

Some Risk, | Some Management

By Candace DeLapp, D.D.S.

Dentistry is different today, not just on a clinical level, but also from a risk management perspective. Patients today may be looking for care with different attitudes and heightened expectations. It is not uncommon to encounter more demanding, unaccepting, and intolerant patients who become threatening when there are less than perfect or unanticipated outcomes. Learning to manage difficult people is, well, difficult!

The majority of patient issues are directly related to dental treatment that was rendered or failed to be rendered. There are, however, some other factors involved that may be termed “non-dental,” which may greatly contribute to the escalation of a patient situation or litigation.

Patients may be overly optimistic about potential results after doing their own internet research or talking with friends. Downplaying the limitations and risks of treatment may lead to unrealistic expectations that your treatment will undo years of

neglect, poor health habits, and lack of follow through. Disappointment sets in when a compromise is the result. Blame is extended to everyone but themselves.

When the dentist does not take the time to explain the options, risks, limitations and complications of treatment, the consequence may result in the patient’s belief that dental “malpractice” occurred... does this sound like *Informed Consent*? Attempting to discuss or explain a problem after it occurred may result in lack of acceptance and raise the perception of wrongdoing.

The provider who is unwilling or unavailable to clarify and address the patient’s treatment outcome may heighten patient frustration and anger. What does a phone call cost? What does a post-op appointment cost? Patient anger often becomes the foundation for a complaint or suit secondary to the perceived lack of caring, concern, or inattention in a dental office. An attorney recently put it this way, “It’s the providers who lack ‘people skills’ that find themselves in trouble.”

The Code of Colorado Regulations (3CCR 709-1 1.9 C.8.a.) requires the dentist to document in the patient’s records a “Discussion of recommended treatment as well as alternatives, risks, benefits, and prognosis.”

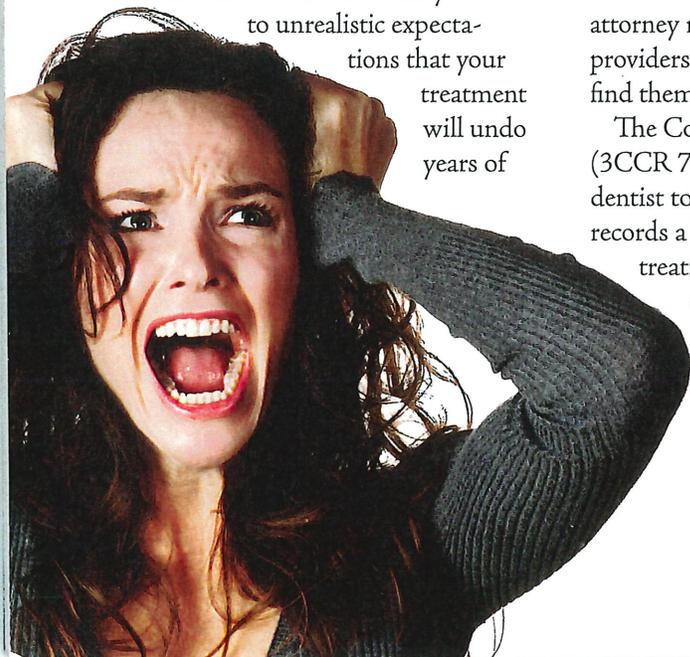
Creating a comprehensive treatment plan and having a consultation is not only the right thing to do, it is required!

A signed financial agreement listing full costs for all procedures may help in fee disputes. When the patient does not know if the dentist is in network or out of network, surprise billing comes in to play due to out-of-network costs. If the patient’s insurance is in-network, then it is the patient’s responsibility to pay. Out-of-network... surprise billing! It is my suggestion that best practice would be to discuss the costs with the patient and document the discussion with a witnessed and signed agreement of informed acceptance to proceed.

If, despite your best efforts, you have a patient write a demand letter, file a Colorado Dental Board complaint, or file a suit, what are your next steps? Do not self-respond! It is important not to let your emotions and feelings cause you to lose your objectivity and professionalism. Think twice before your thoughts become words. Contact your professional liability carrier (failure to do so may threaten the availability of insurance coverage). Do not add to or alter the patient record in any manner! Advise your team members of the same.

Resolution may be as simple as dismissing a patient or a return of fees. Following proper protocol for both is important, so reach out for guidance. When indicated, the engagement of an attorney to ensure a Board complaint is properly answered and all documents are provided is an important mitigation step to obtain the best outcome.

Have you received a letter from an attorney or has the patient threat-



ened a lawsuit? Early engagement of an attorney on your behalf improves your defense outcome. Legal strategies and tactics are best discussed with the attorney assigned to you and are protected with the attorney/client privilege. Discussion(s) with an individual other than your attorney are not privileged and are discoverable.

A lawsuit is a long and arduous process. Many practitioners wonder if it is worth the time required and sometimes a dentist may elect to settle without admitting liability. It becomes a "business" decision. While a well written settlement agreement will extinguish the patient's ability to sue further on the same facts, the settlement is reportable to the National Practitioner's Data Bank and to the Colorado Dental Board. A dental Board complaint will most likely ensue.

Another option in the world of healthcare litigation in Colorado is the Candor Act enacted July 1, 2019 (C.R.S. 25-51-101 et. Seq.), which established a framework to address adverse healthcare incidents involving physical injury or death of a patient. The Act creates an opportunity to have a confidential open discussion with a patient about an adverse result and resolve the matter without triggering reporting requirements (in Colorado) and improve future patient care. There are restrictions to the Candor Act, including time to engage, etc., which are beyond the scope of this article.

In closing, I heard this a short time ago about risk management: "I don't have the time and I took a course a while back."

I would, therefore, offer these few ideas to help you avoid malpractice actions.

- + Maintain good dental records.
- + Do not make guarantees for your dental work.
- + Obtain informed consent.
- + Use written instructions.
- + Have written and signed financial agreements.
- + Build great communications.
- + Exhibit a caring personality.
- + Courtesy will get you "everywhere."
- + Keep your team informed.
- + Be trustworthy...without it, very little can be accomplished. 

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