EASTERN DENTISTS INSURANCE COMPANY

FYI: Case Study

Topic: Don't Cloud Your Professional Judgment - Allowing Patients to Dictate Treatment

Barry Regan | Vice President of Claims and Risk Management

On April 12, 2010, the insured diagnosed decay below the crown margin of tooth #18. The dentist recommended removing the crown, having endodontic therapy, and perhaps a crown lengthening procedure prior to placing a new crown, or extracting the tooth and going with an implant supported crown or a bridge. The patient did not want to incur additional expenses, and requested the dentist do what he could to try and save the existing crown. The dentist performed hand excavation and placed a restoration in the existing crown, but still advised the patient that the tooth may need a root canal or extraction. He made an appointment for patient to be seen by Dr. Endo for April 18, 2010. When the patient appeared at Dr. Endo's office she had gross submandibular swelling. When he opened the tooth and did not have any drainage Dr. Endo transferred the patient emergently to a community hospital.

A CT scan showed air in the left mandible. It became apparent that the community hospital could not handle the situation and the patient was transferred to Mass General Hospital (MGH). The patient was 15 days inpatient and received significant thoracic surgery leaving her with very long scars on her neck and torso. The tooth was extracted at MGH. After extraction the tooth was described as having a perforation in the furcation and a perforation in the area of the bone of the furcation into the lingual cavity.

There was a perforation on the lingual cortex that was correlated with the furcation. The patient was discharged with a feeding tube and orders for physical therapy.

The patient filed suit against the insured general dentist. The allegations were that the insured caused a perforation through the furcation of tooth #18 and through the bone of the mandible allowing air and/or debris to enter the soft tissues. The emphysema and subsequent infection followed the path of the esophagus into her neck, mediastinum and chest.

The claimant was a married woman of 52 years of age at this time.

The claimant's expert opined that the insured breached the standard of care by perforating the furcation and the bone. Further, he should have known that this tooth was not salvageable and referred for an immediate extraction rather than attempting a restoration.

EDIC had the case reviewed by a general dentist. Our expert agreed that the insured is responsible for the medical course incurred by this patient. He does agree that the insured embarked upon treatment on a tooth that was non-restorable. Extraction should have been the plan from as early as February 2010, let alone April 2010. EDIC's expert disagreed to some extent with the patient's expert, as EDIC's expert believed the insured probably did not 'cause' the furcation.

However, because the expert believed the furcation was already evident by carious effect prior to the insured's excavation, it follows that the insured should not have attempted to restore the tooth. When the insured placed a filling into the tooth after stirring up the bacteria inside, he blocked the buccal egress of the infection and forced it lingually into the tissue, thus causing the massive spread of the serious infection.

We also had the case reviewed by an endodontist. He was also not supportive. He opines that the insured failed to meet the standard of care in several respects; at the time of his treatment the insured did not correctly assess the restorability of the tooth, did not remove the crown to achieve the best scenario for decay removal, and failed to detect the several perforations of tooth and bone.

The claimant presented bills from the community hospital for $23,846; Mass General for $138,683; and MGH Physicians for $23,346, for a total $185,875. The photos of scarring show a scar of 7-8 inches on the front of her neck that continues onto her clavicle area, and a scar greater than 12 inches going from her mid-back arcing to under her right arm.

Without a supportive expert, EDIC would not have been able to get a defendant's verdict at trial, so we sought the insured's permission to settle the case prior to a trial. The insured granted his consent to settle, and the case was settled for $450,000.

A Dental Society Risk Retention Group
edic® EASTERN DENTISTS INSURANCE COMPANY
Malpractice Insurance By Dentists, For Dentists®

Case Study

Risk Management Comments

Unfortunately, the dentist in this matter allowed his concern for the patient's financial situation to cloud his clinical judgment. The dentist would admit later that he knew it was a long shot to save the crown and the tooth, but he didn't think there would be any harm in trying to do so. He never anticipated the complications that arose in this instance.

EDIC reminds its member dentists that they should never allow a patient to dictate treatment to them. You are the dentist, and you should use your best clinical judgment and deliver treatment to the patient that will meet the standard of care required of the average qualified dentist. However well-intentioned the dentist in this matter was, no matter how unexpected the infection was, the bottom line here is that if the insured refused to attempt to clean out decay without removing the crown, the patient would have had a better result in both the long- and short-term.

Colleague Speaks...

"Speaking as a long-term client of EDIC, I encourage all my colleagues as well as all dentists, to join the EDIC family – a family that constantly looks out for all of its members".

Frank Glushefski, DMD
PA Dentist
EDIC Insured

FAQs

Who owns the Medical Record the dentist or the patient? Are patients entitled to original records and X-Rays? How about the study models?

As a general matter, the dentist owns the original record (including the charts, radiographs, and models). The dentist is ordinarily required to retain a patient's original record for a number of years after last seeing the patient. (This period varies by jurisdiction.) That being said, the patient does have a right to examine his or her record upon request.

Am I entitled to charge a fee for copying medical records? If the patient has an outstanding balance, do I have to provide their record?

In general, you are entitled to charge a patient a reasonable fee for copying medical records. Although it might be tempting to withhold copies of the record if a patient has an outstanding balance, you are obligated to provide a copy upon receipt of a reasonable copying fee. Aside from being obligated to do so, consider the practical effect of refusing a copy to the patient. This itself may inflame a situation where the patient is dissatisfied with his or her condition or your treatment. For example, if a patient is dissatisfied enough to switch to a new dentist and faces difficulty in obtaining a copy of his or her chart, this may only increase the chances that the patients dissatisfaction may ultimately lead to a claim.

Are there any requirements or laws that pertain to computer records?

A number of states have laws that concern the confidentiality of patients' medical records, including those records kept on a computer, but these vary considerably by jurisdiction. Some states have laws that provide for criminal or civil penalties for unauthorized access to such data.

As a practical matter, patient confidentiality should be a paramount concern with regard to all patient records. You should limit access to computerized records as you would with paper records, on a "need to know" basis. With regard to computerized records, you should have a password protected system for access to data, and you should require staff to log off a computer containing patient data when not in use. In addition, in order to prevent loss of patient records kept on computer, you should routinely back up this data to CD/DVD, removable hard drive, tape, or a cloud based system, and secure the storage media as you would a chart.