
15. LEGAL ISSUES AND ETHICS

Elliot V. Feldbau, D.M.D. and Bernard Friedland, B.Ch.D. M.Sc., J.D.

LEGAL ISSUES

1. What general principles of law apply to dental practice?

United States law is outlined under principles of criminal and civil law; the latter is divided into contract and tort law. Most legal issues related to dental practice involve civil wrongs or torts; that is, wrongful acts or injuries, not involving breach of contract, for which an individual can bring a civil action for damages.

Malpractice is part of the law of **negligence**, which constitutes one kind of tort. A malpractice suit based on the law of negligence alleges that the dentist failed to employ the care and skill of the average qualified practitioner. It further alleges that the failure to employ the required care and skill was the "proximate cause" of the patient's injury. Malpractice is considered an unintentional tort. It is normally covered by dental malpractice insurance.

Informed consent cases used to be based on the theory of **assault and battery**, but today they are considered no differently from other malpractice cases.

Invasion of privacy, another intentional tort, results when a patient's image or name is used by a dentist for personal gain, such as in advertising. Discussing a patient by name without permission, with persons other than the clinical staff, also may be construed as a violation of the privacy implied by the doctor-patient relationship.

2. Under the law, how is the relationship between doctor and patient interpreted?

The law defines the doctor-patient relationship under the principles of contract law. The terms are usually implied but may be expressed. Upon accepting a patient for care, the dentist is obliged (1) to maintain confidentiality, (2) to complete care in a timely and professional manner, (3) to ensure that care is available in emergency situations or in the absence of the dentist, and (4) to be compensated for treatment by the patient. Of interest, the contract is termed binding at the earliest point of contact; that is, the moment of a telephone call to the dentist may be interpreted as the point of consummation of the contract, unless the dentist refuses to consider the caller for care or does not realize that the caller is a patient.

3. May a dentist dismiss a patient after beginning a treatment?

There are four ways to terminate the dentist-patient relationship: (1) the patient may inform the dentist that he or she no longer wishes to be cared for by the dentist; (2) the treatment has run its course; (3) the dentist and patient mutually agree that the patient will no longer be treated by the dentist; and (4) the dentist terminates the relationship. Perhaps an example best clarifies the second way. Suppose a patient is referred to an endodontist for treatment of tooth #9. Once the endodontist has completed treatment and any necessary follow-up, the dentist-patient relationship is terminated. In this case, the dentist is under no obligation to treat the patient at any time in the future. A possible exception may be if future treatment is needed for tooth #9. In cases involving ways (3) and (4), the dentist should avoid the risk of being liable for abandonment by notifying the patient of his or her decision in writing, by providing the telephone number of the local dental society that the patient may call for a referral, and by offering to provide emergency treatment for a reasonable (depending on the circumstances) period of time.

4. What is considered adequate informed consent?

A dentist must disclose to a patient the risks and benefits of a procedure, alternative treatments, and the risks and benefits of no treatment. Informed consent is not required in writing but may be helpful.

U.S. courts use one of two measures to determine whether the dentist satisfied the informed consent requirement. States are split approximately 50-50 on which standard to apply. One standard states that disclosure is adequate if the dentist has given the patient information that the "average qualified practitioner" would ordinarily provide under similar circumstances. The other standard requires a dentist to disclose to a patient in a reasonable manner all significant medical and dental information that the dentist possesses or reasonably should possess; the patient uses such information to decide to undergo or refuse a proposed procedure. The national trend is leaning towards this patient-centered approach.

5. When may the issue of informed consent be bypassed?

In an emergency consent is implied. Such an emergency exists when treatment cannot be postponed without jeopardizing the life or well-being of the patient and the patient is unable to grant consent because of physical impairment.

6. Who is responsible if a dental hygienist performs prophylactic treatment without proper premedication on a patient who develops subacute bacterial endocarditis after relating a history of rheumatic fever and heart valve replacement on his or her medical form?

Under the legal principle of "respondeat superior" ("let the master answer"), the employees of a dentist as well as the dentist may be sued for negligence (deviating from the standard of care) or other issues of malpractice or battery during the course of their employment.

7. Does a missed diagnosis or failure of treatment constitute negligence?

An incorrect diagnosis does not necessarily constitute negligence. Because of the many judgments involved in dental practice it is considered unrealistic to expect that a dentist be 100% correct. The plaintiff must demonstrate serious injury because of the dentist's failure to diagnose properly before there are grounds for negligence. Furthermore, it must be shown that the dentist failed to exercise the applicable standard of care. But injury alone is grounds to file a suit for negligence.

If the outcome of treatment is bad (e.g., a failed endodontic treatment due to a separated instrument), negligence is not necessarily supported if the appropriate standard of treatment is employed. However, if a dentist promises to effect a specific cure, to bring about a particular result, or to complete a procedure with no residual problems and fails to fulfill the promise, a lawsuit may be filed on the basis of breach of contract rather than negligence.

8. When should a patient be referred?

A patient should be referred under the following circumstances:

1. When there is a question of appropriate treatment;
2. When periodontal treatment not routinely performed by the general dentist is indicated.
3. When periodontal disease is advanced with severe bone loss;
4. When shared responsibility is desirable for complex multidisciplinary cases.
5. When complex care is required for medically compromised patients; and
6. When the patient is refractory to treatment or unstable with a well-documented history of previous treatment failures.

9. What are common reasons for patients to sue?

- 1 Lack of informed consent: a patient does not know the specific nature and/or complications of treatment.
2. Failure to refer: for example, treating advanced periodontal disease with only scalings.
3. Failure to treat or diagnose adequately.
4. Abandonment: if the patient was dismissed for nonpayment of services, the dentist must show that other avenues were tried, such as small claims court or collection agencies. The dentist should document the reason for the dismissal and make available a referral source and any necessary emergency care for a period of 60 days. Communications to the patient should be through a registered letter.
5. Guarantees by doctor or staff.
6. Poor patient rapport.
7. Lack of communication.
8. Poor recordkeeping.
9. Issues related to fee collection.

10. What is necessary to prove negligence?

Four elements are necessary to prove negligence and win a malpractice suit. The patient must establish that (1) a dentist-patient relationship existed (i.e., that the dentist owed the patient the care and skill of the average qualified practitioner), (2) the dentist breached his or her duty by failing to exercise the level of care and skill of the average qualified practitioner, (3) the patient suffered injury, and (4) a connection exists between the dentist's breach of duty and the patient's injury (causation).

11. What are grounds for revocation of a dental license?

Criminal convictions involving fraud and deception in prescribing drugs, gross immorality, or conviction of a felony under state law are grounds for revocation, usually by decision of the state licensing board.

12. What issues may constitute a defense against malpractice?

In a claim of malpractice or negligence, the patient must show that his or her injuries are directly associated with the dentist's wrongful acts or that standards of care were not followed. Failure to achieve successful treatment or to satisfy a patient with esthetic results does not necessarily constitute negligence.

"Contributory negligence" is a special phrase used in the law to describe what the plaintiff may have done to contribute to his or her own injury. Contributory negligence may occur if the patient does not comply with specific instructions regarding medications or home care and summarily dismisses any claims of negligence.

13. What elements are contained in a complete dental record?

- Identification data
- Medical history, including updated antibiotic regimens for prophylaxis of subacute bacterial endocarditis, effects of medication on birth control pills, and medical consultations as needed
- Dental history
- Clinical examination
- Diagnosis and interpretation of radiographs
- Treatment plans
- Progress notes
- Consent forms for surgical procedures
- Completion notes

14. How should records be written and corrections be made?

All entries require ink or typed notes, not pencil, and errors must be lined out with a single line and initialed, with the substitute entry correcting the error. This procedure guards against any challenge to the reliability of record entries.

ETHICS

15. How is the practice of dentistry broadly governed?

The ethical rules and principles of professional conduct for the practice of dentistry are set forth in the American Dental Association's publication, *Principles of Ethics and Code of Professional Conduct*, which describes the role of the professional in the practice of dentistry.

16. What three ethical principles are outlined in the code?

1. Beneficence: being kind and/or doing good
2. Autonomy: respect of the patient's right of self-decision
3. Justice: the quality of being impartial and fair

17. How does the code define beneficence in the practice of dentistry?

The dentist is obliged:

1. To give the highest quality of service of which he or she is capable. This implies that professionals will maintain their level of knowledge by continued skill development.
2. To preserve healthy dentition unless it compromises the well-being of other teeth.
3. To participate in legal and public health-related matters.

18. Who is expected to be responsible for practices of preventive health maintenance?

The patient is expected to be responsible for his or her own preventive practices. The dentist is responsible for providing information and supportive care (e.g., recall and prophylaxis), but the patient has the ultimate responsibility to maintain oral health.

19. Outline the essential elements implied in the principle of autonomy.

The principle of autonomy requires respect for the patient's rights in the areas of confidentiality, informed consent for diagnostic and therapeutic services, and truthfulness to the patient. The dentist should work with patients to allow them to make autonomous decisions about their care. The dentist is obliged to provide services for which the patient contracts.

20. How does the dental profession serve justice, according to the code?

The individual dentist and the profession as a whole are obligated to be just and fair in the delivery of dental services. Self-regulation is a basic tenet of this obligation as well as calling attention to any social injustices in the allocation of societal resources to the delivery of dental health services.

21. A 29-year-old patient with poor oral hygiene and multiple caries requests full-mouth extractions and dentures. A complete examination reveals a basically sound periodontium and carious lesions that can be restored conservatively. What ethical principles apply to this basic case of neglect without advanced disease?

Respect for the patient's autonomy and requests is evaluated and judged against the duty of the dentist to provide the highest type of service of which he or she is capable. After full disclosure about long-term effects of edentulism, as well as the costs and benefits of saving teeth, the assessment of the patient's motivation is most important. Saving teeth that will only fall into disrepair through neglect and the patient's lack of commitment to maintain oral health must be considered carefully before a final treatment is elected or rejected.

22. A patient rejects the use of radiographs for examination of his teeth. How should this situation be handled, according to the code?

The dentist's only recourse is to use informed consent about the risks and benefits of an in complete examination and the possible consequences of such a decision. The respect of the patient's right to choose (autonomy) prevails, even if it generates a negative obligation not to interfere with a patient's choice.

23. An adolescent presents with a suspected lesion of a sexually transmitted disease (STD) and asks that no one, especially his parents, be told. What are the ethical considerations?

The right of autonomy and respect for privacy are overturned by the public health law that requires the reporting of STDs to the health department. Public law is often the determinant in such situations.

24. A patient requests that all her amalgam restorations be replaced. Is this an ethical issue?

It is not unethical to replace amalgams on request. It is considered untruthful, and hence unethical, to make any claim that a patient's general health will be improved or that the patient will rid her body of toxins by replacing amalgam restorations. It is unethical to ascribe any disease to the use of dental amalgam, because no causal relationship has been proved, or to attempt to treat any systemic disease by the removal of dental amalgams.

25. What disciplinary penalties may be imposed on a dentist found guilty of unethical conduct?

1. **Censure:** a disciplinary sentence written to express severe criticism or disapproval for a particular type of conduct or act.

2. **Suspension:** a loss of membership privileges for a certain period with automatic reinstatement.

3. **Probation:** a specified period without the loss of rights in lieu of a suspended disciplinary penalty. A dentist on probation may be required to practice

under the supervision of a dentist or other individual approved by the dental board.

4. Revocation of license: absolute severance from the profession.

26. For what acts may a dentist be charged with unethical conduct?

1. A guilty verdict for a criminal felony.
2. A guilty verdict for violating the bylaws or principles of the Code of Ethics.

27. To what guiding principle does the ADA's *Principles of Conduct and Code of Professional Ethics* ascribe?

Service to the public and quality of care are the two aspects of the dental profession's obligation to society elaborated in the code.

28. May a dentist refuse to care for certain patients?

It is unethical for a dentist to refuse to accept patients because of race, color, or national origin or because the patient has acquired immunodeficiency syndrome (AIDS) or is infected with the human immunodeficiency virus (HIV). Treatment decisions and referrals should be made on the same basis as they are made for any patient that the dentist treats. Such decisions should be based only on the need of a dentist for another dentist's skills, knowledge, equipment, or experience to serve best the patient's health needs.

29. May a dentist relate information about a patient's seropositivity for HIV to another dentist to whom he or she is referring the patient?

The laws that safeguard the confidentiality of a patient's record are not uniform throughout the United States with regard to HIV status. It may be prohibited to transfer this information without the written permission of the patient. As a rule, the treating dentist is advised to seek written permission from the patient before releasing any information to the consulting practitioner.

30. What is overbilling?

Overbilling is the misrepresentation of a fee as higher than in fact it is; for example, when a patient is charged one fee and an insurance company is billed a higher fee to benefit the patient's copayment.

31. May a dentist accept a copayment from a dental insurance company as payment in full for services and not request the patient's portion?

It is considered "overbilling" and hence unethical to collect only the third-party payment without full disclosure to the insurance company.

32. May a dentist charge different fees to different patients for the same services?

It is considered unethical to increase a fee to a patient because the patient has insurance. However, different treatment scenarios and conditions may prevail and dictate different fees, regardless of the form of payment.

33. Is it appropriate to advance treatment dates on insurance claims for a patient who otherwise would not be eligible for dental benefits?

It is considered false and misleading representation to the third-party payer to advance treatment dates for services not undertaken within the benefit period.

34. What are the standards for advertising by dentists?

Advertising is permitted as long as it is not false or misleading in any manner. Infringements of the standards involve statements that include inferences of specialty by a general dentist, use of unearned degrees as titles or nonhealth degrees to enhance prestige, or use of "HIV-negative health results" to attract patients without conveying information that clarifies the scientific significance of the statement.

35. How may specialization be expressed? What are the standard guidelines?

To allow the public to make an informed selection between the dentist who has completed accredit training beyond the dental degree and the dentist who has not, an announcement of specialization is permitted. The areas of ethical specialty recognized by the American Dental Association are dental public health, endodontics, oral pathology, oral surgery, orthodontics, pediatric dentistry, periodontics, and prosthodontics. Any announcement should read "specialist in" or practice "limited to" the respective field. Dentists making such announcements must have met the educational requirements of the ADA for the specialty.

36. What are the stated guidelines for the name of a dental practice?

Because the name of a practice may be a selection factor on the patient's part, it must not be misleading in any manner. The name of a dentist no longer associated with the practice may be continued for a period of 1 year.

37. What does the code state about chemical dependency of dentists?

It is unethical for a dentist to practice while abusing alcohol or other chemical substances that impair ability. All dentists are obligated to urge impaired colleagues to seek treatment and to report firsthand evidence of abuse by a colleague to the professional assistance committee of a dental society. The professional assistance committee is obligated to report noncompliers to the appropriate regulatory boards for licensing review.

38. How are problems of interpretation of the *Principles of Ethics and Code of Professional Conduct* to be resolved?

Problems involving questions of ethics should be resolved by the local dental society. If resolutions cannot be achieved, an appeal to the ADA's Council on Ethics, Bylaws and Judicial Affairs is the next step.

BIBLIOGRAPHY

Law and Dental Practice

1. Barsley RE, Herschaft EE: Dental malpractice. In Hardin JF (ed): Clark's Clinical Dentistry, vol. 5. Philadelphia, J.B. Lippincott, 1992, pp 1—26.
2. Brackett RC, Poulson RC: The law and the dental health practitioner. In Hardin JF (ed): Clark's Clinical Dentistry, vol. 5. Philadelphia, J.B. Lippincott, 1992, pp 1—42.
3. Pollack B: Risk management in dental office practice. In Hardin JF (ed): Clark's Clinical Dentistry, vol. 5. Philadelphia, J.B. Lippincott, 1992, pp 1—26.
4. Pollack B: Legal risks associated with implant dentistry. In Hardin JF (ed): Clark's Clinical Dentistry, vol. 5. Philadelphia, J.B. Lippincott, 1992, pp 1—8.
5. Pollack B: Legal risks associated with management of the temporomandibular joint. In Hardin JF (ed): Clark's Clinical Dentistry, vol.5. Philadelphia, J.B. Lippincott, 1992, pp 1—11.
6. Risk Management Foundation of the Harvard Medical Institutions: Claims Management and the Legal Process. Cambridge, MA, 1994.

Ethics and Dentistry

7. American Dental Association: Principles of Ethics and Code of Professional Conduct, with official advisory opinions revised to May 1992. Chicago, American Dental Association, 1992.
8. Massachusetts Dental Society: Code of Ethics. Natick, MA, 1986.
9. McCullough LB: Ethical issues in dentistry. In Hardin JF (ed): Clark's Clinical Dentistry, vol. 1. Philadelphia, J.B. Lippincott, 1992, pp 1—17.
10. Ozar DT: AIDS, ethics, and dental care. In Hardin JF (ed): Clark's Clinical Dentistry, vol. 1. Philadelphia, J. B. Lippincott, 1992, pp 1—2 1.

بسم الله الرحمن الرحيم

قام بتحويل هذا الكتاب من كتاب مطبوع إلى كتاب إلكتروني :
الدكتور / محمد ساري البرازي
سوريا - حماة

لأي ملاحظات أو تنبيه عن أخطاء إملائية في الكتاب يرجى مراسلتنا على البريد الإلكتروني
sari_barazi@hotmail.com

لاتنسونا من دعوة صالحة

هذه النسخة هدية لموقع أسنانك.نت

أسنانك .نت