

Basic Suggestions for Claim Mitigation

Regardless of the reason, the best defense in claims mitigation is to prevent them from happening in the first place. Some basic suggestions in that regard are below.

Communicate clearly with your patient before treatment.

Patient dental education regarding their treatment is vital to the overall success of the case. The informed consent process is mandatory before treatment is started by providing the patient with options, considerations, and complications and risks of treatment, benefit of treatment, alternative treatment, and no treatment. The patient questions must be completely satisfied. Don't take for granted that your patient has some background knowledge of dental procedures. You should require your patients sign a consent form that states they understand the treatment and its risks. Risks Benefits of Treatment and No treatment - RBA or BARN can be used as chart notation.

Always follow up with missed or cancelled appointments.

At the new patient experience, the patient should be advised of the office policy on scheduled appointments and providing the delivery of proper treatment. Your office should have written protocol in place for following up with patients who miss or cancel an appointment – even if it's just a six-month recall exam and cleaning. A missed appointment means you might miss the opportunity to diagnose a condition as soon as possible, which leaves you vulnerable to claims of negligence. The missed appointment must be entered into the patient's chart to document the patient not fulfilling their responsibilities or duties. It also confirms the patient's contributory negligence which would possibly reduce the dentist's liability in an alleged malpractice lawsuit.

Stay in your comfort zone.

Treat patients using your specific training, experience, and education. If a patient comes to you with an issue that is outside your level of care, always refer them to a specialist that you trust. If you decide to go ahead with an extraction that ends up failing, a patient (and his lawyers) can argue that a specialist would have been a safer route and that you should have known better. It should be noted that extraction complications are a leading cause of claims.

Proper communication.

This will be discussed in detail later, so suffice it to say that without proper communications between patient and doctor or staff, there is potential for disputes between all parties that can easily lead to a claim.

Realistic expectations.

If you are presented with a patient who does not understand or comprehend realistic goals of treatment, this poses increased risk and potential for a claim. If the patient cannot be educated to accept the realities of dental treatment, it may be prudent to consider separating yourself from that patient.

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Unexpected events.

Even the most dedicated and skilled dental practitioner who has practiced for many years, can experience an unexpected event. A tooth can fracture during an extraction and have much difficulty completing the procedure producing increased trauma afterwards, a reamer can separate during a root canal, a simple restoration can morph into a root canal, or any number of unexpected events most difficult to predict.

Retribution.

Motivation for filing a claim can come from several non-clinical events. These could include collection efforts for a past due account, dismissing a patient from your practice, disregarding patient requests, rude or disrespectful behavior from the staff to patient, and many other situations.

Treatment failures.

Much of what we do is highly technique sensitive, which invites failure. In addition, unexpected events made occurring early in a procedure or case, and not realized, often get magnified to being a mistake at the outcome.

This can make a small situation result in a tremendous failure! Also, in this category you would include such problems as, the shade is off, the shape is not right, the bite is off, the porcelain cracked, it's gotten very sensitive, to name a few complications.

Keep accurate records.

Your first line of defense is accurate recollection of the events that occurred during treatment documented in the patient chart. They must be comprehensive and truthful rendition of everything that happened. Included here should be adverse or unexpected events, unmet expectations, poor treatment outcomes, complications of the treatment, statements made by the patient, and anything you deem appropriate to treatment. If there is a complication or if the patient finds out about it later, they may be surprised, angry, and ready to file a claim against you and your practice.

Never erase anything in a patient's paper chart. Not even mistakes!

If you do mistakenly record incorrect data or information record a mistake in a chart, simply cross it out with a single line drawn through it and note that it is an error. If that patient sues later and your records are examined, it's going to look suspicious if entries have been rubbed out or transformed. For the same reasons, you should never add information to a chart (if only to clarify) once a patient has filed a claim. Don't even touch the chart.

The letter from the state dental board.

In some states, a claim filed with your insurance carrier may be reported to the state dental board. Normally is it not reported if the verdict/damages are below the reporting limits of the state. Claims are normally not reported, just judgments above the reporting limit of the state. It is mandatory and as such the board must investigate all these complaints. Even if the complaint is baseless, the board has a duty to adjudicate the case. Being contacted by the state board is very serious and you must contact your insurance carrier immediately to seek legal advice. Providing them all the information requested is the first step towards having the case dismissed. And if your insurance has not been notified, you would be prudent to advise them of the issue, so it is on record they have been apprised of the event or incident.

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