

HOW NOT TO GET SUED

The threat of a claim for professional negligence hangs over every Canadian health practitioner. Though an unfortunate reality in our society, there are things dentists can do to mitigate that threat. The following are tips for minimizing the risk of being on the receiving end of an action for dental malpractice.

Why do patients sue?

Most health professionals have bad clinical outcomes from time to time, but not all of them have to defend their actions in court. Interestingly, some excellent practitioners get sued a lot while less skilled counterparts never get sued at all. What accounts for this discrepancy?

Studies have shown that, contrary to popular mythology, the primary driver of lawsuits against health care providers is not money. When treatment doesn't go as planned, patients and their families often want to find out what went wrong and why. If a practitioner's or institution's response to an untoward clinical event is to stonewall, the patient may feel compelled to resort to the legal system to get answers. Providing timely, accurate and complete information about the circumstances leading to an injury may undercut one of the incentives for seeking legal redress.

Similarly, patients who believe their injuries were caused by ongoing systemic or endemic deficiencies may look to the courts to help prevent similar incidents. Considering the lessons learned from an unexpected treatment outcome and relating them to the patient may alleviate his or her concerns in this regard.

Patients may also be inclined to take legal action or launch complaints against health practitioners who attempt to deflect responsibility. Sometimes an expression of regret or sympathy can go a long way toward defusing a patient's anger.

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Nice people finish first

The bottom line is that people tend not to sue people they like, and how patients feel about their health caregivers is intimately tied to the quality of their interactions. A pervasive theme found in medical and dental malpractice actions is the breakdown of the clinical relationship due to the practitioner's poor communication style. A patient who perceives a health professional to be arrogant, dishonest, dismissive or unsympathetic will likely have fewer qualms about commencing legal action against him or her than against someone who is respectful and compassionate.

The key elements in establishing and maintaining a healthy, non-adversarial, therapeutic relationship with a patient include:

- accurately representing professional qualifications and credentials;
- acknowledging and, where appropriate, validating the patient's concerns;
- showing respect for patient autonomy by informing the patient about the benefits, limitations and risks of any proposed treatment;
- ensuring that treatment recommendations are based solely on the patient's best interests;
- taking the time to listen to and answer the patient's questions;
- recognizing, acknowledging and attempting to relieve the patient's suffering, especially in the case of an adverse clinical result.

While any dentist may be the subject of a legal action, professionals who exhibit these qualities are less likely to be sued, and more likely to be successful if they are.

For further guidance on this topic, contact PLP.

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