



C. Scott Litch

Chief Operating Officer and General Counsel

Litch's Law Log

Speaking of Safety

In recognition of the AAPD® Safety Symposium in the fall of 2019, using that term broadly this column features some resources and recommendations to help with a variety of threats to a pediatric dental office. In this context safety is almost interchangeable for prudent legal risk management. In fact, a new buzzword in health care today is “enterprise risk management” (ERM): “an ongoing series of inter-related activities designed to identify, assess, manage, and monitor the risks facing an organization.”¹

AUDIT LEGAL DEFENSE AND INSURANCE

In my column from the May 2019 *PDT* the following was noted:

“In most situations it makes sense to hire an attorney to defend and appeal against any negative audit findings. I would love to be able to provide a personal recommendation for a highly competent Medicaid audit provider defense attorney to any AAPD member needing such assistance. Unfortunately, this would be either herculean or impossible.”²

Perhaps the degree of difficulty was somewhat over-stated. AAPD recently prepared a list of law firms (national and by state) that handle Medicaid audit provider defense.³ It’s not an exhaustive or exclusive list, as noted in the introductory disclaimer, and we certainly don’t have personal knowledge of each firm’s capabilities. However, at least it’s a starting point. The ADA also offers guidance on selecting a lawyer called (not surprisingly) *A Dentist’s Guide to Selecting a Lawyer*, which is available for free to ADA members in the Center for Professional Success™ section of their website.⁴

Audit insurance is also an important consideration, as legal defense costs can quickly add up. As noted in the Treloar and Heisel column from the November, 2019 *PDT* entitled *Eight Questions to Ask Your Malpractice Carrier*:

“As a specialist, look for a company that offers additional coverages addressing your industry’s needs, such as Medicare/Medicaid billing defense coverage, which will provide you with coverage if the government audits your practice with a formal

This column presents a general informational overview of legal issues. It is intended as general guidance rather than legal advice. It is not a substitute for consultation with your own attorney concerning specific circumstances in your dental practice. Mr. Litch does not provide legal representation to individual AAPD members.

For further information contact Chief Operating Officer and General Counsel C. Scott Litch at 312-337-2169 ext. 29 or slitch@aapd.org.

records request. For example, a policy with MedPro Group⁵ includes limits for this coverage up to \$25,000 per incident and \$100,000 for total incidents in the policy period.”⁶

Based on recent member experiences in Nebraska, Medicaid audits can impact a pediatric dentist whether you are working as a practice owner or partner, associate, or employee of a DSO.

Don’t neglect to inform your professional liability insurance carrier immediately if you are facing an audit, or a state dental board complaint for that matter. For example, MedPro Group will assist in drafting a letter if fees are returned to a patient’s family.

COMPLIANCE PLAN

Every practice should have an effective compliance plan. The ADA offers a model office compliance plan.⁷ In previous columns I’ve also recommended the October 2015 CMS resource *Medicaid Compliance and Your Dental Practice*.⁸

CYBER LIABILITY AND INSURANCE

In this day and age, you should definitely obtain coverage in this area and have a discussion with your insurance broker. Ken Thomalla of Treloar and Heisel (the AAPD’s insurance broker) notes the following:

“In addition to cyber coverage under the MedPro Group plan (professional liability insurance), office policies (business owners/commercial general liability insurance) purchased through the AAPD program have cyber protection built in as well. As an option for all insureds, Treloar and Heisel also offers a stand-alone cyber policy which provides higher limits for those wanting the extra protection.”

This coverage becomes even more critical given the disturbing new trend of ransomware attacks on dental practices. Ransomware is a type of malware that denies access to a computer system or data (such as patient records) until a ransom is paid. Recent attacks have impacted a number of pediatric and general dentists in Colorado, Kansas, Louisiana, Nebraska, Nevada, and Wisconsin.⁹

¹Robert L. Carroll, Gisele A. Norris, and Michael Zukerman. *Basics of Enterprise Risk Management in Healthcare. Risk Management Handbook for Healthcare Organizations, Vol. 1: The Essentials*, American Society for Healthcare Risk Management, (6th ed. 2011, Chapter 1).

²https://www.pediatricdentistrytoday.org/assets/3/23/Litchs_Law_Log4.PDF

³<https://www.aapd.org/globalassets/media/advocacy/lll/audit-defense-law-firms-with-expertise-by-state.pdf>

⁴<https://success.ada.org/en/regulatory-legal/a-dentists-guide-to-selecting-a-lawyer>

⁵MedPro Group is the AAPD’s endorsed professional liability insurer.

⁶ http://www.pediatricdentistrytoday.org/assets/3/23/Treloar_Heisel2.PDF. For more information about this article contact Kenneth C. Thomalla, CPA, CLU®, CFP®, Chief Operating Officer, Treloar and Heisel, at kthomall@th-online.net.

⁷https://www.ada.org/~/media/ADA/Public%20Programs/Files/The_Compliance_Plan.pdf

⁸https://www.ada.org/~/media/ADA/Public%20Programs/Files/Medicaid_Compliance_and_Your_Dental_Practice.pdf

⁹<https://www.ada.org/en/publications/ada-news/2019-archive/october/data-breaches-unlikely-in-august-ransomware-attack>

<https://www.ada.org/en/publications/ada-news/2019-archive/december/colorado-ransomware-attack-leaves-100-dental-practices-without-access-to-patient-data>