

Outline Florida Laws, Rules, and Ethics And Medical Errors and Omissions

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(now necessary because someone pitched a hissy fit):

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Any other information is intended for entertainment purposes only, and I'll apologize now in the event you don't find me entertaining. Nothing said is intended to offend you or any attendee, and I apologize if you are offended in any way.

What's the bottom line on the law on Domestic Violence in Florida?

The ADA says that ethically, dentists are obliged to become familiar with the signs of abuse and neglect and must report suspected cases to the proper authorities.

Dentist must:

- be able to recognize any signs of abuse and neglect, not just those in the mouth
- familiarize themselves with signs of both abuse and neglect
- report to the proper authorities suspected abuse and neglect of any patients (not just kids) according to the laws of the states in which they are practicing

Florida requires that all health care officials report any suspected case of abuse or neglect of a child or **vulnerable adult** to the proper authorities [Florida Dept of Children and Family Service's central abuse hotline 1-800-962-2873] (*vulnerable adult is a person 18 or older whose ability to perform the normal activities of daily living or to provide for his/her own care*)-someone w/developmental disabilities or elderly patients

Also requires that anyone who knowingly treats any person suffering from a gunshot wound or life-threatening injury indicating an act of violence shall report it to the sheriff's department of the county in which the treatment is administered or requested

If you make a report based on reasonable suspicions of abuse you are protected from criminal and civil liability. So long as you were acting in good faith, so long as you weren't doing it maliciously to cause trouble or to falsely accuse someone, you won't have any liability. (*DOES NOT MEAN YOU CAN'T BE SUED, just means that the case will be thrown out of court if it comes up.*)

As the reporter of abuse, your name is protected from public records and, unless you give written permission, is only disclosed to employees of the child protection department, the hotline, law enforcement, the child protection team, or the state attorney. You can also request that you be notified in the event that an investigation results. Otherwise, in the event the abuser is prosecuted, you will probably be subpoenaed to court to testify.

Bottom Line: You are required by law to report it if there's a child or vulnerable adult involved. If it's an adult and they don't want you to report it, don't report it. Exception would be if the abused adult has children, then the children are at risk and the possibility for abuse should be reported. (If you're not sure, you can call the domestic violence hotline and ask their advice)

Understand that you are legally obligated to report abuse that a reasonable professional in similar circumstances would report. If you don't report it, you are subject to criminal prosecution and can result in up to 1 yr in jail and/or \$1,000 fine. Also, these defense costs will probably not be covered by your liability carrier because it's a deliberate act

If you make a false report you can receive a fine of up to \$10,000 per incident and you become liable for a civil suit if the person you accused wants to sue you

LAWS, RULES, and ETHICS

New Laws:

As part of the minimum standard of care, as of **FEB 28, 2006**, every dental office is required to have an automatic external defibrillator on site. If you do not have one, you are considered to be practicing below the minimum standard of care.

Dentists have to have 30 hours of continuing education which includes: 2 hrs in laws rules ethics; 2 hrs in prevention of medical errors; 1 hr in HIV/AIDS; 1 hr in domestic violence
-in addition to the 30 hours, must have a CPR class

Hygienists have to have 24 hrs, including: 2 hrs in laws, rules and ethics; 2 hrs in prevention of medical errors; 1 hr in HIV/AIDS
-in addition, must have 1 hr domestic violence plus a CPR class

Anyone with an anesthesia permit has to take at least four hours of anesthesia related CE each biennium; that 4 hours is included in the 30 hour requirement

Extra hours do not carry over to the next biennium.

(You do NOT have to take HIV/AIDS and Domestic Violence in the current biennium if you did it in the previous biennium; you can substitute another board approved course if you would prefer—check with the Board for specific details)

A special session was called in the summer of 2003 and laws were passed on personal injury damages and reporting of any adverse events:

There was a rate freeze on malpractice insurance rates and requires insurance companies to inform policyholders and the state when rates are going to be increased

Expands the good Samaritan law to give immunity to practitioners in hospital to voluntarily provide immediate emergency care or treatment to a nonpatient

Cap on non-economic damages in a personal injury or wrongful death arising from medical negligence have been capped at a maximum of \$1.5 million from all practitioner defendants for an injury that is a permanent vegetative state or death and it goes down from there

Every dentist has a duty to inform a patient in person about adverse incidents that result in serious harm to the patient

Every dentist has to report any claim or action for damages for personal injury alleged to have been caused by error, omission, or negligence or based on a claimed performance of professional

services without consent even if the doctor has malpractice insurance—check with your carrier in the event this happens to see who and how it's reported

–if you don't have malpractice insurance, you have to report it yourself to the OFFICE OF INSURANCE REGULATION

-note that claims reported are not confidential

--ALSO, if a dentist files bankruptcy, info is made available to anyone who asks (not just patients)

LICENSURE:

Have to renew licenses each biennium (*March 1 thru Feb 28 of each even numbered year*)

You are responsible to renew your license regardless of whether you get a notice or not—you are legally obligated to tell the board you've moved within 10 days

When you agree to be licensed to practice dentistry in Florida, you agree to submit to a handwriting sample and allow it to be used as evidence against you in a court of law; and you agree to waive access and allow access to your medical records in cases involving: possible impairment, moral turpitude, violations of laws governing controlled substances OR ANY VIOLATION OF CRIMINAL LAW—you also waive any objection to the admissibility of the reports as privileged communication (this is a concern with psychiatric records)

Every dentist has to have medical malpractice insurance or provide an unexpired irrevocable letter of credit showing proof of financial responsibility

You are responsible for providing reasonable 24 emergency care for patients under their care

No person other than a dentist can own a dental office or control treatment provided by dentists

PROFESSIONAL RESPONSIBILITY AND COMPETENCE:

Dentists and hygienists have to post their licenses conspicuously and expanded duty assistants have to have their expanded duties certificates posted

In the event a dentist is penalized by the board, he can be reprimanded, fined up to \$10,000 per offense, his license suspended or his practice restricted; placement of the dentist on probation for a period of time and subject to conditions such as attending CE courses, submit to reexamination or to work under another dentist's supervision; revocation of the dental license or denial of an application for licensure and/or the dentist may be responsible for the costs of investigation

The board considers factors like the danger to the public, the # of times in the past the dentist has been reprimanded, the length of time the licensee has practiced, the actual damage and whether it's reversible; the deterrent effect of the penalty, the effect of the penalty upon the licensee's livelihood; efforts of rehabilitation by the dentist; knowledge of the offense; attempts to correct or stop the violation

-the dentist has the right to due process and there is a series of hearings set out by law
(lots of different time limits and requirements, so always use a lawyer)

You can't practice dentistry or hygiene without an active license, you can't use someone else's license to practice, even if yours is suspended (can go to jail for that)

Have a responsibility to report professional misconduct to the board; if you don't you can be disciplined by the board (*you can be disciplined if: you know that someone's practicing improperly or without a license; or if you file a false report against another practitioner*)

Your license can be suspended if you fail to pay child support or fail to repay your student loans

You can be disciplined by the Board if:

1. You can't practice your profession with reasonable skill and safety (either because of a medical or physical condition, or because of drug or alcohol use)
2. You are incompetent or negligent because you fail to meet the minimum standards of performance in diagnosis and treatment when measured against generally prevailing peer performance. You must have a defibrillator. You can't diagnose and treat things you're not qualified to treat. You can't be guilty of malpractice. (*Includes things like failure to diagnose, failure to refer, extracting the wrong tooth, improper fabrication of crowns, etc.*)-Specifically said that SARGENTI CEMENT as an endodontic filling material does not meet minimum standard of performance (*because it contains paraformaldehyde, which can cause severe and irreversible damage to patients*)

Standard of care-The standard of care is defined as that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers

-if you do specialty care, but are not a specialist, you are held to the same standard as the specialist (*i.e.-you do a RCT, you're held to the same standard as an endodontist-so important to know your own limitations*)

-A bad result DOES NOT necessarily equal negligence-patient would have to prove negligence (*unless you do something like leave a sponge, surgical needle, etc. inside someone, then that's pretty much considered to be negligence*)

3. You practice beyond the scope permitted by law (*prescribe growth hormone, or steroids or speed, or prescribe/dispense drugs to yourself unless another dr prescribed them*)
4. You commit sexual battery upon a patient (*If you commit sexual battery in another state, FL can refuse to renew*)
5. You are adjudged mentally incompetent
6. You fail to provide adequate radiation safeguards
7. You fail to maintain sanitary facilities and conditions

8. You fail to maintain required patient records or fail to provide them to a patient or his representative when asked in writing
9. You perform experiments on humans without first obtaining full consent
10. you delegate responsibility to a person who's not qualified (minimum 6 month suspension)
11. You allow anyone other than another dentist to direct control or interfere with a dentist's clinical judgment (doesn't count for insurance company who has contractually excluded services)
12. You advertise improperly

Delegation of Duties:

Dentists are primarily responsible for all procedures they delegate to others-you can only delegate diagnosing or treatment planning to another dentist

Dental tasks are either considered to be irremediable or remediable

-**IRREMEDIABLE**: intraoral tasks that are irreversible and create unalterable changes within the oral cavity OR cause increased risk to the patient

-**REMEDIALABLE**: intraoral tasks with are reversible and do not cause increased risk to the patient

Cannot delegate any irremediable tasks to hygienists or assistants

Remediable tasks can be delegated as allowed according to Florida Law

For certain tasks hygienists and assistants must successfully complete an expanded duty course, for some tasks, on the job training is okay, so long as the dentists assumes full responsibility that the employee is competent to perform the job

Supervision: DIRECT-dentist must examine, diagnose a condition to be treated, authorize the procedure, remain on the premises while it's performed and approve the work before the patient leaves

INDIRECT- requires examination, diagnosis, authorize and remain on the premises while it's done

GENERAL-requires examine, diagnose, and authorize (*authorization is valid for a maximum of 13 months-USED TO BE 2 yrs, now 13 months*)

Emergency remediable tasks-when a dentist cannot be physically present to preexamine a patient who will be seen within 3 days, hygienists and assistants who are CPR certified and are properly trained can: temp cement crowns/bridges when patient is uncomfortable; remove/recement loose bands not permanently attached to any appliance; secure or unsecure an archwire by attaching or removing the fastening device; repack dressing in a socket; place or remove perio dressings, replace temp fillings when a patient is uncomfortable

Anesthesia and Drugs (for specific questions about anesthesia administration and what's allowable with/without anesthesia permits, please contact the Board):

Dentists have the right to prescribe drugs or medicine and dispense fluorides and chlorohexidine rinse solutions; perform surgery within the scope of his practice or training; administer general or local anesthesia (*prescribing cannot be delegated to anyone but another dentist--can't presign prescriptions and have your hygienist write them*)

-common violation of drug rules are: prescribing drugs in excessive quantities, self prescribing drugs, prescribing drugs to people who are allergic, prescribing drugs for improper purposes (*like steroids or growth hormone for enhancing athletic performance*)

All offices should have a current emergency kit, an ambu bag or one that attaches to your oxygen system, training in CPR, and as of Feb 28, 2006, a defibrillator

Dentists have to have a permit from the Board of Dentistry before they can administer general anesthesia or deep sedation, or parenteral or pediatric conscious sedation

-requires Amiodarone instead of sodium bicarbonate in office for both general anesthesia and conscious sedation

-If you use oral medications only in order to achieve conscious sedation, you have to get a sedation permit--(*reason for this is that because of the unpredictable nature may require proper resuscitative training and equipment*)

-Change on the **Nitrous** requirement--now allow the use of nitrous in combination with a single dose of an enteral sedative or a single dose of a narcotic analgesic to achieve a "minimally depressed level of consciousness, not to exceed the manufacturer's maximum recommended dose"

-nitrous must have fail-safe features and a 25% minimum oxygen flow

Each doctor must have a permit for each facility, must have a current CPR certification (*For general anesthesia and deep sedation, must also be certified in Advanced Cardiac Life Support or Advanced Trauma Life Support.*) No doctor can administer anesthesia for anything other than a dental procedure. You cannot induce sedation in more than one patient at a time unless you have two dentists on-site, each with a permit, AND you have enough resuscitative equipment for both people

General anesthesia or deep sedation requires 3 people: doctor, person to monitor the patient AND an assistant

If you have an adverse event from anesthesia at your office, you have to notify the Board in writing by registered mail, within 48 hrs (*have to report any incidence which result in temp or perm injury requiring hospital ER treatment and/or hospitalization of a patient during or as a direct result of any types of anesthesia, including nitrous or local anesthesia*)

-(*Board then determines whether an emergency situation exists in the office that could result in suspension of license until a situation can be evaluated and rectified*)

If you actually fill prescriptions at your office, you have to register as a "dispensing practitioner"

Sterilization and Disinfection Procedures: (Please see the 2003 CDC Guidelines for Dental Infection Control and contact the Florida Dept. of Health for specifics)

Biomedical waste-

Dept of health regulates storage, transport, treatment of biomedical waste

Dept of Environmental Protection regulates disposal

In first year of business have to get permit through city health department--once can show don't generate 25 pounds/month can get exemption from a permit or fee-permits expire every sept 30

All biomedical waste bags that are disposed of outside the facility must be labeled with the doctors name and address unless they're processed at the facility

Isolyzer system has to be cleared with your individual county

If you generate very little biomedical waste so you decide to nuke it and throw it in the regular trash, first call the department of health and ask if that's okay, then you have to run a test load to make sure your autoclave can handle it (*if you have a chemi-clave or a dry heat sterilizer, you'll have to have written permission to use these types of sterilizer*)

Put together a load of gauze/cotton rolls/etc. similar in size and content to a load of biomedical waste that you would treat. Place spore tests at the bottom and top of the load, at the front of each treatment container, in the middle of the load, and buried half way between the top and bottom in the front and back of the load.

--once you know it'll work properly, keep an autoclave log (*gives date/time/operator name, type and approximate amt of waste treated, and post treatment confirmation results by either recording the temp, pressure and time the waste was treated, or by attaching the temp tape or other monitor*)

Transporters who picks up waste should give a receipt to the generator

You can transport your own medical waste (*so long as it's less than 25 lbs you don't have to have transporter registration, fee and you don't have to put a big biological hazard sticker on your car*)--Sharps should be picked up

You can get up to a \$2500 fine per day for non-compliance with the medical waste disposal sections (*depends on things like, the severity of the violation, the potential for harm, extent to which the rules were violated, if the owner tried to correct the problem and whether there's any previous violations*)

Hazardous Waste

If hazardous waste is combined with biomedical waste, treat it as hazardous waste (*Ex: potentially contaminated tooth with an amalgam filling, don't put it in a red bag or sharps container, put it in the hazardous waste container*)

Hazardous waste includes amalgam, fixer, lead shields in x-ray packs, and other waste in the office (*technically, also includes fluorescent lights, batteries, etc.*)

Florida has a very strong inspection program, so figure out what systems to use and start using them

So long as you generate less than 220 pounds of scrap amalgam, fixer, and lead foil from x-ray film (combined) per month, you are a conditionally exempt small quantity generator (*if you recycle it, it's not considered generating it, so you're not even a conditionally exempt small quantity generator—Recycling is the best alternative*)

Have to document all loads of waste with name, date, and the place where you send your hazardous waste, then when the recycling company comes to pick it up, save the receipt showing it was picked up (*if they later send you some sort of certificate, put that with the pickup receipt*)

Some counties will let you pour x-ray fixer down the drain, some won't (*you have to call your county waste water treatment facility to ask them*)--otherwise it has to be picked up, or the silver has to be extracted with some sort of recovery system

One good source to check out first for any type of recycling is Household hazardous waste sites (*almost every county has one and the web site link is on my "links" page*)--a lot of these places will take your business waste for recycling for a minimal fee

Amalgam:

When you empty your trap, or if you have a damaged amalgam capsule, or if you have extracted teeth with amalgam in it, you are not supposed to throw it down the sink or toss it in the trash, you are supposed to recycle it

There's a copy of some amalgam recycling companies in your handout, and there are some links on my website that you can go to to check them out.

Anyway, when you contact one of the amalgam recyclers, they send you a container, most of them with a Biohazard sticker-when it gets full, most of them want you to fill it with a mixture of 1:10 bleach/water solution to cover the scrap amalgam in the container (*then you cover the biohazard sticker with a label that reads "scrap amalgam decontaminated with 1:10 bleach solution on (month/day/year)"*)

-make sure the container weighs less than 2 pounds (which is about 1 pound of mercury) so you don't have to meet any DOT regulations, which requires additional documentation, etc.--check with your recycler for their requirements

No requirement for an amalgam separator on your suction system, but they are considering it for the future

Advertising:

Fees-ads must have disclaimer stating that the fee is a minimum fee only; must show the specified period that the fee is in effect and that the fee will remain okay for at least 90 days after the final advertisement is published, and must give the exact description or ADA code number and have to give a disclaimer about the patient having a right to refuse to pay for any fees above the advertised fee

-If you do anything more than the procedure offered in the ad within 72 hours, the patient can legally refuse to pay you (*don't want people to do a bait and switch—Some unscrupulous dentists might get patients in for a cleaning and pressure them to do ear to ear crowns while they're in the chair*)

Solicitation-dentists can't do telephone solicitations and ads can't have any misrepresentations of fact, can't give unjustified expectations of favorable results, can't try to scare people, can't be false or cause the average person to be deceived

-can't hold out as specialists unless they are

Can't say "**HIV free**" and must have disclaimer that says "This negative HIV test cannot guarantee that I am currently free of HIV" and must give the exact date of the negative HIV test—also cannot imply you're safer because you're HIV free

HYPNOSIS: You can use hypnosis (*if properly trained, which is not defined*) to relieve dental anxiety, but NOT to "treat neurotic difficulties"

CONFIDENTIALITY and CONSENT:

First group of laws we're going to talk about is the 1998 modification on state laws on HIV and HIV testing

According to the new laws, all health care providers who have to take the AIDS course have to be informed about these, even though these really only affect you if you're doing HIV testing

Counseling and testing requirements for the public sector were made less restrictive. You still have to give informed consent and consent still has to include info on HIV infection reporting and on the availability of anonymous testing, but you don't have to do pre-test counseling and it's up to the individual offices to determine how to deliver test results (*used to have to come back to the office, now can be done over the phone or by mail-just remember, with HIPAA and the huge implications of damages is HIV status is overheard, I wouldn't leave it on an answering machine*)

-make sure you inform aboutt the availability of medical and support services, the importance and legality of notifying partners and preventing HIV transmission

All positive HIV results must be reported to the health dept w/in 2 weeks of diagnosis

Health department should offer HIV testing and info as a routine part of primary health care or admission to a health care facility and this revised protocol should be available to all providers

Health care workers involved with delivering babies can disclose the mom's HIV status on the kid's medical record

The medical examiner can disclose HIV status of dead people to the health dept and to any health care workers in the event of an exposure incident that occurred while handling the now dead guy

Informed consent is not necessary when monitoring existing HIV+ patients

Reregistration of HIV testing sites is still required

Any person who maliciously or for money, breaches the confidentiality of sexually transmitted disease information commits a felony (plus a major HIPAA violation)

(Statutes also go into detail about an outreach program for pregnant women in several counties to educate, test, and provide pre-natal care to decrease likelihood of passing HIV to their kids)

People with HIV must disclose their status and obtain permission for sex or they commit a felony

Now have both state statutes and federal HIPAA statutes when concerning yourself with patient privacy and confidentiality.

Under both Florida law and federal HIPAA laws, generally, you should keep patient's information private and treat it carefully and confidentially. You should only disclose their information to other providers if using it for treatment purposes, otherwise, you would need a specific written authorization from the patient (or a subpoena).

A couple of little Florida housekeeping points on privacy and patients: HIPAA does not interfere with public health reporting laws on disease reporting, the newborn screening, abuse, investigations of a missing child, court orders, warrants or subpoenas, or law enforcement purposes, administrative investigations and judicial proceedings

There are a few exceptions.

Florida law requires mandatory reporting of certain diseases that can cause public health problems, some within certain periods of time (*polio, smallpox, yellow fever, etc.*)

Realistically, you aren't going to be the one diagnosing most of these cases, but you may send out for a medical consult if you saw symptoms and the physician you referred the patient to would make the diagnosis

If you suspect someone has tuberculosis (*patient comes in has a prolonged productive cough of over 2 weeks, unexplained low grade fever, night sweats, loss of appetite, unexplained weight loss, fatigue*), you are required by law to report it to the health department in the county where the patient lives or where your office is located, within 72 hours.

-you have to give name address, home phone, date of birth, race and sex, have to tell how it was diagnosed (or why you suspect it) and give your name address and phone #

If you are the treating physician, you have to send followup reports every 3 months until the case is closed and treatment is complete

You can violate confidentiality in certain cases involving AIDS.

Dentists cannot be held criminally or civilly liable for disclosing otherwise confidential information to the needle-sharing or sexual partner of someone who is HIV+ if :

- the patient names the partner
- patient refuses to practice safe sex or stop sharing needles after the dr tell him how/why to be careful
- doctor tells the patient he's going to tell
- dr tells because he believes he's ethically obligated

On the other hand, there's no duty to tell the partner so there's no criminal/civil liability for failure to disclose (*The Fla Dept of Health has a specific protocol to follow in the event this type of disclosure occurs*)

HIPPA Security Section goes into effect in April of 2005 (*Please go to my website, www.laneykay.com, and look under "Laney's Articles" and you can print off an article that gives the basics of the Federal requirements*)

RECORDKEEPING:

- Each patient has a doctor of record identified in his chart and that doctor is responsible for treatment of the patient, even if another doctor in the practice renders treatment
- if another doctor renders treatment, they should note their initials in the chart and if the doctor of record changes it should be noted in the chart
- no matter how many doctor practice in one office, the doctor of record is responsible for making sure charts are maintained and copies are kept
- Not keeping proper records can result in fines of up to \$5000/violation or other sanctions

Talk to your insurance carriers for suggestions about how to protect records (*especially electronic records*) in the event of natural disasters, also considering state law

Doctors have to keep work order forms for all labs for 2 years, or can have license suspended (*can't pre-sign lab orders or prescription forms*)

Generally, notes should includes medical history, results of any clinical examination and tests conducted, (*including the ID or lack thereof of any pathology or disease*), diagnosis and clinical observations, any comments by patients, treatment recommendations, treatment performed and most importantly anything WEIRD (*Anything that makes you go, "hmmm, that was weird", write it down!!!*)

-If a patient refuses to follow treatment, DOCUMENT IT, whether it's refusal to get x-ray or refusal to see specialist, including what you told them will happen if they don't follow recommendations

WHAT IF PATIENT REFUSES X-RAY BUT WANTS TREATMENT? Document how you did determine there's a problem since you didn't have an x-ray, etc. and make decision from there

-Patients have right to copy of their chart, even if they owe you money

Doctors cannot withhold medical records if a patient has not paid their bill. You have to give copies of the entire file, including x-rays, at the patient's written request. The copying charge can only be equal to the amount charged per page by the clerk of court in that county (*usually .25 per page*) and the x-ray duplication charge has to be the actual charge—(*Payment of the fee may be requested upon delivery, but the board has seemed to rule that pre-payment is not allowed*)

These records must be maintained at least four years from the date the patient was last examined or treated (*including appointment book*). Check with your malpractice carrier, because most experts agree you should keep records longer than that because of all the exceptions to the statute of limitations.

-generally, the statute is 2 yrs from the time the incident is discovered, or should have been discovered with the exercise of due diligence—there are many exceptions that can extend it for years (*For example, if the patient is a kid, could be the age of majority PLUS a certain period of time.*) I'd keep them as long as possible.—(*some doctors have had paper charts converted to electronic so they don't have the storage issues*)

- **Documentation:**

Generally, if you don't write it, it didn't happen

-Biggest mistake that practitioners make is insufficient documentation

Don't ever go back and change the record. You can amend it, but don't go back and change it—don't write in margins

For computer documentation, back up regularly on a regular basis, seal and put aside a back up disk—if you don't have a program that sets your notes in stone when you close out the month, make sure you have a method to make sure that records aren't altered or deleted (*some sort of audit trail*)

-take your back up records off site on a daily basis

Patients have right to copy of their chart so be careful what you write—Don't give subjective opinion, try to be as objective as possible, and always document any patient comments that may demonstrate state of mind or show the patient being difficult

Documentation should allow anyone in the office to pick up the chart and know what's going on

Abandonment:

—Doctors are responsible for terminating the doctor/patient relationship in order to avoid negligence, unless the patient has **refused treatment** or **actually told you they're leaving**

-Simply not coming back does not properly terminate the doctor/patient relationship

- Can't refuse to treat because of discrimination based on race, age or HIV status
- Can't just stop treating because a patient hasn't been paying, you have to dismiss properly (*otherwise, if patient came in with emergency, you'd have to treat, even though they owe you money*)

In order to dismiss properly, best to make sure they're stable; if not able to do that because they won't return for treatment, then dismiss properly

Dismissal should always include: date, what still needs to be done, what can happen if those things are not completed, recommend finding a new dentist, offer a referral source and offer emergency treatment for 30 days, offer to send records to the new dentist or give the records to the patient

-If patient being dismissed has a perio condition, part of what you write about "what can happen if treatment is not completed" should include something about untreated periodontal disease being linked to strokes and heart disease

-For someone who wouldn't come to complete treatment, make sure you show all attempts to contact the patient so you can show a good faith effort before dismissing that patient

-for consistent no shows—that is not considered to be "refusing treatment", so make sure you have good documentation and then dismiss them properly

Patients can sue if you don't notify properly that you are moving or that you're dead

-People can sue your estate if you don't notify them you're dead

-if you move your practice outside the local phone directory service area, have to advertise 4 consecutive weeks in newspaper of greatest circulation in the county (*ad must say where the practice is moving or that it has been terminated and tells the patients how to get copies*)

-if dentist dies, have to publish notice w/in 90 days to tell the patients where to get copies of their records and have to transfer the records to another Florida dentist

If this isn't done, it can be construed as abandonment

LEGIBLE PRESCRIPTION LAW:

Obvious reason for this requirement—one of the biggest reasons for drug mistakes is not being able to read the prescription or looks like another drug

Went into effect July 1, 2003 and requires that all scripts must be legible printed or typed so pharmacist can understand it (*must have the name of the doctor, the name and strength of the drug prescribed, quantity in both written and numerical formats and the directions for use of the drug, date has to be written in text format (M-A-Y 1, 2003) and has to be signed on the day issued*)

Can still use latin abbreviations like BID, TID; doesn't have to be in a form that the patient understands, just the pharmacist

-be aware of language barriers and problems language can cause (*60 minutes had story where man who spoke Spanish gave wife 11 pills instead of 1 because he thought once was the spanish number for 11*) and wife dies

The pharmacist can still fill a script that doesn't comply with the new law, but if a problem arises, doctor could have a problem (*generally, in the past, pharmacists have always verified scripts that were hard to read*)

ETHICS in DENTISTRY

The ADA has a publication called "Ethics and Code of Professional Conduct", which pretty much sets forth what it considers to be the obligations arising from the implied contract between the dental profession and the society it serves. This would arguably be considered the standard of ethics that dentists should hold themselves to.

Basically, you want to use your dental skills to help your patients. You want to provide treatment that is beneficial to your patients and in their best interest, and you want to treat them fairly.

The ADA specifies that there are 5 principles of ethics that we, as members of the dental field, deal with.

1. Patient Autonomy-- patients have the right to be involved with their own treatment, they have the right to be informed about decisions that affect their own health. Doctors should properly maintain all patient records, should provide copies of records when requested by the patient and should be careful to keep all records and information confidential.
2. Drs and hygienists have a duty to "do no harm" (*they should keep their learning continuous and up to date, they should refer to a specialist when necessary and the specialist should send the patient back to the same dentist when treatment is done (unless the patient specifically request a different dentist)---(hygienists can only refer to a general dentist, not a specialist)*
 - only delegate allowable responsibilities to auxiliaries
 - no DUI (*dentistry under the influence*)
 - limit your activities if you become impaired physically or mentally (or b/c of communicable disease) to avoid endangering patients
 - inform patients if they are exposed to bloodborne pathogens in your office and tell them how to proceed with post-exposure evaluation and testing
 - avoid abandoning patients-make sure they are stable, give them adequate notice, etc.
 - provide clean, safe, non-infectious environment for patients
3. Doctors and hygienists have a duty to "do good"
 - behave in an ethical, moral way
 - share knowledge to improve the profession by contributing, and not limiting research or practice

- report abuse or neglect of children or vulnerable adults
4. Professionals have a duty to treat others fairly
- treat all people, without regard to race, creed, color, gender, national origin, or HIV status
 - provide emergency treatment for patients of record, and even those not of record in emergency
 - report constant poor dentistry to regulating board, but don't disparage others work to patients
 - treat other professionals with benefit of the doubt (*give them opportunity to explain or correct problem before reporting, etc.*)
 - can testify as an expert witness but can't agree upon a fee based upon a certain outcome
 - shouldn't accept kickbacks or rebates for referring patients, etc.
 - all patients should have access to high-quality, affordable health care
5. Professionals have a duty to be honest, and trustworthy in their dealings with people
- recognize that doctor/patient relationship is based upon trust
 - don't recommend work that doesn't need to be done
 - don't commit insurance fraud (don't say you did work you didn't do, don't charge different fees just b/c a patient has insurance or doesn't have insurance)
 - Can't recommend removing amalgam fillings for the purpose of removing toxic substances from the body, or perform any other procedures that supposedly cure or alleviate diseases when such representations are not based upon accepted scientific knowledge or research
 - should be careful to disclose any conflicts of interest to patients or seminar participants and should be careful about selling products
 - should report any adverse reactions to drug or devices
 - Must be careful about advertising truthful, shouldn't misrepresent any facts, shouldn't indicate any specialty/degree, etc that isn't true, shouldn't advertise HIV status, can't use name of dentist who doesn't work there (*after 1 year, according to the ADA, Fla says 2 years after sale of a practice*)

Ethics and legal obligations are not the same. Oftentimes, something is legally allowable, but is not ethical.

MEDICAL ERRORS AND OMISSIONS

What's a **medical error**? An adverse event or a near miss that is preventable with the current state of medical knowledge. An **adverse event** is an injury caused by medical management instead of a patient's underlying disability. If an unexpected adverse event involves death or serious physical or psychological injury it is called a **sentinel event** (*even if the patient ends up uninjured, if it's one of those "but for the grace of god" it would have resulted in very poor result, still sentinel event*)

Statistics in Florida are compiled by the Agency for Health Care Administration. They say that there are more than 11,000 dentists in Florida, and, during the time period of April, 1992 to March of 1997, approximately 3% were either subject to discipline or had either paid at least 3 dental malpractice claims or had paid a single claim for \$25,000 or more.

Most common complaints were things like: temporary insignificant injuries like accidentally nicking someone's tongue or lip with a bur
-temporary minor injuries like failure to diagnose an abscessed tooth, mismanaging a dry socket
-permanent minor-failure to diagnose perio disease that had not progressed significantly

LESS common problems: emotional distress (*frightened patients negligently and unnecessarily*)

-temporary major injuries: failure to remove Gore-tex membrane, burning of a palate from failure to temper a hydrocolloid impression
-permanent significant injury- perio disease that had progressed significantly, organ damage from wrong drug prescription
-permanent grave-damage from anesthesia mishap
-death-anesthesia mishap or mismanagement of anaphylaxis

For hygienists, most of the problems involved not completing the CE requirements or not using fl-approved CE providers

Medical errors are the #8 cause of death and injuries in the US. The Institute of Medicine estimates that up to 98,000 ppl in the US die every year of medical errors, more than die of car accidents, breast cancer, or AIDS. Two recent studies estimate that approx 3-4% of patients in hospitals have adverse events. In another study in 1994 (Leape, Harvard Medical Practices Study of adverse medical events-based on 30,195 randomly selected records from 51 hospitals in NY state), experts estimated that there are almost 2 errors/day in the average ICU, and one out of five of these errors were potentially serious or fatal. (*If these performance levels were equated to other industries, it would be like 2 dangerous landings per day at O'Hare international Airport and 32,000 checks deducted to the wrong account per hour. [Leape, 1994]*)

Many accidents result from pharmaceutical mistakes and are potentially preventable. These preventable errors account for nearly 10% of all hospital admissions and result in more than 7,000 deaths per year. Leape study estimated that 30% of individual with drug related injuries died.

Generally, the oldest and youngest patients are at the highest risk of being victims of medical errors. With children, they can't discuss their problems and it's easy to make pharmaceutical mistakes because they have to have their dosages specially calculated according to weight (*problems occurred with improper conversion of lbs to kilograms*). Old people have a lot of problems because of dementia & because they take a lot of different medications and there are often drug interactions. (*PLUS they have impaired organ function so they oftentimes don't clear drugs out of the system very quickly.*)

Medical errors and omissions can occur in any setting. Most of the ones we are dealing with are in hospital settings, but they can happen in any medical or dental setting. As more and more procedures are moved into outpatient facilities, there is significant potential for serious injuries because of lack of standardization of protocols and staff credentials.

Everyone hears horror stories about people who die from liposuction and other seemingly minimal procedures. Most of them are in outpatient facilities that aren't set up for emergency procedures and they have a reaction to anesthesia

In medicine, the types of errors you generally see are:

Administrative errors caused by mislabeling of the person or procedure to be done
-can also include include lack of checks on charting and treatment records (*e.g., situations where a pap comes back with a bad result and no one calls to tell the patient*)

Treatment errors errors done during a procedure or a test that results in damage, or when there are avoidable delays in treatment after receiving test results

-Surgical errors-In 2002, a study done by the Joint commission on accreditation of healthcare organizations analyzed 126 surgical errors and showed that 76% of surgical errors involved the wrong body part, 13% the wrong patient and 11% the wrong procedures (*after analysis, most found out that the errors were caused because people were in a hurry or were having to do something out of the norm, or were having to do something involving several different procedures or doctors*)

-delays in treatment usually because of misdiagnosis or improperly ordered tests

(studies have shown that meningitis is the illness most often not diagnosed quickly enough)

-negligence --just not paying attention (much higher among elderly patients)

Diagnostic Errors-

-incorrect diagnosis (can lead to unnecessary tests or allows a disease to progress unnecessarily)

-use of incorrect test or failure to perform a test

-delays in making a correct diagnosis

Medication errors -preventable errors involving inappropriate drug use or patient harm while health care workers are in control of a drug

-Legible prescription law written to reduce these kinds of errors

-in emergency departments, improper dosing or quantity was the leading medication error & only 23% of these errors were caught before administration (US Pharmacopeia, 2001)

-Often a problem with drugs that look too much alike

-Computerized drug administration systems significantly reduce errors (*automatically checks dosage, cross check against patients other drugs and allergies, make sure not given too frequently, etc.*)

-improper monitoring after drug administered common in understaffed hospitals (grandma given a beta blocker to control her high blood pressure-in hospital with liver failure so drugs clear slowly out of her system-gave it too soon and her BP crashed & she went into a coma-SENTINEL EVENT even though no permanent damage)

-Device errors -Anything from pacemakers to catheters to ventilators-parts can break off during use, the equipment can be used improperly, alarms can be used improperly, etc.

-in hospitals, many errors have occurred when the wrong gas tanks are hooked up to a supply systems-often they didn't check the labels and when the fittings didn't work they substituted one that would work (in other words, thought the fitting was not working when it was actually not working b/c it wasn't the right fitting)-need to take time to verify labels to make sure it's the right gas and NEVER change the fittings on a tank

Dental errors:

-Wrong tooth

-Failure to diagnose-most common would be perio disease, also can be caries under a crown, cracked tooth, infection

-Failure to refer-don't treat what you're not comfortable or qualified to do and don't wait before referring

-Medication-no pre-med, wrong dosage, drug interaction or allergy

-Anesthesia- problems have most often occurred with overdoses and drug interactions when sedating kids (*greatest risk when 3 or more sedating drugs are used*)-kid died in south Georgia-found out it was a combination of mom not disclosing everything on a medical history form, plus too many drugs were given

-Equipment-file breaking off, air/water syringe tip flying down patients throat, swallowed crown

-Infection-infection from improperly maintained waterlines, cross contamination between patients, patient gets infection because of improper pre-med before procedure

How do we prevent these errors?

Most error prevention experts agree that root cause analysis is the best method for reducing medical errors.

ROOT CAUSE ANALYSIS is an objective system of analyzing a situation by looking at it as a theoretical problem--it allows you to determine what happened, why it happened, and what can be done to keep it from happening again, **WITHOUT** assigning blame

-when properly done, root cause analysis focuses on the systems and processes related to the event instead of looking at individuals to blame

-it's a multi-level analysis that breaks down an adverse event into causes and effects at every level

ROOT CAUSE ANALYSIS:

1. must involve people most familiar with the adverse event plus leadership of the facility
2. must be impartial-human factors must be considered, but should focus most on the systems that allow the human factors to occur
3. must dig deeper by asking why at each level of cause and effect
4. identify risks and their potential contributions
5. ID improvements and changes that need to be made in systems or processes

AND do all that while taking out the human factor

How does the process work?

1. establish procedures that examine the adverse event
2. analyze procedures, systems and processes related to the event
3. determine where flaws, breakdowns and/or mistakes in procedures, systems and processes caused the problem
4. determine whether uncontrollable external factors and/or human factors contributed to mistake
5. revise systems wherever needed to prevent same problem from occurring again

In the Annals of Internal Medicine, June 2002, “The Wrong Patient”, Chassin and Becher did a root cause analysis of an event where a woman was given an invasive cardiac test by mistake. Fortunately, before any damage was done, the test was stopped.

When they did a root cause analysis, they found that there were 17 separate errors that allowed this one incident to occur. The patient she was confused with had a similar name. The nurses went to get her even though there was no written order. No one in the cath lab verified her identity.

Thanks to a sufficient analysis, there are new procedures in place that require identification verification at several different points, the patient is verbally asked what she’s in for, and records, bracelets, etc. are all required to match at several different points.

How could we use it in a dental office?

Realistically, we don’t have a huge facility that requires several levels of checks and balances, but we still need to look at the same process.

We have a much more personal environment, which both helps and hurts us. We are more likely to break established procedures because we know the patients, because we have personal involvement with patients

Error Reduction and Prevention:

In hospitals, the best method of reducing errors is setting up an environment where patient safety is the number one priority and setting up systems and procedures that limit mistakes

Take as much of the human factor out of procedures as possible. Use checklists, automated prescription programs, simplify processes and have enough people to take care of patients

Preventing medical errors:

- Take a thorough medical history and schedule enough time to adequately listen to your patients (*sometimes what they don't say is as important as what they do say*)

- Regularly update medical histories (*make sure you get info about all medications and dietary supplements, and all allergies or previous adverse reactions to any drugs; history about diseases; info about lifestyle and habits, like alcohol and tobacco use, and unintentional weight loss; pregnancy status and info on family violence; and whether the patient wants to talk to the doctor privately*)

- Dentistry-problem is that lots of patients don't think of their general health as having to do with their mouth-you ask "any changes in their medical history" and they automatically say no because they figures it doesn't matter

How do you prevent the most common types of errors

- Diagnostic (take complete medical history, listen to your patients, take x-rays and order correct lab tests)

- Treatment errors

- medical-verify correct patient and procedure, blood type, etc.

- dental-verify correct patient, correct tooth, correct procedure, allergies (*make sure that all necessary x-rays are taken, all diagnostic records are taken, medical history is current, and the patient has been informed about all risks, benefits, and alternatives to treatment and has given consent before treatment performed*)

- Medication

- Legible prescription law (write out dosage, use computers as much as possible)

- Make sure you are familiar with all medications patients are taking

- be very careful of dosage, especially with kids if not sure about a dosage, call pediatrician to get dosage recommendation

- Device/Equipment

- When patients are sent home with any sort of equipment or appliance (*for dentistry, dentures, partials, etc.*), make sure they understand how to use it (*don't just explain, show them and have them show you so you can see them do it-especially with older patients*)

- likely equipment failures in dentistry, endo files breaking off, burs breaking off

- reduce radiation exposure as much as possible to avoid overexposure to radiation (*had patients receiving radiation therapy receive burns when the software settings weren't correct*)

Risk Management, Damages, and Reporting adverse Events

The best way to reduce errors is to take your time, talk to your patients and make sure your patients are educated. Educated patients participate in their own health care and are responsible for making sure that their care is done properly.

Communicate-Use language that is adequate for the patient's education and intelligence

Make sure that there are no language barriers when explaining something to a patient

Use non-technical language and always take responsibility for ensuring that the patients understand (*don't say "do you understand?" say "did I explain that okay or is there anything that I need to go over again?"*)

Listen to the patient and look at the patient's body language

Always make sure you get informed consent before doing a procedure—if there are brochures, videos, or any other materials that will help explain it better, use those materials

-don't just rely on written materials to ensure that a patient understands, you have to go over it verbally, as well as a signed form—(*generally, a signed form is basically evidence that you did what you said*)

–The State of Florida says that if a patient or another authorized person validly signs an informed consent form, it is **rebuttably presumed** that the consent was correctly given, so the patient would have to prove otherwise

-In Florida, the informed consent law is a “Physician Standard of Disclosure” or a “Reasonable Professional” standard—which means that dentists should disclose risks that a reasonable medical or dental practitioner in a similar situation would disclose.

They have to disclose: 1. the nature of the procedure; 2. the risks and hazards of the procedure; and 3. the reasonable alternatives (*including what happens if you do nothing*).

- The law further provides that even if a patient can argue that he wasn't thoroughly informed, that if a jury believes that a reasonable patient would have still consented and had the procedure done, the doctor can still be okay

Much better than in Georgia where we have a “reasonable patient” standard where you have to disclose whatever a reasonable person in the patient's position would have considered significant in deciding whether or not to undergo proposed treatment (*which is really stupid, because every disclosure would end with “and you could die”*)

In Florida, if you had a deep filling on a patient, you'd have to say, “Yes ma'am we can do that filling. You might have a little cold sensitivity, if the decay is really deep you might have some damage to the nerve that might eventually require a root canal”

In Georgia, technically you should be saying, “Yes ma'am, we can do that filling. You might have a little cold sensitivity, if the decay is really deep you might have some damage to the nerve that might eventually require a root canal...oh and by the way, you can have possible permanent paresthesia from the injection if I somehow nicked the lingual nerve. If I get too close to a vein and nicked it, you could have a possible hematoma, you could have an allergic reaction to the lidocaine, in which case you could die.” HOW STUPID IS THAT!?

Get your patients to participate in their own care—they should ask questions, they should research, they should know what's going to be done to them before it's done—that's how errors are prevented and how they can make informed decisions about their own care