CNA HealthPro

Manage Your Extraction Risks

Of the many clinical procedures performed by dentists, more funds are paid annually for extraction malpractice claims than for any other dental procedure, according to CNA HealthPro claim data.

A comparison of 2007 CNA HealthPro claim data with that from 1997 (4-year retrospective, closed claims only) shows the frequency of claims arising from extractions declined from 21.9% to 16.3% of the total number of claims attributable to a specific dental procedure. However, over that same ten year period, the percentage of total claim costs arising from extraction claims rose from 16.2% to 24.5%, a rather significant increase.

Among the malpractice allegations arising from extractions are extraction of the wrong tooth, failure to take reasonable precautions to prevent an injury, failure to prescribe antibiotics when clinically indicated, failure to refer to an oral surgeon, nerve or sinus damage, retention of broken instruments, and incorrect performance of the extraction procedure.

Identifying risk factors

Because claims are based on patients' subjective perceptions of care as well as objective outcomes, it is necessary to identify and address all factors that increase the risk of both adverse events and patient dissatisfaction. Some factors relate to the tooth to be removed, including

- anatomic or morphologic issues such as impaction, ankylosis, and divergent or dilacerated root structures
- proximity to the sinus or nerve
- lack of tooth structure due to caries or prior restorations

Other risk factors relate to the patient's overall health, habits and attitude. It is known that systemic diseases, such as diabetes and hypertension, increase the risk of an adverse outcome. In addition, tobacco and alcohol use compromise healing after extractions and other surgical procedures. Lack of compliance with postoperative instructions and follow-up care also diminish the prospect for optimal healing. Therefore, dentists should have a current and accurate patient medical history prior to performing an extraction.

Among the most frequent extraction risks gleaned from the medical history review are excessive bleeding and delayed healing. An uncommon but noteworthy risk for patients with a history of bisphosphonate therapy is bisphosphonate-associated osteonecrosis (BON). Clinical and patient management information on the subject of BON was published in the December 2005 and August 2006 issues of the *Journal of the American Dental Association* (*JADA*) and is available on the American Dental Association (ADA) web site at www.ada.org. Also available on the ADA web site is an information sheet to aid in discussing BON risks with patients during the informed consent process.

Patient expectations represent another area of risk. Ask patients what they expect to occur during treatment and in the postoperative period and educate them about any misconceptions or inflated expectations they may have regarding the procedure.

In some cases, once a particular risk has been identified, it would be prudent simply to avoid it. Exercise good judgment when selecting the extraction and other surgical cases you will undertake and those for referral to specialists. Do not be afraid to just say *no* to a patient. If you encounter a case or foresee a complication that exceeds your expertise or even your comfort level, refer the patient to an oral surgeon *before* attempting the procedure, rather than waiting until difficulties arise.

If you choose to perform the extraction yourself, you must control the risks associated with extractions. Thorough documentation is vital. Always document why the extraction is warranted, beginning with subjective patient complaints. We recommend that subjective patient complaints and comments, such as "this tooth is killing me" and "I haven't slept for three days," be documented in the progress note using quotation marks. This is a very effective record keeping technique that withstands scrutiny.

Also document your objective clinical and radiographic findings. Such documentation should include the results of percussion and mobility testing, digital palpation, and periodontal probing. Leave no doubt as to the reasons supporting your recommendation to extract.

Informed consent

Before proceeding, secure the patient's informed consent to extract the tooth. Informed consent comprises more than a signature. It is the process by which patients are provided sufficient information about the nature of the proposed treatment, the available alternatives, and the risks associated with pursuing or forgoing treatment. This protocol enables patients to make an informed, reasoned decision about whether or not to proceed with your recommendation.

We strongly encourage every dentist to use a written form as part of the informed consent process for extractions. Use the consent form as a framework for your discussion to ensure that patients have a clear understanding of what to expect, encompassing all pertinent information. The written form also serves as detailed documentation of your disclosure and discussion. Feel free to modify the content of our sample consent to suit your practice needs.

The consent form should specify the tooth or teeth to be extracted. It should not simply state that "extractions" will be performed. Do not extract any teeth for which you do not have consent! If you foresee a potential complication that is within your skill level, and you plan to accept the case, be certain to discuss that risk with the patient as part of the informed consent process. To reduce the chance of a failure to refer allegation, non-oral surgeons should always offer referral to an oral surgeon as a viable treatment alternative. Following your informed consent discussion, first ask the patient to sign the consent form, then sign it yourself. Always give patients a copy of the consent form to take with them. This will help refresh their memory about the points raised during your discussion.

The informed consent process is vital to managing extraction risks. It serves to educate patients and manage their expectations. Additionally, careful documentation of the process via a written form and progress note entries will aid your defense, should an allegation of negligence be brought against you. Even if you do not prefer the use of consent forms, extractions are one procedure where they serve an essential risk management function. If you have never used written informed consent forms in your practice, we recommend introducing them with extractions. Finally, you should become conversant with any applicable state laws in your jurisdiction that govern the informed consent process.

Standard of care

Dentists have a professional duty to be knowledgeable about current clinical protocols and to use techniques that meet or exceed the standard of care – i.e., what a reasonable and prudent dentist would do in the same or similar circumstances. For example, dentists should have a preoperative radiograph showing the *entire* root structure prior to extracting any tooth. Additionally, all dentists should know the current American Heart Association guidelines for the prevention of infective endocarditis (IE) as well as proper flap design and reflection techniques. Any deficiencies in knowledge or skill should be addressed through a review of the literature and/or continuing education.

Keep in mind that a general dentist who performs procedures that fall within the scope of practice of an oral surgeon will likely be held to the standard of care set by the specialty. In the event of litigation, the plaintiff's expert witnesses for an extraction or oral surgery claim will likely include an oral surgeon. (Michigan represents an example of one state with an exception to this general rule – only another general practitioner can give expert witness testimony against a general practitioner.)

A good dentist-patient relationship can be as important as knowledge, skill and due care in reducing potential liability. Keep in mind that an extraction may constitute a traumatic emotional and physical experience for many patients. Your empathy during treatment can go a long way toward making the patient feel more at ease with the extraction, even when the procedure does not go quite as planned.

Chart documentation

It is also necessary to thoroughly document the entire clinical procedure, including

- local anesthesia used (type, concentration, quantity, vasoconstrictor concentration)
- antibiotic, anxiolytic, or other premedication or drug regimen alteration
- incision and flap reflection
- bone removal
- tooth sectioning
- socket curettage
- irrigation
- clotting agents
- sutures (type, number, and location)
- postoperative medications prescribed (both over-the-counter and prescription meds)
- untoward events and their resolution
- patient condition upon discharge
- postoperative instructions given
- follow-up conversations, if any

If complications arise

Astute risk identification, coupled with sound clinical judgment, can reduce the likelihood of a clinical complication and the potential for a claim of negligence. However, even when using your best skill and judgment, complications occasionally occur during extractions.

Once a complication occurs, be objective about your ability to address it. Use prudent judgment and ask yourself, "What is in *my patient's* best interest *at this point in time*?" It may be best to refer the patient to an oral surgeon for further care. Keep in mind that a referral made following a treatment complication is *not* an admission of negligence in and of itself. In fact, many extraction claims are brought because the general dentist chose *not* to refer following a complication.

If you refer mid-treatment, stay involved. Call the oral surgeon to discuss the referral and ask to be called back when treatment is complete. Be certain to phone the patient that evening to ask about his or her condition. Your calls and questions will demonstrate your genuine concern. And, of course, document your conversations and the patient's condition in the progress notes section of the patient chart.

Treatment complications are a real test of a dentist's patient management skills, emphasizing the need for effective patient management from the beginning of the dentist-patient relationship. Anticipate untoward events, plan what you will do in case they occur, and inform patients of your protocols. These strategies will guide patient expectations in the event of a complication.

For example, inform patients prior to attempting the extraction that you will refer them to an oral surgeon if a complication arises. Since risks and potential complications must be explained as part of the informed consent process, include the possibility of specialist referral at that time. If the patient balks at the prospect of referral, re-evaluate whether you wish to proceed.

Also, determine in advance your office policy concerning charges for procedures during which a complication arises that requires a referral. It is neither right nor wrong for you to charge the patient for the time spent attempting the extraction. The individual dentist must decide whether or not to do so. However, many dentists choose not to bill for "patient satisfaction" reasons, as experience has shown that satisfied patients generally do not allege malpractice. Satisfied and non-litigious patients who would not ordinarily consider suing their dentist may become angry and allege negligence after receiving a bill for what they consider a botched extraction. Opting not to charge a fee in such an instance does not constitute an admission of liability.

Post-treatment complications

It is impossible to tell before an extraction whether a patient will suffer post-treatment complications. Therefore, it is necessary to explain to all extraction patients during the informed consent discussion the possibility of post-treatment complications, such as infection, bleeding, swelling, pain, and anesthesia or paresthesia. Before treatment begins, inform patients of your post-extraction protocol, including the manner in which you follow up with post-extraction complications. Tell patients in advance that they will be required to come to the office once, twice or more for examination, diagnosis and treatment should a postoperative complication occur.

Many claims relating to post-extraction complications involve dentists who have diagnosed and treated the problem by phone, not in person. Have the patient return to the office periodically, as many times as necessary, until the problem is fully resolved. This protocol allows you a better opportunity to make the correct diagnosis and prescribe the correct treatment.

Cases involving post-extraction complications must be fully documented, preferably using the SOAP format of record keeping. Be sure to document your clinical care as well as all pertinent phone conversations, including patient complaints, return calls to patients, and calls to pharmacies.

What you can do

The following 10 pointers can help reduce the chance of a malpractice claim arising from an extraction:

1. Assess the patient's medical history, physical condition and ability to tolerate the procedure. Record the blood pressure and pulse prior to administering any local anesthesia. Patients with elevated or depressed pressures should have treatment deferred, if possible, and should be referred to their physician for evaluation.

2. Confirm and document that appropriate premedication or pre-treatment regimens have been followed (e.g., antibiotics as needed for IE, anxiolytics, diabetic management, etc.).

3. Have a preoperative radiograph showing the *entire* root structure prior to extracting any tooth.

4. Reduce the oral bacterial count and the chance of postoperative infection by having patients preoperatively rinse with an antimicrobial agent.

5. Plan your incision and flap design before picking up the scalpel. Avoid vital anatomical structures, such as nerves and blood vessels.

6. Before picking up an elevator or forceps, verify *twice* the correct tooth to be extracted using your written and radiographic records. Ask the patient for his or her understanding of the tooth to be extracted.

7. Irrigate the extraction/surgical site using only sterile solutions.

8. Provide clearly written postoperative instructions and information, including how to contact you after hours and when to return for follow-up.

9. Call extraction patients later on the day of treatment to assess their post-extraction condition. Document the conversations, including all patient complaints and your recommendations.

10. Require patients to return for at least one post-extraction evaluation. Document the patient's post-op course and your clinical findings.

While extraction risks are real, most of the risk factors can be diminished by paying careful attention to patient selection, informed consent, skillful treatment, thorough documentation, and old-fashioned empathy. A high proportion of extraction-related allegations involve skilled dentists who simply fail to exercise good judgment. One of the best protective measures for you and your patients is to simply ask yourself, "What is best for my patient?"