How much adversity do we need to face before our vision includes:
Insightful risk recognition?
Effective risk management?

Risk Management “101”

“Adversity is the catalyst in the evolutionary process...”
E. O. Wilson

How much adversity do we need to face before our vision includes:
Insightful risk recognition?
Effective risk management?

They Believed It....

“With over 50 foreign cars on sale here, the Japanese auto industry isn’t likely to carve out a big slice of the US market for itself.”
- Business Week, August 2, 1968

“There is no reason for any individual to have a computer in their home.”
- Ken Olson, President, Digital Equipment Corporation, 1977

“They couldn’t hit an elephant at this dist...”
- Actual last words, General John Sedgwick, 1864, Battle of Spotsylvania

Dentists believe it won’t happen

“I never thought this would happen to me...”
“The patient is lying...it didn’t happen that way”
“But I was just about to retire...”

IT CAN HAPPEN...recent news:
- “Teen’s death prompts suit against dental clinic”
- “Jury awards woman millions in dental malpractice suit”
- “Dentist takes plea deal in fraud case”
- “Down town dentist gets four years in prison: He admitted billing insurers for work done by uncertified assistants”
It can happen

- "4-year-old's death not negligent, says dentist's defense"
- "Dentist charged 113 times: [dentist] allegedly falsely billed $365,000 worth of work"
- "District judge orders dentist to be held in jail"
- "Family files suit after teen dies following dental procedure"
- "High court upholds case against dentist: dentist climbed into wrong side of jaw, causing permanent injury"
- "Dentist can't protect Florida home from creditors"

Risk Management “101”

- Premise #1
  - It is preferable not to have accidents
- Premise #2
  - All accidents are avoidable
- Premise #3
  - "Stuff" happens

Risk Management “101”

- Risk Management is all about...
  - The practical
- All standards must be:
  - Complied with 100% of the time
  - Practice-wide
  - Sustainable

LEVELS OF RISK

- Measuring risk
- Public laws vs. private laws
- Dental practice and the law

Risk Management “101”

- Eliminating/Reducing risk of suit or regulatory action
  - Don’t treat certain patients
  - Don’t perform certain procedures
  - Have great communication skills with your patients
- Assume risk
  - Indemnify an employer
  - Accept your financial responsibility
  - “The empty appointment book”
- Transfer risk
  - Require hold harmless agreements from employees, contractors
  - Buy insurance

Risk Management “101”

- There are levels of legal risk... Before a dentist decides on a course of action, he/she must ask: “How much risk am I willing to take?”
  - Example: Refusing to treat a patient is the lowest legal risk
  - Example: Continuing to treat a patient who will not follow your advice is high risk
Risk Management “101”

- Violation of Public Laws
  - Laws adopted by elected and appointed representatives of the people such as:
    - The dental practice act (State statutes) - penalties include fines, loss or suspension of license, drug counseling, jail, etc.
    - Administrative agency rules or regulations (State dental boards)
    - Other statutes and administrative laws that impact upon health practice
  - Other - penalties include possible injunctions, and fines (no action against the license to practice)
  - Federal and local laws regulating the disposal of hazardous waste
  - The Americans with Disabilities Act

- Violation of Private Laws
  - Civil actions in torts and contract law – only money damages such as:
    - Unintentional torts
      - Negligence
      - Professional negligence (malpractice)
    - Intentional torts
      - Assault and battery
      - Misrepresentation
      - Fraud
      - False imprisonment of privacy
      - Breach of confidentiality
  - Breach of contract
  - Violation of civil rights laws

Risk Management “101”

- Private Law: 12 major ways for a dentist to get sued or board action:
  - Failing to collect a fee
  - Refusing to return the return of a fee
  - Guaranteeing a result
  - Exceeding your level of competency & training
  - Failure to obtain an informed written consent
  - Being inaccessible to a patient having complaints
  - Not being available or not having a substitute
  - Failure to refer for consultation or treatment
  - Failure to diagnose and treat pathology
  - Failure to prescribe when a prescription is called for
  - Failing to meet a reasonable standard of care
  - Committing errors in treatment

Management “101”

- “Traditional” suits or board actions against the dentist include:
  - Dentures that are “unsatisfactory”
  - Failure to diagnose and treat periodontal disease
  - Faulty bridge or crown
  - Fractured root tips remaining in bone
  - Missed diagnosis
  - Post treatment infections
  - Fractured jaws
  - Failure to prescribe
  - Extraction of wrong tooth
  - Chemical burns
  - Lacerations

Risk Management “101”

- Now... “Specialty” areas include:
  - TMD
    - Failure to diagnose and monitor
    - Failure to refer
  - Periodontics
    - Failure to diagnose
    - Failure to treat
    - Failure to refer
  - Prosthetics
  - Implants
    - Broken Implant
    - Failure of implant
    - Porcelain

Risk Management “101”

- Endodontics
  - Broken Instruments
  - Consent
  - TMD
  - Perforations
  - Injuries due to failure to use a rubber dam

- Orthodontics
  - Failure to diagnose disease
  - Failure to diagnose periodontal disease
  - Root resorption
  - Failure to achieve expected results
  - Failure to timely remove fixed appliance
  - TMD
Risk Management “101”

- Minor Oral Surgery
  - Extractions
  - Paralysis
  - Fractured Mandible
  - TIA
- Large Awards and Settlements
  - General Anesthesia
  - IV Sedation
  - Aspiration
  - Implant Failure
  - Paralysis
  - Failure to diagnose oral cancer

Risk Management “101”

- Risks related to the medical history
  - Allergies
  - Drug incompatibilities and side effects
  - Cardiac conditions and hypertension
  - Pre-Treatment drug use (Chloral Hydrate)

- Emerging areas:
  - “Sleep” dentistry
  - Failure to detect oral cancer
  - Cosmetic procedures outside of the dental practice act
  - Anesthetic Paresthesia
  - Sleep Apnea

Risk Management “101”

- Other areas of concern:
  - Consent
  - Documentation
  - Professional Misjudgement
  - Refusal to treat (RT)
  - Third party fraud
  - Failure to diagnose, treat or refer
  - Practicing while impaired
  - HIPAA Violations
  - Scope of Practice
  - Abandonment
  - SPLA

Risk Management “101” Summary

- Assumption of Risk, Elimination/Reduction of Risk, Transfer of Risk... know the difference
  - The DENTIST is in control of the dental practice...“Captain of the Ship”
  - A well administered and immaculate office
    - disciplined procedures = predictable outcomes
  - Accidents in the office reflect badly on DDS reputation
  - Immediate investigation and documentation of an unexpected incident
  - Know the historical high risk areas
  - Dentist’s risk transfer partner should be their risk management/liability insurance partner

What is Negligence?

- A definition of negligence
- Standard of Care
- Communications — the key to risk management and avoiding negligence

So, What is Negligence?

- The Elements of Negligence
  - A duty
  - A “breach” of the duty
  - “Proximate cause”
  - Damages
Dental Malpractice

➤ What is the Breach of the Standard of Care?
- A doctor who renders a dental service is obligated to have that reasonable degree of knowledge and ability expected of dentists (or specialists) who do that particular treatment in the community where he practices, or in a similar community.
- You are required to keep abreast of the times and to practice in accordance with the approved methods and means of treatment in general use.
- You are obligated to use your best judgment and use reasonable care in the exercise of your knowledge and ability.

Dental Malpractice

➤ Breach of the Standard of Care:
- The degree of care is that of a reasonably prudent dentist under the same or similar circumstance.
- General v. Board Certified Specialist
- Local v. National Standards

Dentist/Patient Relationship

➤ Communication Creating the “Duty”: The Dentist-Patient Relationship
➤ When does the Dentist-Patient Relationship begin?
➤ What about a Telephone Call? Internet? Social Gathering? E-Mail?
➤ When does the Dentist-Patient Relationship end?
➤ Abandonment and Dismissing a Non-compliant Patient

Dentist/Patient Relationship

➤ Eliminate Abandonment Risks
➤ Give the patient sufficient time to find alternative care (30 days)
➤ Assure the patient that you will cooperate by making the patient’s records, radiographs, and other diagnostic aids and reports available to the succeeding dentist
➤ Inform the patient that you will be available for emergency care

Dentist/Patient Relationship

➤ Abandonment
- “Treatment should not be discontinued at a time when the patient’s health may be compromised. The decision is professional rather than legal. In addition, it is a violation of the law to discontinue the care of a patient for the sole reason of race, religion, color, national origin, or because of disability, e.g. AIDS, HIV+, Hepatitis B”

MEDICAL/DENTAL HISTORY

➤ History taking is a process, not only a form
➤ The dental record
➤ The informed consent process
The Medical-Dental History

- "One of the dentist's fundamental duties is to take a proper and careful medical and dental history of the patient's condition prior to treatment. In order to make a diagnosis, the dentist must first determine the patient's history, and it is an accepted rule of proper dental care that a patient's history must be taken by the dentist. Failure to ask the proper questions necessary to elicit an adequate history or failure to heed the patient's complaints and observations can be as much a dereliction of duty by the dentist as any actual commission in the course of his services."

The Medical-Dental History

- Comparative Fault of the Patient
  - I understand that honest answers to the questions stated below are important to the provision of my dental care, and that I will answer them to the best of my ability. I have been informed that if I am uncertain about the question or how the question relates to my health status, I must discuss the problem with the doctor or a member of the office staff. I understand that all questions must be answered. I have been assured that the information I provide will not be released without my express permission.
  - I understand that should there be a change in my health during my dental treatment, I am to inform the dentist at the earliest possible time.

Patient Records

- What some folks have said...
  - "Dentists seem to be among the worst record keepers. It is not unusual for the complete dental record to consist mainly or solely of a billing chart. Such scant records should be considered malpractice in and of themselves."
  - "The inability of the dentist to produce the original of the clinical record concerning his treatment of the plaintiff creates a strong inference of consciousness of guilt."
  - "A patient record so sparse as to be accurate and meaningful only to the recording dentist fails to meet the intent of the requirement to maintain records which accurately reflect the evaluation and treatment of the patient."

Patient Records

- Communication in patient records
- Dental records are a legal document
- Record ownership
- How long should you retain patient records?
- What if you're employed or selling a practice?
- What NOT to put in the record
- What about computer records?
Informed Consent

- INFORMED CONSENT: The Ultimate Communication
  - What is Informed Consent?
  - Who may grant Valid Consent?
  - Essential Element: Communication (and others)
  - The Risks: How Much to Tell?
  - Telephone Consent
  - Must it be written?
  - Who may obtain a Valid Consent?

Informed Refusal

- INFORMED REFUSAL: The “New” Communication
  - Patient must be informed of the consequences of refusal of a recommended course of treatment
  - Refusal should be documented on a separate form and in the patient record

RISK MANAGEMENT AS AN ENABLER

- Risk management enhances a dental practice
- Prepare for a safe future for your practice

Risk Management

- Risk management is a part of practice development and management
- Risk management is an enabler, not an obstacle: enables long-term, safe practice

Risk Management

- The pursuit of excellence is enhanced
- “Ships in a harbor are safe, but that’s not what ships were meant to do.”
- But a tight ship is less likely to sink!

THE NEW DENTISTRY

- Dentistry is changing
  - Products
  - Techniques
  - Services
  - Philosophies
- Dental School curricula are changing
- Medicine and dentistry moving closer together
  - Periodontal disease & systemic disease
  - Bisphosphonates
  - Saliva testing for cancer
THE NEW DENTISTRY

- Standards of care change
- Evidenced Based Dentistry
- Stay informed
- Plan for change
- Determine your position in the new dentistry – know the advantages and the risks
- Educate your peers

THANK YOU

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