



DENTAL Insights

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*Protecting Reputations ... One Dentist at a Time**

PROFESSIONAL SOLUTIONS INSURANCE COMPANY BRINGS YOU PRACTICAL TIPS FOR AVOIDING A MALPRACTICE ALLEGATION

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Practice Issues in a Dental Office

Different practice situations can place a dentist at risk for a malpractice allegation or board action even when the care provided is proper.

Each of the following practice situations placed the dentists involved in a difficult spot. Consider how a difference in practice philosophy, a stance on collections and an approach to charting all created problems in the following scenarios.

Scenario 1—Dentist Takes on Partner with Different Practice Philosophy

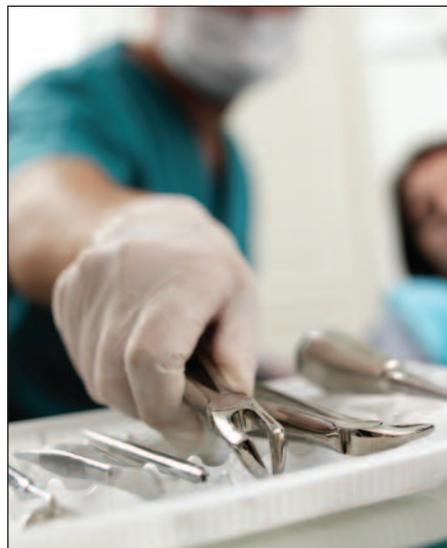
Jared Smithson, DDS, age 35, was interested in buying a dental practice from 62-year-old Donald Jackson, DDS. Selling the practice seemed to make sense to Dr. Jackson. He wanted to phase into retirement, and both dentists had a strong sense of mutual respect for each other.

Dr. Jackson had a large and loyal patient base, in large part because he and his staff had always focused on patient satisfaction. Dr. Jackson was a conservative practitioner who stayed abreast of dental literature and practices. He prided himself on being able to, at least initially, handle more complex types of dental care that other practitioners would tend to refer out to specialists.

In contrast, Dr. Smithson, based upon his training and limited experience, believed that early intervention and

coordination with specialists allowed him to focus and concentrate on general dentistry. He wanted to work toward building a good network of specialists. Dr. Smithson believed his approach provided the best care to his patients.

Dr. Smithson began to take on more of Dr. Jackson's patients as the senior



dentist pared back his schedule. Not understanding that Dr. Smithson had a different philosophy, some patients began to ask him why they needed referrals to specialists when Dr. Jackson just "did it all." Dr. Smithson simply avoided these questions.

Dr. Smithson eventually referred a patient with periodontal disease to Dr. Roberts, a periodontist. This patient had been treating with Dr. Jackson for several months before seeing Dr. Smithson.

After examining the patient, Dr. Roberts criticized the fact that the patient has not been to a periodontal specialist previously. He recommended a fairly comprehensive and costly treatment plan, which angered the patient. What's more, the failure to recognize periodontal disease ultimately cost the patient some teeth.

Consequently, the patient filed a lawsuit for failure to refer to a specialist sooner, which resulted in a \$20,000 settlement.

The periodontist criticized the dentist for not referring the patient sooner.

Scenario 2—Collections Become an Issue after Sale

Walter Allen, DDS, age 59, had a successful solo dental practice when a large, multi-office practice made him an attractive buy-out offer. The terms of the offer allowed Dr. Allen to continue working in the office as an independent contractor while he wound down the number of hours he worked. Thinking this was an ideal solution as he transitioned into retirement, Dr. Allen agreed to sell his practice to the group.

After finalizing the sale to the multi-office practice, Dr. Allen discovered that many of their policies and procedures

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Working together can make practice transitions go smoother and reduce malpractice risk.



were dramatically different from the informal way he ran things. For example, the new practice was much more aggressive on recouping unpaid collections than he ever was. However, as an independent contractor, Dr. Allen had no input on how collections were handled—or how any other administrative issues were handled for that matter.

The different approaches to collections came to head when Dr. Allen treated a patient with the placement of a number of implants. When the majority of the implants failed, the patient told Dr. Allen that she would not pay for the treatment because of the unsuccessful result.

Not knowing about this discussion, the new practice aggressively sought to collect the woman's unpaid fees for the implants. This infuriated the patient and prompted her to sue Dr. Allen for malpractice.

Later, well into the litigation, the patient and Dr. Allen had a sit-down discussion with their lawyers present. As

a result of that discussion, the case was withdrawn.

Scenario 3—Updated Charts Not Available at All Locations

Sarah Markham, DDS, just graduated from dental school when she took a position with a large, multi-office practice. While her short-term goal was to get hands-on experience and learn the ropes of a practice, she ultimately wanted to grow her patient base and open her own practice.

Dr. Markham practiced at several of the office locations. Sometimes, patient charts were updated at different practice locations and were not immediately available to her. Sarah felt this was a problem that could impact the continuity of care she provided.

There was no specific clinical supervisor for this multi-office practice. Instead, all questions and concerns about these types of issues were to be directed to the office management personnel. However, none of the office management staff was clinically trained.

Though Dr. Markham raised the issue with the office management staff at one point, she did not follow up to see if it was resolved. She was hesitant to press the issue because she did not want to create problems for the practice and its practitioners. What's more, Dr. Markham had established a sizable group of patients, and she was afraid if she "made waves" she would potentially lose the positive relationships and patient base she had built up.

One day Dr. Markham saw a patient who had been treated by clinic providers at another office location. The main chart was not available at the office where

Dr. Markham was providing treatment.

Before Dr. Markham began treating the patient, she expressed her concern to the patient that the chart was not readily available. Though Dr. Markham treated her appropriately, the patient had an unsuccessful outcome.

Dr. Markham was afraid if she "made waves" she might lose her patient base.

The patient ultimately filed a disciplinary complaint against the clinic and the practitioners. Dr. Markham was called in to testify before a disciplinary agency, and the board mandated that she take continuing education on record keeping for not having the chart available. 🔄

These case scenarios were written by Linda Hay, J.D. All names used in *Dental Insights* case studies are fictitious to protect patient privacy.



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What Can We Learn?

The common thread between these cases is that the dentists failed to recognize and attempt to resolve potential problems before complaints were made. While there is no guaranteed way to avoid a claim, there were steps these practitioners should have taken earlier.

The most important thing that all the dentists could have done was to work together as a team with the other caregivers. This would have provided a united and thoughtful response to potential patient problems before situations escalated.

In Scenario 1, the periodontist expressly criticized the prior care. This, in turn, triggered a claim. Before that point, Drs. Smithson and Jackson should have worked together to figure out the best way to address their significant philosophical differences to care.

Dealing with these issues early, directly and together would have helped the practitioners resolve the issue. Both Drs. Smithson and Jackson needed to provide a united front in explaining to patients that they would see differences in the manner and method of care each dentist provided. In cases where Dr. Smithson believed the patient required an immediate referral to a specialist, both practitioners should have directly expressed to the patient their support of the decision to refer.

What's more, Dr. Smithson should have continued to build upon and learn from Dr. Jackson's method to successfully retain loyal patients. It was equally important for Dr. Jackson to understand that, while Dr. Smithson's methods were different than his, they were not better or worse. They just reflected a different training and philosophy.

Dr. Smithson may have averted Dr. Roberts' criticism if he would have called and spoke to the periodontist before Dr. Roberts saw the patient. Dr. Smithson would have been able to explain the background and the nature of the referral. Dr. Roberts' criticism may have stemmed from not knowing all of the relevant facts of this case.

In turn, Dr. Roberts could have easily spoken to Dr. Smithson or Dr. Jackson before he criticized their care directly in front of the patient. Any practitioner who condemns another's care to a patient is merely asking to be a part of the litigation process!

In Scenario 2, the trigger that landed Dr. Allen as a defendant in a malpractice case was actually not a decision

made by him. Instead, it was the policy of the new practice group to aggressively pursue collections that ended up spurring the lawsuit.

Though Dr. Allen was happy to have a more limited role in the practice and to give up the administrative and other responsibilities associated with owning a practice, he still had responsibilities. He should have alerted the new practice when he had an unsuccessful result and told them about the patient's threats not to pay for the treatment provided.

Likewise, the practice should have involved Dr. Allen in the decision-making process of when to aggressively collect. Working together on how to deal with this dissatisfied patient might have helped to avoid a lawsuit.

In Scenario 3, Dr. Markham would have been better served to try, in a diplomatic manner, to address the lack of availability of the patient charts. Criticisms of one's employer, staff and other practitioners should be addressed within the office—they should not be shared with patients, either directly or indirectly.

Ultimately, dentists need to feel confident they are rendering proper dental care. If there are office-wide issues that impact their ability to properly provide dental care, dentists must raise these issues and follow up to ensure the matters are resolved to everyone's satisfaction. (Note: Most dentists with multiple office locations will have the patients' files sent to the location where the dentist is treating the patient, or they use electronic health records.)

Dr. Markham should have followed up with the office management and the appropriate chain of command to seek a resolution to the issue. She should not have expressed these concerns to the patient. If Dr. Markham believed the lack of the availability of the chart precluded her from being able to properly treat the patient, she should have asked the office management staff to obtain what she needed from the chart. Then, she should have continued to try to resolve this issue for all other patients.

In short, if Dr. Markham felt she could not treat the patient properly, she should not have done so. Instead, Dr. Markham was put in the unpleasant position of testifying before a disciplinary board about an allegation against her and ended up with a mark on her record since the board required her to take additional continuing education courses. Perhaps worse, she had to testify against the practice group that employed her about her concerns with their protocols.

How Finances Can Affect Practice Risk

You're already aware that financial issues may affect a practice's quality of care, patient safety and professional liability risks. This is especially true during turbulent financial times.

Patients may be more prone to put off dental care, particularly elective treatment, if they lack adequate dental benefit coverage, or they are unable to pay the cost of an office visit or co-pay.

Some offices charge a fee for no-shows or appointments cancelled less than a day in advance. However, if the reason for the cancellation or no-show is financial, you may decide that this step would be counterproductive and damage the dentist/patient relationship. Patients experiencing financial difficulties are also more likely to postpone recommended treatments, diagnostic tests or procedures, or opt for less costly professionally acceptable treatment alternatives.

Before labeling patients “noncompliant,” find out why they failed to follow your recommendations. By knowing the “whys,” you may be able to determine if there are other options.

Keep in mind that many patients find it difficult and embarrassing to admit their financial problems to their dentists. Some may find it easier to talk with a staff member who is knowledgeable about third-party reimbursement and payment options.

All of these factors can ultimately increase your malpractice risk. Here are tips to mitigate these risks:

- **Routinely follow up on missed or cancelled appointments.** Your staff should call no shows, and document attempts to reach these patients. They should explain why rescheduling the appointment is necessary.
- **Establish a follow-up procedure.** The practice should have a system for tracking the status and results of ordered lab cases, X-rays, and other diagnostic studies and consults. A consistently used tracking system helps verify whether a patient followed your advice. It also allows you to monitor whether the practice received test results or feedback from requested consults, the dentists saw the reports, and patients were notified of results.
- **Determine the reason for patient noncompliance and document it.** There are many reasons for a patient's noncompliance—some that cannot be easily addressed or corrected. Regardless, it is the dentist's responsibility to educate the patient about why the prescribed treatment plan, taking meds, having an X-ray taken, etc., is necessary for a good outcome.
- **Offer patients less costly alternatives if they're unable to pay.** If that's not feasible, educate the patient about

why the recommended treatment is the best option and the consequences of refusing or delaying care.

- **Offer payment alternatives to patients having financial difficulties.** Offering monthly payment plans can help make the balance due more amenable to patients. It can also help to designate a knowledgeable staff member in your billing department as the “go-to” person for patients in need of financial assistance. 

Practice Finances

In today's environment of increased overhead, decreased reimbursement, decreased patient compliance and increased demands on a dentist's time, more dental practices are also experiencing financial difficulties.

Although it's common for a practice to reduce its hours and the number of staff when patient appointments are down, this can be a “Catch-22.” Make these decisions carefully, and make sure your staff continues to be sufficiently experienced and credentialed. Functioning with less than adequate staff can jeopardize patient and staff safety, quality of care, patient outcomes, patient satisfaction and practice efficiency.



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