

# Words of Wisdom

*"By three methods we may learn wisdom: First, by reflection, which is noblest; Second, by imitation, which is easiest; and third by experience, which is the bitterest."*  
—Confucius

It is often said that learning from the mistakes of others is beneficial. This advice, though simple, holds significant truth. At the Dentists Professional Liability Trust of Colorado, we engage in daily discussions with dentists related to risk management, particularly in the context of patient care. Usually, these situations are resolved through effective communication between the patient, the dentist and the dental team. Regrettably, there are instances when situations escalate. Instead of "learning the hard way," we reached out to our Trust attorneys and asked them to reflect on actual cases and offer up some words of wisdom.



By Candace DeLapp, D.D.S. and David Geck, D.D.S., M.S.

*Good documentation facilitates effective communication, while good communication influences the quality of documentation.*



**Steven A. Michalek, Esq.**  
Childs McCune Michalek, LLC



**Corinne C. Jozwick, Esq.**  
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## The importance of documentation and communication

"A recent case we handled emphasized the importance of documentation and communication issues when providing emergency dental care. This case involved a 49-year-old male who presented to a general dentist seeking treatment for an inflamed and infected first bicuspid. The patient had a history of organ transplant and diabetes. The dentist had not seen the patient before and obtained a written and oral history, obtained imaging studies, completed a clinical exam, and then performed an emergency extraction and bone graft of the area. The dentist also prescribed oral antibiotics. After the extraction, the patient's condition continued to deteriorate, which resulted in him returning to see the dentist two days later. The patient was sent to a specialist, hospitalized for sepsis, and required organ rejection treatment, though the organ was ultimately saved. It was later

revealed that the patient had inconsistently been taking immunosuppressant therapies and had not accurately disclosed his medications to the dentist. The patient filed a lawsuit, alleging the dentist should have obtained medical clearance from his transplant physician, referred the patient to a specialist for the extraction, and not placed a bone graft. Experts evaluating the dentist's care confirmed that the extraction was emergent and medically indicated, that consultation with the patient's medical providers or referral to a specialist would not have changed the course of care, and the bone graft was not contraindicated. The case was resolved prior to trial. Nonetheless, more thorough documentation of the patient's history, coordination of care with the medical providers and specialists, and separate consent for the bone graft in addition to the extraction would have assisted in the defense of the case."

*He Said, She Said — a common situation where two people view the same event differently.*



**Miles M. Dewhirst, Esq.**  
Dewhirst Dolven & Parker, LLC

## If it isn't written down, it didn't happen.

"In the legal world many lawyers argue that if some fact or event wasn't written down, it didn't happen. In our experience, our dentist's clients are most successful in defending a patient's



DORA complaint when they have kept detailed patient notes. On the other hand, if patient treatment notes are lacking, the debate becomes a "he said, she said" situation and the Colorado Dental Board tends to side with the patient, e.g., informed consent on what was discussed with the patient or not. Accordingly, we advise our dentist clients to take the time to write down detailed treatment notes including material conversations with the patient that may later prove useful in responding to a patient's DORA complaint, i.e., adopting a CYA mentality."

***What happened, why it happened, and potential solutions to prevent litigation and obtain a resolution.***



**Alyson R. Rutberg, Esq.**  
Conklin Cardone & Rutberg, PC

**Candor Act - achieving case resolution.**

"Many dental practitioners who are searching for a solution with a patient when treatment may not have gone as planned are not aware of a relatively new Colorado law called the Colorado Candor Act. This 2019 law, §25-51-101, et seq. of the Colorado Revised Statutes, provides that if a healthcare provider (including a dentist) initiates a discussion with a patient about an adverse healthcare incident within 180 days of learning of the adverse incident, and if certain other conditions are met, the provider (and their attorney and/or insurance adjuster) could have a candid and confidential discussion with the patient about the incident and could ultimately offer compensation to the patient, which would not be reportable to the Colorado Dental Board or the National Practitioner Databank. This Act does not apply if the patient has already made a written demand for payment or settlement. As such, if a provider is faced with a situation where an open discussion and patient reimbursement may avoid acrimony, the

provider should reach out to the Trust to work with an attorney to determine if initiating proceedings under the Colorado Candor Act is a good option."

***Truth in Advertising – your website's goal is to instill a positive impression about your practice and encourage patients to schedule.***



**Marilyn B. Doig, Esq.**  
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**Website accuracy falls on the dentist, not the website designer.**

"With consumers likely to locate and research a healthcare provider via the internet, it is especially important that dentists verify the accuracy of their online presence. On a regular basis a dentist should review the content of their website. It is not unusual for a dentist to hire someone to create the content for his/her website. Frequently the content creator interviews the dentist, uses the dentist's curriculum vitae, or some other method to gather the information they decide to publish on the website. The website is not only informational, but a great marketing piece for the practice. Although some "puffing" is allowed, i.e., Dr. X is a terrific dentist ..., the website must above all be accurate. Even a small misinterpretation of wording, or inaccuracy at the time the website is read, can lead to a Colorado Dental Board complaint. As an example, a general dentist retained a firm to create his website. He advised the web designer that he passed the dental board exams in two different jurisdictions, Colorado and in another country. The web designer interpreted this to mean the dentist had two board certifications and in the dentist's biographical information stated that the dentist was "dual board certified." In reality, the dentist was licensed in two jurisdictions but was not board certified in any specialty. Fortunately, this error was caught and corrected before a Colorado Dental Board complaint was filed.

In another instance, a board-certified periodontist created his website noting that he was the only board-certified periodontist in his city and general area. This information was absolutely accurate at the time the website was created. However, several years later, another periodontist moved into the area and began practicing. Shortly thereafter, an anonymous complaint was filed with the Colorado Dental Board alleging the original periodontist advertised with false information on his website. The website was corrected immediately. However, the periodontist still had to deal with the board complaint. The moral here is to regularly review the substantive content of your website to make sure it is accurate in all respects. It can save you time and aggravation."

***Technology has become synonymous with modern dentistry and is a powerful tool in augmenting diagnosis and***



***treatment, improving patient comfort while increasing efficiency and safety.***

**David M. Jones, Esq.**  
Sharuzi Law Group, Ltd.

**Technology and communication.**

"We tried a case recently in which two themes emerged that have risk management interest. The first has to do with the use of technology generally and Cone Beam Computed Tomography (CBCT's) in operative dentistry. Jurors — and by extension, all patients — may be less likely to justify a dentist's decision not to utilize a CBCT as a matter of course, even in cases in which CBCT will not meaningfully alter or add to the information necessary for diagnosis and treatment. You might expect that if there is a technology that could be used as part of the workup for a particular procedure, patients and jurors are coming to believe it should be used.

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The second issue this case exposed involved text messaging with patients. After the treatment at issue, my client provided his personal cell phone to the patient, and they exchanged texts over a weekend while the dentist was out of town. Messages to the patient included an informal referral to a specialist and made clear the dentist was responsive and invested in the patient's progress. A serious complication arose — a deep-space neck infection — requiring hospitalization and emergent surgical drainage. The patient recovered, but in the lawsuit that followed, the patient argued that the dentist did not communicate specifically enough in the text exchange to elicit the type of information that would have furthered earlier diagnosis and treatment. We argued the patient did not follow the dentist's recommendations or provide information that would have raised concern.

We prevailed at trial, but the jurors told us this: healthcare providers who "cross the threshold" of text messaging with patients should be prepared to use that form of communication as a thorough and complete means of information exchange. Do not be informal. Do not use texting as shorthand. And make certain the messages are incorporated in the record or otherwise preserved in case the communications are needed later."


### In conclusion,

*"...to perceive the important truths, that knowledge is power, that knowledge is safety, and that knowledge is happiness."*

—Thomas Jefferson, 1817

Knowledge is a good thing. Conversely, we would argue that wisdom is better. Knowledge is the accumulation

of facts, information and understanding, while wisdom is to understand and use knowledge wisely to make good judgments in practical situations. Knowledge is the foundation; wisdom is the application. Hopefully, you gained wisdom by reading this article that will prove useful in your practice for years to come.

When you have an incident, a claim or a potential lawsuit, reach out to the Trust and let's share some words of wisdom. 

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