



PROFESSIONAL INSURANCE EXCHANGE MUTUAL, INC.

ONLINE NEWSLETTER

VOLUME 32, NO. 1

January 2017

Approaching 40 years serving the profession

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2016 STATISTICS DENTISTS COMING AND GOING

On pages 7 and 8 of this Newsletter you can read our statistics for 2016 as far as policies written and canceled by PIE. The number of new policies written has averaged 57 so we sustained a slight increase over that with 62. The number of cancellations was slightly less than last year at 75. One category increasing in number on both sides was the number of dentists who seek temporary coverage which works for working interviews or for dentists requiring coverage for a one-time CE course in Utah. Other dentists have colleagues come out of retirement to cover their office for short periods as they recover from medical procedures, etc. Our offering these temporary policies has helped new dentists who are potential insured form a very positive opinion about PIE and the services we can render and most of these dentists obtain regular policies once they decide that Utah is the place for them.

The number of dentists retiring has stayed at around twenty per year for the past several years. The numbers have gone from 27 to 20 to 14 as far as dentists simply retiring and not going to teach or do mission service. The average retirement age was 70 which compares to 69.4 in 2015 and 69.11 in 2014. We saw the number of dentists leaving the state each year or establishing satellite practices in nearby states increase to 26 in 2016 as compared to 19 in 2015 and 22 in 2014. The number of new graduates insuring with PIE was up to 31, many of whom went to Roseman School of Dental Medicine. Numbers in 2015 and 2014 were 22 and 21, respectively. This number was much higher in 2009 when we signed up almost fifty new graduates. Obviously, there are not enough places for that many new dentists to land and succeed

each year in Utah but the smaller number is working out better. We also had a significant number of dentists switching carriers due to dissatisfaction with their prior malpractice carrier due to

either higher premiums or poor service. We hope that our service and claims handling is such that few if any of you want to switch to one of our competitors or terminate your PIE coverage unless you have to move away or are ready to retire!

PIE is the only entity in the state that compiles these statistics and we plan to continue to do so in the future. We often get requests for copies of these statistics and are happy to share them.

--RCE

PATIENT PREPARATION: WHAT DO YOU TELL THEM?

I generally attend the DREA Symposium which has been going on for 44 years and is usually held the first weekend in December. I started going to their courses in the early 1980s and with few exceptions, the speakers are excellent and the information presented is very timely. The course is administrated by the Army Reserve Dentists and they put a lot of work into it.

The presenter this year was Scott R. Dyer, DMD, MS, PhD who covered the topic of Implant Prosthodontics. He spent a lot of time initially discussion treatment planning and patient education issues to bring up as treatment options are presented. I thought some of his material was worthwhile to summarize in this article.

For patients with missing teeth, he basically gave four options:

1. Removable Partial Denture (RPD)
2. Fixed partial denture or bridgework
3. Implant restoration
4. Nothing.

He talked about the pros and cons of each option but reinforced something that we have tried to emphasize at PIE for years: Patients want an explanation of what choices are available to them and you need to present patients with their options, document these options and clarify which one was accepted by the patient.

A very important point that Dr. Dyer brought up that many dentists do not think about is how you must forecast the difficulty of the procedure and relay that to the patients with consideration given to their pre-existing conditions. In other words, if a patient presents with caries and several missing teeth, there is a high probability that the fixed bridgework you do will fail due to caries and increased occlusal stress. Do you tell the patient ahead of time that no matter how well your margins are sealed, that with their prior decay rate, there is a good chance that caries will recur and the bridgework will then fail? Or, what if they are more

interested in having front teeth crowned and leaving spaces in the posterior despite your recommendations to have these edentulous areas replaced with implants, fixed bridgework or even removable partial dentures? Do you explain that their biting forces can then result in porcelain fracture and failure of the anterior restorations? The point is to encourage the patient to take some responsibility and own their problems!

Do you tell the implant patient ahead of time that since they had periodontal disease and sustained bone loss that no matter how carefully implants are placed and how well they osseointegrate, there is a good chance that the patient will again sustain bone loss around their implants and that the implants may ultimately fail for the same reason that their teeth did?

Dr. Dyer explained that most dentists do not take enough time to emphasize how the pre-existing problems the patient presents with will not just go away and that they will have to be dealt with in the future. With this explanation and prediction, when the bridge does fail in a few years or the implants do not last as long as the patient would otherwise expect, the patient can be reminded of and will remember the discussion they had with you that was indeed documented in the chart about longevity and predictions.

If the patient does not want to spend the time, effort and money after hearing the forecast and hearing that their problems will not magically go away after restorations are placed, then you will have to provide other alternatives. At the same time, you will not set yourself up for a claim or lawsuit when the work ultimately fails and the patient wants to blame you when it was their own pre-existing condition that was responsible for the failure. Of course you can make an effort to work with the patient to exert better hygiene methods to better control dental caries or practice better hygiene and regular recall visits to slow down periodontal destruction but the idea is to not make promises you cannot keep!

--RCE

COMMENTS FROM A NON-PIE CASE

What kind of allegations are listed in a Complaint? This is the document crafted by a lawyer representing someone who is suing one of you for malpractice. Generally the lawyer asks their client to list all of the problems that they think the dentist caused them to have that created the matter at issue. The patient's lawyers do not always request copies of the records so they rely heavily on what the patient tells them. and accept their client's version as the "real deal," in the same way that many people believe that anything they read on the internet is the absolute truth.

Recently I received a copy of a Complaint that is not part of any PIE case but involves an unfortunate dentist that we do not insure. The lawyer involved is from a law firm that routinely handles medical malpractice cases for plaintiffs suing physicians. Rarely they handle dental cases if they think they can get a lot of money out of them. I thought it would be interesting for PIE insured to see what types of allegations that patients make and then see how these complaints become embellished by the attorney.

In this case, the plaintiff was a male in his late fifties who presented to the subject dentist with various complaints. Over an almost four year period the patient was treated in the office during at least sixty appointments that included extractions, crowns, implants and additional remedial procedures.

Near the end of the treatment process the patient claimed that a maxillary anterior implant was infected as confirmed by radiographs. Another maxillary implant had a screw loose. The patient was referred to a prosthodontist who had the patient undergo a CT scan that revealed that implants were placed in the maxillary sinus.

After two days the patient was discharged and the discharge summary noted sepsis, pus in the urine, dental abscesses and heart rhythm issues. Once the heart issues were stabilized, the patient had an oral surgeon remove the implants penetrating into the maxillary sinus and had them replaced with new ones. After three months and remedial treatment by the prosthodontist, the patient was disease free and happy with his "new teeth."

After the description of the basic problems with the treatment, the next step most plaintiff's lawyers take is an even more exaggerated series of allegations and consequences. Many of these are repetitive and used with several cases which tells me that many of these plaintiff's lawyers simply cull the comments from a "cookbook" or "how-to" article. In any event, I will outline the exaggerations throughout the rest of this article along with some commentary.

1. "Because of the dentist's negligent acts and omissions, my client endured multiple years of additional dental procedures and surgeries, including but not limited to the removal of the mal-placed implants from his maxillary sinus. And, my client endured many months of impairment, disfigurement, pain and infections as well as thousands of dollars of dental and medical costs."

Commentary: Attorneys love to use words like "disfigurement" and "impairment." They also talk about thousands of dollars in medical costs, etc. but fail to mention that the vast majority of these costs are actually covered by medical insurance.

2. The next contention that is usually covered has to do with statements that the dentist and his/her employees were negligent and failed to use that degree of learning, care and skill that was to have been used in the same or similar circumstances by reasonably prudent practitioners in the same field.

Commentary: In other words, the dentist has a duty to perform the procedure the way he/she was taught and did not follow the proper protocols of the procedure in question.

3. The next contention will generally state that the dentist breached the applicable standard of care and was negligent due to:
 - A. Failure to provide appropriate treatment and care.
 - B. Providing unnecessary and inappropriate care.
 - C. Failure to refer the patient to a proper specialist with the necessary expertise.

- D. Failure to inform the patient of the risks of the procedure and failure to follow-up in an appropriate manner.
- E. Failure to obtain proper informed consent such that the patient was aware of alternatives and the prognosis of the attempted procedure.
- F. Failure to comply with the applicable standards of care in evaluating, diagnosing, treating and referring the patient.
- G. Failure to properly monitor, respond to, and/or obtain appropriate and timely intervention for the patient's condition and needs.

Commentary: In essence, all of these allegations have to do with the standard of care, which means the level of care or treatment expected to be reasonable and proper under the same circumstances. The failure to provide informed consent is often emphasized as one of the most important parts of the plaintiff's case, even if it only seems to be a sidelight in the complaint. If you do not provide adequate informed consent, especially in any case that involves surgical procedures or extensive restorative procedures, the case will be very difficult if not impossible to defend. Please refer to the October 2016 edition of the [PIE Newsletter](#) to review the recent article that covers in depth the concept of proper informed consent.

4. The negligence and breaches of the standard of care by the subject dentist caused the patient to suffer significant injuries, including but not limited to physical pain and suffering, discomfort, emotional pain and suffering and loss of enjoyment of life.

Commentary: This is how the lawyer wants to earn their money. They are entitled to a third of any settlement or judgment after their expenses are deducted, so these descriptions are typical in any plaintiff's lawyers commentary and are actually an effort to heap on additional amounts in the ultimate settlement or judgment.

5. As a result of the substandard care by the dentist as described in the Complaint, the patient has been subjected to unnecessary treatments and has been required to receive and will continue to require multiple therapies and other treatment. The patient has suffered significant economic harm, including but not limited to the costs of past, present and ongoing medical and dental care and services, supplies, medications and equipment, and other economic and special damages.

Commentary: This standard line covers the laundry list of various itemized expenses that are going to be claimed which usually include fees for medical and dental treatment, prescriptions, lost wages, transportation costs, and anything else they can conjure up.

6. As a result of the heinous acts and indifference to the patient's suffering and loss of enjoyment of life, punitive damages are warranted and will be sought after.

Commentary: This can be a serious allegation from the standpoint that punitive damages, if awarded by a jury, are almost universally excluded by nearly every existing malpractice insurance policy, including PIE's. This means that if a dentist loses a case in court and punitive damages are awarded, these will have to come directly out of the dentist's pocket. In PIE's history

we have never had a case result in such a burden for an insured but whenever we have punitive damages mentioned as part as any complaint, we have to notify the dentist and advise them to obtain their own legal counsel, if necessary, to handle that part of the claim. In practice, if punitive damages are part of a claim we will take all steps and measures possible to avoid the dentist being place in a position where personal assets are at risk.

So, there you have it! This is what you are in for if you ever have to undergo an actual lawsuit. One of the many take-away-thoughts that we at PIE hope you have after reading this is to consider how each procedure you attempt will be judged as far as your carrying out your duty to follow proper procedures that you were taught and performing at or above the standard of care expected of you.

--RCE

DON'T FORGET THE TAIL IF YOU MOVE!!

Unfortunately things do not work out for all dentists, old and new, when it comes to practice location, covering expenses, work-related conflicts and so forth. Therefore several dentists each year end up leaving the state for hopefully greener pastures. The problem for us is that many of them leave without contacting PIE and perhaps forget that with the Claims-Made policy that PIE offers, you need to obtain extended reporting or tail coverage so that you have coverage for the time you worked in Utah in case a claim develops and must be reported later on.

If you have to leave, please contact your agent at PIE (Lisa for those with last names from A-L and Maralee for those with last names from M-Z) so we can obtain forwarding information. Many of you who move have refunds coming so we need to send those or credit the premium for the tail. In any event, you do not have coverage when you move away unless you purchase the tail so please remember to contact us as soon as you determine that you will be moving!

--RCE

SOME REMINDERS

1. A few of you are consistently late making payments, returning your renewal forms, etc. We cannot issue a Proof of Insurance Page or Dec Sheet until we have the renewal form and payment in hand. Therefore, it is in your best interest to look ahead at the dates these items are due. Of course you can pay your premiums on a quarterly basis which means less of a financial hit all at once and you can also pay by credit card.
2. When you received your Dec Sheet, please keep it in a secure yet handy place and make sure your front desk has a copy or copies as they often need to submit a copy to various insurance panels that want to make sure you do indeed carry malpractice insurance. We get several requests a day from offices to send additional copies of the Dec Sheet because the original has been misplaced. You are allowed one extra copy at no charge but please remember that there is a \$10.00 charge if we receive a second request for an extra copy! We would rather not

have to charge this fee so help prevent this necessity by ensuring that the front desk has a copy.

3. There will be an oral sedation refresher course at the Utah Dental Association convention taught by Dr. Kevin Croft on Friday, April 28. The course is titled, "Pain Anxiety in Dentistry: 21st Century Approaches for 21st Century Dentists." If you need the refresher course, attend the morning session. If you need the initial course, you will need to attend the afternoon session as well. We look forward to what we predict will be an excellent update for you!
4. Some of you may be involved with some entities or programs where dentists are going into public schools and performing dentistry on children that may not have access otherwise. Although this is a noble endeavor, you must still obtain an informed consent from the parents for the specific procedures planned before you proceed. We have heard reports that some children, even though they have a family dentist, are having procedures performed without parental consent or even knowledge. There are consequences that can create some unpleasant problems for you if you do not remember the simple step of obtaining informed consent from the parents in these circumstances.
5. When you decide that you will be retiring, please let us know right away what your end date will be or when you want us to cancel your coverage. Some dentists do not call us until they get a billing or renewal notice months after they actually retire. We cannot give a refund going back that far and must base it on the report date! So don't forget to call us in a timely manner!

--RCE

GUEST COMMENTARY

- **By Scott H. Brown, DDS**
- **Member, PIE Board of Directors**

Go/No Go

One of my bucket list items has been to learn to fly. Four years ago I started the process with a friend who is also a CFI (certified flight instructor). We progressed thru the basics of flight, adding one skill after another until I was competent to solo. The process was thrilling and frightening at the same time. After completing the FAA requirements of written, oral and check ride with an examiner I was licensed to fly.

As my training progressed, I remember being reminded over and over again that the responsibility is completely on my shoulders for my safety and for the safety of my passengers. The critical decision of *go/no go* prior to every flight is mine, and mine alone as I factor in the weather, wind, aircraft, and my personal abilities to safely arrive at my destination. I learned in a hurry that "take off is optional, but landing is mandatory".

The critical *go/no go* decision is something we face multiple times daily in our dental practices. From diagnosis to treatment planning, to final restoration, we are responsible for a positive outcome. Just like adverse conditions impact the safe outcome in flight, adverse conditions affect the successful outcome of our final restorations. Factors that we must consider are patient

compliance, financial limitation, lab communication and quality, and our ability to deliver the needed care.

We are fortunate to be involved in such a marvelous profession and have the opportunity to serve our patients. What a sacred responsibility we have to be in a position to make the *go/no go* decision and may we always respect and honor the trust instilled in each of us as we serve our patients.

The PIE Newsletter is brought to you by:
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P.I.E. STATISTICAL DATA - 2016

New Insured

New Policies Written

62

New Graduates (Never Practiced Before, Anywhere)	31
Specialists: 1 (Pediatric Dentistry)	
Moved from other states or Canada (KY 1; WA 1; Canada 1)	3
Finished Military Obligation	2
Switched to PIE from other carrier; Already practicing in Utah	9
Came out of Retirement, returned from Mission service, etc.	5
Part Time Faculty	1
Finished Maternity Leave	1
Temporary Coverage Only (Led to reg. cov.: 5)	10

TOTAL INSURED DENTISTS, YEAR END: 1290

Net PIE Decrease, 2016: 13 dentists

P.I.E. STATISTICAL DATA - 2016

Cancellations

Total Policy Cancellations	75
Retirement	27
Retire	14
Retire to teach only	4
Retire to serve Mission	5
Retire for 2 nd time	4
Specialists retiring: 1 (1 pros)	
Retire early due to disability	2
Congestive heart failure	1
Brain Tumor	1
Move from Utah to practice elsewhere or establish out of state satellite	26
Return to school for specialty training	0
Enter Military	0
Switch Carriers	4
Entity that provides own coverage	1
Bait and Switch	3
Temporary Coverage Only	10
Non-Payment of Premium	3
Teach Full Time	3
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Average Age at Retirement:	70
Youngest: 59	Oldest: 83

DETAILS WITH 2016 DATA

STATES DENTISTS MOVED TO or SATELLITE ESTABLISHED:

Arizona:	2
Alaska	1
California	2
Colorado	7
Idaho	1
Kansas	1
Montana	1
Nevada	2
New Mexico	2
Texas	1
Washington	3
Wyoming	2
Unspecified	1
<hr/>	
	26

Number establishing satellites:	6
Number moving out of state	20

AGES AT RETIREMENT (Inc. 2nd TIME):

71, 71, 68, 69, 64, 65, 74, 69, 66, 66, 83, 69, 81, 78, 70, 72, 59, 65

AGES AT TIME OF MISSION SERVICE:

64, 65, 68, 66, 67

AGE AT RETIREMENT TO TEACH:

65, 60, 71, 64

AGES AT DISABILITY:

64 (congestive heart failure, which ultimately led to death)

46 (brain tumor)

SWITCHING CARRIERS:

1. Some dentists became employed by various entities that provided coverage as long as the dentist stayed within that network to work so PIE coverage was no longer necessary as no "moonlighting" was planned.
2. Some practices were sold to large, out-of-state corporations that had arrangements with national carriers to provide malpractice coverage at set rates and the decision was made for all dentists in the corporation to change their coverage to the national carrier.
3. Employer mandates: Some non-PIE insured practice owners wanted all associates, etc. to be covered by the same carrier.
4. Bait and switch: Some dentists were enticed by a relative or patient to bundle all of their insurance coverages, including malpractice, for a better rate initially. But who will they call when they have a problem, and what dentist is available to give them advice?
5. Many dentists hear about PIE and decide to switch due to our experience, better service and strength in numbers, as manifested by the nine dentists who came on board in 2016.