



CNA HealthPro

Why Are Malpractice Claims Alleged?

Dentists and other health care providers against whom malpractice has been alleged can't help but ask themselves – why? Why did this patient think I did something wrong? Why did this patient turn on me? Why didn't the patient pay his bill on time? Why doesn't the patient remember my instructions? The list could go on forever.

While it is impossible to understand every claimant's motivation, we have been able to learn a great deal about the collective thinking that drives patients' claims of malpractice.

A common thought among dental professionals is that a patient's pursuit of a malpractice claim should only be permitted when the practitioner has made an error or omission that constitutes malpractice as judged through the eyes of the dental professional. However, the legislatures of the various states have chosen to take a broader approach and permit malpractice allegations to move forward under more far-reaching circumstances.

It is clear from our claim data that clinically unacceptable dental treatment is not at the top of the list of reasons why patients allege malpractice. If it were, then a far greater percentage of the claims we receive would involve a compensatory payment to the patient, either in the form of a settlement or a jury verdict. Approximately 78% of our dental professional liability claims are closed *without* a payment being made to the patient. The reality is that there was a lot of good dentistry done for those claimants.

So if it's not bad dentistry, then why are the majority of claims being alleged?

The motivation behind a patient's malpractice claim can sometimes be a mystery. But more often than not, the reason is rather clear: it's about money. Money they paid. Money they owe. Money they don't want to pay you. Money you have. Money you sent them to collection over. Money to fix their problem. Money for which you are insured.

The only tangible benefit a patient can gain from a malpractice claim is money. A malpractice claim cannot turn back time to prevent the alleged injury from happening, nor can it ensure that any corrective treatment for the alleged injury will return the patient to the way he or she used to be. So the law allows money to substitute for the fact that some people just can't be made "whole" again, or otherwise returned to the way they were before.

Disputes over money are inevitable in the business of dentistry. How you handle those disputes is currently one of the most significant determinants of how likely you are to face a malpractice allegation. In one state, for example, it is estimated that malpractice claims alleged in retaliation for collection actions by dentists comprise roughly 80% of the total claim volume. Clearly, dentists in that state should be more cognizant of the implications of their offices' financial policies. Most states have a lower – yet still significant – percentage of retaliatory claims.

In addition to disputes over money, we have identified a number of prominent issues as underlying patient motives for malpractice allegations. Many are grounded in various aspects of patient dissatisfaction. Keep in mind that patients will rely on their own perspectives and criteria – however biased, erroneous or unfounded – when determining their level of satisfaction with your practice and the care they received.

Poor communication

Good communication is the foundation for good dentist-patient relationships. A patient who believes issues can be discussed openly with a dentist and his or her staff will be less likely to pursue a malpractice claim in the event of a dispute or less-than-ideal outcome. The adage states, "people don't sue people they like."

Some individuals are naturally good communicators that easily develop relationships. Others must work hard to improve and maintain their communication skills. No matter how well a staff communicates with a patient, their abilities can never fully overcome a dentist's communication inadequacies. Dentists have been characterized by some claimants as uncaring, uncompassionate, or simply a "complete jerk."

Not to be overlooked is the fact that communication issues between staff members and patients can also lead to claims. Just as some dentists are poor communicators, so too are some dental staff. Moreover, dental staff are often delegated difficult communication tasks, such as collections and rescheduling patient appointments at the doctor's request.

Every dental practice has experienced a communication breakdown at one time or another. Such breakdowns may irreparably damage the dentist-patient relationship such that either the patient leaves the practice or the patient is asked to leave the practice.

Unmet expectations

Patients have certain expectations when they present for treatment. These expectations may be related to cost, time, appearance, comfort, courtesy, or convenience, to name just a few. Patients generally have no clinical knowledge of how to assess the treatment you provide, so other criteria are used to judge how well you, your staff, and their dental experience meet their expectations.

Revenge or Spite

Some patients insist on retribution for their injuries, while others pursue retaliation for even the most trivial offenses. The mere perception of having been slighted is enough to impel some patients to file a malpractice claim or dental board complaint. Collection actions are a frequent source of these claims.

Treatment errors

Treatment errors, including clinically unacceptable results, are usually preventable events. Every dentist must be knowledgeable and also exercise skill and due care when performing treatment. Increasing one's skills and knowledge base are achievable through personal commitment and continuing education. Additionally, dentists must critically evaluate their own decisions and clinical results to recognize errors or omissions and take appropriate corrective action.

Accidents

Accidents can and do occur. However, accidents represent a small segment of the total volume of claims received.

Whatever a patient's complaint or motive, steps can be taken to minimize the risk of a claim. The implementation of sound financial risk management practices, coupled with thorough patient communication, can greatly reduce the likelihood of a dispute that leads to a malpractice allegation.

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