

# DEALING WITH UNHAPPY PATIENTS AND THE THREAT OF LITIGATION

Like most health professionals, dentists will inevitably have patients who are dissatisfied with their clinical care or treatment results. Such situations are usually stressful, and the dentist's anxiety will be compounded if a patient's complaints are accompanied or followed by a demand for compensation or a threat of legal action.

The following are important guidelines and strategies for dealing with unhappy or threatening patients.

## Risk Management Dos and Don'ts

### 1. Remain calm and professional

The manner in which a health care provider deals with an unhappy patient or an adverse event may play as much a part in what happens next as the incident itself. No matter how upset or difficult the patient may be, you must try to remain professional. Rather than engaging in an argument, hear the patient out. Allowing the patient a chance to vent may defuse the situation and enhance the prospects of having a productive discussion.

### 2. Be empathetic

Studies have shown that apologizing to a patient for a less than ideal treatment outcome does not increase the risk of litigation against the health professional, but failing to offer sympathy in such circumstances may. And since such an apology is not admissible in legal proceedings, there's no reason not to say "I'm sorry."

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### 3. Notify PLP

You must contact PLP immediately if you become aware of circumstances relating to dental services provided by you that could give rise to a claim (a demand for compensation). Not only is timely reporting a requirement under the terms of your liability protection, but getting PLP involved early also increases the chances of resolving a dispute quickly and favourably. Failure to report a potential claim may impair PLP's ability to assist you with that matter, so when in doubt, call. Never assume the problem will go away if you just ignore it.



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#### 4. Keep notes about legal matters separate from the clinical record

Information about legal proceedings threatened or commenced by a patient and any conversations you may have with PLP staff do not form part of the patient's chart and should be recorded in a separate, confidential document.

It may be in your and the patient's best interests to refer the patient to a colleague for further or remedial treatment.

#### 5. Maintain confidentiality

In order to protect yourself and the patient's privacy, only discuss specifics of a reportable patient situation with PLP staff or the lawyer assigned to assist you. If you are having trouble coping and need to speak to a friend or confidante about the matter, be sure not to disclose the patient's name or personal health information.

#### 6. Consider referring the patient to another dentist

You should consider whether a request for compensation by a patient suggests a breakdown in the therapeutic relationship. Continuing to treat a dissatisfied patient or trying to fix your own mistakes is risky business, and it may be in your and the patient's best interests to refer the patient to a colleague for further or remedial treatment. Obviously, except in an emergency, you should not treat a patient who has threatened or commenced proceedings against you or whose legal representative has contacted you regarding alleged deficiencies in your care.

#### 7. Don't offer compensation or admit liability

Admitting liability or offering any sort of compensation to a patient, including a refund of fees or paying for the costs of retreatment, prior to contacting PLP could jeopardize your liability protection.

#### 8. Don't alter records

It is dangerous for a health care provider to alter or add to a chart after a patient has expressed dissatisfaction with treatment. At best, any such changes will be seen as self-serving; at worst, they will be considered fraudulent. Either way, they seriously undermine that practitioner's defence in a legal action. If you learn of a patient's concerns and feel that the record is inaccurate or incomplete, any information a subsequent health practitioner would need to know may be recorded in the chart as a clearly identified late entry. Information that is irrelevant to the patient's ongoing care, however, such as the content of a previous informed consent discussion, should not be added to the chart and should rather be noted in a separate document.

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For guidance on this and any other risk management topic, contact PLP.