



DENTAL Insights

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

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

Winter 2014

Red Flags with Billing—What Dentists Should Watch for

Malpractice lawsuits often have a few common denominators among patients. These include patients who shop for the cheapest care; are dissatisfied with prior dental care; have sporadic care histories; and/or have seen many prior dentists.

Notwithstanding those listed above, the most prevalent denominator among malpractice lawsuits is patients who fail to pay their dental bills. Patients who don't pay their bills will often claim the care was improper and/or exhibit other red flags. Consider the following scenarios:

Scenario One:

Alberta King lived about 45 minutes away from the office of Dr. Paul. She came to see Dr. Paul for failing restorations after being recommended to him by a friend who said Dr. Paul was very inexpensive.

Alberta told Dr. Paul on that first visit and often thereafter that she was

very unhappy with the appearance of her teeth and prior dental care. At this visit,

Alberta brought with her a restorative treatment plan from a previous dentist. However, there was no dentist's name on the plan, just the dollar estimates and the plan of care.

Dr. Paul asked for the name of the prior treater, but Alberta refused to identify him. Nonetheless, Dr. Paul took her on as a patient—he believed he could render care for Alberta more efficiently than the prior dentist.

In the course of the initial two visits, Dr. Paul told Alberta she needed full mouth X-rays. Alberta again refused, saying she had films taken within the past year and would bring them in.

Over the next month, preparations began and temporaries were placed. Alberta continued to tell Dr. Paul that she would bring in the prior films, and Dr. Paul tried to be accommodating. When he finally had to press Alberta for what was becoming an urgent need for the films, Alberta began to cancel appointments. However, she did come in for emergency dental care for tooth



sensitivity and broken temporaries.

Throughout this time, Alberta failed to pay her bills on a timely basis. Accordingly, the relationship soured to the point where Dr. Paul told Alberta he could no longer provide her care. Alberta went to another treater who recommended specialized periodontal care and an extensive, expensive treatment plan to which Alberta agreed.

Dr. Paul became very angry with Alberta as he felt he had “bent over backwards” for her. As a result, he decided to pursue Alberta's unpaid bills of \$540, and he directed his collection agency to file suit.

In response, Alberta immediately retained a lawyer to file a counterclaim for malpractice. This counterclaim alleged that as a result of Dr. Paul's malpractice, Alberta experienced treatment delays and broken temporaries, and she was required to have endodontic care due to the poor preparations. The malpractice suit also claimed Dr. Paul failed to refer Alberta

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to a periodontal specialist and to obtain Alberta's informed consent as he didn't educate her about the downsides of not having films taken.

All of these allegations were initially supported by her subsequent treater. However, this dentist ultimately backed off when Alberta began to exhibit some of the same troubling characteristics with him (e.g., she criticized prior dental care, was inconsistent in follow-up appointments, refused to follow recommendations and failed to pay her bills.)

Alberta initially demanded more than \$100,000 to resolve the case, which Dr. Paul fought for three years. Ultimately, the case was dismissed because Alberta was not able to find a good expert witness to support her claims. However, the cost in time, money and aggravation to Dr. Paul was immense.

Scenario Two:

Bobby Rhodes lived in the same neighborhood as Dr. Antico and passed his office on the way to work. Dr. Antico advertised a first-time patient special of \$59 for an initial evaluation and cleaning. Bobby hadn't been to a dentist in years and decided to take advantage of the offer.

Dr. Antico's initial evaluation of the patient revealed significant decay and a poor prognosis. Dr. Antico prepared a treatment plan and did the initial cleaning. Dr. Antico advised Bobby to return for work, and they would outline an extensive and consistent care plan later.

Bobby returned a month later, not for his own care but for his mother's care. Mrs. Rhodes was also a first-time patient who, like her son, had an inconsistent dental history.

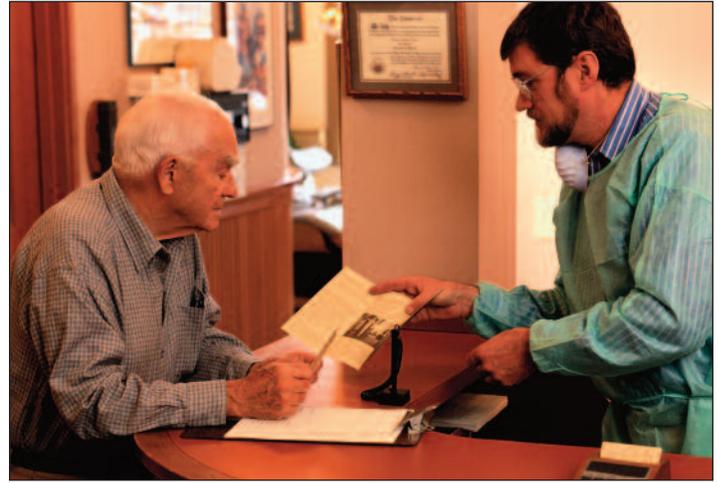
Dr. Antico's most imperative recommendation for Mrs. Rhodes was a root canal to address a significant area of decay. After conducting an initial evaluation and cleaning for Mrs. Rhodes, Dr. Antico also prepared a treatment plan and recommended an immediate return for the root canal, which would take an additional two visits.

After Mrs. Rhodes' first root canal appointment, Dr. Antico requested payment in full. Bobby indicated he would take care of his mother's bills, but he wanted to wait until after the work was completed. Trying to be accommodating, Dr. Antico agreed.

Bobby scheduled a return appointment for himself to begin preparations for removal of one of his badly decayed teeth. He set this for the same day as his mother's final root canal appointment.

At the end of her appointment, Mrs. Rhodes left the office. When Bobby was asked to pay, he said he forgot his checkbook in the car. He left to retrieve it and never came back. Mrs. Rhodes also never returned.

Feeling angry, Dr. Antico attempted to aggressively collect on both balances. In response, Bobby filed a lawsuit against Dr. Antico, in which he alleged Dr. Antico's poor care necessitated further dental treatment for him and his mother. He also contended Dr. Antico's first-time patient special was fraudulent because it attempted to lure patients



with a reasonable rate only to later require more expensive care.

Bobby sought \$10,000 in damages, and Dr. Antico filed a counterclaim for the unpaid fees. Bobby's case against Dr. Antico was eventually dismissed because Bobby was unable to present proof of malpractice and fraud. Dr. Antico did not pursue his case for unpaid fees because the initial case was dismissed with prejudice.

Scenario Three:

Middle-aged Victor Bates was a construction worker who spoke with a heavy accent. Prior to seeing general dentist Dr. Fulser, Victor told Dr. Fulser he did not have a regular dentist, but instead saw various dentists every few years for short periods of time. He also had received dental care in Eastern Europe when he was young.

Dr. Fulser evaluated Victor and expressed the need for an overall treatment plan, dependable follow up, and consistent and regular dental maintenance and hygiene. Victor seemed to understand and agree.

At the next appointment, Dr. Fulser began by attending to Victor's most urgent dental needs. This included replacing two aging and deteriorated

fillings and extracting two periodontally compromised teeth. Subsequently, one of the extracted tooth sockets developed an infection. The records were scant about the details of the visit, but it was clear that Dr. Fulser had not obtained Victor's written consent to remove the two teeth.

Victor paid for half of this care with his credit card. Follow-up appointments were set to monitor the infection, along with regular maintenance appointments and a follow-up consultation visit to talk about the next phases. Victor failed to return for any of these set appointments, calls went unanswered, and he failed to pay the remainder of his bill. On one occasion, Victor spoke with the office manager to ask for his money back, referencing that his dental care wasn't done properly. The office refused this refund request.

After a month of unanswered calls to Victor about his bills and the need to return for care, Dr. Fulser's office received a notice of a disputed payment from Victor's credit card company. The notice advised that Victor claimed the dental care was done improperly, and he never agreed to extraction of the two teeth. Victor also claimed that he did

Victor spoke with the office manager to ask for his money back, referencing that his dental care wasn't done properly.

not understand the nature of the work and felt the charges were improper because he didn't agree to them beforehand. He was surprised when he saw the bills and felt pressured to pay.

Dr. Fulser's office manager responded to the notice by stating that Victor had a very serious periodontal problem that caused the need for the extraction of two hopeless teeth. The response went on to indicate that Dr. Fulser had fully discussed this

with Victor prior to the extraction.

When Victor's dispute over payment to Dr. Fulser was denied, he retained a lawyer who used the response that Victor had a serious periodontal problem as the basis to claim the dentist failed to refer Victor to a periodontal specialist before treating him. Ultimately, Dr. Fulser agreed not to pursue any remaining claims for unpaid bills, and Victor agreed to take no further action against Dr. Fulser.

Scenario Four:

Dr. Marzek, a general dentist, regularly treated Joan Erling with regular dental care including cleanings and some restorative work. Joan developed a problem with an upper tooth that necessitated a root canal, which Dr. Marzek performed.

After the root canal, Joan continued to complain of ongoing problems, and Dr. Marzek referred her to an endodontist. However, Joan did not follow up with the endodontist, and her complaints seemed to worsen. During this time period, Joan lost her job and divorced her husband. Joan then began to fall behind on her dental bills. Dr. Marzek liked Joan, and felt sorry for her personal problems, so she did not aggressively pursue Joan for these unpaid bills. When Dr. Marzek tried to call Joan after she failed to return for a regularly set dental appointment, her calls went unanswered.

Around this time, Dr. Marzek began using a collection service for unpaid bills. Dr. Marzek was not involved in the collections process, but every quarter her office manager would send the service a list of patients who had left their care and had outstanding balances. Apparently the collection service filed a lawsuit against Joan Erling without Dr. Marzek's knowledge.

Approximately four months later, Dr. Marzek received notice that Joan had filed a malpractice claim against her. This claim alleged that Dr. Marzek

performed the root canal improperly, and failed to urgently advise Joan to seek a specialist's care. It also alleged that Joan lost a tooth due to Dr. Marzek's negligent care.

Dr. Marzek called her insurance company and counsel became involved. Discussions between Dr. Marzek's lawyer, Joan's lawyer, and the collection agency ultimately resulted in a dismissal of the fee in exchange for the dismissal of the malpractice claim. 🔄

(See "What Can We Learn?" on page 4.)

This case study was written by Linda Hay, J.D. All names used in *Dental Insights* case studies are fictitious to protect patient and dentist privacy.



The Benefit Dentists Rely on to Avoid Claims

Worried about a touchy situation? Just need advice? Call PSIC's Claims Advice Hotline at **1-800-640-6504** to talk confidentially with a professional claims representative about any potential claims concern or situation you're not sure how to handle.

With PSIC, a claim is not automatically opened when you call us. While other companies may set up a claim file if you call with an incident or situation that causes concern, our approach is different. Your information is initially put into an incident file, but not in your claims record. This approach helps you keep you claims-free status, but still allows you to receive guidance when you need it.

What Can We Learn?

Decisions concerning unpaid fees are never easy. They should include considerations of public relations, personal patient relationships and business needs. While there is no simple way to resolve these problems, a review of each situation can give insight into which steps might prevent it from escalating.

How a dentist handles and oversees the situation is critical. Many times practitioners, in the moment, feel like they are being overly accommodating to patients. In hindsight, the accommodations were made because problems were not being resolved.

Having good office protocols for patients who do not pay their bills—and sticking to those policies—can help to fend off problems early. Policies can also provide fallback for



critical and will help in enforcement. In addition, documenting objectively such things as patient dissatisfaction with previous care and/or sporadic prior care can be beneficial.

Straightforward, early discussion with the patient about a problem, financial or otherwise, can help elicit an honest evaluation of the situation. Then, with some guidance from resources available, such as malpractice insurance carriers' help lines or legal counsel, the practitioner can decide on a plan of action and resolve the situation before it progresses into a claim. Waiver of a fee or an accommodation to a patient might sometimes prevent a claim, but not always; thorough evaluation before making a decision is the best course.



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A policy might provide that no new appointment is scheduled until a bill is paid.

the doctor and staff to use when a patient gets behind with paying their fees. It is important that patients know the policy early, as well. For example, a policy might provide that no new appointment is scheduled until requested films are received, or a bill is paid. Documentation of a patient's understanding of these policies is



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