



Defending the #1 Anesthesia Claim: Dental

Before a Dental Injury Occurs

In order to minimize losses caused by dental injuries, it is recommended the risk of dental injury be discussed with all patients undergoing general anesthesia and this risk be included on anesthesia consent forms. Informed consent is a key factor in managing dental claims. Documentation of the risk of dental injury helps to establish reasonable patient expectations and diminishes the perception of medical negligence. During the pre-anesthesia evaluation, attention should be directed to the condition of the patient's teeth. Any existing damage should be noted on the record. Patients with existing dental problems should be advised that they are at increased risk for dental injury. Patients with existing bridges, caps and/or crowns are particularly susceptible to injuries, which frequently require expensive repairs. Pre-existing dental conditions not only increase the patient's susceptibility to injury, but the higher cost associated with repairing such injuries greatly increases the likelihood the patient will pursue a claim.

After a Dental Injury Occurs

In the event a dental injury occurs, the patient should be notified and advised to consult with a dentist. During these discussions, the patient will often ask, "who is going to pay my dental bill?" Unless the anesthesiologist has previously discussed the manner in which dental claims are handled, please contact PPM before assuming responsibility for a patient's dental bill. This provides PPM with an opportunity to review and discuss the options for handling such claims.

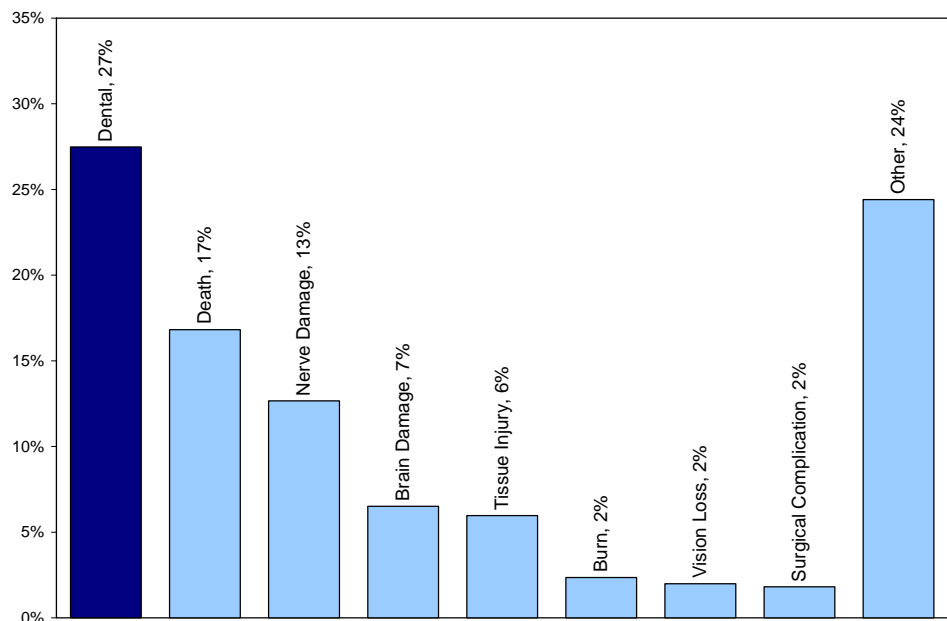
It is extremely important to avoid an assumption of responsibility.

First, dental injuries, especially those involving bridges, may be more expensive than expected. Assuming responsibility in advance may contractually obligate the anesthesiologist to pay damages that did not result from anesthesia care. In a large percentage of the dental injuries investigated, PPM discovers that the patient had significant pre-existing dental disease or conditions, which caused or contributed to the injury. Assuming liability before the patient's dental history is known may obligate the anesthesiologist to take responsibility for years of dental neglect. Second, assuming responsibility may prevent PPM from handling the claim appropriately.

PPM recommends that patients be referred to their own dentist. If the patient does not have a dentist, the PPM policyholder may suggest a known dentist. Again, because the PPM policyholder wants to avoid an assumption of responsibility for the dentist's bill, PPM recommends having the patient schedule the appointment.

If pressed by the patient to assume the cost associated with the dental consult and injury, the PPM policyholder should instead advise the patient to forward the dental bills to the anesthesia office for review. If the PPM policyholder has an office administrator, PPM recommends that this individual be given responsibility for gathering information regarding a patient's dental claim. By utilizing an office administrator, the PPM policyholder is often able to avoid an immediate assumption of responsibility for the dental bills. The PPM policyholder or office administrator should then contact PPM to report the dental claim and to discuss the options for handling the claim. ❖

Claims - 553
6/2004 - 6/2009



Options for Handling Dental Claims

Direct Handling by PPM Policyholder

In order to avoid a blemish on their credentialing report or just the additional paperwork, many PPM policyholders prefer to handle dental claims without reporting them to PPM. Under this scenario, dental claims are commonly resolved by a direct payment to the patient's dentist or by discounting the patient's anesthesia bill to cover any dental charges that are not reimbursed by the patient's insurance. This option avoids the National Practitioners Data Bank reporting requirement, most state reporting requirements, and does not appear on credentialing reports provided on the policyholder's behalf to hospital and insurance organizations.

In the event the PPM policyholder decides to make a direct payment to the patient or to the patient's dentist, the PPM policyholder should ask the patient to sign a general release before providing any reimbursement or compensation. PPM's claims attorneys and claim specialists can assist you by providing a sample release form.

Note: In the event you require assistance, PPM will establish an incident file. Such reports, however, are not reflected on your credentialing report.

PPM Claims Handling

In situations where the PPM policyholder wishes to turn over responsibility to PPM, they should do so prior to assuming responsibility for payment. This provides PPM with an opportunity to review the claim and make recommendations for its resolution. In the event the patient presses for a commitment, PPM suggests that the patient be informed, "we are referring your claim to our insurance carrier, Preferred Physicians Medical." PPM will then assume the responsibility of interacting with the patient.

As a general rule, PPM recommends payment of dental claims only in cases where the injury results from a failure to meet the appropriate standard of care. PPM believes it is appropriate to defend dental claims when there is no evidence to suggest a breach of the standard of care. In order to maintain low premiums, PPM does not pay dental claims under a no-fault provision. At the same time, PPM is committed to evaluating dental claims on a case by case basis consistent with our policy.

As an example, PPM may recommend payment for dental injuries that result from multiple intubation attempts if there is no anatomical structure or condition to explain the difficulty with intubation. On the other hand, PPM would typically recommend denying a dental claim that cannot be reasonably prevented, e.g., patients who bite down on the oral airway in the recovery room.

Note: In order for PPM to handle your dental claim, PPM is required to establish a claim file. This file will be reflected on your credentialing report and you may need to disclose it on applications for hospital or insurance company privileges. PPM may also be required to report your dental claim to your state licensing board, depending on the State in which you practice.

Other Options

PPM recognizes that it has been customary in some communities for the anesthesia group to reimburse patients for dental injuries on a strict liability basis. PPM recommends discussing this and other options with us. Increasing dental costs and fewer patients with dental insurance have led a number of anesthesia groups to re-evaluate the cost effectiveness of this approach.

After selecting the appropriate claims handling option for a particular situation, PPM will continue to be available to assist the PPM policyholder in resolving the dental claim in an expedient manner.

Based on the options discussed above, PPM has resolved or assisted our policyholders in resolving dental claims quickly and efficiently. The majority of claims turned over to PPM are resolved without litigation or payment. Our experience in this regard indicates that the majority of dental claims are defensible. ❖

Defending Dental Injury Lawsuits

In the last 5 years, PPM has defended 18 dental injury lawsuits. PPM obtained dismissals on behalf of the PPM policyholders in 14 of these lawsuits. PPM tried 3 dental injury lawsuits and obtained defense verdicts on behalf of PPM policyholders in all 3 trials. PPM settled 1 dental injury lawsuit for the cost of the dental repair, \$1,145. According to Shelley Strome, Senior Claims Specialist, "Litigation involving dental injuries is extremely rare. Experienced plaintiff attorneys rarely want to handle cases with little economic damage given the considerable costs associated with preparing medical malpractice cases for trial, especially the cost of retaining expert witnesses. Additionally, an overwhelming number of dental cases are fully defensible on the medicine."

The cases summaries below highlight some of the successful outcomes PPM has obtained for PPM policyholders in defending dental injury lawsuits.

- 61 year-old male with a history of colon cancer underwent a wide excision of a sinus tract of the anterior abdominal wall with closure. During the pre-anesthesia assessment it was noted that the patient had upper and lower caps. The risks of general endotracheal anesthesia were discussed and he signed the consent form which included among the risks, injury to mouth and teeth. The patient was intubated with no complications and the procedure was successfully completed. He was discharged home the same day with no complaints.

The patient claimed that while he was in PACU he felt a sensation similar to one of his caps having been broken off. He further alleged during the car ride home he confirmed a cap had been broken off by feeling the tooth with his tongue. When he arrived home he said he grabbed the tooth and removed it easily with no pain or blood.

Prior to trial the plaintiff made several demands starting at \$10,000. With PPM's policyholders' consent and in a gesture of goodwill, PPM offered the cost of the dental repair, \$2,225. Plaintiff rejected this offer and proceeded to trial.

Plaintiffs' settlement demand on the first day of trial was \$25,000. Plaintiff did not retain an expert witness to testify in the case. An anesthesiologist retained by the defense testified the intubation was performed appropriately and without evidence of any dental injury while under the care of the anesthesia personnel. The defense expert also testified that dental injury is a known risk and complication of general anesthesia.

Following a three-day trial, the jury returned a unanimous defense verdict in favor of PPM's policyholders after less than one hour of deliberation.

PPM's policyholders were represented George H. Cortelyou from the law firm of Buckley & Theroux, LLC, Princeton, New Jersey. The file was managed on behalf of PPM by Shelley Strome, Senior Claims Specialist.

- 35 year-old male presented for emergency appendectomy under general anesthesia provided by a PPM insured anesthesiologist and CRNA. Due to the emergent situation and the fact that the patient had been pre-medicated in the ER with Demerol, no informed consent was signed by the patient. However, the PPM insured anesthesiologist reviewed the informed consent issues with the patient, including the risk of potential injury to teeth. PPM's policyholders also noted the patient had poor dentition. During intubation, the patient's left upper front tooth became loose.

The patient's attorney sent a demand letter to PPM's policyholders alleging that his client needed dental work which would cost about \$3,900. With PPM's policyholders' consent and in a gesture of goodwill, PPM offered the cost of the dental repair, \$1,695. Plaintiff rejected this offer and countered with a \$9,500 demand. PPM rejected this settlement demand and proceeded to trial.

Plaintiff's anesthesiology expert, David Cullen, MD, testified that from his review of the chart there was no indication that the patient had loose teeth going into the procedure or that he had poor dentition. Dr. Cullen testified that excessive force had been applied against the teeth and the PPM policyholders did not meet the standard of care.

An anesthesiology expert retained by the defense testified the care and treatment provided by the PPM policyholder was appropriate and within the standard of care. The defense expert also testified that loosening of a tooth can occur with intubation even under the best of circumstances and in the absence of any negligence in the intubation process. The defense expert also testified that dental damage is a known risk and complication of intubation.

Following a three-day trial, the jury returned a defense verdict on behalf of PPM's policyholders.

PPM's policyholders were represented Mike Jones from the law firm of Hall & Evans, LLC, Denver, Colorado. The file was managed on behalf of PPM by Shelley Strome, Senior Claims Specialist.

- 67 year-old female presented for total hip replacement under general anesthesia. Prior to the procedure, the patient read and signed an anesthesia-specific informed consent that listed dental injury as a risk of the procedure. The PPM policyholder also noted in the chart that the patient had poor dentition. One of the patient's teeth was chipped during intubation.

As a good-will gesture, the PPM policyholder offered to pay a portion of the patient's dental bill. The patient refused that offer and instead filed a lawsuit in small claims court. PPM responded by making a motion to have the case transferred to a higher court. Thereafter, PPM's defense counsel informed the plaintiff that dental injury was a known risk of general anesthesia, and reminded the plaintiff that she had signed an informed consent document in which dental injury was highlighted. Additionally, the plaintiff was advised that she would need to retain, at a likely significant hourly rate, an expert anesthesiologist to support her claim. Finally, PPM's defense counsel stressed to plaintiff that if she insisted on pursuing her claim, PPM would pursue her for all available costs in the event of a defense verdict. Faced with this prospect, the plaintiff voluntarily dismissed her lawsuit.

PPM's policyholder was represented by defense attorney James C. Goodwin from the law firm of Sanders & Parks, PC, Phoenix, Arizona. The file was managed on behalf of PPM by Shelley Strome, Senior Claims Specialist.

**PREFERRED PHYSICIANS MEDICAL
RISK RETENTION GROUP, INC.**

9000 West 67th Street
Shawnee Mission, KS 66202-3656

T 913.262.2585 • 800.562.5589
F 913.262.3633

NEWSLETTER EDITOR

Brian J. Thomas, JD
Senior Claims Attorney
Director of Risk Management



ANESTHESIA

A RISK MANAGEMENT NEWSLETTER



the

LAW

PREFERRED PHYSICIANS MEDICAL
RISK RETENTION GROUP, INC.

ISSUE 23

In This Issue

Dental claims continue to lead the list of all other anesthesia-related claims reported by PPM policyholders. And while dental claims account for a small percentage of Company losses, many PPM policyholders continue to be challenged in deciding how best to resolve dental claims when they occur. In response, PPM developed guidelines to minimize the number of dental claims, as well as reducing the inconvenience associated with processing, investigating and resolving dental claims. PPM's guidelines also take into consideration concerns regarding reports to the National Practitioner Data Bank, state licensing boards and credentialing organizations. In this issue, we focus attention on PPM's dental claim guidelines that were designed to respond to a significant number of questions and concerns regarding dental injuries and their handling. We also highlight some of PPM's successes in defending dental injury lawsuits.

Thanks for reading,

Brian J. Thomas, Editor

Note: The purpose of this newsletter is to provide information to policyholders and defense counsel regarding professional liability issues. Risk management analysis is offered for general guidance and is not intended to establish a standard of care or to provide legal advice.

Copyright © 2009 Preferred Physicians Medical Risk Retention Group, Inc. All rights reserved. Contents may not be reproduced without prior written permission of the editor.