On the Cusp

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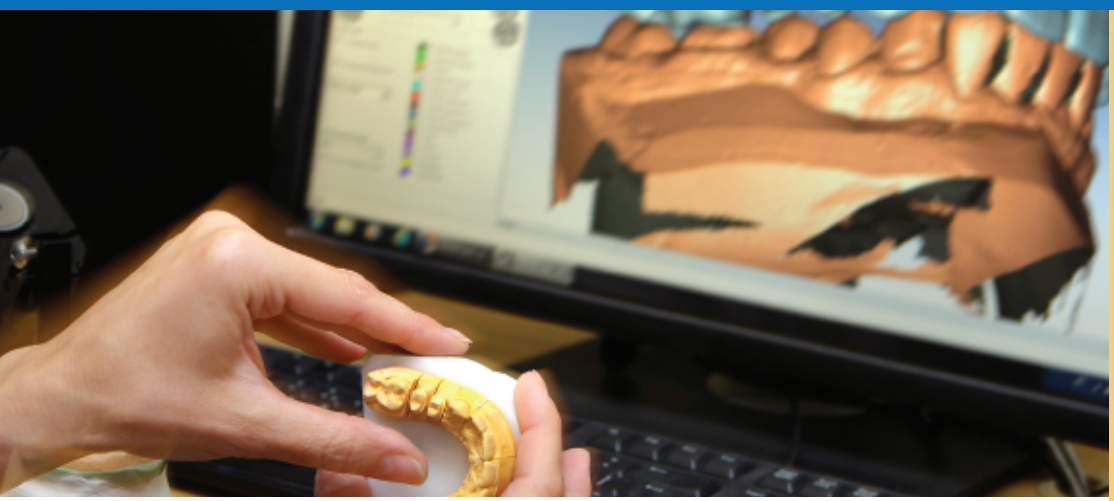
EASTERN DENTISTS INSURANCE COMPANY



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

2015 EDIC Spring Webinar Series

The Use of CAD/CAM Technology and Digital Impressions in Prosthodontics

Dr. Paul S. Gamber, Jr., DMD

Thursday, May 21, 2015
7:00 PM, EST

— EDIC INSUREDS ONLY —

In dentistry and prosthodontics, computer-aided design and computer-aided manufacturing (CAD/CAM) are used to improve the design and creation of dental restorations, especially dental prostheses, including crowns, crown lays, veneers, inlays and onlays, fixed bridges, dental implant restorations, dentures (removable or fixed), and orthodontic appliances.

Learning Objectives: This webinar will explore the multiple applications of CAD/CAM dentistry and examine the risks involved in creating prosthetics. Dr. Gamber will also identify the different systems available for CAD/CAM dentistry and discuss the advantages and disadvantages of each system.

Trigeminal Neuralgia: An Electrifying Case Study

By Craig Fontaine, Attorney, Fontaine Alissi P.C. and Julie Dickinson, MBA, BSN, RN, LNCC, Fontaine Alissi P.C

Thursday, May 28, 2015
7:00 PM, EST

Craig Fontaine, with the assistance of Julie Dickinson, successfully defended a dental malpractice case in 2014 alleging the onset of trigeminal neuralgia after a root canal treatment. Plaintiff had asked the jury to award $2,900,000.00, and his appeal of the defense verdict was denied.

Learning Objectives: Craig and Julie will use this case to discuss the anatomy and physiology behind this neurologic disorder and its clinical presentation and progression. Consideration for the defense of such cases, including expert selection, cross-examination of opposing experts and plaintiff's treating physicians, demonstrative evidence, and jury instructions, will be explored.

To learn more about these FREE webinars and to register, go to: http://edicevents.webex.com

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

Speaking With Hope

Pride of ownership is most commonly associated with home ownership, not an insurance company. But EDIC is not your standard insurance company – we are a mutual company owned by our policyholders and governed by a Board of Directors consisting of dentists. Our goal is to always be viewed as the only "By Dentists For Dentists" company, and to achieve that we must continue to always provide superior customer service, strong claims management, and timely risk management programs.

As owners of EDIC, our policyholders share in the financial success of the company. We are proud to report that in 2014 EDIC's operating results were profitable and the company surpassed the $20 million mark for policyholders' surplus. Because of this success, we were able to return over $300 thousand to our policyholders through dividends.

Just as proud homeowners continue to maintain their homes in order to protect their investment, EDIC is investing in our future by working closely with 16 dental schools. These students are the future of dentistry and EDIC is committed to helping them from their first year in school to becoming the best dentists they can be. We are also closely watching the changing landscape of dentistry, and in May, EDIC will be hosting a Symposium to address emerging topics related to Dental Support Organizations (DSOs). Over 20 industry leaders, including Dental School Deans, practicing dentists, ADA representatives,

(Continued on page 6)

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FYI: EDIC CASE STUDY

Vicarious Liability: Oral Surgeons as Independent Contractors

Barry Regan | Vice President of Claims and Risk Management
bregan@edic.com

This matter involves a then forty-five (45) year old male who presented to our insured XYZ Dental Center on May 19, 2007 through December 22, 2009 for various root canal treatments, periodontal surgeries, cleanings and extractions. On December 22, 2009 Dr. Oral Surgeon, an independent contractor not insured with EDIC proceeded with the extraction of tooth number 11, number 15, number 19, number 28, number 29, number 30, and number 32 for bone grafting and future implant placements. The patient was hooked up to monitors, and given IV sedation (brevital and versed) as well as local anesthesia (lidocaine); and extractions of #11, 15 and 19 were done. The bite block was moved and then extractions of #28, 29, 30 and 32 were done. During the extraction of these teeth, the oxygenation saturation level dropped from 97% to 45% for an unknown period of time. The chin and tongue were repositioned which resulted in the oxygenation saturation returning to 97%. Dr. Oral Surgeon proceeded to resume the procedure with bone grafting and suture placement. The patient again was noted to be at 48% oxygenation. There was no/weak carotid pulse, BP was 80/40. 911 was called and CPR was begun with an ambu-bag applied and continued until the City Fire Department Emergency Ambulance Technicians arrived and took control of the situation at 8:19 p.m. It was noted in the Ambulance Call Report that the patient went into cardiac arrest approximately ten (10) minutes before they arrived on the scene. In route to the hospital, the patient was intubated and received Epinephrine x3, Atropine x3, Vasopressin, 1 amp of bicarbonate and 3 amps of D50.

At 9:00 p.m. the ambulance arrived at the Emergency Department of The Hospital. At that time, the patient was in cardiac arrest with CPR in progress. After the third attempt of cardioversion, a normal sinus rhythm was obtained and the patient was transferred to the Intensive Care Unit. In the Intensive Care Unit, the patient was comatose; the pupils were noted to be fixed and dilated; there was no response to verbal and/or physical stimuli; and he was receiving mechanical ventilation. A CT-scan of the head was performed and revealed a severe anoxic injury. The diagnosis was acute respiratory failure; anoxic encephalopathy; status-post cardiac arrest; chronic renal insufficiency; and hemodynamic instability.

On December 23, 2009, the patient went into cardiac arrest five times; with successful resuscitation efforts by the hospital staff. At 8:00 p.m., the patient went into cardiac arrest for the sixth time; however resuscitation efforts were unsuccessful and he was pronounced dead at 8:49 p.m. An autopsy was performed the following day and the cause of death was listed as "Anoxic-ischemic encephalopathy complicating cardiac arrest during tooth extraction due to atherosclerotic and hypertensive cardiovascular disease." The report reflected that the patient had sustained anoxic-ischemic encephalopathy and large intestinal ischemia. Additionally, he had marked coronary artery disease (90% stenosis in the left anterior descending coronary artery; 70% stenosis in the right coronary artery; and 50% stenosis in the left circumflex coronary artery), cardiac hypertrophy, left ventricular wall thickness, marked aortic atherosclerosis, and focal interstitial fibrosis in the posterior left ventricle.

In April of 2011 a lawsuit was filed by the decedent's wife as administratrix of the Estate. The defendants were Dr. Oral Surgeon and XYZ Dental Center. According to the complaint, it was alleged that the insured, XYZ Dental, was vicariously liable for the malpractice of codefendant Dr. Oral Surgeon, in that he failed to take an appropriate medical history; properly monitor the plaintiff-decedent's condition while under intravenous sedation; and performed dental work for which he was unqualified. It was also claimed that the malpractice committed by Dr. Oral Surgeon resulted in the wrongful death of the plaintiff-decedent.

As a general rule an employer, a hospital or any other facility cannot be vicariously liable for a non-employee's -- an independent contractor's -- malpractice. But there is an exception. Vicarious liability may be imposed under an ostensible agency theory where the patient reasonably believes the contractor is an employee of the facility. Thus, although the codefendant Dr. Oral Surgeon was an independent contractor not employed by XYZ Dental, Dr. Oral Surgeon utilized XYZ's office for this surgery and XYZ referred the patient to Dr. Oral Surgeon. Unless we could definitively show that the patient was told that Dr. Oral Surgeon

was in no way affiliated with XYZ, vicarious liability would attach to XYZ Dental Center under an ostensible agency theory.

In order for a jury to find a corporation vicariously liable, they must first find that the employee/agent was negligent. The estate had an expert opinion from a board certified oral surgeon. He opined that the codefendant Dr. Oral Surgeon departed from the standard of care by failing to obtain a proper medical and dental history on December 22, 2009; failing to maintain an anesthesia record pertaining to the surgery; failing to obtain a baseline blood pressure prior to proceeding with the procedure; failing to closely monitor the plaintiff-decedent throughout the procedure for changes in the oxygenation level; failing to evaluate the plaintiff-decedent's mental status and administer 100% oxygen following the decrease in the oxygenation level; and failing to obtain the plaintiff-decedent's pulse during administration of CPR.

EDIC also had a board certified oral surgeon review the case, and he agreed with much of the plaintiff's expert opinion. At her deposition, the decedent's wife testified that she had occasionally accompanied her husband to his previous dental visits to XYZ Dental, and that his husband's general dentist referred him to Dr. Oral Surgeon, "who shared office space" with XYZ Dental. She further testified that she thought Dr. Oral Surgeon was another dentist who worked for XYZ Dental.

Defense counsel gave EDIC a less than 25% chance to win the apparent agency argument at trial, and a less than 25% chance that Dr. Oral Surgeon would win on the negligence count. Defense counsel placed a verdict value on the case of $7-8 million. Before trial, Dr. Oral Surgeon's insurer agreed to settle the case for the full value of his $1 million policy limit. With XYZ's permission, EDIC also offered their full policy limit of $1 million in full and final settlement of all claims. The plaintiff accepted both offers and dismissed the suit.

CASE STUDY
Risk Management Comments

The errors made by the oral surgeon were simple, but deadly! Despite having all the proper training and experience, the oral surgeon failed to either read the equipment's warnings, or failed to acknowledge the significance in a timely manner. What was the oral surgeon thinking as the oxygenation saturation level dropped from 97% to 45%? Why didn't he take action sooner? Unfortunately, it was simple human error that caused a tragic outcome.

When EDIC was first founded in 1992, we made the decision not to insure oral surgeons, as the exposure for that specialty was much greater than that for the general dentist. This case showed that EDIC had not eliminated the exposure entirely. You may have noticed changes in your renewal application and policy language with EDIC over the past two years. This case has resulted in EDIC now excluding direct or vicarious liability for oral surgeons employed or hired as independent contractors by corporations. Our rate structure simply was not adequate to support the exposures that oral surgery cases can represent. We had the choice to raise everybody's rates to meet this exposure, or to exclude it from the few corporations who did have employed or hired oral surgeons working for them. We chose the latter.

Lastly, if you do have independent contractors working for you, you should consult with your personal/business attorney on how best to structure your contracts to avoid being held vicariously liable for their actions, and on how best to advise your patients of this relationship. Whether they are general dentists or specialists, you may be held vicariously liable for their actions unless you clearly explain to your patients that these individuals are independent contractors, and not employees. EDIC's risk management suggestions on how this could be done could include posting a notice to this effect in your office, on your referral sheets, and on your billing notices if you do the billing and then pay the contractor a percentage of the collections.

"This case has resulted in EDIC now excluding direct or vicarious liability for oral surgeons employed or hired as independent contractors by corporations."

WITHIN YOUR CONTROL

Communication in the Office Visit

Debra Udey | Risk Manager
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From a simple prophy appointment to a discussion about oral cancer, communication in the dental office is vital to delivering good care. Communication can be straightforward, as for a prophy appointment for a long-term patient, or more involved, as in trying to convince a reticent patient to have a suspicious lesion biopsied.

The uncomfortable reality is that patients don't always understand what is explained to them. Unfortunately, that may not stop them from staunchly believing their misunderstanding, and blaming a dentist if something goes wrong as a result of it. Though this is not necessarily the dentist's "fault," it is one more reason why good communication is so important. Let's explore some situations and the necessary communication for them.

Restorations

A discussion of restorations should include information about all modalities so the patient can make an educated choice. The patient's options should never be limited based on an assumed determination of his or her finances. Even if one type of restoration would be better than another for a patient, the discussion should include the other types with an explanation of why one is preferred over another. There are too many instances where patients claimed they were not advised of other types of restorations, even if the other types would not have worked for them.

Granted, this discussion can take more time. However, the time spent discussing other options can be very small compared to what it would take to deal with a patient's complaint about the type of restoration provided.

Biopsies for Suspicious Lesions

Most patients will readily agree to a referral to a specialist for a biopsy of a suspicious lesion. However, some will refuse. The reasons vary, from an inability to understand the significance of the potential problem to fear of what the lesion could possibly be. Though explaining the significance to these patients can be time consuming, it is crucial. Never downplay the potential of the lesion. Don't put yourself in the position where a patient can claim you said the biopsy "wasn't that big a deal" or "wasn't that important." Granted, claims of failure to diagnose a cancer are few and far between, but can be devastating. The discussion can determine the patient's reason for refusing the biopsy. You may then be able to address the reason or fear, and convince the patient of the necessity.

If a patient still refuses the referral, don't let the discussion in the office be the "last word." Write a follow up letter to the patient to let him or her know that you care for their well-being, and why it is so important to obtain the biopsy. Vital to the letter is the consequences of not following your instructions. Again explain what the lesion could be, and that a delay in diagnosis and treatment could lead to a more serious outcome, including death (if true). A copy of this letter in the patient's chart would very likely convince a lawyer pressing a claim of failure to diagnose that you were not at fault.

Communication Techniques

Good communication is not just "giving information." It is a two-way conversation. There are several techniques one can use to ensure better communication. One is the "teach back" method. If you ask the patient, "do you understand," it allows them to say "yes" even if they misunderstood. Asking patients to repeat back to you what they understood requires them to verbalize the information. If they can't repeat it back, they haven't understood. This allows you to explain it again, possibly in a different way so that they understand. Good communication is vital to the excellent treatment you deliver, and attention should be paid to ensure that you truly communicate with patients.

Debra K. Udey is the Risk Manager at EDIC. Her many years of experience plays a significant role in the development of their annual Risk Management Educational Program. Ms. Udey has been in the Medical Malpractice field for over 30 years, 12 of which were spent in medical malpractice claims for a physician-owned company as well as in a hospital setting. Since then, she has put her claims experience to good use on the Risk Management side of professional liability insurance for doctor- and dentist-owned professional liability insurance companies.

Employment Practices Liability Insurance (EPLI)

As a small business owner, you need insurance coverage that helps to proactively minimize risks to your practice. And, if you have employees, you need insurance that helps protect you from employment-related claims resulting from alleged or actual acts of:

- Discrimination
- Harassment
- Retaliation
- Violation of the Family Medical Leave Act (FMLA)
- Wrongful discipline
- Wrongful failure to promote
- Wrongful termination

For almost 30 years, The Hartford has been protecting small businesses with a business insurance policy that provides some of the broadest liability and property coverages available. In fact, the business owner's policy they offer automatically includes EPLI coverage, usually with a limit of $10,000, which helps to protect you from the types of claims above. Unfortunately, $10,000 is probably not enough.

To help make sure you have an insurance program that's "just right" for you, The Hartford gives you the flexibility to increase the amount of EPLI coverage automatically provided by their business owner's policy. You have the option of purchasing: $25,000; $50,000; $100,000; $250,000, $500,000 or $1,000,000. And, this increased limit is conveniently added to your existing business owner's policy – no separate policy or billing to deal with.

CONSIDER THESE ACTUAL CLAIM SCENARIOS

- **A former employee claims she was unfairly terminated due to religious discrimination and receives $110,000 in back pay and compensatory damages.[1]**
- **A current employee files a complaint claiming she was denied a promotion due to her caregiver responsibilities as a mother of two. A settlement of $105,000 is agreed to for the alleged sex discrimination.[2]**

BUT THAT'S NOT ALL ...

Customers who purchase increased EPLI limits have access to hartfordhelp.com[3], a proprietary website full of employment-related resources such as ..

- Model employment policies and employee handbook
- Web-based training on topics such as wrongful termination, discrimination, sexual harassment and ethical behavior
- Timely articles regarding employment practices trends
- Sample forms for: employment applications, commendation letters, exit interviews, incident reports, performance reviews, reprimands and warnings.

THE HARTFORD BEHIND SMALL BUSINESS ... AHEAD OF THEIR NEEDS

EDIC/EDIA Employment Practices Liability (EPLI) Coverage

- **Underwritten by the Hartford Insurance Company**
- **Protects you and your dental practice against charges or suits on employment-related issues.**
- **Issues such as sexual discrimination, harassment, wrongful termination and employment discrimination can arise.**
- **EPLI coverage provides for both defense and indemnity payments**

For a quick, no obligation quote, please call EDIC at 800-898-3342

1. http://www.eeoc.gov/eeoc/newsroom/release/1-6-11.cfm 2. http://www.eeoc.gov/eeoc/newsroom/release/12-8-10.cfm 3. Hartford HELP and hartfordhelp.com are not substitutes for the retention of legal counsel and may only provide short answers or general questions. The Hartford disclaims all liability with respect to any information provided thereon or in connection therewith.

(Speaking With Hope, Continued from page 1)

and executives from DSOs, will gather to discuss a number of factors related to DSOs including patient demographics, credentialing of employed dentists, and the continuum of care regarding the doctor-patient relationship.

As a homeowner, your pride of ownership not only increases the value of your home, but also improves the neighborhood and surrounding community. As you read through this edition, you will see the numerous ways EDIC goes beyond the standard insurance company to protect and support the entire dental community.

Hope Maxwell
President & CEO, EDIC
hmaxwell@edic.com

You've Got Mail

Digital Delivery Options

Going paperless has become a thing of the present and future for many industries due to the nature of the digital era. To keep up with this leading trend, EDIC's 2014 Annual Report is now available to view online and download at http://www.edic.com/EDICAnnualReport.

To accommodate the many insured's that would like to receive our valuable clinical materials by email only, EDIC is providing an opt-in option. **If you would like to join this e-mail list, go to www.edic.com/GoDigital and register. You will receive all current EDIC clinical materials via email in the future.**

Additional digital versions of EDIC's clinical materials will be accessible on our new website that will launch in the Spring.

UPDATE: CDA Card for Prescription of Antibiotic Prophylaxis

In 2007, EDIC created our Clinical Dentistry Advisor based on the Prescription of Antibiotic Prophylaxis in relation to Endocarditis and Prosthetic Joints. In 2011, EDIC issued an updated reprint of this article and laminated card revised by the American Heart Association's Recommendations for Prevention of Infective Endocarditis. EDIC continues to receive numerous requests for reprints of this particular Clinical Dental Advisory. In 2014, ADA Council on Scientific Affairs updated their recommendations in the 01/2015 JADA article. The findings concluded that there is no association between dental procedures and prosthetic joint infections. Based on this review, the 2014 panel concluded that prophylactic antibiotics given prior to dental procedures are not recommended for patients with prosthetic joint implants. The ADA, as well as EDIC, recommend the individual patient's circumstances and preferences should be considered when deciding whether to prescribe prophylactic antibiotics prior to dental procedures.

A new antibiotic card has been sent to all EDIC insured's as of April 1st with the updated information to use in your operatory. Please discard any old laminated cards on this topic that you may be currently using. EDIC will continue its mission to provide cutting-edge Clinical Dentistry Advisor topics as well as provide our colleagues with important information and updates as we receive them. Look for the new 2015 Clinical Dentistry Advisor topic and laminated card coming to all insured's in June.

EDIC Dental Service Organization (DSO) Symposium May 20-21, 2015, Boston, MA

EDIC will be organizing the first ever EDIC DSO Symposium on May 20-21 in Boston, MA. We are collectively gathering to address perceived concerns associated with DSO's. Agenda topics such as patient demographics, credentialing of employed dentists, continuum of care and the doctor-patient relationship, risk management programs, and parameters for advanced treatment will be discussed. Our hope is to mutually develop suggested guidelines, which would benefit dental care and all practicing dentists and dental students who may practice at DSO's at some point in their career. Along with EDIC staff members, there will be a panel of representatives from the American Dental Service Organization (ADSO), American Dental Association (ADA), and Dental School Deans. There will also be a young practicing dentist from Massachusetts as well as a D3 dental student from Boston University who will be in attendance on the panel. After the Symposium, EDIC, with the help of the ADA, will gather and present the findings and proposed future plans on how the dental industry will move forward to continuing its integrity of quality of care and dental professionalism in a DSO work place.

RI Dental Association (RIDA) Names New Executive Director

It's with great pleasure that we congratulate Dr. Robert Bartro, DDS, for his new appointment as Executive Director of the Rhode Island Dental Association. Dr. Bartro practiced as a general dentist in Rhode Island and Massachusetts for over 40 years up until his retirement in 2012. During this period, he served the RIDA in many capacities, culminating as president. Dr. Bartro has served in many levels with the RI Board of Dental Examiners and the ADA as a Long Term Delegate to RIDA. Dr. Bartro continues to be an active member of the EDIC Board of Directors since his appointment in 2009.

EDIC Harpoon Brewery Event at ASDA Annual Session Boston

A huge shout out and thank you to all the ASDA students from 16 dental schools who attended the exclusive invite-only EDIC Beer For Peers event at Harpoon Brewery on February 20, 2015 in the famous South Boston Waterfront. EDIC held the event to thank all the students and schools for their support in past years in making EDIC's Dental School Program one of the best in the East. Approximately 150 students attended a night of networking and mingling with EDIC representatives for an evening that attendees called "the best event of Annual Session". It was nice to place names with faces from University of New England in Maine all the way down south to UNC School of Dentistry. Photos from the event can be accessed on EDIC's facebook page (www.facebook.com/edicinsurance) and Instagram (edicinsurance) accounts. Thank you again for the networking and camaraderie that the students took part in that evening.

NEW $50 Occurrence Policy for New Graduating Dentists

Effective February 1, 2015, EDIC eliminated the Claims-Made policy for new graduating dentists and will be offering an Occurrence policy at a flat rate of $50. After the first year flat rate, the insured will have the option of either converting to a Claims-Made policy or continuing on with an Occurrence policy. EDIC will continue to offer discounts for the first four years of practice for both Claims-Made and Occurrence policies for all new dentists after the first year flat rate premium.

If you are a new or soon-to-be graduating dentists, call EDIC at 1-800-898-3342 or visit our website at www.edic.com to apply for the best malpractice insurance coverage you will need as a practicing dentist. As always, our customer service team is second to none. You will speak to a live person upon calling EDIC during normal business hours and we are happy to answer any questions you may have to help you through this important process. EDIC also offers business office packages, workers' compensation, and cyber liability insurance through our subsidiary, EDIA.

EDIC Student Program

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The EDIC Dental Student Program

Dental Student Event Calendar 2015

April 2	ADEA Dental Student Virtual Fair
April 9	NYU Spring Vendor Day
April 9	UNC Lunch N Learn
April 11	UPITT Deans Ball
April 14	UPENN Vendor Fair
April 15	Buffalo Vendor Fair
April 16	VCU Vendor Fair
April 20	UPENN Lunch N Learn
April 22	VCU Lunch N Learn
April 29	Stony Brook Vendor Fair
May 5	Columbia Vendor Fair
May 5	UCONN Vendor Fair

Check www.edic.com for up-to-date listings of events, seminars, and Lunch N Learns at your dental school.

Recipient of the Matt Boylan Scholarship Award at Yankee Dental Congress 2015. L to R: EDIC Vice Chairman, Dr. Richard LoGuercio, Stephanie Slate, a D4 student from Harvard School of Dental Medicine, and R. Bruce Donoff, Dean, Harvard School of Dental Medicine.

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Join Our Community!

Note From The Editor

Did you know that when you purchase an EDIC policy you are actually buying a stake in the company? Pay your premium and Voilà – you, together with 5000 of your colleagues, have "skin in the game."

When everyone has skin in the game, everyone is working towards the same goal: the company's success and profitability. The company does its part to reach this goal: by offering extensive risk management programs and information to help our insured dentists avoid suits (See webinars, page 1, risk management article, page 4); by crafting coverages so that, where prudent, the company limits unnecessary exposure (see case study, page 2); by structuring the company so that dentist board members participate in the functional insurance committees: claims, underwriting, and risk management.

Unlike large commercial insurance companies our company directors are elected by our insureds. Our insureds have a direct line of communication to the company's leadership. (Do you think the president of a large commercial company is going to take an insured's call? Well you can call Hope anytime.) And best of all our insureds share in the company's profits through policyholder dividends.

Having skin in the game promotes the ancillary "pride of ownership" which is the theme of this edition. As you read this just take a moment and gratefully savor the success of EDIC and your role in this success. As dentist/owners, our insureds should be proud of their accomplishment in creating this unique "By Dentist, For Dentist"® company.

Sheila A. Anzuoni

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We welcome your comments about *On the Cusp*. Please contact our editor, Sheila A. Anzuoni, at sanzuoni@edic.com, or call at 1-800-898-3342.