



# **ONLINE NEWSLETTER**

**VOLUME 31, NO. 2**

**April-May 2016**

**Over 35 years of serving the profession**

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## **MORE REASONS WHY PIE IS A STEP ABOVE THE COMPETITION**

We appreciate the loyalty that our PIE insured have in sticking with us and referring dentist colleagues to PIE who move from other states who are just starting to practice. Recently we have become aware of some procedures followed by PIE's competitors that you should know about:

1. If you simply report an incident such as a patient swallowing a crown or a patient threatening to sue you, they will open a claim file on you! Generally this means something that you will have to report to various entities for the rest of your career! PIE has only two criteria that require us to open a claim file, which include either a Notice of Intent to Commence Action sent by a lawyer to a dentist per Utah Statute or a situation where PIE is helping a dentist resolve a problem and a settlement payment will be paid by PIE on behalf of the dentist.
2. PIE does not require you to pay an additional premium for a "Hammer Clause" or "Consent To Settle Clause" as part of your policy. In other words, PIE has never settled a case over the objection of our insured dentist. There are many factors that enter into the decision to settle a claim and occasionally the dentist is the one who changes his/her mind after deciding that the stress, lost sleep, pressure, etc. is not worth continuing the effort and asks us to make an effort to resolve the matter without going through trial.
3. You are our priority. Unlike our national competitors, we only have one focus, which is you, our insured. Our competitors are busy dealing with several different types of insurance such as life, auto, homeowners, etc. They

also have overpaid executives and a top-heavy bureaucracy to deal with. PIE has none of that. Our Board of Directors are all dentists and all have been insured with PIE for several years. PIE was formed to serve Utah dentists and that is what we continue to do.

4. PIE has a full time Utah based dentist on board, Dr. Engar, whom you can call Monday through Friday to have potential claims addressed without worrying about having a claim file opened in your name. You can obtain advice and help quickly to nip problems in the bud rather than having things fester and get worse.
5. PIE has very competitive premiums compared to the alternatives. Other companies have tried to undercut us in the past but they have not lasted and have not been able to match PIE's service. Each of you has your own agent who can assist you or your staff with policy questions.

In summary, PIE is not perfect yet but we try to do the best job we can to help keep you out of trouble and keep the premiums low and the service excellent. We appreciate your support and loyalty and also are grateful when you send your colleagues our way!

--RCE

## **WE HAVE A WINNER!**

Thanks to all of you who stopped by our booth at the recent Utah Dental Association Convention to say "Hello" and enter our drawing. We had several prizes to give away. The big winner was Dr. Daniel W. Asay of Springville who won the grand prize, a Nexus 9 Tablet. We also gave away PIE logo golf shirts and golf towels to Drs. Hyrum Cannon, Chris Capener, Grant Brough, Celeste Mortensen and Jeff Sperry. The big winner among the office staff members was Anita Colby who works for Dr. Landon Rockwell. She won a \$50.00 visa gift card. We also gave six gift cards for pies to various staff members throughout the state. We hope to see you at next year's booth; it may be YOUR turn to win!

## **MORE ON ELECTRONIC RECORDS**

We have covered some of the problems we have encountered with electronic or digital records previously but we wanted to pass on some repeated problems we continue to see with the existing software systems most of you use and have a proposal which might help to solve the problem at the end of this article. Our lawyers are also frustrated with the ongoing problems that they also encounter dealing with digital records systems.

1. There are two or three different ways that treatment notes are printed or appear in printed form and the copies PIE obtains are often different from the copies that are sent to the patient's lawyer and then to our PIE lawyers. These differences lead the patient's lawyer to believe that the records are being altered.
2. X-rays come to us that are undated and not sent in chronological order.
3. X-rays that are provided to our insured by previous dentists at the beginning of the patient's treatment are

mixed in by the program and not kept separate, nor are dates taken or even acquired preserved.

4. Head and neck examination data is not preserved in an easily accessible or understandable format.
5. Templates are used inappropriately and do not provide useful information.
6. Treating dentists are misidentified and it is unclear who actually generated or entered the record.

If any of you have been approached by a new software vendor interested in creating a better system that can solve all of the problems described in this article, have a representative of their company contact Dr. Engar at PIE. We would be happy to work with them to create a better system that would solve all of the problems we encounter across the board with every existing software vendor!

--RCE

## SOME SHORT SUBJECTS

1. **UNIDENTIFIABLE CHECKS:** Amazingly, we receive checks from some dentists, generated by either corporate entities or large practices that do not list either the insured dentist's name or their policy number. If you have an outside entity send your insurance premiums, please ensure that they have your name and policy number on the check so we can properly apply the payment to the dentist's account for whom the payment was intended.
2. **LICENSURE RENEWAL:** As of 5/31/16 all Utah dentists, including PIE insured, should have renewed their dental licenses. You should have received a postcard in the mail from DOPL alerting you to the need to renew and if you have not renewed yet, you had better contact DOPL and take care of this necessary task. If you do not have a current license to practice your malpractice coverage is null and void. As you renew, please include a copy of your new license that expires on May 31, 2018, along with your renewal form and payment, etc.
3. **CROWN AND BRIDGE PAYMENT PROTOCOLS:** We often help dentists deal with situations where they prepare teeth for crown and bridgework, send the impression to the lab and then have trouble getting the patient to return to have the restorations seated, mainly because the patients have not paid anything. The situation is made worse when the office has already billed the insurance. We recommend the following protocols:
  - A. You should have patients sign a financial agreement ahead of time wherein they agree to pay their copayment or half of the total fee before the case goes to the lab and then the balance at the front desk before seating. The same can apply to dentures. In this way, if a patient does not pay money to cover the lab fees, you are not burned when they do not return for the finished product and you are left with a lab bill you need to pay. With

such a prior agreement, not completing the procedure is not abandonment since the patient has not followed through contractually with something they agreed in writing to do.

- B. Do not bill insurance until the procedure is completed, IE the work is "out on the street" or seated! You can certainly use the prep date or impression date if allowed by the insurance, just wait to send the bill until after the denture is inserted/delivered or the crown and bridgework is seated.

## 4. SHOULD I HAVE MY HYGIENIST TAKE X-RAYS, ETC. BEFORE I SEE THE PATEINT?

This is an excellent question we often get asked since there has been much discussion recently about the frequency and appropriateness of x-rays. If the patient is a recall patient and the interval that bitewing x-rays has been taken has previously been established, then the hygienist can proceed with the planned x-rays. If it involves a new patient, however, then the dentist should screen the patient before a final decision is made. The hygienist should probe selected teeth such as the upper and lower first molars, canine teeth, and any areas of inflammation first and then the dentist should be called in to discuss the findings. If there are any periodontal probings of 4 or higher than the patient should have a full mouth series of periapical films taken to completely assess their periodontal status. If there are no problems revealed through probings, then the dentist can determine if 2 or 4 bitewings will do and whether or not a panoramic x-ray is indicated. One size does not fit all, and the patient will appreciate a customized approach.

## 5. PIE HAS A FACEBOOK PAGE!

For those of you into social media, PIE has jumped on the bandwagon and now has a Facebook page! Just find and like us under Professional Insurance Exchange. We post announcements about upcoming events, post pictures from the convention or other activities that we are involved with, and occasionally have mini-contests for you to enjoy. Check us out!!

--RCE

## THE NATIONAL PRACTITIONER DATA BANK - 25 YEARS IN OPERATION

I write a quarterly column for the Academy of General Dentistry and recently covered the National Practitioner Data Bank. There were components of that topic that I thought might be of interest to PIE insured so I have excerpted information for you and hope this article answers several questions you might have about the Data Bank.

One aspect of any settlement or judgment is the required report to the National Practitioner Data Bank (NPDB or Data Bank). Where there are several misunderstandings and even fears about the NPDB among dentists, I thought it would be worthwhile to review a little history and to take away some of the mystique and misconceptions associated with the Data Bank.

The NPDB has been operational since September 1, 1990. It was established by Public Law 99-660, the Health Care Quality Improvement Act of 1986 and mandated that each required entity report appropriate actions involving practitioners within 30 days of the payment or ruling necessitating the report. Required entities originally included: 1. Medical/dental malpractice insurers; 2. Hospitals and other health care entities; 3. State medical and dental boards and 4. Professional societies. Twenty-five years later these same four entities remain as required reporting entities but current NPDB Guidelines also include the DEA, other agencies that handle federal licensure and state Medicaid agencies.

The Data Bank has undergone some evolution since its inception and operational beginnings. The ADA has been a major player in affecting reporting of patient refunds. The requirements for reporting are actually very straightforward. However, many dentists are still unsure as to what incidents are reportable and may also try to avoid being reported whether the incident in question is actually required or not. The following actions still require reporting of a Utah dentist to the Data Bank:

- A. A malpractice judgment against you.
- B. A malpractice settlement wherein PIE makes financial compensation to the patient.
- C. Disciplinary actions taken by DOPL to revoke or suspend your dental license or place your license on probation.
- D. Adverse actions a hospital or surgical center takes against a dentist's clinical privileges. The actions must be based on the dentist's professional competence and must last more than thirty days.
- E. Adverse action taken by your state dental association or component dental society to remove a dentist from membership based on a formal peer review process and based on the dentist's professional competence or professional conduct.
- F. Refunds to patients based on a written demand that are provided by a professional corporation/group practice/clinic.

The patient refund reporting requirement has created the most confusion and acrimony of all the requirements. Initially a dentist was required to report **any** refund to a patient other than those based on overpayment. There was no minimum payment; if you were refunded fifty cents to a patient based on a written demand you were required to report yourself under the original requirements. However, on August 27, 1993 a federal appeals court effectively ruled that individual dentists do not need to report malpractice payments to the Data Bank as long as the refund is written from personal funds and not through the dentist's corporation. The requirement to report still applied to malpractice insurance companies or professional corporations that made refund or settlement payments to patients.

The following transactions are not reportable under any circumstance:

1. Refunding money due to an overpayment by an insurance company.
2. Refunding a credit that was never used.
3. Writing off a balance.
4. Refunding money to a patient based on a verbal agreement.

What are the consequences of not reporting a required incident? Any entity not reporting an eligible incident within thirty days is subject to up to an **\$11,000 penalty!** Most patients are not aware that the Data Bank exists and your employees may also not be familiar with Data Bank rules. Remember, however, that the requirement applies to **entities** such as professional corporations, not to individuals.

What are the consequences of being reported to the Data Bank?

1. If you move to another state, the State Board can require you to query the Data Bank to see if you have ever been reported. The process to query the NPDB is easily found by going online and it is not onerously expensive.

2. If you apply for hospital privileges, the hospital is required to query the Data Bank to see if you have ever been reported.

3. If you have hospital privileges, the hospital can query the Data Bank periodically and will learn about any reported incidents.

4. DOPL receives a copy of any Data Bank report filed by a malpractice insurance carrier such as PIE after a settlement payment or judgment and becomes aware of the situation.

5. If you apply for employment with a hospital or other health care entity, they may require you to query the Data Bank and furnish a copy of your findings.

Who is restricted from requesting information about you from the Data Bank?

1. State Dental Associations are not allowed to query the dental bank.

2. Attorneys are not allowed to query the data bank except for one limited circumstance involving claims against a hospital and dentist or physician where it is alleged that credentials were not checked by a hospital prior to granting privileges.

3. Professional liability insurance companies. PIE cannot query the Data Bank if we have questions about a prospective insured dentist. Therefore, we will request what is called a "Claim-Loss Run" to obtain that information and will request an applicant to sign a form if necessary to give us permission to do so.

4. Third party insurance carriers are not currently allowed to query the Data Bank about potential preferred providers or closed panel providers.

If your professional corporation, clinic, or group practice makes a refund to a patient based on a written demand, the corporation/clinic/group is responsible for reporting the involved dentist or dentists to the Data Bank. Your corporation is responsible for obtaining, completing, and filing the reports correctly. PIE has plenty of experience with the Data Bank and may be able to help you with the filing process which is done exclusively online. However, if you follow our advice early on regarding the written demand, the report should not be necessary!

Proposals have been made to limit reportable incidents to refunds, judgments, settlements, etc. over \$30,000. Such a minimum would eliminate a large number of dental related events. However, the proposal would have to become law and several organizations, including the OB-GYN physicians, have been opposed to such a minimum in the past.

Other proposals were made early on for the general public as well as third party payers to have access to the Data Bank. In July 1993 the ADA News published an article wherein Blue Cross and Blue Shield of Kansas was reported to be seeking status as an entity that could legally query the data bank. The reason was commercial; the third party payer could advertise to potential buyers that they provide peer review or quality assurance because they screen potential dental participants. To date, however, no third party carriers have been granted Data Bank access but plan contracts often contain questions asking dentist applicants if they have ever been reported to the Data Bank.

The most recent statistics published by the Data Bank are through 2012. 51% of all reports submitted over the past ten year reported period were for medical/dental malpractice. Although it is difficult to sift through all of the various statistics, dentists made up only 11% percent of the malpractice payment reports submitted to the Data Bank for dentists, physicians and nurses.

During the Clinton Administration Oregon Democratic congressman Ron Wyden (now an Oregon Senator) was a vocal proponent of public access to the Data Bank and introduced a bill along with Republican congressman Scott Klug of Wisconsin in April 1994 to allow the public to gain access to Data Bank information. The Wyden/Klug plan would have granted the public access to a semiannual publication containing information on adverse actions reported against health care providers. The publication cited would have been available in public libraries and would have included information on license suspension/revocation and malpractice payments for health care practitioners with two or more separate incidents. Other provisions of this bill would have allowed established provider networks, especially PPOs, to have access to the Data Bank to facilitate selection. Several consumer organizations jumped on the public access bandwagon. The ADA was an adamant opponent of any public access and ultimately this bill went nowhere. Hearings on this topic were also held in 2000 yet public access remains limited.

As stated previously in this article, Data Bank requirements have evolved and have been subject to change and may continue to be subject to change in the future. For most dentists involved in malpractice actions there is a lot of trauma which is essentially compounded by the "black mark" necessitated by a Data Bank report if the dentist's insurance company makes a settlement or the dentist sustains an unfavorable judgement in court. Whether the case is meritorious or not the situation must be reported. The dentist does have some recourse, however, in the event that the report is inaccurate or otherwise offensive. Whenever an entity submits a required report the reportee is provided with a copy of the report that he/she may dispute. Furthermore, a relatively new provision to the Data Bank allows a reported provider to submit his/her own side of the story as part of the official Data Bank report. A dentist may thus write a 600 character statement which amounts to about nine word-processed lines which can become a part of the report.

Has a Data Bank report been deleterious to any dentist in terms of participation in dental insurance panels or licensure in other states? I am not familiar with any such scenarios although if the

amount of any settlement paid is substantial enough, the facts of the claim or circumstances resulting in a lawsuit or claim would bear the most weight. In some states the mere generation of a civil claim results in an investigation and possible probation even before the claim is resolved and a Data Bank report filed.

There are some circumstances in a claim process where pre-trial or pre-arbitration agreements such as high-low contractual agreements may mitigate Data Bank reporting. In a High-Low Agreement there are specific amounts agreed upon that guarantee the low end being paid to the plaintiff even if they lose in court and the high end being the cap even if the plaintiff wins in Court. Some insurance companies interpret these as contractual agreements between the insurance companies and the plaintiff's lawyer that may exempt a Data Bank report from being filed. However, according to Data Bank guidelines published in October 2015, if the practitioner is not found to be liable in the case but the agreements stipulates that a payment be made through the agreement, this payment is not reportable because the payment is not being made for the benefit of the practitioner. Of course if the arbitrators or jury find in favor of the plaintiff, then the high end payment is enforced and must be reported, according to the Data Bank guidelines.

Others argue that if a Notice of Intent to sue is the only written document in a claim, than any settlement paid by the malpractice insurance carrier does not need to be reported under the "no written complaint" rule. However, the way PIE interprets the rules is that any settlement of a claim file, nearly all of which have the requisite "Notice of Intent" constitutes grounds for filing the Data Bank report, in part to avoid the potential for the \$11,000 fine. Where I write the Data Bank reports myself, I generally try to make them as tame as possible in an effort to not make our PIE insured look bad!

It is also very unlikely that the UDA would, or ever has considered adverse action to remove a dentist from membership based on a formal peer review process and based on complaints regarding the dentist in question's professional competence or professional conduct sufficient to require filing a Data Bank report.

The Data Bank is here to stay but fortunately it has not caused any PIE insured an undue burden and we hope that trend will continue far into the future.

--RCE

## **DO-IT-YOURSELF BRACES? REPORT ON SOME CASES**

*Tara C. Smith, an associate professor of epidemiology at Kent State University, studies infectious disease with a focus on antibiotic resistance and infections which move between animals and people. We thought it would be interesting for our PIE insured to read the following report written by Ms. Smith which may provide ideas to use when patients ask you about trying to do their own dentistry!*

Amazingly, there are people out there that think that Do-It-Yourself orthodontics methods using 3-D printers and other devices is a great idea. The following is an excerpt from an article that was written by a non-dentist that I received by checking out a link via an ADA report I read recently:

I'm 40 years old, and I'm in braces. Like design student Amos Dudley, I disliked my teeth and wanted to get them fixed. Unlike Dudley, whose Internet-famous braces cost him \$60 out of pocket to fabricate and took just 16 weeks from start to finish, I will have paid about 100 times as much to a credentialed orthodontist, and spent a year and a half in treatment.

But even though those numbers are tempting, experts say the DIY (Do It Yourself) braces movement is a terrible idea. I understand the yearning for a cheap fix to bad teeth, trust me. I've put two kids of my own through braces, and am currently using clear braces to fix my own snaggletooth. This involved interviews and X-rays at four orthodontists over the past decade to get estimates and treatment recommendations, which varied from practice to practice. Was I a candidate for Invisalign — the clear, "can't tell you're wearing them" braces — or would I have to do traditional braces? (Responses were mixed). How long would I have to be in them? (Eighteen to 30 months). How much would they cost? (\$4,000 to \$6,500).

No one will say that orthodontic work is quick, easy or inexpensive, and while expertise in this area requires knowledge of the biology of your teeth and the physics of moving them, creating the "perfect" smile has the nuance of an art form.

And that perfect smile can mean a lot. I grew up in a lower-middle class family, and though we had dental insurance and saw our dentist religiously every six months for cleanings, braces were off the table. I remember my granny soaking her dentures at night, her teeth long gone. Several relatives had full sets of false teeth in their 30s, their original teeth pulled due to rot. Healthy, straight teeth don't come easily to those growing up without economic privilege. It's no surprise that some recent essays on poverty revolve around the appearance of teeth and how that appearance can perpetuate the cycle of economic disadvantage. And given the cost involved with orthodontic treatment, the rising popularity of DIY printing, and the growing distrust of expertise in all areas of science, it's similarly unsurprising that Dudley's methods and results have received so much attention.

But despite those who claim that the DIY braces were "safe," orthodontists say otherwise. Stephen Belli, a board-certified orthodontist who has treated over 15,000 patients, cautions others about trying to replicate Dudley's results. "I'd like to see an X-ray, because he's probably caused some irreparable harm." What kind of harm could this include? From the outside, his teeth look pretty good — good enough to get his success story shared across the Web.

Belli notes, "He moved these teeth in only 16 weeks. You can cause a lot of problems with that. If you move a tooth too fast, you can actually cause damage to the bone and gums. And if you don't put the tooth in the right position, you could throw off your bite," leading to additional damage and wear on the teeth.

Belli also says that quick, unsupervised movements of teeth like Dudley has done set the patient up for a high potential of relapse, where the tooth will move back into its previous position faster than it took to move it originally. With Dudley, this has already happened once, as he acknowledged that "he originally had braces in junior high, but neglected the upkeep," leading to dissatisfaction with his teeth that kept him from smiling. Dudley is planning to follow up with nighttime retainers this time — also DIY'ed. But most who carry out their own orthodontic work will not have access to the expensive fabrication equipment available via Dudley's university, which he used to make cheap, custom-fit retainers to keep his newly straightened teeth in place.

While Dudley justified the risk he was taking as part of "stick[ing] it to the dental appliance industry," he does note he denied his own "instinct [sic] for self-preservation" and acknowledged that DIY orthodontics could go "horribly wrong." (He also has a disclaimer on his blog, warning readers not to attempt "anything written here" and assuming no liability for actions taken by readers).

But Dudley is far from the only DIY orthodontist on the Web. The DIY fad, largely driven by Internet videos, has become so widespread that the American Association of Orthodontists (AAO) addressed the issue last year in a press release and series of videos highlighting the potential for serious damage when patients try to move their teeth on their own.

In one case study, a patient attempted to use rubber bands to remove a gap between their front teeth. The band instead migrated into the gums, pulling the teeth together and destroying the roots, leading to tooth loss. Yet admiration for the DIY-ers persists. Commenters on Dudley's blog suggested that his technique would be great for those lacking funds for braces — but ignored the possible harm that could come from braces used without orthodontic expertise and supervision. While it sounds great to be Robin Hood, taking patients away from The Man and bringing cheap, 3D-printed braces to the poor, the simple fact is that much of the cost of braces is for the expertise of the orthodontist — for good reason.

After all, like orthodontics, much of the cost of surgery is for the expertise of the surgeon, not the equipment being used. While DIY braces may not seem as risky as DIY surgery, bad outcomes can still range from lingering problems with a patient's bite to the complete loss of teeth, costing far more than the price of braces to fix.

Instead of hitting up YouTube tutorials or sketchy mail-order services, a better place to start for affordable orthodontics would be the donated services offered by professional orthodontists, or working with your designated provider to set up a payment plan. DIY fixes may seem like an inexpensive alternative, but unfortunately the adage holds up: you get what you pay for.



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