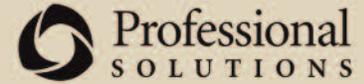




DENTAL Insights



PROFESSIONAL SOLUTIONS INSURANCE COMPANY BRINGS YOU PRACTICAL TIPS FOR AVOIDING A MALPRACTICE ALLEGATION

FALL 2011

Dentist Deals with Emergency in the Office

An emergency in the dental office can have far reaching and serious implications.

Elliott Penn, age 73, had coronary artery disease, stenosis, diabetes and hypertension. Before he retired, he was a vice president at a manufacturing company. Elliott had seen Jake Teskin, DDS, for general dental care over the years, including the removal of teeth without sedation.

Two years after his last extraction, Elliott entered the practice with his lower left cheek and gums so swollen he had difficulty opening his mouth. Dr. Teskin felt tooth number 17 required extraction, and he advised Elliott to return that afternoon to be evaluated by Dr.

Note: If you work with independent contractors, make sure to update your policy with PSIC.

Michaels, an oral surgeon who treated at the practice a couple of times a month.

When Elliott returned, he checked off heart murmur, allergies, hives, diabetes and high blood pressure on the patient history form. He also signed an informed consent form on Dr. Teskin's letterhead, which listed Dr. Michaels as the surgeon.

This form outlined the risks of surgery, which included the possibility of death and/or cardiac arrest from anesthesia. It also acknowledged that Elliott had discussed his past medical history with the dentist. Dr. Michaels later testified that Elliott told him before the procedure that he had no prior complications with general anesthesia.

Dr. Michaels performed a limited oral exam, reviewed the films taken a few days earlier, and noted that the patient had a restricted oral opening and some swelling. Consequently, he decided to extract tooth number 17 immediately.

Dr. Michaels Extracts Tooth

The surgery began with light sedation. The patient was monitored with EKG and a pulse oximeter. His blood pressure and heart rate were within normal limits; oxygen saturation was at 96 percent. Dr. Michaels administered two light doses of narcotics to relax and open the mouth enough to perform the extraction.

All premedication vitals were normal, and Elliott responded to the medications. A steroid was given to decrease swelling. At that point, Dr. Michael later testified, there was a sudden drop in Elliott's oxygen saturation to the mid-80s. It increased when Elliott breathed deeply and then fell again. When the saturation



level dropped to the 70s, Dr. Michaels said his staff immediately called 911, and Dr. Michaels and Dr. Teskin began CPR. They did not give reversal agents or attempt intubation. There did not appear to be any airway compromise.

A staff member's documentation of the event was inconsistent with Dr. Michaels' version in that it stated oxygen levels dropped five minutes after the IV began—not suddenly. These notes also stated that Dr. Michaels tried to rouse Elliott with verbal stimulation and the use of a surgical instrument to attempt to elicit a pain response.

EMS records indicated the paramedics gave Elliott a reversal agent with no response, and the patient was intubated after some difficulty. They transported Elliott to the hospital where efforts to resuscitate him continued for a half an hour before he was pronounced dead.

An autopsy the next day revealed that the cause of death was atherosclerotic cardiovascular disease. The mechanism was cardiac arrest, brought on by respiratory arrest due to an adverse drug reaction. The autopsy report said it was not clear whether the adverse reaction was anaphylactic or due

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to a depression of the central nervous system. The report further stated the patient's diabetes, hypertension and hypercholesteremia all contributed to his cardiac death.

Lawsuit Ensues

Not surprisingly, a lawsuit was filed by Elliott Penn's family alleging:

- Dr. Teskin was negligent in his referral for oral surgery in light of Elliott's history.
- Dr. Michaels was negligent in his response to the emergency, including failure to properly monitor the patient and failure to use proper resuscitation efforts, including the appropriate drugs and equipment.

Litigation began with Dr. Michaels testifying that he did not take all his resuscitative equipment with him. Instead, he relied on Dr. Teskin's equipment. Dr. Michaels reiterated that he believed Elliott was an appropriate candidate for in-office sedation.

The defense team had serious concerns about how the defendants would appear in front of a jury. The experts brought in to review the matter,

"The Essential Drugs and Equipment for the Dental Office" is a helpful article.

It is available on the archives of *The Journal of the American Dental Association* website, <http://jada.ada.org> (May 2010, vol. 141 no. suppl 1 8S-13S).

a pathologist and an oral surgeon, felt there were strong reasons to conclude the patient's death was caused by deviations in the standard of care. Specifically, there was:

- No detailed evaluation about the decision to perform the procedure.
- No reversal agent administered.
- A lack of appropriate emergency equipment used.
- Poor documentation on the details and timing of the procedure.
- No prompt call to 911.
- Inconsistency in the versions of the timing of events among the key witnesses.
- No evidence of proper emergency training of the staff. Elliott Penn might not have died had appropriate care been rendered.

Based on the evaluation of the claim and years of experience with similar claims, the defense team, in consultation with the dentists involved, agreed to settle early for \$900,000 against Dr. Michaels and \$125,000 against Dr. Teskin.

This case study was derived from the files of Linda Hay, J.D. All names used in *Dental Insights* case studies 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?

Not only is an emergency a potential tragedy for the patient and his or her family, it can have traumatic implications for the dental practice.

Consequently, dentists should prepare for emergencies by having the proper policies and procedures in place, as well as sufficient emergency equipment that staff has been trained to use. In this case, Dr. Michaels relied on Dr. Teskin's equipment, which was alleged to have been insufficient to respond to the emergency.

Further, as owner of the practice, Dr. Teskin should have spelled out in the independent contractor agreement any items Dr. Michaels needed to bring to the office and who would handle follow-up care. In this case, there was

further confusion about Dr. Michael's role as an independent contractor because Dr. Teskin allowed him to regularly use his office, forms and letterhead.

It's also important to be aware that some states require dentists to report the death of a patient to their state disciplinary board. In Illinois, for example, the Dental Practice Act requires reporting by the dental practitioner of any matter that results in a patient's death or hospitalization within 24 hours after the treatment was provided. (The Illinois Act also requires the report be made within 72 hours after the death and 30 days after the hospitalization.)

Finally, as you would with a malpractice allegation, always consult with PSIC at 1-800-640-6504 immediately if you have an emergency in your office. And, of course, make sure to document what transpired during the event.

Do the Risks of Social Networking Outweigh the Benefits?

Social networking has become a cultural phenomenon, and advances in mobile technology have resulted in the ability to text, instant message, and send photos and videos to just about anyone at any time. The most salient concern for dentists is, of course, to protect patient health and other confidential practice information no matter what the technology.

Users of social networking and mobile technology routinely share detailed information about their daily lives and activities, and hit the SEND button without thinking about the consequences. Unfortunately, once the information or photo is out, it cannot be taken back or deleted.

The ramifications for dentists can be even more serious than they are for the general population, due to the duty to protect patient health information (PHI). There is the potential for malpractice and disciplinary actions against the dentist, employee and practice, as well as loss of patient trust and bad doctor/patient relations.

Civil Money Penalties

Penalties will vary significantly depending on factors such as the date of the violation, whether the covered entity knew or should have known of the failure to comply, or whether the covered entity's failure to comply was due to willful neglect. Penalties may not exceed a calendar-year cap for multiple violations of the same requirement.

Practices may need to update their confidentiality policies and HIPAA training programs annually to address how a patient's right to confidentiality can be breached by new technology and

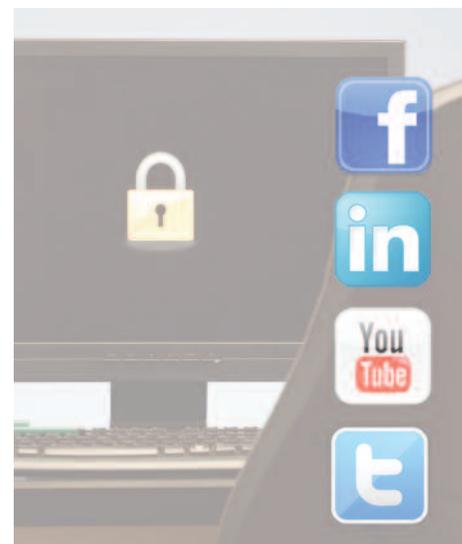
devices. Another fact to consider is whether to allow staff access to social networking sites during working hours, including the use of electronic devices. Training efforts should be documented, with each staff member initialing the policy after review.

To add to the risk potential, patients, family members, vendors and other visitors may come to the practice with smartphones or devices capable of capturing confidential patient information. Consequently, many dentists take the additional step of banning the use of these devices in their practices altogether.

Personal Posts and "Friending"

Many healthcare practitioners have a desire to keep their personal and professional lives separate. Yet, many dentists frequent online chat rooms, social networking sites or maintain blogs where they identify themselves as dentists. It is important that dentists ask themselves whether any postings could adversely affect their professional relationships.

Some practice and risk management experts recommend that a dentist interested in social networking have two separate pages—one personal and one



professional. Some even go so far as saying a doctor's personal account should be devoid of any mention of the doctor's professional status.

Moreover, accepting patients' invitations to be "friends" or asking patients to be your Facebook friend is not recommended as it blurs the patient's distinction between dentist and friend and jeopardizes the efficacy of the therapeutic process. It may be a good idea to tell patients that it's your policy not to "friend" current or former patients out of respect for the doctor-patient relationship and to safeguard patient confidentiality.

	For violations occurring prior to 2/18/2009	For violations occurring on or after 2/18/2009
Penalty Amount	Up to \$100 per violation	\$100 to \$50,000 or more per violation
Calendar Year Cap	\$25,000	\$1,500,000

Source: www.hhs.gov/ocr/privacy/hipaa/understanding/summary/index.html

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Policies Helpful

Some dentists also develop a social media policy that addresses the professional use of all types of social media by the dentist and practice with patients. This policy could be incorporated into the practice's new patient information packet.

If a dentist elects to have a profile on a social networking site, privacy settings will require extreme care and regular attention. Even when privacy settings are in place, the protection may not be sufficient. It's important to be aware that privacy settings on these sites were never intended to guarantee the security and privacy required for PHI.

It is not prudent to use the Internet for any specific discussions with patients about their condition or treatment. Even a seemingly innocent comment could be interpreted by a patient as clinical advice and could come back to haunt you. Remember, even if social networking content is no longer viewable, it still probably exists somewhere in cyberspace. Instead of answering a question online, recommend the patient call your office or schedule an appointment.



The Internet is an easy place for plaintiff attorneys to get information about doctors.

information stored online. Unfortunately, these sites have become easy prey for hackers, scammers and phishers in the business of identity theft, fraud and other cybercrimes.

Malicious software and code can be planted into victim computers that allow passwords for any account on that computer to be stolen. The thieves can then change the user's passwords to hijack social networking accounts and then move on to friends of the victim. Getting access to patient records is especially valued by hackers because they often include complete demographic information, including Social Security numbers.

Not only could patient information be breached and stolen, the entire system could be incapacitated by a virus. That's why it's important to put in place technology risk audits, firewalls and security scans and to routinely monitor the system's protection.

In addition, cellphones, smartphones and other electronic devices present potential risk to practice and patient information security when used for e-communications and social networking

in the office. Social networking sites could become portals for illegal access into other databases or additional PHI.

Investigating

Some dentists are surprised to learn that the Internet is one of the first places plaintiff attorneys will go to seek information about doctors in the event of a lawsuit. That's why it may be prudent to "Google yourself" and see what shows up. Also, there are services available that let you know when your name or practice name appears on the Internet—this may be a good investment to avoid surprises.

Be Vigilant

Although the risks inherent with social networking may outweigh the benefits in many situations, there are ways to mitigate those risks and still protect your patients' confidentiality and privacy and yourself from professional liability. Navigate wisely to avoid the dangers that lie within. 🔄

The Benefit Dentists Rely on to Avoid Claims

Worried about a touchy situation? Just need advice? Call Professional Solutions' FREE Claims Advice Hotline at 1-800-640-6504 to talk confidentially with a professional claims representative about any potential claims concern or situation you're not sure how to handle.



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