



## CNA HealthPro

### Claims Alleging Treatment of the Wrong Tooth

“Wrong tooth” allegations have long been a source of dental malpractice claims. Fortunately, dentists’ risk management efforts have decreased the frequency of these claims from what they once represented fifteen years ago. Treatment of the wrong tooth is one of the more preventable causes of malpractice claims. The risks can be managed through careful attention to clinical needs, documentation, patient consent and communication between the primary and referral dentist.

Wrong tooth claims usually involve technical errors leading to the performance of dental procedures on the wrong tooth or damage to adjacent teeth. For example, root canal therapy may be performed on the wrong tooth because the rubber dam was incorrectly placed. This reason for the claim can be described as a technical error, which would be discovered immediately upon removing the rubber dam.

Wrong tooth claims are also brought following a dental procedure that was appropriately performed, in accordance with the treating dentist’s professional judgment. This may occur after a patient consults a second dentist whose philosophy or professional judgment contradicts that of the prior treating dentist, or when patients have not been fully informed of either their dental condition or of the treatment provided.

In certain instances, treatment may be completed on the proper tooth. If more than one tooth in the same area requires treatment, however, the patient may question the necessity of the first treatment if he or she continues to experience symptoms. A wrong tooth claim may follow, although the dentist provided appropriate care for the treated tooth. A common allegation in wrong tooth claims is that the patient did not provide his or her informed consent for treatment of the tooth in question.

The damages requested in wrong tooth claims primarily relate to the expenses associated with the allegedly unnecessary dental treatment as well as future medical or dental treatment to correct the error. Other damages claimed are for disfigurement or loss of a body part, pain and mental anguish, and lost wages.

#### **Tooth Misidentification Due to Technical Errors**

The most common wrong tooth claim example occurs when a practitioner mistakenly extracts or treats a healthy tooth, often adjacent to the indicated one. Technical errors are typically the reason the wrong tooth is misidentified and treated. Technical errors include an inaccurate or incomplete review of dental records (particularly radiographs), lack of concentration, incorrect rubber dam placement, and miscommunication of a referral.

These technical errors may lead to:

- Extraction of a wrong tooth
- Avulsion or fracture of adjacent teeth during extraction
- Initiation or completion of root canal treatment on a wrong tooth
- Preparation of a wrong tooth for restoration

- Incision performed on the wrong side or area of the mouth
- Removal of a crown or other restoration from a wrong tooth
- Errors by a referral dentist based on erroneous or misunderstood instructions from the referring dentist

### **Preventing Technical Errors**

To effectively manage the risk of wrong tooth claims, dentists should minimize the potential for technical errors, obtain the patient's informed consent before starting treatment, and fully document all dental procedures. Proper documentation of all of the above can help defend the dentist against potential allegations of improper dental treatment.

The first step in reducing the risks of technical errors focuses on the immediate pre-treatment review of all patient chartings, radiographs, treatment plans, prior treatment progress notes, and medical and dental histories. The treatment plans should be comprehensive and clear, and based upon a comprehensive patient charting, examination findings and radiographic interpretation.

All radiographs should be consistently mounted and labeled to minimize the chance of inadvertently misreading them. Additionally, the tooth number and position in the arch should be double checked prior to initiating any treatment. If the intended treatment is irreversible, such as an extraction or endodontic treatment, this procedure becomes more critical.

Whether rubber dams are placed by the dentist or staff, steps should be taken to minimize the risk of isolating the wrong tooth. The tooth to be treated should be clearly marked, possibly even with a test preparation, prior to rubber dam placement.

### **Referral Miscues**

Wrong tooth claims also occur because of miscommunication in the referral process. In such cases, both the referring dentist and the treating dentist are often alleged to have been negligent if miscommunication leads the referral dentist to perform dental treatment on the wrong tooth.

When referring to another dentist, provide a clear indication of the treatment to be performed and an accurate identification of the tooth or teeth involved. It is best to use written referrals, and to place a copy of the referral in the patient's record. In addition to indicating a tooth number, write out the tooth in question, such as "#31 – mandibular right second molar" and the current position of the tooth if it is not in its normal position. This is particularly helpful if #31 and #32 have drifted mesially into the positions of #30 and #31 due to the longstanding absence of #30. It must be clear to the referral dentist to extract *morphological* #31, not the tooth currently in the *position* of #31.

If you are the referral dentist, call the referring dentist if you have any degree of uncertainty. Calling may lead to frustration and delay if the other dentist is unavailable. Nevertheless, it is optimal to reschedule the appointment rather than to risk an error in patient care. You have a duty to use your independent professional judgment – notwithstanding the tooth number or treatment indicated by the referring dentist – to be certain the proper treatment is performed on the correct tooth.

If a telephone referral is made, we suggest scheduling a dentist-to-dentist conversation. This approach will diminish the chance of a possible communication error when staff personnel are used as intermediaries. A written follow-up to all telephone referrals also is recommended.

Another step referral dentists can take to minimize technical errors that result in wrong tooth claims is to take a new radiograph if the needed diagnostic image is unclear or unavailable from the referring dentist. A copy of the radiograph used for treatment, or an original if available, should always be retained in the referral dentist's records.

## **Informed Consent Misunderstandings**

Many wrong tooth claims do not allege that the dental procedure was performed incorrectly, but that the patient did not authorize or consent to the procedure. Further, they would not have consented in advance had they been properly informed of the consequences.

Therefore, any health care provider has a professional responsibility to obtain the patient's informed consent prior to initiating treatment. The informed consent process should fully inform the patient or guardian about the recommended procedure, its risks, consequences and alternatives.

If additional facts become known during a procedure that dictate a change in treatment, discuss these facts and recommendations with the patient before the treatment change is begun. For example, if the patient has authorized a four-unit bridge, and after preparations have begun it is determined that the bridge should be extended to six units through two additional abutments, the patient must authorize the preparation of two additional teeth. All discussions related to informed consent should be clearly documented in the patient record through progress notes and/or informed consent forms. This is especially important when the indicated treatment is irreversible.

## **Responding to an Event**

While there is no absolute way to preclude a malpractice claim following treatment of the wrong tooth, the following suggestions will minimize the potential of a claim arising from fraudulent concealment. Such an allegation may substantially increase the value of a negligence claim and may result in a punitive damage award.

If treatment is unintentionally performed on the wrong tooth, *inform the patient* of the error and of any corrective action you recommend or will perform. Intentionally withholding information from a patient about a known error is neither good professional judgment nor a prudent risk management technique. Most patients will eventually discover the error. Document in the patient record what the patient was told about the error and your proposed corrective action. The corrective action may involve placing a restoration in an erroneously prepared tooth, or a referral to an endodontist for completion of root canal treatment begun on the wrong tooth.

Do not attempt to conceal the error from the patient in the hope that the patient will discover the error only after the statute of limitations has expired. There is no clear statute of limitations for fraudulent concealment. Also, do not bill the patient for a procedure done in error. Doing so may increase the likelihood that the patient will file a malpractice claim.

## **Documentation**

Wrong tooth claims resulting from a patient's perception of error, either related to the patient's own opinion or the opinion of a subsequent treating dentist, can be defended competently only with thorough and accurate dental records that justify the treatment performed. Ideally, these records would include medical and dental histories, radiographs, diagnostic casts, laboratory exams, comprehensive examination charting, treatment plan, and clinical photographs.

Additional components include documentation of the receipt of the patient's informed consent for the procedure, comprehensive progress notes, documented referral communications, documented recommendations for second opinions, documentation of all pertinent discussions with the patient and other consulting health care providers, and documentation of any referrals or discussions about referrals. If the claim is related to the extraction of a wrong tooth, the patient may allege that the injury would have been avoided if an oral surgeon had performed the extraction.

The records should also reflect the dentist's actions following the treatment of the wrong tooth, including the corrective procedures recommended and/or performed and the result of those corrective procedures.

Although treatment of the wrong tooth can result in serious consequences, the steps to manage the risks are easily incorporated into a dental practice. Minimizing wrong tooth allegations is best accomplished through proper diagnostic and procedural techniques and thorough record keeping.

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