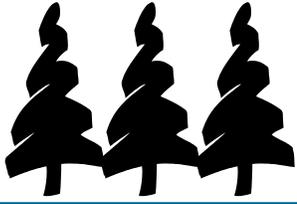
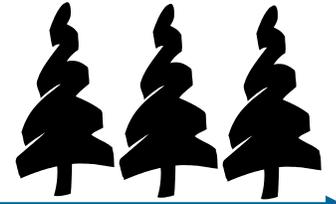


Humboldt Del-Norte Dental Society



FORUM



DECEMBER 2013

For Doctors, Staff and Allied Dental Health Personnel

Thank you to all of the volunteers that serve as Committee Chairs, Board Members, and who are always there to pitch in and help. This dental society would not exist without you. If you are interested in getting involved with very little time commitment, please contact me. –Dani

In this issue:

Notice of Provider Relocation: Dental Patient's Right to be Informed when their treating Dentist has left a practice, Pages 1-2

Federal Department Clarifies Patient Email Communication Guidelines, Pages 3-4

Major Health Care Reform Milestone Reached, Pages 4-5

Business associate agreements, notice of privacy practices under HIPAA, Pages 5-6

FMLA and Other "Triggers for Leaves of Absences, Pages 6-7

Emergency Kit Basics for Dental Practices, Pages 7-8

HIPAA Frequently Asked Questions, Pages 9-10

Notice of Provider Relocation: Dental patient's right to be informed when their treating dentist has left a practice

By Donna K. Klauser, DDS, DABP

CDA Judicial Council

Your associate has just informed you that he or she is leaving your dental practice, or perhaps you are the associate dentist who is leaving a practice. In either of these scenarios, it is important that both parties (practice owner dentist and departing associate dentist) are aware that patients should be notified that their treating dentist will be departing the practice. Hopefully, the subject of "notice of provider relocation" is addressed in the associate's employment contract. However, if that is not the case, the following guidelines will aid you in ethically navigating this sometimes difficult transition.

Advisory Opinion 1.B.2 of the CDA Code of Ethics states:

Notice of Provider Relocation: Patients treated by a dentist who leaves a dental practice have the right to be informed of the dentist's new contact information. It is unethical to withhold this information, if known, upon the request of a patient or to provide misleading information to patients.

FORUM

If the responsibility for notifying the patients falls to the departing dentist rather than the dental practice, the practice should not interfere with the discharge of these duties by withholding patient lists or other necessary information.

Key ethical points to remember in notice of provider relocation:

- Respect patient autonomy. Patients have the right to choose their dentist.
- Notification helps avoid patient abandonment issues.
- In the interest of preserving continuity of care, the owner and associate should agree on the best way to allow the associate to complete remaining treatment on any patient(s) whose course of treatment has not been completed.
- Uphold veracity (honesty). The owner cannot withhold the former associate's new contact information from patients who were referred to or treated by the associate. The former associate should also refrain from actively soliciting patients from his or her former practice.
- In order to avoid any misunderstandings, the CDA Judicial Council recommends that the owner incorporate in the associate agreement contract specific language as to which party bears responsibility for notifying the patients who were treated by the relocating associate dentist. It is not appropriate to place the burden for locating the former associate on the patients.
- The CDA Judicial Council recommends notifying patients treated by the relocating associate of his or her relocation in writing as soon as possible

after the associate notifies the practice of his or her pending departure.

- The notification letter may address whether the former associate would be available for emergency treatment (preferably for 30 days from the termination of the associateship).
- The notification letter should confirm that patients treated by the relocating associate dentist will continue to be treated by the owner dentist if they wish to stay with the practice.

The CDA Judicial Council recommends that the owner dentist draw up the notification letter in order to reduce the possibility of the letter being misconstrued as an attempt by the departing associate to solicit patients to his or her new practice location.

The bottom-line is: Patients have the right to be notified when their treating dentist leaves a practice. The patient's decision to stay with the practice or continue to see their treating dentist at a different practice must be respected. It is best to address the subject of "notice of provider relocation" in an associate agreement, which should be reviewed by your legal counsel, prior to the start of the owner-associate relationship.

Additional resources about notice of provider relocation are available on the CDA Compass (cdacompass.com). For further guidance, talk with a member of your local ethics committee.

Federal Department Clarifies Patient Email Communication Guidelines

The U.S. Department of Health and Human Services (HHS), the agency that enforces HIPAA, has clarified that unencrypted emails may be sent to patients who have been advised of risks and have consented to receive unencrypted emails.

However, if the use of unencrypted email is unacceptable to a patient who requests confidential communications, other means of communicating with the patient — such as by more secure electronic methods or by mail or telephone — should be offered and accommodated. Also, patient consent to receive unencrypted email is not consent to transmit protected health information in nonsecured communications with other entities such as specialists and payers.

The HHS statement was included in the Jan. 25 publication of the amendments to the HIPAA Privacy, Security, and Breach Notification Rules that are required by HITECH legislation approved in 2009.

Here are a few suggestions to obtain patient consent to communicate via unencrypted email. Be sure to retain documentation with the patient record.

- **Reply to a patient's emailed request for information with the following:**

We are happy to respond to your query, but in order for us to do so via email, you must provide your consent, recognizing that email is not a secure form of communication. There is some risk that any individually identifiable health information and other sensitive or confidential information that may be contained

in such email may be misdirected, disclosed to or intercepted by unauthorized third parties. We will use the minimum necessary amount of protected health information to respond to your query.

If you wish to conduct this discussion via email, please indicate your acceptance of this risk with your email reply. You may withdraw your consent at any time.

Alternatively, please contact our office to arrange a telephone conversation or office visit if you decide against corresponding via email.

- **Act on a verbal request from the patient.** Ask the patient to send an email to the office, then the office can respond as described above. Or, the dentist can discuss with the patient the risk of unsecured email and document the conversation and consent in the patient record.
- **Add the following language to the patient information form.**

Unencrypted email is not a secure form of communication. There is some risk that any individually identifiable health information and other sensitive or confidential information that may be contained in such email may be misdirected, disclosed to or intercepted by unauthorized third parties. However, you may consent to receive email from us regarding your treatment. We will use the minimum necessary amount of protected health information in any communication. Our first email to you will verify the email address you provide.

Include check boxes for three statements:

I consent to and accept the risk in receiving information via email. I understand I can withdraw my consent at any time. My email address is _____.

I consent only to receiving appointment reminders via email or text. I understand I can withdraw my consent at any time.

My email address is _____.

I do not consent to receiving any information via email. I understand that I can change my mind and provide consent later.

Major health care reform milestone reached

After months of intense preparation, Covered California, the health insurance marketplace created by the Affordable Care Act (ACA), began its open enrollment period on Oct. 1. Consumers can now begin the process of comparing and purchasing affordable medical and dental insurance coverage online, and Covered California is offering in-person and phone support for those who need it.

Any individual or small-business employer has the option to purchase private health insurance coverage through the new web portal found at coveredca.com. CDA members who currently have coverage through the California Dental Association Anthem Blue Cross Health plan will be contacted during open enrollment by a TDIC Insurance Solutions member service specialist to transition to a new plan that meets their needs.

In the new marketplace, medical and dental

insurance companies have a set benefit package, designed to make it easier for individuals and small businesses, such as most dental offices, to compare the plans and make informed coverage choices. Covered California is what is known as an “active purchaser,” meaning that it has negotiated with medical and dental plans in an effort to make premium rates paid by consumers affordable compared to the current individual or small group market.

Individuals making less than 400 percent of the federal poverty level (about \$45,000 a year for an individual) may be eligible for federal subsidies based on a sliding scale if they purchase their coverage through the new online marketplace.

Come Jan. 1, it will be a requirement that every individual have qualifying medical insurance coverage or pay a penalty. However, there are many ways people can achieve this requirement. Most individuals who already have coverage (whether through the individual or group market, as part of an employer-sponsored plan, or through government coverage like Medicare or Veterans benefits for example), are likely to already qualify, and thus will see little change. However, individuals who had been barred from coverage in the past (for having pre-existing conditions, for example) or who found coverage in the individual market too costly, should be able to access affordable, comprehensive coverage through the Exchange.

There is no requirement for businesses with fewer than 200 employees to offer health coverage to their workforce. However, small businesses can purchase more affordable coverage through a separate Exchange offering insurance products designed specifically for them and their employees.

Furthermore, businesses with less than 25 employees may also be eligible for small business tax rebates to help cover the cost of the coverage they purchase for employees. More information on the small business tax credits can be found here: www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers.

Even with full implementation only a few months away, there are still many unknowns. No one is quite sure what impact the ACA implementation will have on health insurance premium rates for coverage outside of the Exchange. It is still unclear whether employers will change the medical insurance options available to employees. And we don't yet know how many more children will access dental benefits for the first time through the exchanges. These and other key issues will continue to evolve over the next few months and through the new year.

CDA remains actively engaged in all the ACA's implementation details as well as the ongoing policy debates — acting on its members' behalf as California moves to fully implement this law in the near future.

For more information, please contact CDA's Manager of Legislative Affairs Nicette Short at nicette.short@cda.org or 916.554.4970.

Business associate agreements, notice of privacy practices under HIPAA

The U.S. Department of Health and Human Services (HHS) published the long-awaited final omnibus rule under HIPAA (Omnibus Rule) on Jan. 25, 2013. The rule implements the Health Information Technology for Economic and Clinical Health Act

(HITECH) and requires that health care providers amend their Notice of Privacy Practices (NPP) and Business Associate Agreements to include new elements. The compliance date for the final rule is Sept. 23, 2013.

Business Associate Agreements

Covered entities are required to enter into Business Associate Agreements with any individuals or entities that provide services through which they receive protected health information (PHI). These agreements must require that the business associate comply with the following:

- business associates are prohibited from using PHI in a manner that would violate the Privacy Rule;
- business associate must comply with the Security Rule with respect to ePHI;
- business associate may only use or disclose PHI as permitted by the Business Associate Agreement or required by law;
- business associate will report to the covered entity any breach of unsecured PHI;
- business associate will enter into downstream Business Associate Agreements with any subcontractors* and will take steps to cure any breach by a subcontractor.
- business associates may only use, disclose or request the minimum PHI necessary to accomplish their business obligations;

- business associate must disclose PHI when required by the Secretary of Health and Human Services for investigation or determining compliance with the Privacy Rule, and to a covered entity or an individual to satisfy the covered entity's obligations with respect to an individual's request for access to PHI.

A sample Business Associate Agreement can be found at cdacompass.com.

Notice of Privacy Practices

A covered entity's Notice of Privacy Practices must also be reviewed and revised for compliance with the omnibus rule. NPPs must now include a statement that certain uses and disclosures of PHI, such as some related to marketing, require an authorization. NPPs should also be amended to reflect the prohibition on the sale of PHI, breach notification requirements, the right for patients to opt-out of fundraising and the right to restrict disclosure of PHI when paying out-of-pocket.

*a subcontractor is any person or entity to whom a business associate delegates a function, activity or service on behalf of a covered entity.

A sample Notice of Privacy Practices can be found at cdacompass.com.

The omnibus rule can be found at: hhs.gov/ocr/privacy/hipaa/administrative/omnibus/index.html.

FMLA and Other "Triggers for Leaves of Absences"

The Family and Medical Leave Act (FMLA) operates under the principle that workers are not just contributing to the success of a business, but are also contributing to the health and well-being of their families.

Signed into law in 1993 by President Bill Clinton, FMLA basically applies to businesses with 50 or more workers. According to the U.S. Department of Labor, FMLA provides eligible employees up to 12 weeks per year of unpaid leave to manage an illness or for other domestic needs, most commonly to care for a child or other immediate family member.

Many dental practices, because of their small size, may not be required to provide FMLA benefits to employees. However, risk management analysts at The Dentists Insurance Company advise dentists to address any request for a leave of absence with caution. There may be other laws that do apply to employee leave, such as the Americans with Disabilities Act or workers' compensation. There are also state laws that may come into play, such as the Fair Employment and Housing Act in California.

In navigating the laws relating to employee leaves of absence, experts advise employers to seek the assistance of a legal or human resources professional. While the laws are complex, dentists can help protect themselves and their practices by carefully assessing an employee's request for a leave of absence. The basic practices of communication and documentation are essential. Engage the employee, ask questions and seek to "reasonably accommodate" the employee's request. Document your efforts in the employee's personnel file. For in-depth information about the reasonable accommodation process, watch for the fall issue of TDIC's *Liability Lifeline* newsletter.


FORUM

These steps are often referred to as the “interactive process” and are in line with the intent of FMLA, which seeks to positively impact the lives of workers without imposing an undue burden upon employers, according to the Department of Labor.

The department last year surveyed 3,000 employees and 1,800 employers nationwide and reported that most employers give FMLA high marks. According to the survey, 91 percent of employers report compliance with the FMLA as positive in terms of employee absenteeism, turnover or morale. Some employers surveyed said the act did not have a noticeable effect. Employers surveyed also reported that misuse of FMLA is rare, with fewer than 2 percent of covered workplaces confirming misuse of the law.

According to the Department of Labor, FMLA allows the following conditions to eligible employees:

- Workers may take up to 12 weeks of unpaid leave to bond with a newborn, newly adopted or newly placed child; care for a seriously ill child, spouse or parent; or care for their own serious health condition without fear of losing their jobs.
- Amendments to FMLA extend the protections to allow workers with family in the military to take time away from work to attend to a parent, spouse, son or daughter’s foreign deployment and up to 26 weeks of leave to care for a service member with a serious injury or illness.
- During FMLA leave, employers must continue employee health insurance benefits and, upon completion of the leave, restore employees to the same or equivalent positions.
- Covered employers: The FMLA applies to private

employers with 50 or more employees working within 75 miles of the employee’s worksite.

- Covered individuals: Employees of business with at least 50 workers are eligible to take FMLA leave if they have worked for their employer for at least 12 months, and have worked for at least 1,250 hours over the 12 months before the leave.

The Department of Labor website at dol.gov/whd/state/fmla/index.htm links to state-focused labor information and the Job Accommodation Network at askjan.org provides free and professional guidance about workplace accommodations. Call TIDC’s Risk Management Advice Line at 800.733.0634 with questions about FMLA and employee leave.

Emergency kit basics for dental practice

By: Risk Management Practice

What must a dental office emergency kit contain? The answer varies depending on individual state dental board requirements. There are basic necessities dentists are required to include in emergency kits, according to the American Dental Association Council on Scientific Affairs.

Some states may have more rigorous emergency kit requirements, and The Dentists Insurance Company advises dentists to check with their state dental board or dental association for specifics on what to include beyond ADA recommendations. Practices administering oral conscious sedation are required to meet additional emergency standards, as outlined by state dental boards.

Further, the Occupational Safety and Health Administration (OSHA) requires emergency supplies to be available in case of an employee injury. TDIC advises dentists to maintain an emergency kit for employee use and a separate emergency kit for patients.

Practitioners can assemble emergency kits themselves or purchase them already assembled. Commercial emergency drug kits for dentistry can provide consistent drug availability along with a service to update drugs on a regular basis. Dentists must document that all emergency equipment and drug expiration dates are checked on a regularly scheduled basis.

TDIC advises all dentists to know when, how and in what dosages to administer drugs included in their emergency kits. Stocking emergency medications but lacking the training to administer them appropriately can be a liability. Best practice calls for continuing education in emergency protocol for dentists, for the office to be prepared with an established emergency plan and a team approach by the dentist and staff who are certified in basic life support. TDIC outlines dental office emergency protocol in its Risk Management Reference Guide, which is available online at thedentists.com.

The ADA Council on Scientific Affairs, in its 2002 report in the Journal of the American Dental Association, "Office Emergencies and Emergency Kits," recommends the following drugs be included as a minimum. This essential list remains the standard:

- Epinephrine 1:1,000 (injectable)
- Histamine-blocker (injectable)
- Oxygen with positive-pressure administration capability
- Nitroglycerin (sublingual tablet or aerosol spray; be aware of contraindications)
- Bronchodilator (asthma inhaler)
- Sugar (a quick source of glucose such as orange juice)

- Aspirin

Additional items to include in a patient emergency kit:

- Aromatic ammonia
- Blood pressure monitoring equipment
- CPR pocket mask
- Syringes
- Tourniquets
- High-volume suction and aspiration tips or tonsillar suction

OSHA requires employers to have emergency kits for employees and lists the following supplies as adequate for small work sites, consisting of approximately two to three employees. Larger practices should provide additional supplies or emergency kits. While federal law does not require that a physician approve emergency kits, some states such as California do require physician sign off. Here are OSHA's recommendations:

- Directions for requesting emergency assistance
- Gauze pads (at least 4 x 4 inches)
- Two large gauze pads (at least 8 x 10 inches)
- One box of adhesive bandages
- One package gauze roller bandage (at least 2 inches wide)
- Two triangular bandages
- Wound cleaning agent (such as sealed moistened towelettes)
- Scissors
- At least one blanket
- Tweezers
- Adhesive tape
- Latex gloves
- Resuscitation equipment (such as resuscitation bag, airway or pocket mask)
- Two elastic wraps
- Splint

For more information or if you have questions regarding this topic, contact the TDIC Risk Management Advice Line at 800.733.0634.

HIPAA Frequently Asked Questions

Must we provide the updated Notice of Privacy Practices to all our patients? Must we obtain from all patients a signed acknowledgement of receipt of the updated notice?

Yes, you must provide the notice and obtain a signed acknowledgement of receipt from new patients. If a patient refuses to sign an acknowledgement, document the refusal in the patient record. For current patients, you can notify them that the notice has been revised and where they can obtain or view a copy. You can post a temporary notice in your waiting area, next to your Notice of Privacy Practices, and add a note to patient statements and to your practice website.

Who is or is not a business associate under HIPAA?

A business associate is an entity, individual or organization that creates, receives, maintains or transmits patient health information to perform nonclinical functions, such as claims processing or information systems management, on behalf of a covered entity. A dental practice that is a covered entity must have a business associate agreement with each entity that uses its patients' information for nonclinical functions. Examples of dental practice business associates include:

- claims clearinghouse;
- practice management software vendor;
- electronic file-sharing service;
- online data backup and storage services;
- practice management consultant;
- malpractice insurer;
- attorney; and
- accountant.

Obtain an agreement from a business associate before providing the entity with access to patient information. Some business associate agreements may be for an extended period, for example, with a claims clearinghouse or a practice management software vendor that has regular access to patient information. Other business associate agreements can be for a shorter term, for example, with a malpractice carrier upon filing a claim or seeking risk management assistance, or with an accountant who is assisting the dental practice with responding to an IRS request for information or with a practice valuation.

Not business associates: Dental laboratories, other dentists to whom you refer or receive referrals from, and the practice workforce, that includes employees, students and interns, are not business associates. Independent contractors may be considered part of the practice's workforce. Researchers are not business associates; however, patient authorization to use limited data set is required. U.S. Postal Service, couriers, internet service providers and other organizations that transmit patient health information but do not maintain or routinely access patient health information are not business associates.

Additionally, California law requires you to obtain specific patient authorization to share patient information with those business associates who are not third-party payers; entities who review in liability, arbitration, peer review, quality assurance, quality assessment or medical necessity cases; or otherwise not included in Civil Code section 56.10.

I've never received a business associate agreement from my professional liability carrier — why is that?

A business associate agreement is not needed when you purchase professional liability coverage. When the time comes for you to file a claim or share patient information with the liability carrier, you should have a business associate agreement in place.

If business associates and their subcontractors are directly liable for violations of the Security and Privacy rules, why is a business associate agreement necessary?

The 2013 amendments to HIPAA require business associates and their subcontractors to comply with the Security Rule and many provisions of the Privacy Rule. They are directly liable for:

- impermissible uses and disclosures;
- failure to provide breach notification to the covered entity;
- failure to provide access to a copy of electronic protected health information as allowed;
- failure to disclose protected health information where required;
- failure to provide an accounting of disclosure; and

failure to comply with the requirements of the Security Rule.

Business associates may use and disclose the patient information provided by the covered entity **only** as provided for in the agreement and as allowed by law. With the business associate agreement, a covered entity may further clarify and limit the permissible uses and disclosures by the business associate and may set additional requirements for the business associate. For example, a covered entity may want to detail how it and the business associate will coordinate the reporting of a breach at the business associate.

We want to hear from you

Do you have important news from your committee? Thoughts you'd like to share?

Would you like to become a member? How about becoming an officer?

Classified ad; noteworthy item; an interesting case to share; birth announcements; graduation announcements; office or staff news; a personal biography if you are new to the dental society

Call 707-443-7476 or Fax: 707- 442-5857

Email humboldtelnorte.dentalsociety@gmail.com

Visit HDNDS on the web www.hdnnds.org

Or you may send items to: Newsletter Editor,

HDNDS

P.O. Box 6368,

Eureka, CA 95502



HUMBOLDT DEL NORTE DENTAL SOCIETY 2013 Leadership:**President:** Sam Kennedy, DDS**Immediate Past-President:** Gordon Lewis, DDS**President-Elect:** Sonia Bautista, DDS**Secretary/Treasurer:** Karla Roman, DMD**CDA Trustee:** Sam Kennedy, DDS**Board Members-at-Large:** Ralph Davis, DDS, **VACANT, VACANT****Editor:** **VACANT****Committee Chairs:****Continuing Education:** Kerisa Elloway, DDS**Ethics:** Kerisa Elloway, DDS**Librarian:** George Epperson, DDS**Membership:** Richard Wolven, DDS**N.C.D.H.M.:** Brad Tucker, DDS**Peer Review:** **VACANT**, Michael Belluscio, DDS, Brett Wonenburg, DDS**Scholarship and Financial:** Gabriel Enriquez, DDS**Well-Being:** John Winzler, DDS**Dental Advisory Group:** Michael Belluscio, DDS**Community Health Alliance:** **VACANT****Web Site Chairman:** **VACANT****Executive Director:** Dani Hinrichs**Upcoming Continuing Education Course****Friday, January 17th, 2014.** Registration begins at 8:00 am, course starts at 8:30**"CE Express-Infection Control, California Law, OSHA Update"**

6 units category CORE. Marcella Oster, RDA

Location: Baywood Golf and Country Club, Arcata

*Cost: \$135 member dentist/ \$100 auxiliary or \$185 non-member dentist/
\$110 auxiliary*

This course will fulfill your biennial requirement from the Dental Board of California to take Infection Control and California Law. It will also give you the Cal-OSHA updates needed for identifying the specific safety plans required by OSHA.

FORUM

2014 HDNDS Calendar

December 12, 2013 Board Meeting, 5:30pm and Christmas Party, Avalon, 6:30pm.

January 17, 2014 “Infection Control, California Dental Practice Act, OSHA.” 6 units CORE. Marcella Oster. Baywood Golf and Country Club, 8am registration, 8:30-3 class.

January 23, 2014 “Risk Management: The Fundamental Concepts.” 2 units 20%. Natalie Miller, RDH. Trustee Report. Shamus T Bones. 6:00pm.

February 27, 2014 “Simple Secrets to Attract and Keep the Best Patients.” 2 units 20%. William Van Dyk, DDS. Sea Grill, 6:00pm.

March 4, 2014. Board Meeting. St. Joseph Hospital, 6:00pm.

March 14, 2014 Northern Leadership Conference, Location TBD

March 20, 2014 “Discover 5 Essential Strategies That Develop Winning Teams.” 2 units 20%. Kerry Staine. Roys Club, 6:00pm.

March 28, 2014 “Stop Watching and Start Managing” and “Ten Things that Will Keep My General Practice Without Breaking the Bank.” 7 units CORE. Parag Kachalia, DDS. Baywood Golf and Country Club, 8am registration, 8:30-3:30 class.

April 24, 2014 “Health Care Reform: What Every Dental Professional Should Know.” 2 units 20%. Nicette Short. Sea Grill, 6:00pm.

May 6, 2014. Board Meeting. St. Joseph Hospital, 6:00pm.

May 15, 2014. End of Year Party. Gabriels. 6:00pm.

September 4-6, 2014 CDA Presents, San Francisco.

September 9, 2014. Board Meeting. St. Joseph Hospital, 6:00pm.

September 18, 2014. Dinner Meeting. Speaker TBD. Sea Grill, 6:00pm.

October 16, 2014 Dinner Meeting. Speaker and Location TBD.

October 24, 2014 “Current Concepts in Minimally Invasive Dentistry.” 6 units CORE. Ron Kaminer, DDS. Baywood Golf and Country Club, 8am registration, 8:30-3:00 class.