

Preventive Action

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Avoiding Abandonment Claims

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Terminating the Physician-Patient Relationship

The dentist-patient relationship is one that is based on the law of contracts. This relationship obligates the dentist to continue treating the patient until the patient's condition no longer warrants treatment, the patient discharges the dentist, or the dentist unilaterally withdraws from treatment providing that the patient is given appropriate notice of the dentist's intent to withdraw and afforded an opportunity to obtain a suitable replacement. Improperly severing the dentist-patient relationship (contract) exposes the dentist to a potential claim of abandonment.

While a dentist has the right to withdraw from the care of a patient, appropriate measures must be taken to avoid an

allegation of abandonment. The more commonly encountered situations are non-payment of a bill by the patient, failure by the patient to keep follow-up appointments or follow medical advice, or the threat of a legal action by the patient or family member. Under these circumstances, it may be prudent for the dentist to terminate the relationship.

Avoid Abandonment

Abandonment may be defined as the unilateral severance of the dentist-patient relationship at a time when there is still a need for treatment. Actionable abandonment occurs only in the absence of notice to withdraw or a failure to provide adequate medical attention. Generally, there is no legal cause of action when evidence that adequate medical treatment was available within a reasonable time frame after the dentist has withdrawn from care or if no injury or damage resulted. Before severing the dentist-patient relationship, first consider the patient's medical condition and if the severance will result in a break in the continuity of care which in and of itself could unfavorably impact the patient's condition. Depending on the medical condition and treatment requirements, terminating the dentist-patient relationship could be unwise from a liability standpoint. If the patient requires treatment at the

time, the dentist should render care, stabilize the patient and only then consider withdrawal. This does not mean completing all of the patient's medical care, but rather stabilizing the immediate medical condition. To withdraw from a patient who needs immediate care risks not only injury to the patient, but also a suit for abandonment and possible disciplinary action from the Board of Medicine.

If the patient is in a non-emergent condition, the dentist should provide the patient with notice of intent to withdraw. The notice must inform the patient of the need for follow-up care, provide sufficient time to obtain the care, and the potential consequences of foregoing such care. The length of time will vary according to the circumstances. In the interim, the dentist should remain available to treat the patient should the condition deteriorate.

The notice to withdraw should always be documented. The best method is to discuss it with the patient verbally and follow up with a certified letter. If it is not possible to discuss the matter

with the patient, then the letter should provide sufficient protection. Review the applicable provider contract or the patient's managed care plan for any limitations or prohibitions for discharging the patient.

“Improperly severing the physician-patient relationship (contract) exposes the physician to a potential claim of abandonment.”

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First Professionals Insurance Company



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For comments, questions or to obtain additional copies contact the First Professionals Insurance Company Risk Management Department at 800-741-3742, ext. 3016.

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The following elements need to be addressed in the letter to the patient:

1. A statement of intent to withdraw from treatment.
2. A designated time frame and date for the withdrawal.
3. An agreement that the dentist will continue treatment through the withdrawal date.
4. The potential consequences to the patient of foregoing continued care and treatment, when necessary.
5. An offer to refer the patient to an appropriate source where the patient can find a new dentist.
6. An offer to furnish a copy of the medical record upon patient authorization.

The letter should be sent by certified mail, return receipt requested as well as via regular mail, indicating, "copy sent via regular mail." If the patient refuses the certified letter, the regular mail letter will then serve as proper notice. A copy of the letter and return receipt should be filed in the patient's chart.

AVOIDING ABANDONMENT CLAIMS

- Properly terminating the dentist-patient relationship may require more than sending a termination letter. Situations vary.
- Sample termination letters are intended for reference only and should be revised to fit specific issues.
- Send the letter certified mail, return receipt requested and also by regular mail and indicate in the letter "copy sent via regular mail." File a copy of the letter in the patient's chart.
- Consult your professional liability carrier or personal attorney should uncertainty arise.

PATIENT WHO FAILS TO KEEP APPOINTMENT

Dear _____:

On -mm/dd/yy, you failed to keep your appointment at my office. In my opinion your condition requires continued medical treatment. Please call my office for another appointment. If you prefer to have another dentist attend to you, I suggest you arrange to do so without delay. With your authorization, I will provide a copy of your records to the dentist of your choice.

Please understand that my purpose in writing this letter is out of concern for your health and well-being.

TO ANNOUNCE WITHDRAWAL FROM CASE

Dear _____:

Please be advised that I am withdrawing from further professional attendance upon you because of your refusal to follow my advice and treatment. Since your condition requires continued care, I suggest that you place yourself under the care of another dentist without delay. I will remain available to attend you for (specify # of days and calendar date) from the date of this letter, but in no event beyond that point.

This will allow you ample time to select a dentist of your choice from the many competent practitioners in this area. With your authorization, I will make available to the dentist your case history and a copy of your records.

TO CONFIRM DISCHARGE BY PATIENT

Dear _____:

This will confirm that you discharged me as your dentist on _____. In my opinion your condition requires continued treatment by a dentist. If you have not already done so, I suggest that you employ another dentist without delay. At your request, I will provide your new dentist with information regarding the treatment which you have received from me and a copy of your records.

Case Study: Failure to regulate anticoagulation therapy results in respiratory arrest and death

Editor's Note: This case analysis reflects an actual First Professionals' case.

Case Summary

A 42-year-old male presented to the insured dentist with complaints of chronic and severe oral pain of three-week duration. The patient also exhibited swelling of the jaw and neck. A comprehensive dental plan of treatment was initiated. The patient's medical history of atrial fibrillation managed by chronic anticoagulation therapy was not recorded nor was the anticoagulation therapy evaluated or adjusted for the root canal. On the sixth visit with the dentist, the patient underwent a scheduled root canal under parenteral sedation with Versed and Demerol. Romazicon was administered near the end of procedure. Approximately 10 minutes later the patient became short of breath, lost consciousness and fell to the floor. EMS was called. However resuscitative efforts were unsuccessful. The cause of death was determined to be respiratory arrest caused by the combination of parenteral sedation and anticoagulant medication. The dental record was absent any documentation of a medical history, an informed consent discussion, a pre-procedure evaluation, the timing and dosage of medications administered, nor an assessment during or at the conclusion of the procedure. A wrongful death action was subsequently filed against the dentist asserting negligent management resulting in respiratory arrest.

Risk Management Issues

- Failure to evaluate prior medical history;
- Failure to regulate anticoagulation therapy;
- Inadequate documentation; and
- Failure to obtain informed consent.

Conclusion

Defense experts were unable to support the standard of care given the lack of adequate documentation. The patient's medical history of atrial fibrillation and anticoagulation therapy should have been noted in the dental record. Anticoagulation therapy should have been evaluated and adjusted for the root canal. The patient should have been advised of the risks and complications of sedation in light of his medical history of atrial fibrillation. Consequently, settlement was necessitated in the amount of \$775,000.

Discussion

One of the most prevalent procedures involved in malpractice claims is the initial evaluation and history. Because of the patient's medical history, specific adjustments should have been made for sedation. The patient should have been informed relating to the need for regulating her anticoagulation and clearance obtained from the patient's attending physician. The combination of inadequate evaluation and charting documentation resulted in an avoidable complication and indefensible malpractice claim. —

This information does not establish a standard of care, nor is it a substitute for legal advice. The information and suggestions contained herein are generalized and may not apply to all practice situations. First Professionals recommends you obtain legal advice from a qualified attorney for a more specific application to your practice. This information should be used as a reference guide only.

First Professionals Insurance Company is Florida's Physicians Insurance Company and the endorsed carrier for professional liability insurance.

Legal FAQs For information specific to your state of practice, contact First Professionals' Risk Management department



Are all covered entities required to comply with the HIPAA Security Rule?

Yes. All covered entities that must comply with the HIPAA Privacy Rule must comply with the HIPAA Security Rule.

What is meant by the term 'negligence'?

Generally, the failure to use such care as a reasonably prudent and careful person would use under similar circumstances, or the doing of some act which a person of ordinary prudence would not have done under similar circumstances.

Must a dentist supply an interpreter at the request of the patient?

Yes, in compliance with the Americans with Disabilities Act. The expense

incurred in providing interpreter services may be used as a write off for tax purposes.

What action should be taken when a "Notice of Intent" letter is received?

Immediately notify FPIC by calling the Claims Department at (800) 741-3742, ext 3293. FPIC only has limited a limited number of days to prepare a response on your behalf to the notice of intent and assign a defense attorney, if necessary. It is important to not discuss the case with the patient, the patient's attorney or other parties involved in the care and treatment of the patient. You should gather and secure the patient's records immediately.

What action should be taken when a medical or dental error is suspected or occurs?

Contact FPIC's Risk Management Department for guidance as soon as possible. Make no admissions of liability. Federal and/or state reporting requirements under strict time constraints may apply. Always attempt to discuss the situation with personal counsel or FPIC before meeting with hospital risk management.

Are x-ray films the property of the patient?

No. X-ray films are the property of the originating physician, dentist, or radiology group. By law, the patient may access their films and if requested, furnished a copy. However, original films should never be released. The patient may be charged the cost of reproducing x-ray films.

May multiple prescriptions be issued for the same medication on the same day?

The Florida Board of Medicine's position is that the issuance of multiple prescriptions for the same medication on the same day to a stable patient is appropriate as long as the statement 'do not fill before' is written on the subsequent prescriptions. In addition the prescription must adhere to the new legible prescription law. —