

Dental INSIGHTS

The Importance of the Production of Records

Responding to record requests can be a simple matter. However, there can be serious ramifications when your responses are not thorough and proper. Consult with PSIC if you have any questions or concerns about complying with a record request.

Scenario 1:

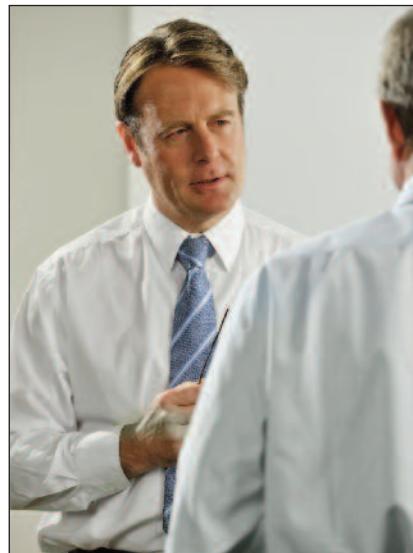
Marcus Holland, who was in his 50s, was a patient of Duane Sparta, DDS. Marcus had received sporadic dental care over the course of his life, and also had two missing teeth that had been restored via bridge-work many years prior.

Dr. Sparta prepared a treatment plan to replace the failing bridge-work with two single implants. Marcus had the implants placed without event, and both Marcus and Dr. Sparta were very pleased with the results. Dr. Sparta took pictures of the implants, in addition to radiographic films. Marcus went to his initial follow-up appointment with Dr. Sparta, as was recommended for the two implants.

Approximately eight months later, Marcus began experiencing pain in the area of one of his implants, and he contacted Dr. Sparta's office. Upon examination, Dr. Sparta noticed signs of infection in the area of one of the implants, which included swelling and some exudate. He took pictures of the area and recommended removal of the implant due to infection, as well as a course of antibiotics. Marcus seemed very angry and never

returned to see Dr. Sparta.

Dr. Sparta's attempts to have Marcus return went unanswered.



Dr. Sparta later learned that Marcus had gone to an oral surgeon who removed the implant.

Months later, Dr. Sparta received a request for any and all records. He spoke with a claims representative from his malpractice insurance company regarding this request, who in turn retained legal counsel on his behalf. On gathering the records, this attorney asked where copies of

the photographs were, since those would need to be included in the request. In addition, the attorney believed they would likely be very good evidence for the defense of any potential claim.

Dr. Sparta advised that the photographs were taken on his mobile phone and were taken only for his own reference. They were never downloaded, printed or put into the patient's chart. What's more, he had lost his phone a few months before, so the photos were now gone.

Discussion

Maintaining a part of a patient's chart on a personal mobile phone is problematic because it can hurt the defense of a claim. It could also give rise to a separate claim of spoliation of records, which in some states creates an unfavorable inference before a jury. Lastly, creating and keeping records on a personal phone will likely be considered a data breach under HIPAA.

(Also see "What Can We Learn?" on page 3 and "What Should You Consider With Record Requests?" on page 4.)

Continued from page 1

Scenario 2:

Cheryl Grant, a middle-aged secretary, went to see Lucian Mario, DDS, because she had a number of very old, failing restorations. She did not see one dentist regularly, but instead went to various dentists sporadically over the years.

Before coming to Dr. Mario for an estimate on the replacements of the restorations, Cheryl had been to a number of dentists, but felt they were all too expensive. Dr. Mario, who had been very close friends with Cheryl's former boss, evaluated her and told her that he would discount the plan for her.

Did You Know?

With PSIC, a claim is not automatically opened when you call us. While other companies may set up a claim file if you call with an incident or situation that causes concern, our approach is different. Your information is logged, but not put into your claims record. This approach helps you keep your claims-free status, but still allows you to receive guidance when you need it.

He explained to Cheryl that her other dental conditions required regular and consistent dental care, maintenance and long-term evaluation. He began the initial replacement of the failing restorations, and as he began the first quadrant, Cheryl began to complain about other medical problems. She shared Internet research that she believed showed a link between her medical issues and her old restorations.

Dr. Mario reviewed the materials and concluded the restorations he was placing were appropriate, based on both the literature and his understanding of her conditions. He also told her to follow up with

her medical doctors regarding her medical issues, which he did not believe were related to his dental care or her dental condition.

Despite these requests, Cheryl continued to complain. She told Dr. Mario she was going to get a second opinion from another dentist, which he strongly recommended.

In the meantime, while performing the replacements, Dr. Mario noted an area of food impaction, which led to some tenderness and swelling. Dr. Mario evaluated the area twice, cleaned the area well, and recommended Cheryl keep the area very clean. Dr. Mario planned to continue to monitor that area closely before recommending any further action. However, Cheryl never returned for her next scheduled appointment or for completion of the remaining three quadrants.

Rather than return to Dr. Mario, Cheryl went to see a periodontist and a general dentist. Those dentists contacted Dr. Mario and advised him that the general dentist had apparently found necrotic tissue around the tooth where there had been the food impaction.

Dr. Mario had a number of email and phone calls with those dentists in an attempt to provide good continuity of care. In particular, Dr. Mario and the periodontist exchanged numerous emails about records and photos. The periodontist was in no way critical of Dr. Mario. He clearly indicated that while there was swelling of the tissue, it was not fully necrotic, and the area had healed nicely.

Around this time, Cheryl was becoming more hostile to Dr. Mario. She claimed in phone calls and emails that Dr. Mario caused the swelling, as well as her other medical problems. In turn, she asked for all of her money back for the work he had



done. She then contacted her credit card company to withhold payments already made to Dr. Mario.

Dr. Mario then received a request for records from Cheryl's lawyer. On his own accord, he decided to provide copies of his handwritten chart, but he did not provide the voluminous copies of his emails with the patient, the articles she sent him, or the communications with the credit card company. Neither did he provide copies of all his emails with the subsequent treaters.

Subsequent to that time, Cheryl filed both a disciplinary complaint and a lawsuit. In the course of these two claims, Dr. Mario contacted his malpractice insurance company who retained counsel on his behalf. Dr. Mario then produced everything he had on Cheryl Grant's case. The disciplinary matter was dismissed, but only after two conferences with the state board. In addition, the lawsuit was eventually dismissed after a number of attempts by Cheryl and her counsel to keep it going.

Discussion

Had Dr. Mario produced the entirety of his chart on this patient to her lawyer when the initial request was made, it is likely that a lawyer would have been more hesitant to take on this matter.

Scenario 3:

Mary Holmes was a patient of Wayne Crest, DDS, for about three years. Mary had general cleanings, fillings and a root canal performed by Dr. Crest. When Dr. Crest recommended the root canal, he

ADA Resource

The American Dental Association offers a publication, *Dental Practice Dental Records—CPSPR180*, that provides additional guidance on this topic. It is available for purchase at <http://ebusiness.ada.org/productcatalog/product.aspx?ID=3273>.

told her she could wait for preapproval by insurance for the root canal or proceed whether insurance covered the cost or not.

As it turned out, Mary's insurance did not cover the root canal procedure. Mary became very angry when she was told she had to pay for the full amount of the bill. Mary had

several unpleasant conversations with the staff.

When Mary asked to review her records, Dr. Crest's office staff copied the progress notes and the history sheet for her to see, but they did not share copies of the billing records. Mary never returned to the practice or paid her bills and the matter was sent to collection. Angry at the collection attempts, Mary filed a disciplinary complaint with the state board and the State Attorney General's office for consumer fraud.

Ultimately, Dr. Crest's defense team became involved, and upon reviewing the billing records, realized Mary had signed a form prior to the root canal. This form stated that she agreed to be personally responsible for any fees not covered by insurance. Eventually, that signed form was the basis for dismissal of Mary's complaints, but only after approximately six months of communications, conferences and explanations.



Discussion

If the billing records would have been produced to Mary when she requested them, it could have been pointed out that she had signed a form agreeing to be personally responsible for the cost of the root canal. This simple step may have stopped Mary from initiating her complaints with the board and the Attorney General's office.

This case study was written by Linda Hay, J.D. All names used in *Dental Insights* case studies are fictitious to protect patient and dentist privacy.

What Can We Learn?

Production of patient records is a serious matter and not one to be taken lightly. All record requests



should be handled formally and overseen by competent staff. The dentist should monitor these efforts.

Furthermore, details should be noted in the chart with the written request. This should include exactly what was produced and when. These details can be critically important.

Extreme care should also be taken to produce and retain of all types of electronic data. Should practitioners have any questions about what to produce, when to produce it, whether a request is proper, etc., it is recommended they contact their malpractice carrier. Alternatively, they could consult with personal legal counsel in their state—someone who practices healthcare-related law and is current with disclosure of health-care records.

Record requests are often a signal of patient dissatisfaction. Dissatisfaction often prompts a claim, suit or board allegation. Early intervention and the proper production of records, with care taken as to the details of the situation, may

serve to prevent a claim. Even when a claim cannot be prevented, this step can enable a better defense.

Moreover, problems with records production often create a problem where none existed previously.

(See next page for specific considerations with record requests.)



Linda J. Hay is a member of 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.



PSIC Gets Another “A”

PSIC’s “A” rating by industry analyst A.M. Best has been reaffirmed. (A.M. Best Ratings range from A++ to S.) Best also assigned PSIC an “a+” (Strong) long-term Issuer Credit Rating (ICR) with stable outlook.

Scan to visit the risk management section of psicinsurance.com/dentists

What Should You Consider with Record Requests?



- ✓ **Know and follow all regulations.** These include HIPAA regulations, your state's healthcare laws and dental board regulations pertaining to recordkeeping. Your state dental society is a good resource for information on recordkeeping requirements in your state.
- ✓ **Ensure the record request is valid** and the requester is authorized to receive the record.
- ✓ **Produce the entirety of the chart** when responding to appropriate record requests. This should include both sides of any two-sided documents.
- ✓ **Create and enforce written office policies** and procedures regarding the release of records. These should include administrative, technical, and physical safeguards pertaining to access and storage of records, and a requirement that records not be released without the dentist's knowledge and approval.
- ✓ **Be aware the patient generally has the right to access** the information contained in their record (even though the dentist owns the patient record). Patient account balances or delinquencies should have no bearing on whether the records are released to a patient requesting them.

- ✓ **If a request is verbal, ask that it be made in writing.** Make a notation in the patient chart as to when, where, how and to whom the record is being sent. Many states allow the dentist to charge a duplication fee. Check with your state dental society about such fees.
- ✓ **Never release original records or radiographs** unless required to do so by a court order or subpoena. Whether you release originals or copies, be certain to retain a duplicate set of everything being released. This will help ensure the return of all originals or provide a record of what was produced while permitting the dentist to maintain a file.
- ✓ **Secure and segregate requested records** and/or other materials to prevent loss or alteration to the information.
- ✓ **Be aware that non compliance** with a record request can have negative consequences with a malpractice claim or lead to a dental board complaint.
- ✓ **Consult with PSIC at 1-800-640-6504** to talk confidentially with a professional claims representative if you have questions or concerns about complying with a record request or another potential claim situation. This complimentary service is available exclusively to PSIC policyholders.



Send all inquiries, address changes and correspondence to:
Dental Insights, P.O. Box 9118, Des Moines, IA 50306
Toll-Free 1-888-336-2642
Internet – www.psicinsurance.com/dentists
Email – riskmanagement@psicinsurance.com

Dental Insights is published quarterly for policyholders of Professional Solutions Insurance Company. Articles may not be reprinted, in part or in whole, without the prior, express consent of Professional Solutions.

Information provided in **Dental Insights** is offered solely for general information and educational purposes. It is not offered as, nor does it represent, legal advice. Neither does **Dental Insights** constitute a guideline, practice parameter or standard of care. You should not act or rely upon this information without seeking the advice of an attorney.

IMPORTANT!

For you to continue receiving *Dental Insights* in the new online format,
We Need Your Correct Email Address!



Note: Please update your information by July 15, 2015
for uninterrupted online delivery.

It's easy! Go to:
www.psicinsurance.com/Insights



Scan this code or
visit the website.

Dental Insights is moving online!

To offer you the most-recent information, as well as bonus articles and interactive content, e.g., videos and links, *Dental Insights* will be available online starting with the fall 2015 issue!

Dental Insights Online will continue to deliver compelling case studies, tips for avoiding malpractice allegations, updates on current malpractice trends and more!

WE NEED YOUR EMAIL ADDRESS TO DELIVER YOUR ISSUES ONLINE!

Please go to www.psicinsurance.com/Insights
for instructions before July 15, 2015.



IMPORTANT MESSAGE

for dental policyholders from PSIC



We need
your correct email
address on or
before
July 15, 2015.

Dear Doctor:

Starting with the fall 2015 issue, you will no longer receive a print edition of *Dental Insights*.

We will make *Dental Insights* available to you as an online publication. To continue to receive the publication without interruption, we need your correct email address on file before July 15, 2015.

Please provide your email address by visiting www.psicinsurance.com/Insights, and entering your email address.

We value you as a policyholder and want to make sure you don't miss an issue. See the inside back cover for more detailed information.

Thank you for your immediate attention.

FAQs about the Online Edition of *Dental Insights*

Q: Do I need to submit my email address if you already have it on file?

A: Yes. That way we can verify the email address we have on file is correct to send you the online edition of *Dental Insights*.

Q: Will you protect my email address?

A: Absolutely! PSIC will never sell your email address. We will use it to send you important notices, such as the availability of the next issue of *Dental Insights*.

Q: Why the new format?

A: Moving to an online publication enables us to offer you more timely news that is relevant to you,

online bonus articles and interactive content, e.g., videos and links. Also, because you will receive the publication online, you can access it from any computer or mobile device whenever it's convenient for you.

One thing we won't change is the compelling real-life case studies, articles and Q&As you have come to expect in *Dental Insights*.

Q: Is there a fee for the online version?

A: No. *Dental Insights* is offered as a benefit to policyholders of the PSIC dental malpractice insurance plan.