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CRISIS CONTROL

Crisis. It is an unfortunate reality for many dentists at some point during their careers. Whether caused by a negative online review, a patient injury or a wrongful termination claim, how you respond can prevent a bad situation from escalating into a critical one.

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The key to getting through a crisis unscathed is twofold: keep your emotions in check and the lines of communication open. Slow down, take a deep breath and take your time in determining how to handle the situation. Don't make rash decisions, combat anger with anger or dismiss patient concerns. Now is the time

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to act with the utmost professionalism. And, of course, when in doubt, turn to TDIC Risk Management to help you weather the storm.

TDIC's Risk Management experts have taken numerous calls from dentists in the midst of a crisis. Their experiences have found that applying proper techniques can help mitigate potentially unfavorable end results. Below are examples that illustrate what should, and shouldn't, be done when faced with common professional challenges.

Negative online reviews

Social media has had an incredible impact on small businesses, including dental practices. Online reviews, such as those on Yelp, can provide valuable feedback to business owners, but they can also be extremely damaging when unhappy customers use them to vent their frustrations. But to what extent should dentists respond to angry posts? And how can it be done legally and ethically?

A dentist learned that an angry patient posted an accusatory review on Yelp. In the review, the patient complained about the treatment received as well as billing discrepancies.

The dentist counterattacked, sharing the patient's history of periodontal disease, his failure to keep hygiene appointments and his negligence in caring for his crowns. The dentist also outlined the fees associated with treatment and the payments made.

Unfortunately, the thread was seen by an acquaintance of the patient, who was also a patient of the practice. The patient complained to the dentist about the alleged violation of privacy.



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Sherry Mostofi,
Mostofi Law Group Inc.

The dentist did reach out to TDIC for advice – but it was too late. The damage had already been done. The information was out in cyberspace.

So, what could the dentist have done differently? For starters, when it comes to public forums, no response is often the best response. Simply by responding, a dentist confirms the reviewer's status as a patient – a clear violation of privacy. Patients can, and have, claimed privacy violations by this seemingly simple act.

“It could be a violation of HIPAA and state privacy laws because by responding to a patient in an online forum you are disclosing they are a patient,” said Sherry Mostofi of Mostofi Law Group Inc. “Instead, try to resolve any issues privately with a patient and see what can be done to remedy the issue they have with the practice.”

A better option is to contact the patient offline. Patients who can be identified by their online profiles should be contacted directly. The power of a personal conversation cannot be underestimated. Patients want to feel heard, and that they matter. Taking this extra step will go miles in showing that you take their concerns seriously.

However, if you are unable to determine the identity of the patient, and have no other option but to respond via the thread in question, consider the following response: “By responding to this review, I am neither confirming nor denying you are a patient of record in my practice. However, if you would like to discuss your concerns, please call the office.” By handling negative reviews professionally – and legally – you can

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thwart potential repercussions to your business.

Patient injuries

One of the greatest fears of those who work in the dental profession is patient injury. Despite precautions, despite countless hours of training, despite safety protocols, things can, and do, go wrong. When they do, the fear of legal action can often be debilitating. But how you react to this crisis when and if it arises is crucial, and can make a difference in the end result.

One case that resulted in litigation involved a patient who sustained a facial burn while undergoing treatment using nitrous oxide. During the procedure, as the patient was receiving supplemental oxygen due to difficulty breathing, the dentist decided to test a lighter in preparation to ignite the Bunsen burner. A spark from the lighter reacted to the oxygen, causing a fire. The patient suffered burns to her nose and periorbital area. Rather than stopping treatment and seeking emergency medical assistance, the dentist applied antiseptic lotion, offered ibuprofen and dispensed a dose of an anti-anxiety medication. He then continued treatment for an additional two hours.

Later that evening, the dentist called the patient to follow up on her status and was informed that she was heading to the emergency room to treat the burns. The next day, he sent a letter of apology, flowers and a gift card to a cosmetics store, wishing her a speedy recovery.

A few months later, the patient initiated a lawsuit, alleging negligence, elder abuse and intentional infliction of emotional distress, as well as monetary loss including general damages, damages to cover medical expenses, punitive



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Daniel Watkins, professional liability attorney

damages and attorney fees. She also alleged false imprisonment because the dentist refused to allow her to leave the operator chair after being burned.

In this case, the most serious issue was that the doctor continued treatment despite the patient’s injury. While well intentioned, sending the flowers and gift card did not take into consideration the gravity of the situation. The patient chose to find recourse in the courts as her remedy.

In many professional liability cases, such as negligence or malpractice, it is

not the occurrence itself that triggers legal action, but the lack of a satisfactory response from the dentist. How you communicate is often as important as what you communicate.

“Poor communication is the great cause of litigation, not poor dentistry,” said professional liability attorney Daniel Watkins. “In general, the most important thing is to slow down and take note of the situation. The complaint might not have real substance or it might be a real dental issue, but the important thing is to stop and pay attention. A lot of times this part gets missed.”

Some dentists fear that listening to patients’ concerns or apologizing for their dissatisfaction means they are admitting liability. But this simply isn’t true. Rather, responding with sympathy and professionalism can help diffuse a tense situation.

Not only is it important to listen to patients’ concerns, it is important

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With the day-to-day operation of a practice, the countless patients and the many regulatory requirements — not to mention personal life — it often seems easier to relent and give unhappy patients what they want.

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to engage in active listening. Active listening places focus on the speaker, rather than responding to what is being said. The listener will repeat back what the speaker said, in his or her own words, often beginning with a statement such as “What I am hearing you say is ...” Active listeners will often put an emotional spin on what is being said, such as “I hear you are feeling very frustrated and angry over this.”

Should you be faced with an incident that leads to legal action, there's good news: less than 10 percent of lawsuits are actually tried to conclusion and of these, more than 70 percent result in defense verdicts. To help get you through this difficult time, TDIC has developed the document “What to Expect if You Are Sued,” which provides tips on navigating the complicated litigation process. TDIC policyholders can access this guide, along with a full library of risk management resources, when logged in at tdicinsurance.com.

Promising refunds

Taking fast action to resolve a doctor-patient dispute is increasingly common. With the day-to-day operation of a practice, the countless patients and the many regulatory requirements — not to mention personal life — it often seems easier to relent and give unhappy patients what they want.

But these cases also need to be handled with care. In one case, a patient came into her dentist's office two years after treatment, demanding a refund for a crown. Busy with other patients and feeling rushed, the dentist agreed. But later that evening, the dentist reviewed the patient's chart, determining the treatment was clinically sound and within the

standard of care. Based on this, the dentist saw no reason to provide a refund and wanted to back out of the offer.

A more appropriate approach would have been for the dentist to have taken the time to review the case thoroughly before making any promises. Explaining to the patient that a decision would be made after reviewing her chart and giving her a specific timeframe (for example, 48 hours), would have protected the dentist's integrity without being dismissive to the patient's complaint.

Wrongful termination

As a business owner, dentists are required to not only be experts in their profession, but also in the practice of business management. Part of that is understanding employment law. Federal law, as well as many state laws, prohibit discrimination based on pregnancy and related medical conditions. It is the responsibility of the employer to assess the risk for pregnant employees in the workplace and to communicate their rights to them.

In one case, a hygienist in her second year of employment began coming in late and calling in sick. A few weeks later, she informed her employer that she was pregnant. The hygienist began missing more days and failed to meet her production goals.

Shortly thereafter, her employer told her that business was not good and the hygiene schedule was becoming difficult to fill, so they no longer needed her services on Fridays. Soon after, the hygienist came in on a Friday to pick up something she had left behind and saw a new hygienist treating a patient. She confronted the dentist, explaining

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A woman with dark hair, wearing a black sleeveless top, is sitting in a green office chair. She is smiling broadly and looking towards the camera. She is holding a dental instrument, possibly a scaler, with both hands. The background shows a window with a view of a cityscape.

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that she felt she was treated differently since becoming pregnant. The dentist listened calmly, then told her to leave the office and not come back. The hygienist then filed a wrongful termination and discrimination suit against the dentist.

The dentist may have been able to avoid a lawsuit by offering the hygienist

temporary accommodation, such as working part-time, limiting exposure to certain substances or modifying tasks. Relieving a pregnant employee of her duties without legal counsel sets the stage for a lawsuit down the road.

In conclusion, controlling a crisis can be challenging, but it is not insurmountable. By taking a step back

and analyzing the situation with a calm and critical eye, it is possible to find solutions that work for all parties involved.

For assistance, questions or concerns about liability, call TDIC Risk Management at 800.733.0634 or email riskmanagement@cda.org.

Reducing stress

The emotional toll a crisis takes on a dentist cannot be understated. Stress can damage your health, your self-esteem and your relationships. Taking care of yourself is essential during this time. The following tips can help:

- Ensure you maintain a healthy diet.
- Get regular exercise and plenty of rest.
- Spend time with family and friends.
- Make time for activities outside of work.



Dealing with emotional patients

Patients who respond with anger tend to do so out of fear, anxiety and worry. Human beings have a need to be heard, and if that need is unmet, frustration – and therefore anger – is the result. Often anger is the patient's way of regaining control over a situation. Your attitude can go a long way in conveying cooperation and a genuine commitment to resolving the problem. Address and diffuse anger during patient interactions using the following tips:

Do's:

- Take a deep breath. Count to ten.
- Talk to angry patients directly. Handing them off to a staff member sends the message that they don't matter.
- Listen attentively. Repeat back what the patient is saying.
- Keep the dialogue courteous and honest.

Don'ts:

- Don't let your emotions take over. Responding to anger with anger only adds fuel to an already fiery situation.
- Don't be defensive. Whether or not it's justified, patient dissatisfaction happens. How you react to it is what matters.
- Don't feel the need to respond immediately. It is acceptable to take your time without rushing to a solution.

Questions and Answers

Q: I'm a general dentist and while I've easily performed more than 100 extractions of third molars, I recently experienced an accidental displacement of a root fragment when removing an impacted third molar (No. 32). When I referred the patient to an oral surgeon, he became upset and wanted to know why I hadn't referred him to the OMS from the start and why I hadn't mentioned having an OMS perform the procedure. He threatened to sue me for failing to offer him that option. I did have an informed consent discussion with the patient. I went over the risks, benefits and alternatives to the treatment and I advised the patient that I had completed well over a hundred third molar extractions with no complications. He seemed satisfied with my handling his case and he signed the informed consent acknowledging his authorization to proceed with treatment. The form I use does mention there may be a need for referring to a physician or OMS should there be a perforation of the sinus. However, I'll admit, I didn't tell the patient that an OMS could provide his care. Am I required to?

A: Most professional liability claims include an allegation of a lack of informed consent. Patients argue they would have made a different treatment decision had they known of the possibility of a negative outcome. Obtaining informed consent is the best way to protect the patient and the doctor.

Provide all the information necessary for the patient to give his or her informed consent, including the risks of having no treatment or if the treatment could be performed by a specialist. An informed consent discussion should include the following:

- The nature of the recommended treatment.
- The risks, complications and benefits of that treatment including the likelihood of success.
- Alternatives to the recommended treatment, including no treatment, with their risks, complications and benefits.

- The outcome and benefits of diagnostic workups including their function in diagnoses.
- An explanation of the treatment plan sequencing.

How many potential risks and how many alternatives must be mentioned? While many states rely on a standard of what a "reasonable clinician" would provide or what a "reasonable patient" would need, this still leaves room for interpretation. Note the patient's preference and rationale for choice of provider in the treatment record, including if the patient refuses referral to a specialist.

Q: Should the advice my insurance carrier gives me regarding handling a difficult situation with a patient be part of the patient's record?

A: No. Written or verbal correspondence between you and your insurance carrier regarding problem patients should not be part of the patient

record and such documentation should be kept separate. There should be no reference to this communication in the patient's chart. Keep the information in a confidential file that may be needed should the matter escalate into a claim or lawsuit.

Q: I bought my practice from a retiring dentist five years ago. Since then, some patients only come in for the hygiene visit, refusing to allow me to examine them or to take X-rays. The staff has confirmed that the former owner allowed patients to come in for hygiene only. Am I obligated to continue this practice?

A: No. Allowing a patient to come in for hygiene only places you and the practice at risk. Establish best practices for your patients and do not follow a former protocol to dictate your treatment decisions. As a professional, you are bound to provide patients the best care possible. Educate patients of the importance of performing an exam or taking radiographs routinely.

Patients may be willing to sign a release form, releasing you from responsibility should an untoward result occur from failing to allow an exam or radiographs. Let patients know that as a professional, you cannot allow them to consent to substandard care.

Advise the patients that as the new practice owner, you are responsible for their oral health. Should the patient continue to refuse the exam or radiographs, consider dismissal from the practice.



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