive Program Announced

Financial incentives will soon be available to healthcare providers—including dentists—who adopt EHRs and meet Health Information Technology for Economic and Clinical Health Act requirements.

To receive the incentive payments, the provider must be able to demonstrate "meaningful use" of certified EHR technology in the practice, which would include:

- Electronically capturing health information in a coded format
- Using the captured information to track key clinical conditions
- Communicating information for care coordination
- Initiating the reporting of clinical quality measures and public health information

The regulations spell out the objectives that eligible physicians and hospitals must achieve in payment years 2011 and 2012 to qualify for incentive payments beginning in mid-May 2011.

The rule divides the objectives into a "core" group of required objectives, as well as a "menu set" of procedures from which providers can choose. This approach was designed to ensure that providers who qualify for the incentive payments meet basic elements but still have the flexibility to address their varying EHR needs.

For more information on the incentive program including registration and objectives, go to www.cms.gov/EHRIncentivePrograms/.

Expert answers to your questions about ...

Collecting on Outstanding Patient Accounts

Q: We use a collection agency to obtain payment on outstanding accounts. Lately several patients have threatened to sue us for unrelated matters after their accounts were sent to a collection agency. Should we just write off the unpaid balances?

A: Most risk management experts suggest evaluating each case individually; however, there are things you can do to minimize the risk of a lawsuit.

1. **Spell out your third-party payer and billing policies/procedures in your new patient information**, including timing for turning over outstanding accounts to a collection agency. This way, patients will know what they can expect from you and what is expected of them.
2. **Select only reputable, experienced collection agencies** that comply with applicable laws and regulations. Before making a long-term commitment, ask the agency to "collect" from select friends or relatives who have agreed to pose as patients. This test should provide a good indication of how collections will be handled and if the agency's methods could alienate your patients.
3. **Make it office policy that the treating dentist reviews the patients' charts** before any account is turned over to a collection agency. The dentist may already be aware of a patient's inability or unwillingness to pay or if there is dissatisfaction with some aspect of care. In addition, the treating dentist should contact these patients personally to smooth ruffled feathers and make accommodations for special circumstances.
   - A patient may have lost his or her health insurance or otherwise be facing financial circumstances that is making it difficult to pay the outstanding bill. In these situations, you may wish to give the patient more time to pay.
   - A patient may be dissatisfied with an outcome, cost or other aspect of care. If you believe the patient's argument has merit, consider writing off the patient's balance or making payment accommodations. (However, be aware that writing off bills doesn't guarantee a lawsuit won't be initiated anyway. What's more, a plaintiff's attorney could try to slant the write-off as an admission of guilt.)

If a patient is willing to make regular payments to pay off his or her balance, try to provide this option.

4. **If you still decide to turn the outstanding bill over to a collection agency**, make sure to advise the patient to that effect and to fully document how the situation is handled.
5. **Consider writing off collections under a certain dollar amount and more than a year old**. One idea is to send these patients a letter stating the practice is writing off the amount they owe. If the patient needs care later on, they would be welcomed into the practice but would have to pay as service is rendered. Surprisingly, many patients decide to pay after receiving such a letter.

Call the Professional Solutions Claims Advice Hotline at 1-800-640-6504 *to talk confidentially with a professional claims representative about what type of action might be best for your individual situation. This complimentary service is available exclusively to Professional Solutions' policyholders.*

Professional SOLUTIONS INSURANCE COMPANY

Send all inquiries, address changes and correspondence to:
Dental Insights, P.O. Box 9118, Des Moines, IA 50306
Toll-Free 1-800-718-1007, ext. 9250
Internet – www.profsolutions.com
Email – dentists@profsolutions.com

Dental Insights is published quarterly for policyholders of Professional Solutions Insurance Company.