



# AVOIDING MALPRACTICE

## **What is the most common cause of a dental malpractice case?**

I often hear the patient complain that no one at the dental office seemed to care, adequately answer their questions or pay attention to their problem or complication. Most patients will accept a dental complication and even a dental error if they feel the doctor and the dental staff sincerely cared about what they are going through. When a dentist is faced with a problem patient, do not rely on the staff to run “interference.” The dentist needs to talk directly with the patient about what has occurred and identify possible solutions to the problem. The dentist or staff should try to follow-up after dental procedures with care calls to the patient and document the care calls in the dental chart.

## **What dental procedures carry the greatest risk of being sued?**

The smile “makeover” case, which includes significant crown and bridge work. The amount of money the patient paid to have the dental work initially performed is usually significant. If the dental work then needs to be redone, the cost to redo a full mouth restoration case is also significant. The patient will likely want monetary compensation for damages of “pain and suffering.” The potential monetary value of this type of dental case is large enough for an attorney to take and pursue litigation.

## **If I got sued and my treatment of the patient was completely above the standard of care, why would my insurance company want to settle?**

It may be less expensive for an insurance carrier to settle a case than pay litigation expenses for the case to proceed through trial. However, most dental

professional liability insurance policies have what is called a consent clause. The dentist has to give consent to the insurance company before the insurance company can enter into settlement negotiations or settlement of a case. If the dentist did perform the treatment within the standard of care, the dentist holds the decision to consent to attempt to settle the case or not to consent and take the case to trial. Once a dentist gives consent for settlement of a case, the insurance company then controls the settlement amount for the case.

## **Could I be completely in the right and still lose in court?**

Yes, you could be right and still have a jury find against you at the time of trial. Nobody can predict with 100% accuracy how a jury will decide a case. A jury is not made up of a dentist’s peers. It is a random selection of people from the community. A jury may not have any understanding of dentistry, other than their personal dental experience, which could be negative. It is the job of the attorney and the dentist to educate the jury to the dental treatment and how the dentist met the standard of care, but there is no guarantee a jury will view the case the same way as the dentist. Fortunately, Arizona is still a fairly conservative State which tends to benefit the defendant doctor rather than the plaintiff patient.

## **I know I need an attorney for a malpractice lawsuit. Do I need legal representation if I get a State Board complaint?**

The first step when you receive notice of a Dental Board complaint should be to contact your professional liability insurance carrier. Most insurance policies provide coverage for legal representation for a Dental Board case. You may think my answer is self

serving since I make my living representing dentists, but it is a wise idea to have an experienced attorney on your side to assist and guide you throughout the Board process. The Dental Board process has undergone significant changes in the past year. The attorney will explain the new Board process, perform a majority of the work for the Board case and help to reduce the anxiety, stress and time involvement of the dentist. The attorney will know what to do, when to do it and what not to do when dealing with the Dental Board process.



### No matter how hard I try, I know I can not make every patient happy. How can I defend myself if they do complain to the Board of Dental Examiners or if they sue me?

Good risk management is the best defense. Perform the proper assessment and treatment on the patient and then do a thorough job of documenting that information in the dental chart. Document the history, assessment, diagnosis, plan of care and treatment performed, as well as the conversations and discussion held with the patient. Telephone conversations by your staff should also be memorialized with a chart note. Typically, if it is documented in the chart, people will believe it actually happened. A well documented chart acts like a witness to support the dentist's testimony regarding the dental care. A well documented chart makes it easier to defend a case at the Dental Board or in litigation.

*Disclaimer: The content of this article is not to be construed as legal advice nor does it constitute the creation of an attorney-client relationship.*

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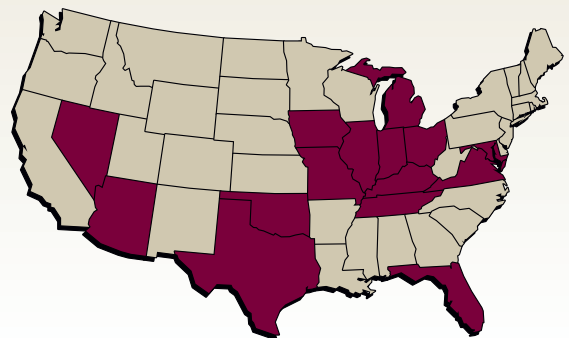
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