The EDIC Practice Risk Management Program

"By Dentists, For Dentists"®

EDIC believes that risk management should be practiced every day in a dentist's practice to prevent medical malpractice insurance claims. In fact, since 1992, we know that good risk management practices help prevent medical malpractice lawsuits and claims.

While we cannot prevent every medical malpractice insurance claim, we are diligent in our efforts to minimize the number of professional liability claims. This is why we believe in risk management education and practices, not only for the newly graduated dentist, but also for the seasoned dentist.

As a value-added benefit for our EDIC insured's, we provide various risk management materials such as whitepapers, case studies, our bi-annual newsletter *On the Cusp*, as well as our EDIC Clinical e-Bulletin on emerging and cutting-edge risk management topics.

We encourage our dentist members to call our Risk Management team at any time if they have questions, a doubt or a pending issue. Please feel free to call our toll-free number 1-800-898-3342 for immediate concerns. Or, email us with a question or concern at info@edic.com.

Web Links to EDIC Risk Management

EDIC Website
www.edic.com

Archived Webinars
www.edic.com/webinars.html

EDIC RM Events Calendar
www.EDIC.com/events.html

Claims
www.EDIC.com/risk-management.html

Oral Conscious Sedation
www.EDIC.com/Dental-Resource-Center/EDIC-and-Oral-Conscious-S-3.html

Consent Forms
www.EDIC.com/Consent-Forms.html

Archived On the Cusps Newsletters
www.EDIC.com/News-And-Events.html

Look for EDIC's Spring and Fall Webinar Series to earn you FREE CEU's!

ADA C·E·R·P® | Continuing Education Recognition Program

EDIC is an ADA-CERP recognized provider, and dentists with a passing grade, may earn two CEU credits per webinar session and be eligible for risk management insurance discounts.

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edic® EASTERN DENTISTS INSURANCE COMPANY
Malpractice Insurance By Dentists, For Dentists®

Join Our Community!

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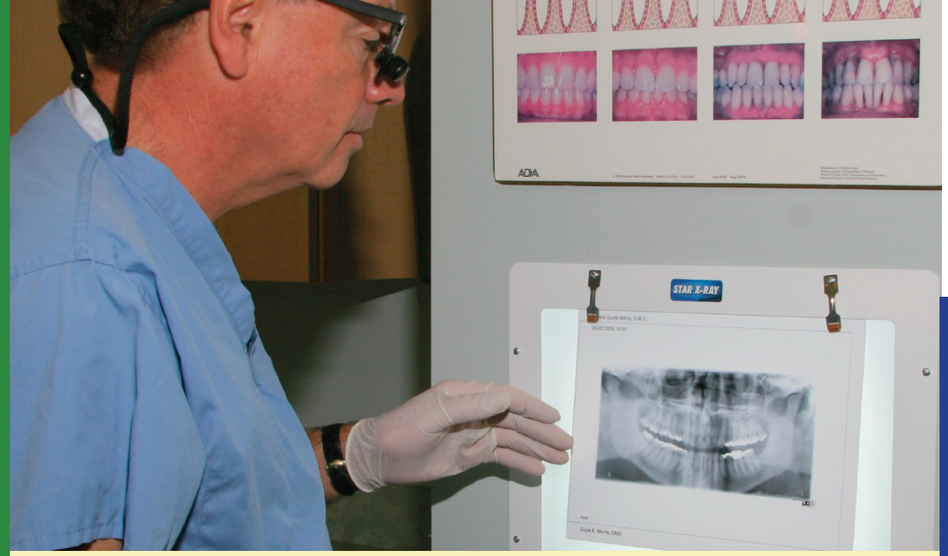
24/7 Toll Free 1800 Hotline



The Value of Informed Consent

AN EDIC CASE STUDY

This issue's case illustrates how something as simple as a postoperative infection can lead to a severe injury and a large settlement.

The patient in question, a 46-year-old male, had been a long time patient of our insured general dentist, with a history of multiple tooth extractions. Those past extractions were routine and uneventful. On 3/2/2005 the patient came in for the extraction of #17, an erupted tooth. The general dentist took one preoperative radiograph. It was a simple extraction using forceps and a straight elevator. The tooth, however, did fracture during the extraction. The dentist was aware that there were roots remaining in the jaw. After several unsuccessful attempts to remove the remaining root tips, the dentist stopped his efforts due to the patient's discomfort. The dentist was confident that the root tip would exfoliate. He was not concerned about taking a postoperative radiograph even knowing of the root tip. The patient was given a preprinted sheet of postoperative instructions. The dentist told the patient to call back if there was any increased discomfort.

The patient returned two days later with some swelling, so the insured prescribed penicillin and Percocet. The patient returned in another three days, still swollen, so the general dentist changed the antibiotic to erythromycin. He was advised that the root tips were still remaining, but the dentist wanted to wait until the infection resolved before he attempted to remove them. The patient called the office on 3/10/05, and stated he thought his face was less swollen, and requested a refill on his pain medication. On 3/15/05, the dentist called the patient and left a message, only to later find out that the patient had been admit ted to the Massachusetts General Hospital 3/11/05.

The patient was admitted to the hospital after a deep space infection of the left neck set in and was in the ICU for 14 days. He was seen in emergency surgery for an incision and drainage of the left neck. The medical team placed four drains under general anesthesia.The patient was kept intubated and sedated with a feeding tube. The drains were removed on day ten. The patient was extubated on day twelve. He had a difficult 72 hours withdrawing from anesthesia with signs of delirium, agitation and confusion. On day sixteen he received physical therapy to provide gait therapy and ambulation assistance. He was also being watched for a small left side pneumonia while in the hospital.

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Barry Regan | Vice President of Claims and Risk Management

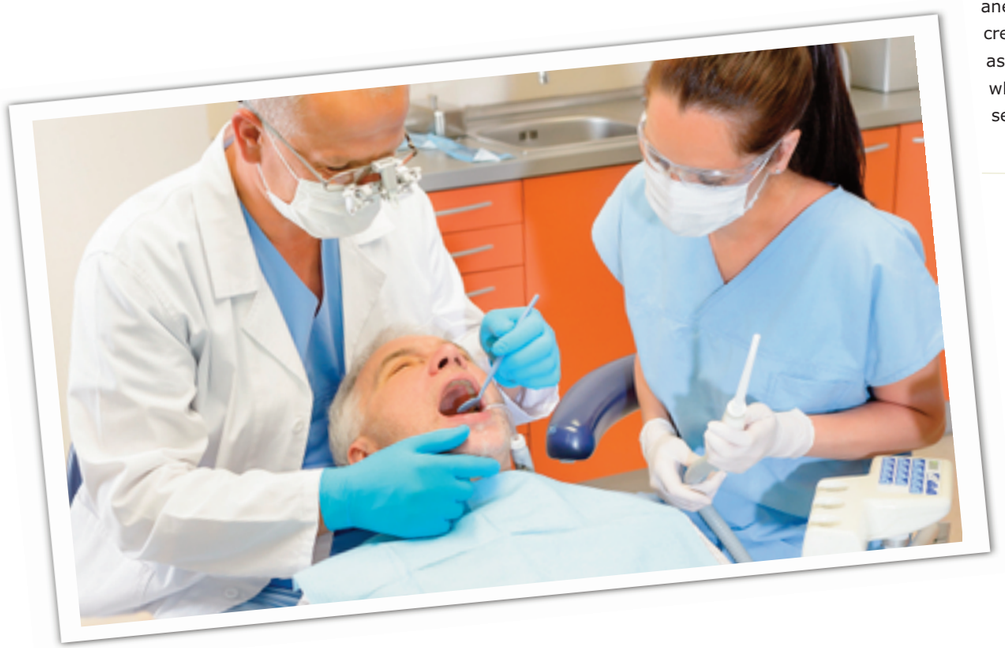
"The dentist was confident that the root tip would exfoliate. He was not concerned about taking a postoperative radiograph even knowing of the root tip".

On 4/7/2005, the patient called for a copy of his records stating he was going to the Oral Surgery clinic at Mass General. On 4/8/2005 the patient came in, picked up his records, and the dentist took a radiograph of the lower left, and indicated that the area was healing well. On 8/18/2005, the patient came in to pick up copies of his radiographs because he was thinking of implants. Our insured had no way to duplicate them, so the patient was given the original radiographs.

In October of 2005, the dentist received a letter from an attorney making a claim against him. The attorney alleged that the dentist failed to take proper radiographs, failed to properly evaluate the patient prior to treatment, failed to advise patient that there were retained roots, failed to take a post extraction radiograph to locate the roots, failed to timely refer the patient to an oral surgeon, and failed to give proper postoperative instructions.

EDIC had an expert oral surgeon review the case. The expert opined that the failure to take a postoperative radiograph was a deviation from the standard of care, and made it difficult for the dentist to properly evaluate the postoperative course. The expert was also critical of the dentist for failing to document any informed consent decision, and for failing to have a written consent form. The expert agreed that the dentist should have referred the patient sooner to an oral surgeon, rather than changing his antibiotic from penicillin to erythromycin, which would not have been an appropriate drug to substitute for penicillin.

With a critical expert opinion, EDIC asked for, and received the dentist's permission to settle. The patient's original demand was for $550,000, based on medical expenses in the area of $150,000. EDIC's original offer was in the amount of $175,000. We were able to negotiate a final settlement in the amount of $210,000.



CASE STUDY
Risk Management Comments

Postoperative infections are a risk of any oral surgery procedure. Therefore, dentists must discuss the risk of infection with a patient previous to the procedure in a thorough informed consent discussion. While the standard of care does not require written informed consent, any good lawyer will tell you that an oral contract is only as good as the paper it is written on! Therefore, at a minimum, after discussing the risks of the procedure with a patient, a dentist should document the discussion in the patient's chart. A written informed consent form can then be used as further documentation that a patient was fully aware of all the risks and benefits of a procedure.

Attendees at almost every risk management seminar ask how much a particular type of case may be worth. The answer is always dependant upon the circumstances of each individual case. In cases of a postoperative infection, like the one at the left, the settlement value depends on several factors, including the time spent in a hospital. Most cases of this type require only a several day hospital stay, so the amount of the mdeical bills in question are generally lower than what occurs in this case. In this case, a 10 day course of antibiotics was needed to control the infection, and then an additional six days were necessary as a result of the patient's reaction to anesthesia; the increase in the hospital stay increases the pain and suffering valuation, as well as the amount of the medical bills, both of which are significant items in determining a settlement value.

FAQs

How frequently do I need to take a full mouth series of radiographs?

A full series of radiographs should be taken on average every five years. For a patient who comes in for regular check-ups, and has good home care and no previous periodontal problems, a full series could be taken every seven years. Conversely, on a patient with poor home care, who only comes in for emergencies, or who has had previous periodontal work, a full series could be taken as often as every three years.

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. EDIC recommends you keep your records for ten years, and until the patient turns twenty-one.) That being said, the patient does have a right to examine his or her record, and to receive a copy of his/her record upon request.

How does the need for informed consent change in emergency or life-threatening situations?

Obviously, in an emergency or life-threatening situation, there may not be the opportunity to engage in a discussion with the patient or the patient's guardian. In such cases, the dentist's conduct will, once again, be governed by what a reasonable person in similar circumstances would have consented to.

Who can legally give consent for a minor or mentally impaired patient?

The minor's parents (assuming they are the minor's guardians) or, in the case of a mentally impaired patient, either the legally appointed guardian or the court.