

**NEW YORK STATE DENTAL ASSOCIATION
COUNCIL ON PROFESSIONAL LIABILITY INSURANCE
MEETING MINUTES
OCTOBER 4, 2019
ALBANY MARRIOTT HOTEL**

Present: Council Members: Drs. Steven Tunick, Chair (S), John McIntyre (2), Michael Pasquali (3), John Schummer (4), Mark Slavin (5), David Reed (7), Chester Gary (8) Sara Jane Goldberg (9), Andrew Witrock (S) and Stephen Harrison (B–Substitute).

Guests: Dr. David Delaney, NYSDA Board Liaison; Dr. Christopher Tota, ADA Council Liaison; Mr. Michael Herrmann (NYSDA Staff); Ms. Linda Pajonas, MLMIC –Downstate Claims; and Mr. John VanDenburgh, Esq., MLMIC independent defense attorney.

Unable to Attend: Sixth District Representative (6), John Keene (N), and Achury Camilo (Q).

After introductions, Mr. Herrmann led a review of the Claims Review Guidelines highlighting particular sections as a reminder to the council members. The Council discussed many of these issues and subsequently agreed to make two changes to the guidelines:

- The Council agreed that in Chapter III Committee Structure, a change should be made to the committee Eligibility section (Sec. 30) to ensure that members who serve on the committee have actively-registered NYS dental licenses. This does not preclude retired members from serving but such members must keep their license active.
- In Chapter IV Meetings, the Council agreed to modify the Participation section (Sec. 40) to stipulate that committee members who practice with either the insured defendant dentist, or a subsequent treating dentist in the case being heard, should recuse themselves from hearing that case.

MLMIC Dental Director, Ms. Danielle Zimbardi, was unable to attend the meeting but prepared a report for the Council that Mr. Herrmann reviewed with them. He highlighted the following facts:

- The top three procedures that generate the highest number of claims continue to be root canal treatment, implants, and extractions.
- The annual number of claims received has been steady with no significant increase or decrease.
- Dental malpractice claims represent roughly 13% of all malpractice claims in NYS and 3% of malpractice payments. This is in line with national averages as well.
- The average dental malpractice payment in NYS is \$97,000 while nationally that figure is \$78,000, although it has been rising nationally.
- The average defense costs nationally for all malpractice claims (incl. medical) was

\$47,000.

Ms. Linda Pajonas gave the Council some insights on what issues she has been seeing in her claims defense duties. She stressed that the biggest hurdle to a successful defense is when doctors are claiming something that their records do not support. The dental records must accurately reflect the conditions, treatment and communication of the case and quite often they do not.

Mr. VanDenburgh took some time to walk the Council through a few cases he has handled and highlight important aspects that are crucial to a successful claims defense. He also explained how the statute of limitations applies to dental treatment and that continuous treatment of a particular issue extends that time period allowed for filing a claim. Lastly, he reminded them of the recently-implemented, "Laverne's Law" which extends the statute of limitations for malignant cancer cases to run 2.5 years from the time the condition is discovered by the patient. This should not affect too many cases but it could result in a number of large awards that may not have happened absent this law.

Mr. Herrmann reported that the Risk Management live course has been updated with new content to reflect recent issues like cyber security and HIPAA issues. He indicated that Drs. Wetzel and Henner will be working together to incorporate these updates into the online course as well. For the last full year (2018) 278 members took the live course while 251 took the online course.

Dr. Chris Tota reported on the activities from the ADA Council on Members Insurance and Retirement Programs. He noted that the long-time insurer of the ADA term life and disability plans, Great West, has sold this business to a new company called Protective Insurance Co. He indicated that the entire operation, including staff, from Great West has simply become part of Protective and they do not expect anything to change in the program.

Dr. Steven Tunick will be ending his term as Chair next June and the Council chose to nominate Dr. Chet Gary to replace him. This nomination will be submitted for consideration of the NYSDA President.

The Council agreed that we should continue meeting in person every 18-24 months as we have been doing.

There being no other business, the meeting was adjourned.