



# DENTAL EXPRESSIONS®

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## Managing Difficult Patients, Minimizing Litigation

Two patients receiving the same treatment will often experience very different results, even if the standard of care was met in both cases. Suboptimal outcomes, coupled with unrealistic patient expectations, can result in costly and protracted litigation. This edition of *Dental Expressions*® provides dental practitioners with tips and techniques for minimizing liability exposure by focusing on communication, documentation and referral.

### PATIENT MANAGEMENT

One of the more unpleasant situations a dentist may encounter is treating an unhappy or recalcitrant patient who threatens to sue during the course of care. In our litigious society, dentists must be aware of the possibility of complaints or claims even when treatment appears to meet the standard of care. The following tips can help minimize the risk of legal entanglements:

**Maintain a good chairside manner.** Not every board complaint or lawsuit is motivated by obvious malpractice. The patient may feel ignored, mistreated or overcharged by the dentist, or may hope that the dentist will forgive a debt or lower a fee if confronted with the possibility of legal action. These marginal claims are less likely to occur if the dentist is attentive, communicative and pleasant; is upfront about costs; and treats all patients with respect.

**Maintain accurate and informative records.** Careful recordkeeping is not only critical to quality healthcare, it also may prevent problems down the road in the event of a conflict or complaint. Most state licensing agencies require practitioners to meet minimal documentation standards. In fact, sometimes when investigating a patient complaint, the board will find no problem with the dental care delivered, but will sanction the practitioner for inadequate records. These standards (as well as other dental rules, regulations and statutes) are found on board of dentistry websites and should be reviewed periodically.

Consistent, thorough and accurate records can do more than avert board sanctions. In the event of a claim, sound documentation significantly strengthens legal defensibility by clearly relating the sequence of events and preventing plaintiff's attorneys from filling in the gaps with a one-sided narrative. Typically, if something is not written down, it is legally perceived as not having occurred. For this reason, good documentation practices are a key risk management measure.

**Keep patients informed.** The ADA's *Principles of Ethics and Code of Professional Conduct* (hereafter "ADA Code"), Section 1.A., states, "The dentist should inform the patient of the proposed treatment, and any reasonable alternatives, in a manner that allows the patient to become involved in treatment decisions." Dentists are legally required to fully describe treatment recommendations, benefits of the suggested therapy, and material risks of both proposed and alternative treatments when obtaining a patient's informed consent for treatment. ([Written informed consent templates](#) for a number of procedures are available on the Professional Protector Plan® For Dentists website.) The informed consent discussion and written form should be consistent with the patient's level of comprehension.

For maximum safety, especially in complex cases, ask patients to sign a written treatment plan that includes both a detailed description of the procedure and an estimate of the cost. There are numerous advantages to putting the plan in writing. First, dental boards look unfavorably upon the absence of a written treatment plan in the patient record. Moreover, in the context of litigation, the plaintiff's expert witness(es) may present the opinion that inadequate or nonexistent treatment planning is a breach of the standard of care. Finally, financial disputes are less likely to occur when the treatment plan lists the estimated cost of the recommended procedure and other treatment options. In general, well-informed patients rarely complain about or sue their dentists.

**Take photographs when possible.** With new technology, photographing pre- and post-treatment appearance is fast, easy and relatively inexpensive. If digital photos are included in the chart, conflicts can be more easily resolved, as the practitioner can show the patient both the original condition and the degree of improvement. In addition, a state board, plaintiff's attorney or a jury can see the treatment results and need not accept the patient's subjective description at "face" value.

**Carefully assess whether to refer to a specialist.** The ability to legally perform a procedure under one's dental license as a general dentist or specialist does not mean that one *must* or *should* perform the procedure. All healthcare practitioners should be conscious of their limitations in terms of training and experience, and must make well-considered treatment decisions based upon the patient's best interest.

When deciding whether to treat or refer (see below for guidelines), general dentists also must be aware of their state's standard of care definition for more complex treatments. In the vast majority of jurisdictions, a dental specialist standard of care will apply in such cases. Dentists have a professional duty to resist patient demands or other pressures or temptations to conduct procedures that are beyond their level of expertise.

**If necessary, dismiss a difficult patient.** With few exceptions, dentists have the right to refuse to treat or discontinue care of a disruptive, rude, impossible-to-please, uncooperative or non-paying patient. In such cases, terminating the patient-practitioner relationship may be the most prudent course of action.

When terminating a patient, it is essential to observe appropriate protocols. This includes sending the patient a clear and respectful termination letter that summarizes treatment needs and describes the urgency of such care, in order to prevent allegations of failing to inform the patient of his or her oral health status. A brief [risk management article](#) on patient termination and [sample termination letters](#) are available at the Professional Protector Plan® For Dentists website.

## REFERRAL MANAGEMENT

If a reasonable and prudent practitioner would have referred a similarly situated patient to a specialist, then it is likely the practitioner will be found liable for any damages that may result from failing to do so. Therefore, the decision whether to treat or refer a patient to a specialist is a critical one.

Section 1.B. of the ADA Code addresses the decision to refer and subsequent duties, noting, "Dentists shall be obliged to seek consultation, if possible, whenever the welfare of patients will be safeguarded or advanced by utilizing those who have special skills, knowledge, and experience." The ADA recommends that dentists convey to patients the following referral-related information in a clear, simple manner:

- The reason for the recommended referral.
- An explanation of why the recommended type of specialist is appropriate for the situation at hand.
- The specialist's or consulting dentist's approximate fee, if known by the dentist and requested by the patient.
- Relevant preoperative instructions and other educational materials.
- A map and/or directions to the specialist's office.

If possible and desired by the patient, the dentist also may schedule the referral appointment for the patient.

A dentist's duty extends beyond making and documenting the decision to refer. Practitioners also are responsible for conveying the following information to the specialist assuming care:

- Reason for the referral/diagnosis.
- Relevant medical and dental information about the patient, including health status, recent consultations, contributory dental history, diagnostic casts and radiographic images.
- Future treatment needs beyond the referral.
- Whether emergency care is indicated.

While following ADA referral guidelines will not necessarily prevent claims, compliance in this area enhances the decision-making process. Moreover, adhering to this protocol will create a stronger foundation for legal defense in the event of an adverse outcome and consequent lawsuit.

Patient referrals are a common source of dental board actions and lawsuits. Plaintiff's attorneys may attempt to prove that a negative treatment result was due to the dentist's failure to refer to a periodontist or other specialist. It is easy to allege – and difficult to disprove – that the outcome would have differed significantly had an appropriate specialty referral been made earlier, or at all. The best defense in such instances is to document adherence to specialty dentists' standard of care when performing complex procedures, as demonstrated in the following case scenario:

*In a Maryland lawsuit, a patient contended that he suffered the most pain in his life after undergoing a difficult extraction of a molar by a general dentist, alleging that the general dentist should never have attempted the procedure. The general dentist responded that she initially offered a referral to an oral surgeon, but that the patient did not wish to wait. Unfortunately, the chart did not reflect the referral option.*

*At trial, a general dentist expert appeared for the defense, who described the extraction as an uncomplicated surgical procedure within the capability of a general dentist. An oral surgeon expert also testified that the extraction technique employed by the general dentist was similar to what he used, and that it met the standard of care of an oral surgeon extracting a molar. The judge entered a defense verdict, reasoning that a bad result did not automatically indicate malpractice.*

The following additional steps may help protect dentists against failure-to-refer claims:

**Be realistic about the risks posed by a procedure.** Consider referral of complex full-mouth restorations, significant periodontal issues, third-molar extractions and similar cases. Such procedures should only be performed after a careful review of case selection criteria and a clinical risk assessment, utilizing information from clinical guidelines and/or specialty organizations to aid in decision-making and documentation. For example, a [downloadable case assessment form](#) is available online from the American Association of Endodontists (AAE), as is a [detailed guide to the standard of practice in endodontics](#). Once again, dentists should never offer treatment beyond their skill level, no matter how persistently a patient requests such care.

**Note in the patient record any offer to refer the patient to a specialist.** If the patient declines a referral, document the refusal and request the patient's written confirmation. In this situation, it is necessary to honestly re-assess the rationale for the initial referral offer. If the decision was due to lack of confidence in one's ability to successfully perform the procedure, do not proceed with treatment. While saying no to a patient's treatment demand is never easy, it is sometimes a professional and ethical duty, potentially preventing serious problems for both patient and dentist.

**Form a referral network.** Making referrals is a vital part of dental practice. By creating referral arrangements with trusted local practitioners in a range of specialties, dentists can facilitate prompt referrals in the event of a post-treatment complication or any other patient situation requiring the attention of a specialist.

Claims and board complaints may arise for reasons other than clinical negligence. By keeping patients apprised of their treatment progress and prognosis, carefully documenting care plans and patient consent, and remaining aware of their limitations, dentists can enhance patient satisfaction while significantly minimizing risk.

## LOOKING FOR ADDITIONAL RISK MANAGEMENT INFORMATION?

Visit the Professional Protector Plan® for Dentists program website at [www.protectorplan.com](http://www.protectorplan.com) for additional resources. The site's Risk Management tab contains links to information about both our in-person CE seminars and our online self-study CE course.

### Dental Risk Management Seminars

Dentists can obtain risk management information by attending any of the risk management seminars listed below, or by completing the CNA online self-study CE course (see above). For more information about our in-person seminars, please contact the nearest Professional Protector Plan state administrator agent.

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