



Risk Management Guide

A Handbook for Ontario Dentists



PROFESSIONAL LIABILITY PROGRAM

Royal College of
Dental Surgeons of Ontario

Ensuring Continued Trust

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AN OPEN LETTER TO ONTARIO DENTISTS

Dear RCDSO Member:

On behalf of the Royal College of Dental Surgeons of Ontario and the College's Professional Liability Program, I am pleased to introduce this Risk Management Guide which is being distributed to all Ontario dentists.

The College's Professional Liability Program (PLP) provides each member of the College with errors and omissions coverage for professional liability or malpractice claims. This coverage is also extended to former/retired and deceased members, as well as dental partnerships and health professional corporations that hold a valid certificate of authorization from the College.

Risk management has always been an important aspect of PLP. In all of our communication activities, PLP's consistent message includes information that:

- Reminds dentists that there is absolutely no link between PLP and the Complaints, Investigations and Hearings area of the College. Any contact with PLP is strictly confidential.
- Provides guidance on how to properly communicate with patients and, equally importantly, explains the importance of recording this communication in the patient record.
- Covers the issue of informed consent and explains/describes how to document the discussion that took place.
- Advises dentists to recognize their limitations and to refer difficult cases when it is appropriate.
- Encourages the implementation of risk management strategies into every day dental practice.
- Reminds members that, "When in doubt, call PLP."

I know that you will find this Risk Management Guide useful in reducing the incidence of disputes with patients and in helping to deal appropriately with issues that arise.

A handwritten signature in black ink, appearing to read "Donald J. McFarlane".

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A Word About the Professional Liability Program (PLP)

The Professional Liability Program (PLP) has been an integral part of the RCDSO since the 1970s. It is a valuable RCDSO membership service that provides errors and omissions coverage for all Ontario dentists. The cost of this program is included in your annual RCDSO registration fees.

Over the years, the College has successfully kept the cost of this program in check. The reason we have been able to do this is directly related to the way the program is funded. Because the College acts as a co-insurer, it assumes a considerable level of financial risk on each claim, up to a yearly maximum. In this way, the per member cost is about half of what dentists outside of Ontario and Quebec are required to pay for similar coverage.

Program Philosophy

The philosophy of PLP is to vigorously defend groundless claims and to resolve valid ones on a reasonable basis. Poor records or undocumented informed consent discussions often make it extremely difficult to defend a member who is being sued. The courts take the position that if it isn't in the records, it didn't happen.

Available Protection

The coverage provided by PLP is limited to malpractice claims. It does not cover the defence of a dentist in matters related to complaints, fitness to practice or discipline. Legal insurance is available from several vendors in Ontario, and it is up to each individual dentist to decide whether or not to obtain such coverage.

Each member has \$2M coverage per occurrence and there are minimal exclusions. Coverage continues into retirement, provided the professional services in question were rendered when the dentist was a member of the College. Individual dentists, partnerships, and health profession corporations with a certificate of authorization from the RCDSO have PLP coverage with respect to the corporation's practice of dentistry.

Additional coverage is available through the College's broker, Marsh Canada, for up to an additional \$8M per occurrence.

Individual Deductible and Step-up Provision

Whenever monies are paid by PLP to settle a claim and/or defend an insured dentist, there is an individual deductible payable by the dentist. This amount increases for subsequent claims where payments have been made during the same prescribed time period. Please refer to the current PLP policy for the applicable individual and step-up deductible provisions.

Duty to Report

One of the conditions of the PLP policy is the member's duty to report any occurrence that might reasonably be expected to be the basis of a claim. Such occurrences could include an unexpected or untoward result, a demand for payment by a patient or his/her lawyer, a threatened lawsuit or, sometimes, just an unhappy patient. Since failure to report an incident in a timely fashion may jeopardize a member's coverage, it is important that PLP is contacted as early as possible.

Risk Management

An important component of PLP is the risk management advice that we provide. Resources such as this handbook, group educational sessions, and individual mentoring are ways we help members reduce their chances of being sued. There is no cost to members for advice and assistance from PLP staff in dealing with patients who are dissatisfied or are demanding money.

In fact, reporting potential claims to PLP ensures the member's right to coverage. By contacting PLP early, matters can often be resolved on a mutually satisfactory basis for both the member and his/her patient.

PLP People Make the Difference

It would not be possible to manage the PLP process or any College program, for that matter, without our able and dedicated staff. The staff functions include:

- ✓ in-house claims examining by experienced and knowledgeable professionals
- ✓ on-site dental expertise
- ✓ administrative support

Where necessary, PLP uses the services of a number of legal firms to defend members who are being sued. These firms are very knowledgeable about dental matters and sensitive to the concerns of practising dentists.

Role of the Professional Liability Program Committee

The day-to-day activities of the College's Professional Liability Program are carried out by professional and administrative staff. Another important component of PLP is the valuable involvement of the Professional Liability Program Committee, one of the College's standing committees.

In addition to reviewing and overseeing the policies and practices of PLP, the Committee must approve claim settlements that exceed the internal staff authority limit before any settlement is made.

The Committee's composition is unique. It is chaired by a public member of Council, and the other members include a dentist member from Council, and five selected members of the profession.

According to College by-laws, the three-year terms of these selected members are staggered so that there are always experienced members to deal with the various matters that require the Committee's attention.

Section 1

Introduction

The current concern about risk management and claims is a direct result of the increase in number of malpractice claims against health-care professionals, as well as a diminishing insurance market in both Canada and the United States.

Risk management is not new to dental or health-care professionals. From the Hippocratic Oath, physicians have entrenched the concept of “Do no harm.” Likewise, dentists have adopted risk management principles, such as infection control, informed consent, and accurate and complete documentation.

Risk management includes:

- review of accidents or incidents to prevent their recurrence;
- review of existing systems including personnel, policies and procedures, and equipment and premises;
- education of all staff about appropriate practice and work habits;
- review of patient complaints;
- establishment of appropriate practice management procedures.

Section 2

The Law and the Dentist

There are two main legal considerations that come into play with respect to claims of negligence against a dentist:

- reasonable person test
- limitation period

This section of the Guide explains the significance and importance of these factors.

2.1 Reasonable Person Test

In determining whether or not a dentist is negligent, courts use what is called the reasonable person test. This test requires courts to compare the actions of the accused dentist with those of a reasonable dentist of ordinary prudence. In order to determine what a reasonable dentist would have done under the circumstances in question, the courts consider the testimony of other dentists or written standards of the profession. The collection of these opinions and materials becomes the reasonable dentist.

Dentists should draw several conclusions from the reasonable person test.

- Each dentist is required to have reasonable skills, abilities, and knowledge.
- Dentists must keep abreast of the times and practise in accordance with the approved means of treatment in general use.
- The rule of reasonable care does not require the dentist to guarantee perfect results. As long as dentists adhere to current standards of care and obtain the consent of the patient, they need not be responsible for a mere error in judgement.

Dental specialists hold themselves out to the public as specialists by virtue of their specialized training, enhanced knowledge, skills, and competence. As such, they are held to a higher standard than general dentists.

2.2 Limitation Period

Effective January 1, 2004, the limitation period for commencing lawsuits against dentists and other health-care practitioners changed. Previously, the *Regulated Health Professions Act, 1991* (RPHA) legislated a one-year limitation period from when the patient knew or ought to have known of the facts that gave rise to the claim.

The new provincial *Limitations Act, 2002* states that a patient must commence a lawsuit within two years of discovering the act, omission or error that gives rise to his/her claim. For children, this time period is extended to two years after the child has reached the age of 18.

Unless proven to the contrary, there is a presumption that a patient knows something has occurred on the day of the incident. However, we anticipate that most limitation periods

will not start running until a patient has had an opportunity to consult with another dentist and discovers the error.

In this new legislation, there is also a provision for a reasonable person test to protect potential defendants, as there was under the *Regulated Health Professions Act, 1991*. That is, consideration is given to both when the patient found out about the error, and also whether a reasonable person under the same circumstances would have made the discovery.

Finally, the new Act provides a 15-year ultimate limitation period. This means that, if a person has failed to discover an act, omission or error within 15 years of the date of the incident, his/her claim would be out of time.

This ultimate limitation period does not run during the time that the person with the claim is a minor (s.15(4)(b) of the *Limitations Act, 2002*). Therefore, assuming no litigation guardian has been appointed while the person with the claim is a minor, the ultimate limitation period would be 15 years after the minor attains the age of 18. There is a provision (s.9 of the *Limitations Act, 2002*), that provides a mechanism for a potential defendant to seek court appointment of a litigation guardian which would start the clock running much earlier for potential minor plaintiffs.

Section 3

Dental Claims History

Although dental professionals do not have as many legal claims filed against them as the medical community, there is nevertheless a growing number of claims to extract statistics. In reviewing claims or potential claims that are reported to PLP, common threads are poor communications (including inadequate informed consent discussion) and inadequate records.

Some areas where dentists have been repeatedly sued include:

- faulty crowns and bridges;
- extraction of the wrong tooth;
- fractured root tips remaining after extraction;
- root fractures following extraction;
- infection following tooth removal;
- cut lips and tongues;
- anaesthesia incidents;
- chemical burns;
- aspiration of foreign objects (burs and crowns);
- failure to diagnose caries.

There are also some areas in which claims are becoming more frequent:

- failure to diagnose, refer or treat periodontal disease (supervised neglect);
- problems associated with the temporomandibular joint;
- fractured file or reamer tips left in the canal during root canal therapy, compounded by not informing the patient;
- paraesthesia following the removal of third molars;
- parasthesia due to the extrusion of endodontic medicaments and sealers;
- failure to obtain the informed consent of the patient prior to treatment;
- failure to record and/or update an adequate medical history resulting in medical complications.

Section 4

Malpractice-Proofing A Dental Practice

4.1 Confidentiality

The Regulated Health Professions Act, 1991 and the Regulations made under the *Dentistry Act, 1991* prohibit the disclosure of patient information without the patient's consent or a court order. Patients expect that dental professionals will respect the confidentiality of information acquired in the course of providing dental care. Unauthorized disclosure may result in professional liability.

The protection of patient privacy is also reinforced in government privacy legislation such as the provincial health-care privacy legislation, Ontario's *Personal Health Information Protection Act* (PHIPA), and the federal privacy legislation, *Personal Information Protection and Electronic Documents Act* (PIPEDA). Information regarding this legislation can be found on the RCDSO Web site at www.rcdso.org.

Liability for disclosure can be based on the following:

- defamation – information that is untrue or harmful to the patient's reputation;
- invasion of privacy – information that is true, disclosure violates legal right to privacy; disclosure causes harm to reputation or status and may result in embarrassment and/or mental anguish.

You can minimize exposure to liability by doing the following:

- Respect patient confidence.
 - > Discourage office gossip.
 - > Adopt an office policy on confidentiality.
 - > Be selective about which staff have knowledge of or access to sensitive patient information.
 - > Have an in-office privacy code, utilize College-recommended forms, and post your privacy policy in a prominent area of the office.
- Obtain written authorization to disclose or release any records or any information about a patient; or to speak with other dentists or health-care professionals.

4.2 Informed Consent to Treatment

Informed consent is based on the right of each person to determine what will be done to his or her own body. Informed consent guarantees each person the right to refuse treatment, to consent to treatment, and to withdraw consent to treatment.

Consent may be either implied or express. Implied consent is usually ascertained by the actions of the patient, as with the patient who opens his mouth for an examination. Express consent may be oral or written.

Informed consent is not an event or specific form. Rather it is an ongoing dialogue with your patient that begins at the first visit to the office and continues as treatment progresses.

Implied consent may be sufficient if:

- The patient voluntarily comes to the dentist's office.
- Simple examinations or non-invasive procedures pose no risk of harm to the patient.

Express consent should be obtained when:

- The procedure is beyond a simple examination or procedure, e.g. oral surgery, extraction or bridge work.

GUIDELINES FOR OBTAINING EXPRESS CONSENT

- The standard for obtaining informed consent used to be what a reasonable prudent practitioner would disclose. In the early 1980s, the standard changed to a more patient-centered view. Now the standard is what a reasonable person, in the patient's position, would need to know to make a decision. This makes it imperative that dentists know their patients and that they tailor the information that is provided to the needs of each particular patient.
- In order for consent to be informed, the dentist must provide the patient with certain information: the diagnosis or problem noted, nature and purpose of the proposed treatment, the risks and benefits of the proposed treatment, the treatment alternatives available (not just the ones that the dentist provides), the likely consequences of not having the treatment, and the cost of each option.
- The dentist should be certain that the patient has consented to the procedure(s).
- Although both oral and written consent are legally acceptable, oral consent should be confirmed in writing where risks are significant.
- Regardless of whether the patient consents in writing or orally, the dentist should keep a record of the nature of the conversation, the information provided, and the patient's decision.

Other significant consent information

- There is no age of consent in Ontario. If the dentist is of the opinion that a patient is capable of providing his/her own consent, then the dentist can rely on that consent.
- A legal guardian or other substitute caregiver must consent to dental procedures for incompetent patients or children, who are not capable of understanding information that is relevant to making a decision about the treatment, and not able to appreciate the reasonable foreseeable consequences of a decision or lack of a decision.
- Consent is not required in emergency situations defined under the *Health Care Consent Act, 1996* as circumstances where the patient is apparently experiencing severe suffering, or is at risk of sustaining serious bodily harm if the treatment is not administered promptly.
- Use non-technical language to obtain consent.
- Never guarantee a result or a safe outcome.
- Never say that the procedure is routine and simple, and that there are no complications.
- Remember that alternatives may include referral to a specialist.

4.3 Personnel Management

In many instances, dentists are only as good as their staff allow them to be. Therefore, prudent dentists would be wise to ensure that their staff are certain of their responsibilities, and possess suitable skills with which to carry out these responsibilities.

From a risk-management perspective, in an adequate personnel management process, a dentist would:

- Ensure employment applications are completed by all applicants.
- Contact relevant/appropriate registration/licensing/certification bodies, including associations, to ensure registration is in good standing.
- Conduct reference checks of all applicants.
- Have a three to six month probationary period for new employees, and conduct a performance review at the end of this period.
- Have an annual performance appraisal process in your office. (There are a great number of forms available to document the appraisal.)
- Have up-to-date written job descriptions for all staff levels.
- Maintain confidential personnel files that contain all of the above documentation, attendance records, and records of any adverse incidents.
- Ensure that provincial employment standards are in place in each dental workplace.

4.4 Dentist-Patient Communication

Establishing good rapport with patients will prevent most lawsuits or patient complaints. Lack of any or clear communication invites unrealistic expectations, confusion, misunderstandings, frustration, and anger in a patient. If a negative treatment outcome occurs, either real or perceived, these feelings may intensify, leading the patient to initiate a legal claim.

The following could improve communication with your patients:

- Remember that first impressions are lasting and are formed within the first few seconds.
- Be punctual or offer explanations and apologies for late appointments.
- Greet the patient by name, introduce yourself and other employees.
- Discuss your treatment plan with the patient and encourage dialogue or questions.
- Tell the patient your office hours and what to do if an emergency occurs.
- If you are not in the office, have a means of covering your practice – another dentist or a tape-recorded message on your answering machine with the number of the local dental emergency service.
- Listen to patients' complaints. Give them a chance to vent their frustrations. Often all they want is a sympathetic ear.
- Contact PLP in the event of any complaints that may give rise to a claim by the patient.
- Do not ignore patient unhappiness.
- Use layman's terms to explain treatment plans.
- Ensure your office is stocked with a variety of patient education materials, such as brochures, information sheets, videos etc. that explain treatments and preventive dentistry, and reinforce post-operative instructions.
- Be aware of language problems.
- After forming a diagnosis, inform the patient. Also, inform the patient about the likely progression of their condition with and without treatment, and the material risks associated with each choice.
- Give post-operative patients a telephone number to call for any reason at any time.
- If post-operative patients believe they have a problem, see them ASAP.

4.5 Practice Management

Patient impressions of their dentists are composites of several impressions formed from the moment they determine they need an appointment until the appointment is ended. There are several factors influencing these opinions that can be controlled to favour a dentist's overall image. These include accessibility and availability, the reception the patient receives from the office staff, the dentist's willingness and ability to communicate with the patient, the efficiency of the dentist's office practice regarding scheduling and arranging referrals, and the quality and comprehensiveness of the treatment and follow-up provided.

Some methods to reduce risks associated with office management

- Ensure that reception rooms are clean and furnishings are comfortable. Provide reading materials for adults and toys for children.
- Mark exits and washrooms clearly. Ensure handrails are available for elderly patients.
- Permit patients to use a telephone, or provide one for their use.
- Ensure that waiting patients cannot hear staff discussing other patients.
- Develop guidelines for professionalism within the office that include proper dress, attitude, telephone etiquette, and protocols for dealing with patients.
- Post signs that note: office hours, procedure to be followed in an emergency, and your office privacy policy.

- Avoid scheduling patients too tightly. Allow enough time to have adequate discussions with patients regarding their treatment.
- Keep appointment slots open for emergencies.
- Assure that all equipment owned or leased meets the dental community's standards, and is used and serviced according to the recommendations established by the manufacturer.
- Maintain a file for each piece of equipment. This file should contain the name, serial number, manufacturer's name, date of purchase, warranties, procedure manual, educational programs provided to staff, service agreements for preventive maintenance, and maintenance logs.
- Periodically audit patient waiting times and adjust booking protocols accordingly.
- Develop patient questionnaires to find out the patients' perceptions of their visits. Elicit their ideas for improvement.
- Encourage patients to verbalize complaints.
- Clarify billing procedures and the basis for all charges.

4.6 Maintaining Dental Records

Make sure your records meet the RCDSO standards. Consult the College's Guidelines on Dental Recordkeeping and the Medical History Recordkeeping kit. Both are available on the College's Web site at www.rcdso.org.

The purpose of the dental record is to document a patient's medical/dental history, describe the conditions requiring treatment, delineate the treatment options given to the patient, and record the treatment rendered details.

THE CONTENTS OF A GOOD RECORD

- patient's name on all records, including radiographs
- date of treatment on all records, including radiographs
- medical and dental history
- allergies and medications
- current complaints
- clinical findings and impressions
- differential diagnosis
- treatment plan
- informed consent notes and documents
- known or suspected complications and side effects
- recommendations or referrals
- treatment performed and follow-up
- consultation or referral to other practitioners
- missed appointments

Correction of entries

- All chart entries should be made in ink. Errors made while charting should not be erased or obliterated. They should be deleted with a single line, so that they can still be read. The corrections should be initialled and dated.
- No changes, additions or deletions should be made after notification of a claim or a problem. Subsequent notes should be made separately and accurately dated.
- You are reminded that under PHIPA and PIPEDA, patients can challenge the accuracy of your records.

Style of documentation

- All entries should be legible, accurate and timely. Illegible or sloppy charts reflect poorly on the quality of care.
- Check the accuracy of all records typed from dictation.
- Diagrams which locate lesions, growths and anomalies help in avoiding misinterpretation.

Daily progress notes

Professional, ethical and legal responsibilities require that detailed patient records, documenting all aspects of each patient's dental care, be maintained. A crucial component of a patient's records are daily progress notes.

Progress notes describe the treatment rendered for a particular patient. However, in addition to a concise and complete description of all services rendered, the progress notes should also document all recommendations, instructions, advice given to the patient, and any discussion with the patient regarding possible complications and/or outcomes.

In general, dental progress notes usually contain adequate information about treatment rendered. Often, though, there is little or no recorded detail of discussions with the patient regarding his/her treatment. Dentists often comment that it is too time consuming to document details of discussions with patients. Remember that short forms or abbreviations are acceptable provided the dentist is able to provide a key to the short forms.

Here are some examples of good progress notes for a number of dental procedures and a description of the importance of each entry.

To assist in the understanding of the chart entries, explanations of the short forms used in the examples are listed below:

PT	Patient told
RD	Rubber dam
IC	Informed consent
LA	Local anaesthetic
N/A	Next appointment
WCU	Will call us
S/N	Short notice

Endodontic File Separates in Canal

In this case, during endodontic treatment, an endodontic file separated in a lower molar. From the progress notes, it was clear that the patient was adequately informed of the separated file and of the recommendations, and possible consequences, associated with it.

Daily Record Entry

Aug. 15/04	1.8 ml Citanest (1:200,000 epi) - mand. block, RD Cont'd RCT tx 46. Filed D to #30 @ 21mm. File sep in MB canal. Unable to bypass. PT file separated, unable to seal canal, should see endodontist for file removal and finish RCT. PT if endo can't remove file, might need surgery. Pt agreed. Refer to Dr. G. Percha - appt. made for September 8, 3pm.
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Record entry clearly shows the patient was informed that:

- A file had separated in a canal.
- The endodontic treatment could not be completed.
- Referral to an endodontist was necessary for the removal of the file.
- Additional treatment might also be required.

Consultation for Wisdom Teeth Extraction

Below are the details of a consultation appointment where extraction of teeth 18 and 48 is contemplated. The progress notes clearly show that informed consent for the extractions was obtained.

Daily Record Entry

Nov. 12/04	C/C: pain O/E: 48 partially erupted, pericoronitis. PA - impacted, tipped M against 47. Roots not close to mand. canal. Recom exo 48, 18. Disc'd optn: leave as is but 48 will not erupt due to position. Symptoms will persist, inf'n may develop. If leave 18, will likely overerupt. Disc'd procedure, risks/conseq, as per surgical IC form, provided cost est. No questions. IC obtained. N/A: 4u - exo 48, 18 LA
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Record entry clearly shows that:

- The extraction of 48 was necessary.
- The patient was warned of risks and possible consequences of surgery.
- Options were discussed, consequences of no treatment were discussed, and a consent form was provided.
- The treatment procedure was discussed.
- Costs were discussed.
- Informed consent was obtained.

Non-compliant Patient With Periodontal Disease

This is an example of a non-compliant periodontal patient. The progress notes, over an 18-month period, clearly show that the dentist informed the claimant of his poor oral health, warned him of the consequences of periodontal neglect, and tried to convince the patient to schedule appointments for treatment, and to see a periodontist for evaluation.

Daily Record Entries

Feb 3/03	Perio exam: Mild-mod bone loss in BW.s, deep pockets esp post. OH poor. OHI. Discussed perio disease. PT needs referral to perio. "Will think about it." N/A 4u scale
Feb 24/03	S/N cancel'n. WCU to rebook.
March 25/03	Called pt. Busy at work right now. WCU when not so busy.
Sept. 24/03	Pt. Presents for "check-up." Reminded did not come back for cleaning. Ging. puffy, red, deep pockets in post. PT must come back ASAP for cleaning and needs to see periodontist. Expln'd if perio cond'n not brought under control bone loss will likely cont and teeth could be lost! Promises to book hyg appt. today.
Oct. 27/03	No show for hyg. appt. Called - N/A. LM to call.
April 30/04	Pt. Presents on emerg. C/C pain 46. PA.-bone loss to furc'n. Told pt MUST see perio. Pt agreed. Refer to Dr. Scaler for complete perio evaluation.
June 4/04	Dr. Scaler's office called. Pt. did not show for appt. Called pt. Forgot. WCU to rebook.
Sept. 15/04	TCF Dr. Scaler's office. Pt. did not rebook appt. Called pt. Home #NIS Called work, no longer works there-moved to BC.

Record entries show that:

- Complete periodontal charting was done.
- The patient was advised of periodontal condition.
- The patient was referred to a periodontist.
- The patient was told of consequences of failure to treat periodontal condition.
- Patient was non-compliant.

Claims often arise when a patient, who has been non-compliant and who has periodontal disease, becomes the patient of a new dentist. When the second dentist advises the patient of his/her poor periodontal condition, the patient looks for someone to blame. Detailed

progress notes demonstrate that the patient was aware of his/her condition and is responsible for the periodontal deterioration that occurred over time.

Deep Restoration

Daily Record Entries

<p>Oct. 12/04</p>	<p>NP emerg. C/C pain to sweet, cold LL (points to 34-35 area). PA-deep recurrent decay 35D, no PA path. PT decay very close to nerve, may need RCT. If RCT, post/core/crown also nec. If no RCT other option is exo. PT RCT not always successful, may need add'l tx and/or surg. Pt understands, wants RCT if nec. Discussed costs of all. 1.8 ml lido (1:100,000epi) mand blk RD Deep DOV decay but no exposure. "X" liner & "Y" comp. PT decay very deep, RCT may still be req. Call if symptoms.</p>
<p>Nov. 2/04</p>	<p>Emerg. C/C spont. pain 35, up all night last night. O/E 35 P+++ , H+++ . Dx: irrev. pulpitis PT needs RCT as disc. last appt. PT can start today. Need another appt to complete. 1.8 ml lido (1:100,000 epi) RD Pulpectomy. File to #20K @22m. 1PA NAOCl, dried. Closed with cotton, cavit. N/A 3-u complete RCT 35</p>

Record entries show that:

- The initial treatment was required.
- The patient was told decay was deep and RCT might be required.
- The tooth subsequently became symptomatic and RCT was necessary.
- The option of extraction was discussed.
- The patient was told post/core/crown would be required following RCT.
- The patient accepted revised treatment plan.

Courts usually take the view that if there is nothing in the chart to support a dentist's contention that a certain action took place, e.g. patient informed of certain risks, then that action is deemed not to have taken place.

For this reason alone, it is vitally important that all interaction with patients, including discussion, information provided, advice/instructions given, treatment recommended or performed etc., be clearly set out in the progress notes, and that all entries be dated and attributable to the treating practitioner.

The examples given demonstrate that it is relatively easy to record detailed, accurate, and timely progress notes that will serve the dentist in good stead, if/when a complaint is lodged or a lawsuit commenced.

Release of records

- The patient's written consent is required prior to releasing a copy of/or information from their record. The only two exceptions to this rule are cases involving court orders and communication with RCDSO, including PLP.
- The dental record belongs to the dentist. However, patients have the right to examine them and copy information from their records. They also have the right to obtain copies of their records from you, provided consent has been obtained for such release. Once obtained, copies of the records should be transferred in a timely fashion to the patient or his/her new dentist, depending on the patient's directions.

What doesn't belong on a patient's chart?

- criticism of care given by others
- communication with the Professional Liability Program
- communication with the patient's lawyer

Why are dental records important to risk management?

- Legal actions typically take three to four years to be heard in court. Because of the frailty of human memories, the record provides reliable details of the patient's care.
- Many legal actions are nuisance claims. Accurate, legible and timely documentation can result in dismissal of these claims.

Other points to remember

- The larger the chart, the more you tend to write. Use large charts.
- Take notes while patients give their history. Doing it from memory later is less detailed and less accurate.
- Don't give original radiographs to patients. Don't give original radiographs to dentists. Where possible, provide copies instead. The radiographs could be the only things that support your diagnosis.

NOTES OF CONVERSATIONS WITH LAWYERS AND PLP CLAIMS EXAMINERS ABOUT A CLAIM OR PROBLEM SHOULD BE KEPT SEPARATELY FROM THE PATIENT'S CHART.

4.7 Referrals

- If you are unsure of a diagnosis, refer.
- Explain the reason for referrals and be familiar with the credentials of dentists to whom referrals are made.
- All patients referred to a specialist's office by a general practitioner should have a repeat examination and history. To extract a tooth simply because a patient presents a note that says "Extract 37" invites liability.

- Referrals should be made in writing for the sake of clarity and certainty. Where possible, personally speak to the other dentist as well.
- Get another opinion when things are not getting better.
- Obtain feedback on the outcome of the referral.
- Record the fact that the patient has authorized the referral to another practitioner. It is the patient's final decision concerning to whom he/she is willing to be referred.
- Record any refusal to see a specialist.

4.8 If You Have A Problem

When to contact PLP

- > unhappy patient
- > adverse treatment outcome
- > threatening comments made by a patient
- > patient's refusal to pay his/her account
- > call or letter from a patient or his/her representative or lawyer
- > service of a legal action
- > instinct

DOS

- Remain calm.
- Notify PLP immediately of any legal action or incident that could result in legal action.
- Caution your staff not to speak with anyone about the incident.

DON'TS

- Don't admit liability.
- Don't panic.
- Don't assume that the suit or the incident will go away if you ignore it.
- Don't contact a patient who has sued or retained a lawyer.
- Don't talk to the patient's lawyer under any circumstances. Refer him or her to PLP.
- Don't alter or add any notes to the patient's record.
- Don't lose any records.
- Don't treat the patient after the suit begins, except in an emergency.
- Don't make notations on the chart about:
 - > the legal action
 - > conversations with PLP
 - > any other matter relating to the legal action
 These notations should be made on a separate sheet for your confidential records.
- Don't write on original court documents.
- Don't seek information about the patient from other practitioners.
- Don't give away original records.

Section 5

SUMMARY OF DOS AND DON'TS OF RISK MANAGEMENT

DOS

- ✓ Contact PLP when in doubt.
phone: 416-934-5600 toll-free: 1-877-817-3757 (Ontario only) fax: 416-934-5601
- ✓ Maintain a professional office atmosphere with friendly and competent personnel in an attractive facility.
- ✓ Take a competent history. Date it. Update it.
- ✓ Give a thorough examination. Record findings and dates.
- ✓ Establish a working impression and diagnosis and record it. Back up your conclusions with tests, where indicated.
- ✓ Remember that good records win a lot of lawsuits.
- ✓ Have defensible rationale for your treatment and technique.
- ✓ Maintain good rapport with each patient.
- ✓ On each visit, record the patient's progress, symptoms, and especially, any changes.
- ✓ If you cannot help the patient, do refer. Upon referring, contact the consulting dentist personally. Always confirm the referral in writing.
- ✓ Keep up your skills by attending accredited courses, and complying with RCDSO continuing dental education requirements.
- ✓ Learn to be people smart. Handle people with dignity and respect.
- ✓ Be honest with the patients about problems that arise; for example, fractured reamer or extraction of wrong tooth.
- ✓ Prior to using a collection agency, review each account. Sending a collection agency after a dissatisfied patient frequently triggers legal action.

DON'TS

- ✗ Don't make extravagant promises.
- ✗ Don't say anything you would not want repeated.
- ✗ Don't let the patient dictate treatment. Evaluate and treat according to accepted procedures.
- ✗ Don't persist in treating patients where the dentist/patient relationship has broken down. Confidence is essential.
- ✗ Don't accept any financial obligation without first notifying PLP of the problem.
- ✗ Don't speak with a patient's lawyer, unless instructed to do so by PLP.
- ✗ Don't erase or whiteout any notations.
- ✗ Don't alter records after notification of a claim or after a serious injury.
- ✗ Don't gratuitously criticize another practitioner.
- ✗ Don't release information about the patient's history without written consent.
- ✗ Don't delay notifying PLP after receiving notice of a claim.

Section 6

Helpful Definitions

Malpractice	Improper care or treatment of a patient
Malpractice Prevention	The conscious effort by a professional to reduce the chance of being sued for malpractice.
Negligence	The omission to do something which a reasonable dentist, guided by those considerations which ordinarily regulate the conduct of dentists, would do, or something which a prudent and reasonable dentist would not do. It is a failure to do what a reasonably careful and reasonably prudent dentist would do in the given circumstances. It is a breach of duty – the duty to take care.
Standard of Care	Acts performed that any reasonable professional would have performed under the same or similar circumstances; the criterion by which professional performance is measured.
Risk Management	The practice of surveying one's practice for risks and potential sources of lawsuits, and taking action to reduce injuries and claims.
Limitation Period	The period of time allowed in which a legal action can be issued. In Ontario, this period is two years from when the patient knew or ought to have known there was a problem with the dental treatment that was provided. For a minor, the limitation period is two years after the child reaches the age of 18.
Claim	Any formal or informal demand for monetary compensation, refund or re-treatment.
Legal Action	A formal demand for money or other relief made through the courts.



PROFESSIONAL LIABILITY PROGRAM

**Royal College of
Dental Surgeons of Ontario**

Ensuring Continued Trust

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