Dental malpractice prevention
Some simple guidelines to help you reduce the risk to you and your practice

By Stuart Oberman, Esq.

Dental malpractice litigation is on the rise. Now more than ever, dentists need to practice risk management in order to avoid malpractice actions. Accurate records should be kept, patients should be completely informed and patients should be actively involved in their treatment process.

Following these easy guidelines will greatly reduce the risk of a dental malpractice claim.

Legal terminology

Dentists must have a basic understanding of certain legal terminology in order to reduce the likelihood of a malpractice action brought against them.

Negligence is a common claim brought against a dentist in a malpractice action. In order to prove negligence against a dentist, the patient must allege and prove four components.

First, the patient must prove that the dentist owed a duty of care to the patient.

Once that is established, in the second component the patient must prove that the dentist breached that duty of care.

Third, there must be an injury to the patient.

Finally, the injury must be proximately caused by the breach of the dentist’s duty of care.

Most dentists are aware that they have a duty to comply with the “standard of care.” Many lawsuits simply allege that a dentist has not met the applicable standard of care.

The standard of care for a dentist is the level of care that is expected of a reasonably competent dentist acting in similar circumstances.

It is important to note that the standard of care is based on that of the average dentist, not on specialists or on the top percentage of dentists nationally. The standard of care is based on the level at which an ordinary, prudent dentist with the same training and experience would practice in similar circumstances.

The last-clear-chance doctrine provides that if the dentist has information from another health care provider that the dentist knows, or should know, is incorrect, the dentist is liable if he/she relies on that incorrect information and the patient is harmed, as the dentist had the last chance to save the patient from harm.

Most dentists are familiar with informed consent. Informed consent is a required element of patient care, but it is also a simple element.

Dentists may not wish to load patients with too much information assuming that if the patients are interested in understanding more, they will ask questions. Patients may also tell their dentist that they trust the practitioner to perform the procedure that is in their best interest and do not need to discuss the treatment.

However, these patients can still fall back on the lack of informed consent and start a legal action against the dentist. Patients must be informed as to the proposed treatment and its benefits, the risks of the proposed treatment, alternative treatments, the patient’s prognosis and the cost of the proposed treatment.

In order to give consent to a proposed treatment, the patient must be completely informed. Patient relations will be improved through informed consent, as the patient will realistically know what to expect from a given procedure.

Practicing risk management

It is well known that dentists should keep accurate and complete records on every patient as well as documentation of each patient’s consent and understanding of a proposed treatment.

Once a malpractice action is commenced, dentists will have a better legal defense if these steps are followed. However, dentists need to do more in the office to prevent these malpractice claims from arising.

Patients want to make their own decisions regarding their health. Dentists who include patients in the
Through involving their patients in the treatment planning process, patients are much less likely to sue a dentist whom they know and trust. It is also important for dentists to understand the needs of their patients. The patients' best interests should be kept in mind at all times. Patients may have special health needs or may be concerned about financing. The dentist may suggest providing dental care in phases in order to best serve the patients' needs or to make payments more affordable. This, in turn, will allow the dentist to gain the patients' trust.

By involving patients in the treatment planning process, dentists are informing their patients of the available treatments and the benefits of each, and letting the patients choose the treatment that best suits their needs.

It is often claimed that the most important factor in preventing a malpractice suit is trust in the practitioner. Trust is especially vital in the dentist-patient relationship. Patients should view their dentists as trustworthy, knowledgeable and skilled professionals.

Dentists may gain this trust through involving their patients in the treatment planning process. Patients are much less likely to sue a dentist whom they know and trust. It is also important for dentists to understand the needs of their patients. The patients’ best interests should be kept in mind at all times. Patients may have special health needs or may be concerned about financing. The dentist may suggest providing dental care in phases in order to best serve the patients’ needs or to make payments more affordable. This, in turn, will allow the dentist to gain the patients’ trust.

It is important to market your services to patients; however, “puffery” should always be avoided. Puffery is a promotional statement that expresses subjective rather than objective viewpoints. Typically, puffery is a statement that no reasonable person would take literally. When discussing the expected outcome of a dental procedure, statements such as, “this root canal will be easy,” “this treatment will be relatively pain free” or “your teeth will be beautiful after this procedure” should be avoided.

This may cause the patient to build up high (maybe even unreasonable) expectations that may lead to disappointment and, potentially, to a lawsuit.

In addition, after performing an invasive procedure on a patient, it is a good idea for a dentist to follow up with the patient through a phone call. This not only builds trust and improves the quality of care the dentist provides, but also alerts the dentist if the patient is experiencing unexpected problems that the dentist may be able to remedy.

If the problems are left unaddressed, however, the potential for a lawsuit becomes much greater.

With a more thorough understanding of malpractice actions and by following these simple tips for handling patient relations in the dental office, dentists will be more likely to avoid costly malpractice actions.

In addition, by involving patients in decisions regarding their dental care, the dentist will gain each patient’s trust. This, in turn, will also reduce the risk of malpractice actions — protecting both you and your practice.

**About the author**

Stuart J. Oberman, Esq., has extensive experience in representing dentists during dental partnership agreements, partnership buy-ins, dental MSOs, commercial leasing, entity formation (professional corporations, limited liability companies), real estate transactions, employment law, dental board defense, estate planning, and other business transactions that a dentist will face during his or her career.

For questions or comments regarding this article, visit www.gadentalattorney.com.

**Prevent fraud in the dental office**

Stuart J. Oberman, Esq., has been invited to lecture at Boston University Henry M. Goldman School of Dental Medicine. Oberman will be one of the featured speakers at a continuing education course titled “How to Prevent Fraud in the Dental Office” on June 27.

For more information on Stuart J. Oberman, please visit www.GaDentalAttorney.com, or go to the corporate website at www.ObermanLaw.com.