Risk management: addressing current issues in the dental practice
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Three components of risk management

• Communication
• Documentation
• Informed consent
Communication
Patient-dental relationship

• First impression developed at first appointment
• Based on mutual trust and respect
• Built through verbal and nonverbal communication
• Communication is irreversible
• Communication is credible and empathetic
Communication – you’re only as strong as…

• Create a favorable first impression
• Demonstrate concern and empathy
• Be sensitive to patient dissatisfaction
  o Report it to the dentist
• Create a favorable last impression
Patient perception of you

- Makes me feel comfortable?
- Cares about me and my well-being?
- Experienced and competent?
- Open to patient input and questions?
- Good listener and personal?
- Informed consent
- Respectful of time and money?
Why is communication important?

• Patient’s satisfaction is based on quality and effectiveness of communication
• Patient’s assessment of clinical treatment largely based on communication
• Good communication promotes healthy doctor-patient relationship
• You obtain the necessary information to treat
• Patients tend to be more compliant
Why is communication important?

People are less likely to sue someone they trust.
Patient noncompliance

• Patient declines clinical care necessary to ensure success of treatment
  o Radiographs
  o Perio care
  o Referral to specialist
  o Treatment plan – wants a band aid

• Noncompliance requires extra chart documentation

• Who’s driving the bus anyway?
Patient noncompliance

• Subsequent provider may be critical

• The patient will shift blame to you and your staff
  ○ The patient won’t remember your warning when your predictions come true

• Noncompliant patients are the least reliable and the most litigious

• DOCUMENT! DOCUMENT!!
Patient noncompliance

• When the patient requests a band aid:
  o Keep the patient informed
  o Fully document diagnosis and treatment
  o Fully document patient noncompliance
  o Know when to refer or dismiss patient
  o Did I say document?!?
Did you know…

•70% of the world’s attorneys live in the United States

•What percentage of lawsuits occur in the United States?
  o 65%
  o 80%
  o 92%
Common reasons for claims

• Failure to properly refer or treat condition
• Failure to diagnose
  o missed
  o delayed
  o incorrect
• Failure to educate patient
• Failure to meet patient’s expectations
Crown and bridge replacement

• Common malpractice issue
  o Includes cosmetic dentistry

• Better communication/patient expectations via informed consent process
  o Patients should be told crowns/dentures will not feel like their natural teeth
  o It’ll take time to adjust to the feel

• Patients should be told a crown’s life expectancy

• Do not guarantee…..but do have a replacement policy
Example replacement crown policy

During years:
• One and two
• Three thru five
• Six and seven
• After seven years

Replaced at:
• No charge to patient
• Patient charged 50% of crown fee
• Patient charged 75% of crown fee
• Patient charged full price
Dental malpractice

When you hear the words “dental malpractice”, who do you automatically think is being sued?
But wait, there’s more...

• Negligence involving staff
  o Hygienist cleaned patient’s teeth with non-sterile instruments
  o Dental assistant burned patient with heating device before anesthesia was administered
  o Dental assistant put acidic denture solution in water bottle, placed in the dental chair. The patient’s mouth was rinsed with the solution and suffered an injury
But wait, there’s more...

- Dental assistant removed enamel from patient’s teeth while removing bonding adhesive after orthodontia treatment.
- Hygienist attempted to seat a crown, dropping it in the patient’s throat, who swallowed it.
- Hygienist administered a block injection resulting in paresthesia.

• Claims like these have resulted in indemnity/defense payments as high as $500,000!
Some reminders…

• If you’re being sued, don’t talk to the patient or their attorney on the phone

• Keep the original chart when providing copies
  - Unless your attorney is requesting the original

• Legal documents, correspondence with your carrier, attorneys, etc. should be kept in a separate file

• Tell your staff and instruct them not to discuss it without your permission
Standard of Care

• A diagnostic and treatment process that a clinician should follow for a certain type of patient, illness, or clinical circumstance.

• What a reasonably prudent dentist would have done under similar circumstances
Treating the pregnant patient

Pregnancy is not a clinical reason to defer routine dental care or treatment of oral health problems.

CDAF Evidence-Based Guidelines, 2010
Pregnancy - the pitfalls of deferring care

• If a dentist defers care because of pregnancy:
  o Patient care may be delayed
  o Patient may receive no treatment
  o Existing issues go untreated potentially exacerbating the problem
Liability when deferring care

If a dentist is deferring care because the patient is pregnant, they may be setting themselves up for a greater risk of exposure to a malpractice claim than if they had simply treated the patient.
Pregnancy - the pitfalls of deferring care

• Dental malpractice claim:
  o Pregnancy is not an illness
  o The standard of care is to treat
  o Pregnancy will not make a good defense for deferring care
Pregnancy - malpractice claims

Historically there have been very few, if any, meritorious professional liability claims made due to dental treatment rendered during pregnancy.
Pregnancy - informed consent

Should informed consent be obtained from all pregnant women prior to any dental treatment?
Perinatal Oral Health Consensus Statement

CA Evidence-Based Guidelines, 2010:
Prevention, diagnosis and treatment of oral diseases, including needed dental radiographs and use of local anesthesia, are highly beneficial and can be undertaken during pregnancy with no additional fetal or maternal risk when compared to the risk of not providing care.
Your most asked questions about minors

• Age for minor to consent
  o WA law doesn’t specify an age at which a minor can consent
  o A married or emancipated minor can consent to treatment
  o WA follows the “mature minor” doctrine allowing care providers to assess maturity.
Your most asked questions about minors

• Age for minor to consent…
  - Base it on age, intelligence, maturity, training, economic independence, or lack of
  - Minors over the age of 15 have historically been presumed to be mature enough to consent to treatment
    Examples:
    - ✓ The minor lives on their own and/or is financially self-supporting
    - ✓ Minor presents for treatment of their own volition/without parental involvement
  - Document very carefully your reasons for determining maturity

• When in doubt, safest practice is to obtain parental consent or from authorized adult
Your most asked questions about minors

• Treatment consent by adults other than parents/guardian
  o A “kinship caregiver” other than a parent may consent to treatment IF parent or guardian consent can’t be obtained
  o A kinship caregiver is a competent adult who has signed a declaration stating they are a relative responsible for the minor’s healthcare
  o A healthcare provider who relies in good faith on the declaration of the kinship caregiver, shall be immune from suit or any action based on lack of informed consent.

RCW 7.70.065
Your most asked questions about minors

• Divorced parents:
  o Dentist may provide treatment in good faith reliant on parent’s representation that they have legal custody of the minor
    ✓ The general presumption is that both parents retain joint legal custody and may consent to treatment and access minor’s records
  o In the event of a dispute between parents over who has right to consent to treatment or access of records, the court-entered parenting plan controls
Your most asked questions about minors

- Parental financial responsibility when a minor self-consents
  - WA law doesn’t specifically address
  - Generally parents are financially responsible for minor children’s medical expenses
  - To ensure parental financial responsibility, best practice is to have a parent/guardian sign a financial responsibility agreement
Your most asked questions about minors

• Parental financial responsibility when an adult other than parent/guardian consents
  o WA law doesn’t specifically address
  o Generally parents are financially responsible
  o To ensure parental responsibility, best practice is to have a parent sign a financial responsibility agreement

• Parent access to a minor’s medical records
  o Generally parents have a right to access their minor children’s records unless the minor is authorized by law to consent to care without parental consent
  o If the minor is authorized by law to consent to treatment without parental consent, the minor can refuse access to medical records.
Our older population...
Medical concerns with an aging population

- Diseases which used to kill have become chronic illnesses
- Extremely fragile population with very depleted reserves
- Dentists/hygienists will be required to act appropriately given complicated medical histories and pharmaceutical regimens
Medical concerns with an aging population

• Make sure you have an updated health history
  - More frequent basis

• Great idea to partner with their primary care provider

• Concerns with memory-related issues should be addressed with the appropriate family member/guardian and documented
Sleep disorders – you know it’s bad when the moon has ear protection on!
Treating sleep-related breathing disorders

- Potentially serious medical conditions characterized by disruptions in normal breathing patterns
  - Snoring
  - Upper airway resistance syndrome
  - Obstructive sleep apnea

- Diseases associated with obstructive sleep apnea
  - Metabolic
    - ✓ Abdominal obesity
    - ✓ Hypertension
    - ✓ Cholesterol issues
    - ✓ Increased blood glucose
  - Cardiac
  - Respiratory
  - Other diseases
Treating sleep-related breathing disorders

• Medical/dental history

• Assess

• Refer to a qualified physician trained in sleep medicine
  - Patient should have a face to face evaluation by the physician

• Therapies for obstructive sleep disorder include:
  - C-PAP
  - Oral appliance (OAT)
    - Must be prescribed by a qualified physician
Treating sleep-related breathing disorders

**Dentist’s obligation**
- Evaluate appropriateness of OAT prescribed by physician
- Provide OAT for mild to moderate sleep apnea when patient doesn’t tolerate C-Pap
- Manage OAT side effects
  - Excessive salivation/dry mouth
  - Tooth/jaw discomfort
  - TMJ discomfort
- Communicate patient’s progress with referring physician/healthcare providers
- Continually update sleep medicine training

American Dental Association – October 23, 2017
Referring to a specialist

• Chart the type of specialty and the name of the specialist
• The date you referred
• Why you referred
• When do you get involved?
Failure to refer

- The dentist has an obligation to refer the patient if treatment is beyond his/her experience and expertise.
  - Patient doesn’t want to pay for a specialist
  - Dentist wants to do the treatment and keep the revenue
  - Just say “No!”
Standard of care

• A general dentist is held to the same standard of care as a specialist when:
  o A procedure is attempted and the available or known evidence suggests that it should only have been performed by a specialist
  o General dentist insists on completing the procedure where:
    ✓ Complications arise which are best handled by a specialist
    ✓ Continue the procedure, when circumstances allow the work to be stopped without serious complication to the patient, and not refer the patient to a specialist to complete
COMMUNICATION

YOUR COLLEAGUES AS A SOURCE OF COMPLAINTS
Communication – your colleagues

• Sometimes a lawsuit doesn’t get started in a lawyer’s office. It often gets started in another dentist’s office.

• Quite common for a claim to be filed after patient has left the practice and is being treated by another dentist.
What do you think?

What’s the percentage of claims we receive because of another dentist’s remarks?

- 5%
- 20%
- 32%
Resist the temptation!

• Some dentists are critical of prior work and actively encourage the patient to file a complaint with the State Board.

• Better options:
  o Call the other dentist to discuss your concerns
  o Call your carrier to discuss options
Consider the following:

- There is usually more than one way to treat appropriately

- Perfection is not required to meet the standard of care
Defusing difficult patients

• Office procedures and policies upfront
  o Patient informational brochure/website
  o Deal with “issues” immediately
• Educate staff/appoint a point of contact
• Take patient to a “neutral” corner
• Remain calm; allow patient to vent
• Confirm and validate w/o admitting guilt
• Follow through on promises made
• Create Dental Care Agreement
Documenting unusual occurrences

• Threats and complaints:
  o Document in a judgmentally neutral manner
  o Use patient quotes, including graphic language
  o Do not sensationalize the chart note
  o If there was not an error, don’t admit to one
  o Do not get defensive

• Resist discussing bad results with other dentists
Adverse outcome

• Fully inform the patient asap
• Demonstrate empathy
• Be open and available
• Avoid blaming others involved in care
• Avoid implying carelessness
  o “I wish I’d had a better night’s sleep.”
  o “Doctors make mistakes too.”
  o “My assistant told me the wrong tooth number.”
Adverse outcome

• Outline a plan for moving forward
• Ensure the patient understands
• DOCUMENT!!
Terminating the patient relationship

• Trouble signs:
  o Patient is rude to staff
  o Patient tells you what treatment they need
  o Patient wants special handling
  o Patient terminated by prior dentist
  o Patient wants care you do not provide
  o Patient wants special appointment
  o Patient wants special billing arrangements
  o Something just does not feel right
Terminating the patient relationship

• Reasons to terminate:
  o Failure to follow the treatment plan
  o Failure to keep appointments
  o Failure to comply with referrals
  o Failure to follow hygiene recommendations
  o Failure to cooperate with the staff
  o Inappropriate behavior towards staff
  o When the patient sues you
Terminating the patient relationship

• Be aware of the Americans with Disabilities Act (ADA) requirements

  o The ADA protects the person with a disability, not the conduct of the disabled person

  o A disabled person whose behavior is unacceptable and inappropriate can be refused treatment
Terminating the patient relationship

• To avoid abandonment issues, you cannot terminate care in the middle of treatment

• Patient care can be safely terminated once the treatment, or a phase of treatment has been completed
Terminating the patient relationship

• How to terminate patient care:
  o In writing
  o Chart the reasons why
  o Offer to make chart copy and radiographs available
  o Offer follow-up care for 15 days*
  o Tell the staff
  o Do not take the patient back

* WAC 246-817-380
Apology vs admission

• Untoward event
  o Good rapport
  o Risks discussed during PARQ discussion
  o Risks identified in written consent form

• Apology
  • 30 days
  • Good will gestures

• Admission of guilt
Refunds

• Are not an admission of guilt
• Are not reportable to the NPDB
• Deflect a potential claim or Board complaint
• In some cases, patient should sign a release form
  o Negotiated amount
  o Confidential
Collections

• Frequently lead to Board complaints
• Doctor SHOULD be notified beforehand
  - May consider personally discussing with patient
• Avoid letting balances become large
Documentation
Why is good charting necessary?

• A thoroughly documented record is invaluable if you get sued.
• Subsequent providers can understand your treatment plan and why.
• HIPAA gives your patients the right to review their dental records.
• Juries and dental boards find documentation the most reliable and persuasive basis upon which to form their decisions.
Charting in the dental record

- Anyone with similar training and experience should be able to understand the treatment planned/provided and why

- The story should be told the same way, every time, with every patient
  - Consistency
  - Credibility
Charting in the dental record

• Connect the dots
  o Make sure that what is noted during the examination and review of the radiographs gets documented
  o This documentation should then be followed by a diagnosis which correlates to treatment
  o Document prescriptions/OTCs as they relate to the treatment plan
  o Document what happens next and patient discussions
Charting in the dental record

- Connect the dots – the 6 X’s
  - HX  History
  - EX  Examination
  - DX  Diagnosis
  - TX  Treatment
  - RX  Prescriptions/OTC medications
  - NX  What happens next?
Charting – patient history

• The chart should answer:
  o History
  o Why is the patient there?
  o What problems are they having?
  o How are they responding to previous treatment?
Charting – patient history

• Health history form should be easy to read and complete

• Provide area for history updating at appropriate intervals
  o Include opioid and other med abuse
  o Marijuana use

• The only effective health history form is one that has been discussed with the patient!
Charting – dental exam

- Exam
  - What did you see and what did you find?
  - Was there anything on the radiographs which should be noted in the chart?

✓ Hint: the answer is always yes!
Charting - dental exam

• Hard and soft tissue examinations

• Supporting clinical examinations
  o Periodontal probing
    ✓ Lack of periodontal probing is one of the most common citations from dental boards
  o Bleeding points
  o Plaque index
  o Gingival index
Charting - diagnosis

• Diagnosis
  o Why did you recommend this particular treatment?
  o Did you talk about the possibility of having to do future treatments?
  o Did you give the patient educational materials?
Charting the PARQ discussion

• Procedure to be performed
• Alternatives to the procedure including no treatment at all
• Risks involved with the treatment, and/or delaying or avoiding treatment
• Questions – opportunity to answer any that a patient may have
Charting - treatment

• Treatment
  o PARQ?
  o What did you do and what did you use to do it?
  o Anything unusual about the treatment?
    ✓ Influence the outcome?
    ✓ Require follow-up?
  o Did you include prognosis for the treatment?
Charting - dental treatment plan

• Probably the most powerful entry in the chart

• It delineates the responsibilities of the patient and the dental office

• The treatment plan is a very understandable document to a jury

• By its nature, the treatment plan implies the dental office is trying to help the patient
Charting - meds

• Prescriptions
  o What was prescribed
  o Dosage
  o How many
  o How long
  o Why
  o Dispense from the office?
Charting - treatment

• What comes next?
  o Is there a sequence of procedures to be completed?
    ✓ Need for comprehensive exam after urgent care
  o Who is supposed to initiate follow-up?
  o Was a specialty referral made?
    ✓ Make a copy of referral slip
Charting basics

• Establish uniform abbreviations with staff

• Dentist should chart last (after hygienist and assistant)
  o Check for accuracy, consistency and thoroughness of staff member charting
  o Consistent nomenclature for procedures

• Initial each entry

• Appointment log and chart dates must conform

• Review transcribed records for accuracy
Charting basics

• Chart cancellations
• Chart who is responsible for rescheduling appointments
• Chart all no shows
  ○ Proof that the patient was uncooperative could greatly add to the defense
More guidelines

• Quotation Marks
  o Juries absolutely believe entries in quotation marks
  o Quoted portions are complete

• Use appropriate language and avoid making disparaging remarks

• Be objective, not opinionated

If it isn’t in the record, it didn’t happen!!
Charting nitrous oxide

• Charting musts:
  o Date of sedation
  o Reason for sedation
  o PARQ
  o Patient orientation at discharge

• Vital Signs:
  o Body temperature
  o Blood pressure
  o Pulse and respiration rate

• Charting shoulds:
  o Rate of total volume of gases delivered (e.g. 8 liters/minute)
  o Post op, 100% oxygen flush
  o Total time of sedation
  o Percentage of nitrous administered (multiple entries from induction to completion of sedation)
Releasing a sedated patient

• Chart notes reflect:
  o Patient was conscious and coherent
  o Assisted to the car
  o Escort [name] properly instructed
  o Copy of instructions
Charting in the dental record
WAC 246-817-305

- Records must be legible, complete and accurate
- Record must include:
  - Provider of treatment and date for each entry
  - Up-to-date dental/medical history
  - Notation of communication to and from patient
  - Post treatment instructions
  - Patient complaints and resolutions
  - Notes cannot be erased or deleted
Correcting an entry

• When making a correction, never obliterate a note (correction fluid, etc.), draw a line through the error, date and enter corrected information

• Never, ever alter treatment dates or notes in the dental record
Charting in the electronic record

• The hard drive is considered the original record
• Never attempt to delete an entry, instead create an addendum with the corrected information and date
• You may be requested to provide access to your hard drive
Charting in the electronic record

- Encrypt, encrypt, encrypt!!!
- Have a redundant backup
- Conduct an audit to confirm data backup
- Have two sources of backup protection
  - Example:
    - ✓ Off site disk
    - ✓ Cloud service
    - ✓ Server provided backup
Most common charting errors

• Not charting PARQ discussion
• Leaving out the diagnosis
• Diagnosis is apparent from films but not noted in the record
• Failure to document prescriptions/OTCs
  o Dental nexus of meds not noted
• Updated health history not noted
Most common charting errors

• No treatment plan

• Failure to document shortfalls in treatment
  o Not documenting follow-up efforts
  o Dentist should do the follow-up
Request for records

- Recommended copying charges in WA
  - $1.17 per page for the first 30 pages
  - 88 cents thereafter
  - $26 clerical fee
  - Basic office visit fee if the provider personally edits confidential information from the record

WAC 246-08-400 effective September 7, 2017

You cannot hold medical records hostage!
• Record Retention
  - Over age 18, records must be kept a minimum of 6 years
  - Under age 18, records must be kept a minimum of 6 years after patient reaches age 18
  - Indefinitely for potentially litigious patient
Discarding records

• On-site
  o Crosscut shredder
  o Keep log
    ✓ Name of chart
    ✓ Name of employee
    ✓ Date chart shredded

• Off-site
  o Keep receipts from shredding service
  o Keep log of charts
Data breaches are escalating

Between 2003 and May, 2012
561,465,563

Between May, 2019 and June 17, 2019
11,578,188,519

Records containing “sensitive personal information” have been involved in security breaches in the United States!

Source: Privacy Rights Clearinghouse Chronology of Data Breaches
Security Breaches 2005 – present
Posted date April, 2005
Updated June 17, 2019
www.privacyrightsclearinghouse.com
Data breaches are escalating

• What about globally?
  • 4,149 data breaches reported in 2016
    ○ 63% increase from 2015
  • More than 4.2 billion records compromised
    ○ 105% increase from 2015
  • 94 reported incidents exposing at least one million records
  • 37 reported incidents exposing ten million or more records

Source: 2016 Data Breach Quick View report
Risk Based Security
Data breaches are escalating

• What about healthcare?

• Since the HITECH Act went into effect:
  o 1,798 large breaches reported
  o 171,208,789 individuals affected

• 325 large breaches reported in 2016

• 16,612,985 patient records breached in 2016

• 320% increase in number of healthcare providers victimized by hackers, year-over-year (2015-2016)

• $23,505,300 in fines paid to OCR in 2016

Source: Cynergistek Redspin
Breach Report 2016: Protected Health Information
February 2017
HITECH Act

- It was designed to protect the confidentiality, integrity, and availability of ePHI, which is vulnerable to and must be protected from:
  - Hackers
  - Disgruntled employee abuse
  - Untrained personnel mishandling
  - Exploitation by people not having a “need to know”*
    - [✓] Employees need a **job-based** reason to access PHI
  - Inappropriate destruction of patient data
  - Burglary and theft
  - Unplanned system outages
  - Fire, flood, and other natural disasters
HITECH Act – natural disasters
Risk analysis/risk assessment – huh???

- **Risk Analysis**
    - Analysis of potential risks and vulnerabilities to the confidentiality, integrity, and availability of ePHI
    - Covered Entity and Business Associates

- **Risk Assessment**
  - HIPAA Breach Notification Rule – 45 CFR 164.402
    - CE conducts after an incident
    - Determines whether PHI has been compromised or breached
    - Determines breach notification requirements
Business Associates

- Examples, who is considered a BA:
  - Attorneys
  - Auditors
  - Accountants
  - Document destruction companies
  - Computer repair/services if accessing PHI
  - Cloud computing

- Examples, who is not considered a BA:
  - Janitor
  - Employees/volunteers
  - Mail, FedEx, UPS
  - Provider to provider
Business Associates Agreements

• Mandatory requirement for 2-day notification if Business Associate suffers a breach

• Your Business Associates should assure and confirm on the BAA that they are HIPAA/HITECH compliant – **ASK!!!**

• Keep your list of BA’s updated

• Store them in an easy-to-access location for review, modification, retrieval**
Employee training

• This is a red flag for the OCR!

• The OCR will probably request records of HIPAA training provided for staff, including:
  o Content
    ✓ Staff should at least be familiar with your Privacy and Security Policies and Procedures
  o Frequency (should be done at least annually)
  o Keep a log
Portable devices

• Another red flag for OCR!

• Do you have policies on:
  o Staff using company devices, laptops, etc.
  o Staff using email, internet
  o Staff frequenting Face Book, Twitter and other social media while at work
  o Staff using their own devices
  o Staff bringing phones with photograph capabilities

OCR now offering educational initiative: Mobile Devices: Know the RISKS. Take the STEPS. PROTECT and SECURE Health Information
www.HealthIT.gov/mobiledevices
Whoops!!

• What regulators look for:
  - Absence of appropriate policies**
  - Failure to address issues identified by risk analysis
  - Slow incident detection and notification
  - Unencrypted data
  - Unencrypted portable devices
  - Default passwords
  - Insufficient employee training/awareness
  - Insufficient dedicated security roles
    - HIPAA Privacy Official
    - HIPAA Security Officer
    - Person who investigates complaints
  - Refusal to provide incident reports and forensic investigation report
Additional keys to survival

• Encrypted/NIST standard – you’re golden!
  (National Institute of Standards & Technology – your IT person SHOULD know what this is)

• Talk to a data breach expert
  o Expert privacy/security compliance analysis (cheap compared to a breach!)

• OCR tool for practice analysis
  o www.HealthIT.gov/security-risk-assessment

• Consider cyber insurance
Informed Consent
Informed consent

A dentist has the responsibility to inform and educate a patient of proposed treatment and obtain consent from the patient for that treatment.
Informed consent – PARQ discussion

• Procedure to be performed
• Alternatives to the procedure including no treatment at all
• Risks involved with the treatment, and/or delaying or avoiding treatment
• Questions – opportunity to answer any that a patient may have
Informed consent

• Performed by the dentist (other than hygiene)
• Staff can be present
• Encourages patient to participate in their dental care and keeps expectations realistic
• Use procedure-specific forms
• Crucial for defense in malpractice claim
Simplify whenever possible

• Patients generally do not understand dental nomenclature
  o Use dialogue in understandable terms

• Along with PARQ
  o Identify problem
  o Proposed solution
  o Expected result

• Use educational materials
  o Brochures
  o Videos
  o Diagrams

• Take time needed for the patient to be comfortable

• DOCUMENT!!!
Informed consent

• The dentist has an obligation to advise the patient of the ideal treatment plan, not just the ones the patient can afford or is covered by insurance or managed care contract.

• The ideal treatment plan does not include unnecessary procedures, treatments, or x-rays just because the insurance plan will pay.
Informed consent includes informed refusal

If patient rejects treatment plan because of cost (or for any reason), chart it with quotes
Informed consent includes informed refusal

• Inform patient of risks and complications of treatment they are refusing
• Thoroughly document chart
  - Use patient quotes
• Consider using a refusal of treatment form
Informed consent

• Don’t confuse informed consent with the importance of building patient rapport and meeting patient expectations

• Aside from legal requirements, informed consent promotes good practice management and quality of care
Informed consent

• Did I say document?!!!

• DOCUMENT!!!!!
Did you know?

• If you are writing off some or all of the fee, you must refund the proportionate share to the patient’s insurance company

• Patients are often alert to this because of annual benefit limits
Self-inflicted wounds

- Not charting care to staff and family
- Not keeping track of:
  - Continuing Education
  - Medical emergency training (CPR, etc.)
  - Staff licensing
- Not knowing what anesthesia permit you need for your office
- Treating a patient after hours or of the opposite sex alone
Let’s talk drugs.....
Did you know…. 

• The US consumes 78% of the world’s oxycodone 
• 99% of the world’s hydrocodone 
• Even though we only have 5% of the world’s population 
• 2014 – 4.3 million Americans 12 or older reported using for nonmedical reasons 

Source: International Narcotics Control Board
Did you know….

• An estimated 1.7 million people suffer from substance misuse related to opioids
• Roughly 21 – 29% of patients prescribed opioids for chronic pain, misuse them
• About 80% of people who use heroine, first misused prescription opioids
• Opioid overdoses increased 30% from 2016 to 2017
• Overdoses increased over 200% in the last decade
• In 2017, over 47,000 Americans died as a result of opioid overdose
• Since 1999, that number is over 400,000
• All of this has occurred at a cost of $504 billion dollars every year
Opioids

- New trend – physicians and dentists are being sued when patients develop addiction or overdose issues

- Dentists and physicians can be named in class actions filed against opioid manufacturers
Opioids

• Dentists prescribe 8 – 12% of opioids in the US

• Dentists are top prescribers to adolescents
  o 31% given to patients aged 10 – 19
  o Most likely to abuse and develop an addiction
Opioid suits

• Oregon dentist currently being sued for $1.5 million

• The allegation – the drugs were “excessively and unreasonably prescribed”
Opioid suits

• Dental suit also alleges:
  ○ “Throughout defendant’s association and alleged dental treatment of plaintiff, the above described medications were provided to plaintiff by defendant for the purpose of plaintiff experiencing the side effects of said medication in the form of a physical and psychological “high” and not for the pharmaceutical and medical purposes intended by the use of said medications.”
The pressures to prescribe

- Angry patients not prescribed an opioid, take to social media, potentially damaging your practice’s reputation

- Example: if you are one of two oral surgeons in a town, and you get the reputation of not prescribing Vicodin or Hydrocodone, patients will seek care from the provider who does
The pressures to prescribe

• The public doesn’t believe that Ibuprofen combined with Tylenol is as effective

• When reviewing the work of dentists, we have seen hospital systems take into account complaints from patients upset they were not prescribed an opioid
Reducing risk…

• How to reduce the risk of a claim and still prescribe:
  o Chart reason for RX very carefully
  o Chart concerns about risk of addiction or side affects
    ✓ Be well informed about how/what impact could be
  o Prescribe in small numbers
    ✓ Does the patient really need 20 – 30?
  o Don’t permit refills without talking to the patient
    ✓ Consider an in-office chat
    ✓ Chart the conversation
  o Refer long-term pain management to a physician
Educate your patients

- As many as 30 million prescription pain pills fall into the category of leftover pain pills annually

- Leftover pain pills can be abused by adolescents or others in the home
Example of Rx charting 1/5/17

• Hx: Patient phoned the office to request a refill of his pain medication.

• Ex: Patient symptomology at site #15 has progressed and worsened. Tooth #15 has irreversible pulpitis and has treatment planned for a root canal. Pt. states “My work schedule has been busy and I’ve been unable to schedule the procedure because I’ve been traveling a lot. I’ll reschedule my procedure in two weeks.” Pt is requesting pain management until then.

• Dx: Patient reports 8/10 pain. #15 irreversible pulpitis w AAP

• Rx: Hydrocodone/APAP 10/325 #20, take 1 tab q6hr prn pain, 0 refills. Ibuprofen 800mg #30, take 1 tabl tid prn pain, 0 refills

• Nx: Pt to schedule root canal in two weeks
Example of Rx charting 1/6/17

• Hx: Pt phoned the office to request another Rx for his pain medication

• Ex: Pt states “My car was broken into and my medication was stolen.” Pt is requesting an additional Rx.

• Dx: Lost medication

• Tx: PARQ. I informed the pt that this would be the last Rx for this medication and to store it in a safe place

• Rx: Hydrocodone/APAP 10/325 #20, take 1 tab q6h prn pain, 0 refills. Ibuprofen 800 mg #30, take 1 tabl tid prn pain, 0 refills.

• Nx: Pt to schedule root canal in two weeks
Example of Rx charting 1/12/17

• Hx: Pt phoned the office to request a stronger pain reliever and to schedule his root canal procedure at site #15. 8/10 pain

• Ex: Pt reports that his current analgesic medication is ineffective at managing his symptoms and requested a stronger medication. I informed the pt that I would not prescribe additional analgesic medication without an appointment and commitment to treatment. Pt agreed to schedule his root canal treatment at site #15.

• Dx: Progressing and worsening symptomology at site #15

• Tx: PARQ. I agreed to prescribe a stronger analgesic medication

• Rx: Oxycodone/APAP 10/325 #20 take 1 tab q6h prn pain, 0 refills

• Nx: Pt scheduled on 1/20/17 for root canal treatment
Washington Prescription Monitoring Program (PMP)

• 2006 – drug overdoses rose 19%, claiming more than 52,000 American’s lives

• About two thirds involved opioids

• Legislation in 2007 gave the DOH authority to create a PMP
  o RCW 70.225

• August 27, 2011 became effective

• Tool to assist in exposing drug seekers

• Helps manage patient care and allows you to know prescriptions ordered by another provider
Prescription Monitoring Program

- Pharmacies submit prescription data to PMP
- System users log onto website to request report of controlled substance meds dispensed to their patient
- Report shows:
  - Prescriptions dispensed
  - Provider who prescribed
  - Dispenser of Rx
  - Drug name, quantity, refill info, etc.
- Sign up on www.doh.wa.gov
Some sound practices:

• Ask if patients are getting meds from other doctors
• Chart their response using patient’s words in quotation marks
• Use the PMP before prescribing opioids whenever possible
• Think twice about prescribing over the phone to someone you haven’t met
Some sound practices:

• Use combination opioids when an opioid is necessary
  ○ Yields greater analgesic activity with less adverse affects

• Consider asking if you can contact their PCP if they need more than one refill, and definitely check the PMP prior to prescribing the second refill
Some sound practices:

• Make sure your health history form has a question about past opioid abuse or other addiction issues

• For patients with chronic pain, consider referring to a pain specialist

• When corresponding with the pain specialist, cc the patient so they know you are trying to help them
Marijuana and your patients

- Hypothetical:
  - A patient comes in for emergency exam, complaining of severe pain in his maxillary right first molar. The tooth has been bothering him for months. He wants it extracted ASAP.
  - Medical history states that he uses marijuana recreationally, including that day.
Marijuana and your patients

- Informed consent
  - Can a patient under the influence of a controlled substance consent to treatment?
  - If something goes wrong, the patient could deny informed consent
Marijuana and your patients

• Tips for addressing marijuana use in patients:
  o Treat it the same way you would alcohol
  o Ask about marijuana use on patient health history form
  o On consent to treatment form, ask if patient is currently under the influence of drugs or alcohol.
Marijuana and your patients

• Tips…
  o If patient appears to be under the influence, or discloses that they are:
    ✓ Chart it objectively
    ✓ If non-emergent, offer to reschedule
    ✓ If emergent, consider providing the minimum amount of care to stabilize the situation and get the patient out of pain
Our Changing Culture

TREATING YOUR TRANSGENDER PATIENTS
Our changing culture

• Patient-centered care
  o Arrange for a private conversation with the patient, e.g. in a consultation room
  o Advise the patient you’re happy to assist them. This conversation will require sensitivity and candor!
  o If your software doesn’t allow you to add a notation with the patient’s requested name or gender change, advise the patient
  o Devise a means to tag the chart with the patient’s former and preferred new name
  o Train your staff
Our changing culture

• Ask if they have/will legally change their name

• Advise that claims submitted to their dental insurance carrier will need to be submitted under the name on the patient’s insurance card
  o It’s the patient’s responsibility to contact the carrier with their name change
  o The patient can file a claim directly with the insurance company

• Advise if lab work is necessary, for the patient’s safety you may be required to indicate the patient’s true gender marker
  o The same holds true for patients whose gender identity may not match their sex at birth.
Our changing culture

• Use gender-neutral words like “partner” or “spouse” instead of “husband” or “wife”

• Include on your health/history questionnaire
  o The patient’s preferred pronouns (he, she, his, hers, etc.)
  o Different gender checkboxes: “male”, “female”, “non-binary”, “other”, etc.
Our changing culture

Know the laws: Washington

• How to change gender on a Birth Certificate
  o People born in WA may request the appropriate form. The new rule added “X” as a third sex designation option

• Washington requires a completed Change of Gender Designation Request Form by patient’s physician or other provider for:
  o Change on Birth Certificate
  o Drivers license
Our changing culture

Know the laws:

• Veterans Administration/Social Security require a letter from the patient’s physician indicating:
  o Patient has changed genders
  o Has had appropriate treatment for transgendering
  o Appropriate treatment does not necessarily mean surgical intervention
Patient injury from equipment or instrument failure
Equipment/instrument failure

- Stabilize the patient
- Tell the patient what occurred - document the conversation
- If you tell a family member, carefully chart that also
- Witnesses (chairside, etc.) should make a record of what they saw/did
- Preserve the instrument or equipment if possible (don’t send home with the patient as souvenir)
Equipment/instrument failure

• Don’t speculate on the reason for the equipment failure

• Photograph and store it someplace safe

• Prior to a technician making a repair, contact your carrier. They may want to preserve the evidence

• Be aware that any communication with the manufacturer, supplier, or distributor will be evidence at trial
Equipment/instrument failure

- Before discarding the equipment, contact your carrier first
- In the event of patient injury, contact your carrier
  - Have the patient seen in the ER
  - Check on the patient after the injury
- Keep good records on maintenance and inspections
- If you lease a property and notice a defect, notify your landlord promptly for repair
And finally....
Resources

• The Dentists Insurance Company
  800.662.4075
  www.tdicins.com

• Melissa Moore Sanchez, CIC
  425.329.2608
  Melissa.Sanchez@tdicins.com