

# Lifeline



Ending the dentist -

patient relationship:

## Protect your patients, protect yourself

It has been said that breaking up is hard to do. Such is true in love, as in dentistry. But in dentistry, it can be said that breaking up is hard to do right.

Dismissing a patient from a dental practice takes much more than just a Dear John letter. Dentists must use caution when dismissing patients from their practice, and they must follow specific protocols to avoid claims of patient abandonment.

### IN THIS ISSUE

- Should I send a patient dismissal letter? **6**
- How to withdraw from care **7**
- Q and A **7**

One of the key guidelines to follow when it comes to patient dismissal is to ensure the patient is not mid-treatment when choosing to terminate the dentist-patient relationship. Not only does this protect patients from injury, it protects dentists from abandonment allegations.

“Dentists are urged to complete the treatment in progress prior to dismissing patients from their practice,” said Taiba Solaiman, risk management analyst, TDIC. “They do not necessarily have to complete the entire treatment plan. However, they must complete treatment that is in progress, such as a root canal, or any provisionals, to avoid placing patients at risk.”

Such was the case involving a dentist who noticed very soft bone during the placement of an implant. He placed bone graft material around the implant to stabilize it, and provided the patient a stayplate

**Patient dismissal** continued on page 2

### Patient dismissal from page 1

to wear during the healing process. Two weeks later, the patient reported that the stayplate was uncomfortable. The dentist made some adjustments to the stayplate, and the patient reported being happy at the end of the appointment.

The patient returned eight months later for an implant check. The dentist suspected that the implant was loose and took a radiograph, which confirmed that the area around the implant was failing. The dentist gave the patient options to repair it. The patient indicated she wanted to speak to her husband before making a decision.

The following day, the patient called the office and asked for her money back. The dentist refused her request for a refund and sent her a letter terminating the dentist-patient relationship. The patient went to a new dentist to complete her treatment.

A few weeks later, the dentist received a notification of the patient's intent to sue, alleging negligent treatment, patient abandonment and pain and suffering.

Ensuring a patient's treatment is resolved is just one component of the larger issue of patient dismissal. Unfortunately, the need to occasionally dismiss a patient is one of the unpleasant realities of practicing dentistry. The reasons for dismissing patients are many, but the most common reasons include the following:

### Nonpayment of fees

While sympathizing with patients' financial limitations is good business practice, keeping patients who repeatedly fail to make payments should be reconsidered. That said, withholding treatment due to nonpayment can put

the patient at risk, and sets dentists up for liability claims should the lack of treatment lead to patient injury. It is a good idea to finish treatment first, and then work with the patient on resolving outstanding financial obligations.

### Noncompliance

If patients fail to proceed with treatment that would put their oral health at risk, dentists have the prerogative to dismiss them from care. It is common for patients to ask to delay treatments due to financial concerns, but if necessary treatments are delayed for extended periods of time, it can result in supervised neglect. A signed informed refusal form does not exonerate a dentist from liability, as dentists are obligated to practice at a certain standard of care.

"Dentists are responsible professionally and ethically to present treatment options that are most appropriate for the patient's clinical need," Solaiman said. "We do not recommend maintaining a patient in your practice whose request to delay treatment results in you practicing below standard or against your judgment. In this case, it is appropriate for you to dismiss the patient from your care."

### Failed appointments

Patients who routinely fail to make appointments not only impact the smooth operation of a practice, they also put their oral health at risk. Whether for hygiene or treatment, failed appointments mean patients are not receiving the care they need.

For patients who repeatedly fail to keep appointments, TDIC recommends sending a failed appointment letter, documenting the date of the missed appointment, attempts to contact the patient, the consequences of not

following the treatment plan, a request to reschedule the appointment and a date by which the patient should contact your office. Keep a copy of the letter in the patient's chart. In some cases, a second letter may be necessary. If you do not hear from the patient, it may be time to dismiss the patient for noncompliance.

"Documenting attempts to contact the patient for missed appointments may become your saving grace should the patient initiate a professional liability lawsuit and claim you abandoned them while in the middle of treatment," Solaiman said.

### Personal

Some dentists find themselves dismissing patients due to personal reasons. For example, they no longer wish to treat a former employee, or the ex-husband of an employee after a divorce. Or, they no longer wish to treat a patient who has unreasonable demands or expectations.

### Physical threat

As an employer, you have a responsibility to keep your employees safe. If you or your employees fear for their safety due to the behavior of an angry or unhappy patient, it is your duty to end the dentist-patient relationship immediately.

### Discrimination

Unfortunately, some patient dismissals are the result of discrimination. For example, dentists may not want to provide services to a hearing impaired patient or a non-English speaker because of the need for a language interpreter. In the eyes of the law, this practice is discriminatory.

## Dismissal letters

There are three types of dismissal letters, according to TDIC: no reason, non-compliance and patient termination. Following are the guidelines for each type:

### No reason

Patient dismissals qualifying for a no reason letter include those who have unrealistic expectations; are unreasonable, demanding or combative; and those who make the dentist or staff feel uncomfortable. For example, in one case a patient was late for her hygiene appointment. Staff informed her that unfortunately, she would not be able to be seen that day and she would have to reschedule. The patient became angry, and began yelling at staff, threatening to sue if she was not seen. The next day, the dentist called and explained how being late impacts the practice and that there wasn't enough time to perform the cleaning. The patient became agitated and hung up. Because the patient had no outstanding dental issues, and was not mid-treatment, the dentist chose to dismiss the patient from his practice.

### Noncompliance

Patients who refuse radiographs, fail to make appointments and repeatedly refuse specialty care are candidates for non-compliance dismissal. For example, one dentist cites a case where a patient was diagnosed with deep decay. The patient disappeared for several years, and then called the office to report extreme pain. She came in the same day for an appointment, and the dentist told her she would need a crown. They discussed the risks, benefits and alternatives to treatment, and the patient signed the consent form for the crown. The dentist prepped the tooth and placed a temporary crown. She scheduled her follow-up for two weeks later, but failed that appointment. The appointment was rescheduled for the following week, but

she failed that appointment as well. The office left three subsequent voicemails but received no return call. Unfortunately, this patient put the dentist in a precarious position. Should the dentist dismiss the patient, the dentist could be liable should the patient initiate a professional liability lawsuit, claiming she was abandoned mid-treatment.

### Patient terminates care

Sometimes, a patient may choose to end the dentist-patient relationship. The reasons for doing so are many: a new job, a move, a change in insurance, or the patient may simply want to see someone new. If a patient notifies your office of his or her intention to discontinue the relationship, send a follow-up letter acknowledging the decision, and keep a copy of the letter in the patient's file.

However, if a patient fails to contact your office, and you have not seen or heard from the patient for an extended period of time, do not assume the patient intends to withdraw from care. Rather, follow the formal patient dismissal procedure, and document all communications.

## Patients of Record

Following a formal patient dismissal protocol is necessary only for patients of record and patients who reasonably believe they are patients of record. For example, there is a reasonable cause for patients to believe they are patients of record if they have been in for a consultation or second opinion, even if no treatment was performed.

Dan Watkins, attorney at Watkins & Letofsky, LLP in Newport Beach, Calif., said generally speaking, a "patient of record" is someone who has received dental treatment from the dentist, including the diagnosis or treatment of teeth, gums, jaws or associated structures. This includes completing a health history,

an exam or cleaning, and discussion of a treatment plan.

"Once a dentist starts to practice dentistry, including the exam, diagnosis or treatment of a patient – including hygiene – it is safe to assume they become a patient of record," Watkins said. "At that point, the dentist becomes responsible for the oral health of the patient and the patient is now a patient of record."

Watkins said when in doubt, it is best to err on the side of caution.

"It's a good idea to assume the dentist-patient relationship exists as soon as the patient sits in the chair and some record of the patient needs to be established," he said.

## Communication

Many of the issues surrounding patient dismissals can be avoided by proactive communication efforts. For example, it is a good idea to include policies on late or missed appointments as part of patient intake forms. Also, for patients who fail to make follow-up appointments or see specialists, it is recommended that dentists send letters advising the patient of the importance of maintaining their oral health and the consequences for delaying treatment.

It is also essential to communicate with your staff about dismissal policies. TDIC reports a case in which a patient had been dismissed, only to receive a recall notice a few months later. In this instance, the original staff member had left, and the dismissal information had never been included in the patient's chart. The office was forced to go through the entire dismissal process all over again.

## Second chances

So what about patients who apologize and want to return to your practice?

**Patient dismissal** continued on page 7



## Caution + control: Reducing employment liability



**The combination of changing employment laws and a litigation-conscious public can be intimidating.** And, it's even more so when dental practice employees are prepared to take legal action if they feel an employer breached their rights. Our latest seminar, designed from TDIC's Employment Practice Liability (EPL) claims experience and calls to our Risk Management Advice Line, will show you how to handle employment concerns. Gain the caution and control to navigate past potential employment practice violations such as pregnancy discrimination, termination and sexual harassment.

Get expert advice while earning **C.E. credits** and a **5% Professional Liability premium discount** for two years.

**After course completion, you will better understand how to:**

- Establish effective hiring and performance review practices.
- Provide employees with a fair and rewarding work environment.
- Implement controls to prevent situations that lead to EPL claims.

\*Due to the sensitive nature of the issues being addressed and our employer-oriented approach, this course is available to dentists and their spouses only.

**Protecting dentists. It's all we do.®**

800.733.0634 | [tdicinsurance.com](http://tdicinsurance.com)

# Fall 2016 Risk Management Seminar Schedule

**Friday, Nov. 4**  
9 a.m. – noon

**Ala Moana Hotel**  
Honolulu, HI

**Friday, Dec. 9**  
9 a.m. – noon

**Hyatt Mission Bay – San Diego**  
San Diego, CA

Reserve your space today at  
**[tdicinsurance.com/seminars](http://tdicinsurance.com/seminars)**

Unable to attend in person? Visit **[tdicinsurance.com/eLearning](http://tdicinsurance.com/eLearning)** to explore convenient eLearning options.

## Fees

- Dentist: **\$50**
- Part-time\*: **\$25**
- New TDIC Policyholder:  
**Free** (*within the first policy year*)

\*Must have a TDIC part-time Professional Liability policy to be eligible for this discount.

\*\*Attendees must register through CDA for these seminars.

## C.E. Details

- **20%** – 3.0 per session

To receive C.E. credit, registrants must be present for the entirety of the three-hour seminar. This seminar meets the Dental Board of California's requirements for 3.0 C.E. credits.

## Special Needs

If you or someone in your group requires special assistance to fully participate in the seminar, please call TDIC at 800.733.0634 or email us at [risk.management@cda.org](mailto:risk.management@cda.org).

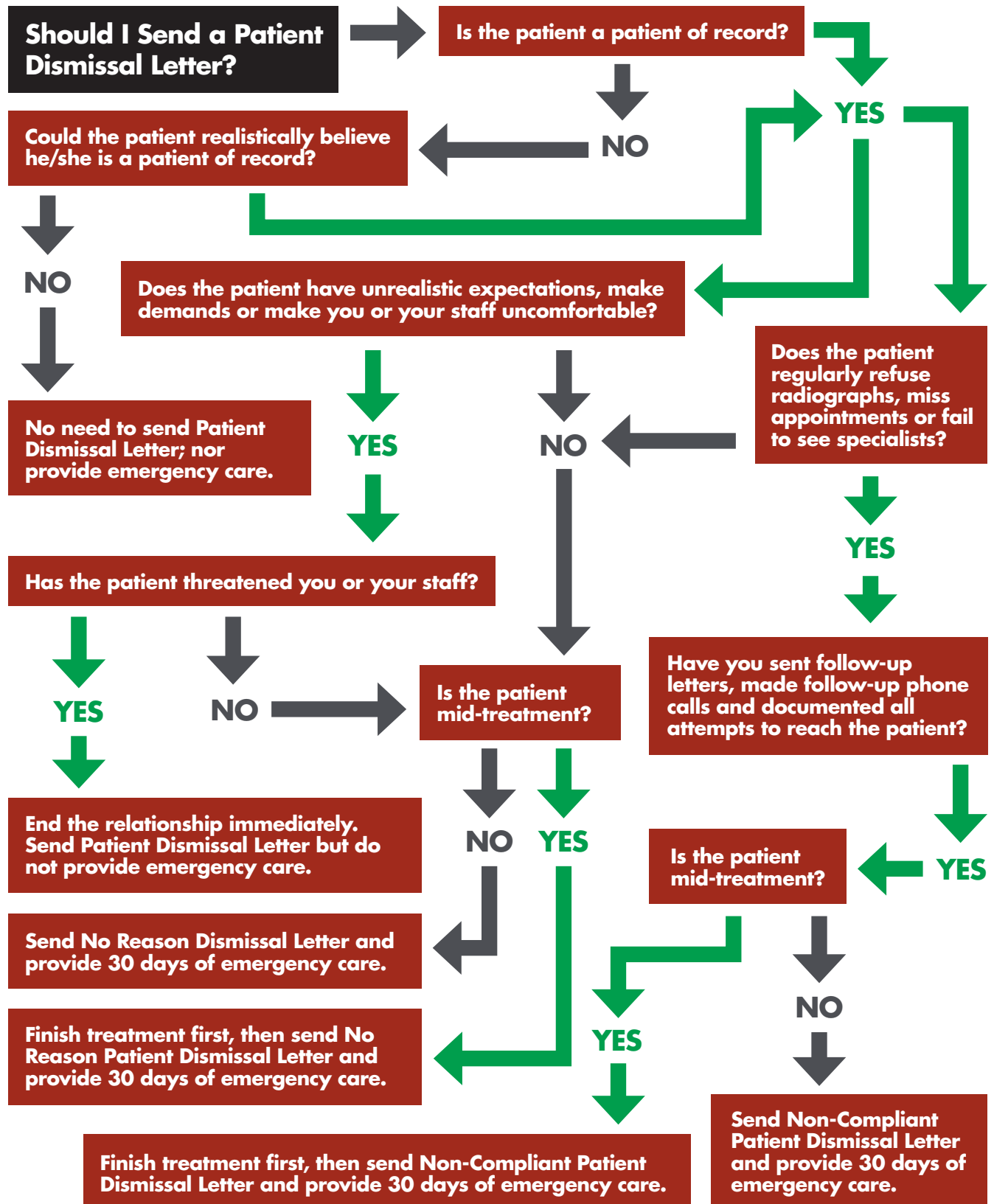
## ADA C·E·R·P® | Continuing Education Recognition Program

The California Dental Association is an ADA CERP Recognized Provider. ADA CERP is a service of the American Dental Association to assist dental professionals in identifying quality providers of continuing dental education. ADA CERP does not approve or endorse individual seminars or instructors, nor does it imply acceptance of credit hours by boards of dentistry. CDA designates this activity for 3.0 continuing education credits. This continuing education activity has been planned and implemented in accordance with the standards of the ADA Continuing Education Recognition Program (ADA CERP) through joint efforts between CDA and TDIC.

Endorsed by:

Alaska Dental Society  
California Dental Association  
Hawaii Dental Association  
Illinois State Dental Society  
Nevada Dental Association  
New Jersey Dental Association  
Pennsylvania Dental Association

Also selling in Arizona and North Dakota



**Patient dismissal** from page 3

Should you take them back? TDIC suggests that for patients who were dismissed for missed appointments, nonpayment or noncompliance, the answer is no. However, it is advised to proceed with caution; the public sentiment about health care costs is strong, and dentists can easily be viewed negatively for terminating a patient over money.

That said, for patients who were dismissed for noncompliance, a good starting point is to educate them about the importance of maintaining oral health. There have been cases where patients had no idea they could be dismissed for missing a routine appointment, nor did they realize the overall impact on their oral health should they do so.

It is important to keep in mind that the goal is to avoid liability. Even if a patient has a baseless claim, even if a

patient loses in court, the stress and headache of the process will interfere with your bottom line. And remember, if a patient was injured and believes it is a result of a dismissal, and they report it to the dental board, the board is obligated to investigate. The board will scrutinize every last detail of your practice; they will go through your processes and procedures with a fine-tooth comb. Therefore, you should feel confident after reviewing your documentation that the decision to terminate care was based on objective criteria and did not place the patient's oral health at risk.

Dismissing patients from care is one of the more unpleasant elements of dentistry. Unfortunately, when the dentist-patient relationship goes sour, there are often no other options. But by following a few simple guidelines, it is possible to make the process go smoothly, while at the same time protecting yourself and your practice from claims of patient abandonment or negligence.

## How to withdraw from care

**1)** Send a letter to the patient, indicating the intent to dismiss. Include the following:

- The type of dismissal, either no reason or noncompliance.
- Two valid references, which may include local dental societies, insurance carriers or dental schools.
- The promise to provide emergency care until the patient finds another dentist; for example, 30, 60 or 90 days.
- Authorization for Release of Dental Records form (available at [www.tdicinsurance.com/risk-management/sample-forms](http://www.tdicinsurance.com/risk-management/sample-forms)).

**2)** Send the letter, marked personal and confidential, by both certified mail with return receipt and first-class mail,

and retain copies of the letter and all receipts in the patient's chart.

The signed receipt verifies that the patient received the letter, so retain it for your records. An unsigned receipt, along with the undelivered letter, can be held at the post office for up to 90 days. However, when a letter is sent first-class mail, and is unreturned, it is safe to assume it was received. Keep a copy of the letter and the means of mail delivery in the patient's chart.

For patients who choose to terminate the relationship, send a letter acknowledging their decision. There is no need to offer emergency care in this instance. Follow the same mailing procedure as above: certified mail with return receipt and first-class mail. Retain all copies in the patient's chart.

## Question and Answer

**Q: I have a patient who is deaf and is requesting an interpreter. Am I required to provide one?**

**A:** The Americans with Disabilities Act defines a dental office as a public accommodation, and states that healthcare providers must provide auxiliary aids and services to ensure that communication with deaf or hard of hearing patients is as effective as communication with others. This can include interpreters, computer-aided transcription services, written materials, assistive listening devices, captioning and other methods of ensuring auditory communication is accessible.

Ask your patient which method of communication he/she prefers. Some may be adept at reading lips and prefer that you speak with them. Some situations may necessitate an interpreter; for example, when providing complex or extensive information to obtain informed consent for procedures that carry significant risk.

Occasionally, a family member can interpret or a service organization may provide an interpreter at no charge. The local health department, a local hospital or college may also be able to assist. A professional interpreter may be needed to increase patient confidentiality.

While not all hearing-impaired patients will request sign language interpreters, be prepared to provide one if requested. Under the ADA, you are required to pay for the interpreter and cannot pass on the cost to the patient, refuse treatment, or otherwise discriminate against those with disabilities.



Liability  
**Lifeline**

Liability Lifeline is published by:  
The Dentists Insurance Company  
1201 K Street, 17th Floor  
Sacramento, California 95814

©2016, The Dentists Insurance Company

**Endorsed by:**

Alaska Dental  
Society

California Dental  
Association

Hawaii Dental  
Association

Illinois State  
Dental Society

Nevada Dental  
Association

New Jersey  
Dental Association

Pennsylvania  
Dental Association

**Also in:**

Arizona,  
North Dakota  
and Minnesota

TDIC reports  
information from  
sources considered  
reliable but cannot  
guarantee its  
accuracy.

**Need one-on-one risk management guidance?**

- Get answers to your critical questions through a free phone consultation with an experienced TDIC risk management analyst.
- Request a consultation at a time that's convenient for you at **[tdicinsurance.com/RMconsult](http://tdicinsurance.com/RMconsult)** or by calling **800.733.0634**.

**Protecting dentists. It's all we do.®**

Risk Management Advice Line | 800.733.0634 | [tdicinsurance.com](http://tdicinsurance.com)