



Referrals: What You Need To Know

Referring patients to outside providers is a regular part of practicing dentistry. Most commonly, referrals come from the need for specialty care outside of a general dentist's scope of practice. Regardless of the reason, referrals should always be made with the patient's best interest in mind.

continued on page 2

IN THIS ISSUE

Liability Considerations
for Practice Websites **6**

continued from page 1

Dentists can, and certainly have, faced liability claims stemming from negligent referrals. Successful referrals require careful consideration, strong communication, thorough documentation and proactive follow-up.

While some routine procedures and treatments can be done in a general dentist's office, others are referred out, such as orthodontia and oral surgery. The decision to refer requires careful evaluation and should be based on many factors, including the patient's oral and general health needs. A referral can take place at any time, including after an initial exam or evaluation, when a patient's advanced condition is noted or during the course of ongoing treatment.

Most important, the decision to refer takes into account the dentist's level of experience. Sometimes, it may be in the best interest of the patient to refer them to an outside provider who has more experience in a given procedure. When a general dentist does perform a treatment normally performed by a specialist, he or she is held to the same standard of care as that specialist. If a general dentist treats a patient beyond their skill level, they can be exposed to allegations of negligence.

According to the ADA's General Guidelines for Referring Dental Patients, "Appropriate referrals are an integral part of complete quality health care management. Referrals should be based on the education, training, interest and experience of the referring dentist and the unique needs of the patient." Referring a patient to an outside provider is, in essence, "vouching" for said provider. Therefore, it is essential to be familiar

According to the ADA, other reasons for referral include the following:

- Level of training and experience of the dentist
- Dentist's areas of interest
- Extensiveness of the problem
- Complexity of the treatment
- Medical complications
- Patient load
- Availability of special equipment and instruments
- Staff capabilities and training
- Patient desires
- Behavioral concerns
- Desire to share responsibility for patient care
- Geographic proximity of the specialist or consulting dentist

with the provider's clinical judgment and competence. A solid professional relationship is preferred, but otherwise, dentists should research any history of complaints or evidence of questionable care. It is reasonable and acceptable to independently assess the qualifications of specialists or consult with colleagues and solicit feedback before recommending a specialist.

Should a pattern of poor care emerge, dentists should cease referrals to that provider and consult with a new one. Dentists can face vicarious liability should they refer a patient to a provider who lacks skill or sound judgment. Specialists are, in essence, an extension of the referring dentist.

Patient safety must be the primary focus when making a referral. A dentist's credibility is on the line when referring patients to outside providers and they could face liability issues should patients encounter problems with that care.

In one case reported to The Dentists Insurance Company, a patient presented to his general dentist for an emergency toothache. The dentist conducted an exam on tooth No. 13, determined the tooth was in need of root canal therapy and initiated treatment. After removing the decay, the dentist noticed the tooth had a vertical root fracture and deemed it nonrestorable. He referred the patient to an oral and maxillofacial surgeon (OMS). On the referral slip, the dentist mistakenly indicated tooth No. 12 as the tooth to be extracted, rather than No. 13.

The OMS extracted tooth No. 12 as per the referral slip. After the extraction was complete, the OMS happened to look at the radiograph that the patient brought in with him and realized that tooth No. 13 was in need of extraction. He then proceeded to extract tooth No. 13, placing bone graft material at the sites for both tooth No. 12 and No. 13. His office billed the patient's insurance company for the treatment on both teeth, exhausting his insurance benefits and billing the patient for the excess balance beyond the insurance limits.

Unfortunately, the OMS did not call the general dentist to alert him of the inadvertent extraction that had taken place. It was not until the general dentist received the specialist's posttreatment follow-up report that he became aware of the situation.

The general dentist contacted the patient and invited him to come in for posttreatment follow up. The dentist offered to place an implant and restore tooth No. 12 at no cost. The patient accepted the proposal and left the office seemingly satisfied. However, a few weeks later, the office heard from an attorney requesting patient records. The next communication the general dentist received was notification that a lawsuit was filed, naming him and the OMS. The case ultimately resolved in the majority of the settlement being the responsibility of the OMS.

The contributing factors in this case represent the same factors in many cases related to referrals: communication, documentation and follow up. They are explained in more detail below.

Communication

Successful patient referrals depend upon strong communication between dentists and patients. Dentists should explain to the patient why the referral is needed for a particular treatment or condition. They must let the patient know that they will remain the primary dentist; therefore, they will be in contact with the specialist to ensure continuity of care and a safe and successful treatment outcome. They should explain what is expected from the specialist and encourage the patient to direct any questions to either provider.

To avoid miscommunication, it is always a good idea to provide a formal, written referral. TDIC offers sample referral letters at tdicinsurance.com/sampleforms. Referrals made over the phone or verbally should be followed up with a letter.

A referral slip should include the following information and a copy kept in the patient's chart:

- Name of the patient
- Date of the referral and the timeframe for completion of the referral
- Diagnosis and prognosis
- Copies of diagnostics performed
- Evaluation and treatment to date
- The reason for the referral
- The name and specialty of the outside provider
- The plan for additional care following treatment by the specialist
- A request for a posttreatment report and ongoing status reports, if indicated

Informed consent is also a crucial component of reducing risk related to referrals. Patients should be given all the information needed to make an informed decision about their care, including the decision to seek care from a specialist. Like any informed consent discussion, those concerning referrals 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

- An explanation of the treatment plan sequencing

Documentation

It's not enough to simply communicate with a patient. That communication must be documented. In fact, thorough documentation is the strongest defense in the event of a liability claim resulting from a referral. Documenting the evaluation, treatment and all discussions with the patient leading up to the referral is critical. The following should be kept in the patient chart:

- Copies of written communication, including referral letters
- Evidence of verbal communication, such as in-office conversations and phone calls
- Evidence of any consultations with the specialist
- Documentation of a patient's refusal or noncompliance
- Evidence of efforts to assist the patient in overcoming refusal or nonadherence
- Documentation of informed consent discussions
- Whether the patient has agreed to the referral

Follow up

Dentists are reminded that referring patients outside their practice should not be a case of "out of sight, out of mind." Their obligation to patients does not end once they walk out the door with a referral slip. Dentists must work with specialists to ensure a successful treatment outcome. If an issue or a problem arises, they must respond quickly and attempt to resolve the issue in a timely manner. Although specialists typically contact the referring dentist after treatment, the onus is on the general dentist to close the communication loop.

Once the treatment is completed, the specialty referral should report to the referral source the following:

- The date of treatment
- The treatment outcome
- Any modifications to the recommended treatment (if any)
- Any complications from the treatment
- Dates of any scheduled follow-up care

In the case outlined above, the general dentist failed to write the correct tooth on the referral slip, but the OMS had an independent duty to verify which tooth needed extraction by reviewing the radiograph prior to the procedure. If he was uncertain, he should have contacted the general dentist for clarification prior to initiating treatment.

Referral FAQs

Should I offer a refund if a specialist's work requires corrective treatment?

Offering to redo treatment or pay for out-of-pocket expenses incurred due to a specialist's error can diffuse a patient's anger. However, each situation must be evaluated on a case-by-case basis. TDIC recommends contacting its Risk Management Advice Line for guidance determining the best course of action to take in these situations.

No matter the barriers to care, it's important to educate patients about recommended referral and treatment and discuss the consequences of not complying. After exhausting these options, if the patient does not comply with a referral, dismissal is recommended.

Am I required to refer a patient to a specialist if I can perform the treatment myself?

There are many treatments that can be performed within a general dentist's office. Hundreds of routine treatments are performed every day without incident. But should an adverse incident occur, a liability claim can follow. Most of these claims stem from an allegation of a lack of informed consent. Patients have argued that they would have made a different treatment decision had they been given more information. While dentists are not obligated to provide referrals for procedures that can be completed in-office, they are required to provide the information a patient needs to make an informed decision — including the fact that the treatment could be performed by a specialist.

Should I dismiss a patient who refuses a referral?

When patients do not adhere to treatment recommendations or referrals and such noncompliance puts their oral health at risk, dentists can be accused of supervised neglect. When facing a patient who

is noncompliant, dentists should first find out what the barriers are to following through with care. Are there financial barriers? Fear or anxiety? No matter the reason, it is important to educate the patient about the recommended referral and treatment and to discuss the consequences of not complying. After exhausting these options, if the patient does not comply with the referral, dismissal is recommended. Carefully document all conversations with the patient that led to the decision, ensure the patient is not midtreatment and follow a formal dismissal protocol. Risk Management analysts can provide advice regarding your specific situation as well as sample withdrawal letters.

Referring patients to other providers isn't without its risk. But it is possible to curb those risks by following best practices. Referrals aren't something to be taken lightly, and dentists have an obligation to their patients to provide them with informed referrals, no matter the reason. Clear and open communication, thorough documentation and follow-up can go a long way in keeping your patients safe.

unparalleled.



Exceptional protection from people who understand your profession.

With a proud heritage of 39 years and counting, TDIC now delivers dentist-focused protection to more than 24,000 dentists in 15 states. Our success is due in no small part to the collective strength of our company, the trust of our policyholders and focus of our dentist-led volunteer board of directors.

It's our privilege to serve a growing community of dentists who are engaged in the bright future of their profession.

Protecting dentists. It's all we do.®

800.733.0633 | tdicinsurance.com | Insurance Lic. #0652783

Liability Considerations for Practice Websites

Marketing may be the last thing on your mind when juggling the many day-to-day aspects of running a dental practice. But the promotion of your practice, your services and yourself is a crucial element of any business ownership. Nowhere is this more essential than your practice's website.

Whether your website has been up and running for many years or you've only recently launched, it's a good practice to conduct a regular audit of your site to ensure it is compliant with state and federal regulations. Laws governing the online world change frequently, so you must stay informed to make sure your website keeps up. Whether you contract with a third-party vendor or assign the task to a staff member, the content of your site is ultimately your responsibility.

Your website is, in essence, a window to your practice. It's often the first point of contact for a potential patient. As such, the user experience should be positive and welcoming. Information such as office hours and services provided should be accurate. All links should work, and site functionality, such as online scheduling and contact forms, should be tested on a regular basis. It should be easy to navigate with simple menus and plain-speak content. Your site should also be responsive, meaning it's designed to automatically adapt based on screen size, device/platform or screen orientation.

Above all else, your website should follow all legal guidelines and regulations.

Copyright

Copyright infringement is by far the greatest liability risk for dental practice websites. Both copyright and trademark law apply to websites, and fines for violations can be steep. Using an image without permission, for example, can result in fines as high as \$30,000 for each infraction, depending on the circumstances. And these types of claims are on the rise.

One of the greatest risks comes from the use of images. It may not seem like a big deal, but right-clicking on an online image and uploading it to your site is an illegal, albeit common, practice. Dentists have been sued for using images without the owner's permission.

If you have contracted with a third-party website developer to build and maintain your website, they are likely already aware of copyright restrictions and will choose images accordingly. When selecting a vendor, make sure to have a written agreement that the developer has consent to use all copyrighted content. Additionally, the agreement should state that the website developer has full rights to use all of the photographs on the site and proof that licenses have been purchased.

Because dentists can be held liable for the content of their websites even if a developer posted the content, the agreement with a developer should include an indemnification provision whereby the developer will be responsible to the dentist for any damages and attorneys' fees incurred by a third-party claim as a result of the website developer's breach of the terms of the website development agreement.

Another consideration when revamping your practice's website is protecting yourself from cyberattacks. A site audit is a good time to change and strengthen passwords, back up your data, update antivirus and antimalware software and remind your staff of in-office cybersafety protocols. It's also a good time to check your Cyber Suite Liability coverage, which can protect you should your site be compromised. For more information, visit tdicinsurance.com/cyber.

Other liability risks

It may appear innocent, but offering a professional opinion on your website can be cause for a liability claim. If a dentist renders a professional opinion on a practice website, a claim could arise as the dentist may not have conducted a dental examination of a patient.

Licenses

If you or your staff have built or maintain your practice's website, a few basic principles can help mitigate the risk of a copyright violation. You must hold the appropriate license

(or permission) for all written and photographic content on your website. The most common way to obtain that license is by paying for images through stock photography websites. There are also many websites that offer images free of charge, but you must abide by the terms and conditions for their use; for example, providing attribution and linking back to the original owner.

The other option is to create the content yourself. Many dental practices take and upload their own photos to showcase their practice, their equipment, their staff and the end result of their work. After all, there's no better way to market yourself than before-and-after photos of happy, smiling patients. But if using a photo of a patient, you must first obtain permission. Using photos of patients without their consent can be cause for a claim. Even if a patient provides verbal approval, a written document is necessary to protect you in the event of a claim. TDIC provides downloadable image release forms at tdicinsurance.com/sampleforms.

The same goes for written content. If you are the author, copyright automatically belongs to you. Otherwise, you must obtain written permission to use the content. Even quoting data from studies or research without citing the original source can be cause for a copyright infringement claim.

In one case reported to TDIC, a dentist used before-and-after photos on his website to demonstrate his restorative work. The images were only of the patient's mouth and no patient-identifying information accompanied them.

However, when the patient saw the photos online, she became embarrassed. She didn't want others to know she had undergone restorative work. Though the patient had signed a release before treatment, the release did not specify possible use of the patient's photos. The patient demanded financial compensation for the unauthorized use of the photos. The situation could have been avoided had the doctor included a sentence in the release form regarding the use of photos.

Even with legal protection, the use of patient photos can be sticky to navigate. Not all patients are happy to be prominently featured online. Even if they've signed a release, they may not be aware of the full extent of the intended use. To keep the dentist-patient relationship strong, always be respectful of your patients' requests for removal.

Privacy

Both state and federal privacy laws, including HIPAA, outline requirements for dental practice websites. HIPAA-covered entities, including dental practices, must include a Notice of Privacy Practices. The notice must include a clear, user-friendly explanation of individual's rights with respect to their personal health information and the privacy practices you follow to protect your patients' information.

In addition, dental practices that are required to comply with the nondiscrimination rules of the Affordable Care Act must post its Notice of Nondiscrimination. The notice must include taglines in the top 15 non-English languages.

The California Online Protection Privacy Act requires websites that collect personal information to post privacy policies, even if they are based outside of California. These policies must contain specific elements and be transparent about how the practice collects, uses and discloses any information provided by the user.

Websites must be accessible to the visually impaired, and practices are required to include language on their websites that inform those with disabilities on how to seek help if they are unable to access something on the site. The language can instruct visitors to phone your office to have staff read content, provide transcripts of videos or assist with filling out online forms. It is important to train staff on the language in the link and how to appropriately respond to inquiries.

Other state and federal laws govern other information that is required to be displayed on dental practice websites. In California, for example, websites must prominently display staff names, license types and the highest level of academic degrees. Check with the dental board in your state to ensure your website is in compliance.

Is important to note that if you hire out to create or maintain your website, you, as the owner, are still ultimately responsible for its content. Your website is a direct reflection of your practice and it must be created and maintained with the same professionalism and care as other elements of your practice. By following a few basic guidelines and keeping abreast of the latest legal and regulatory requirements, it is possible to mitigate potential liability claims stemming from your practice's site.



Liability Lifeline

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

©2019, 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

Oregon Dental
Association

Washington State
Dental Association

Idaho Dental
Association

Also in:

Arizona, North
Dakota, Minnesota,
Montana and
Tennessee

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 confidential phone consultation with an experienced TDIC risk management analyst.
- Request a consultation at a time that's convenient for you at **tdicinsurance.com/RMconsult** or by calling **800.733.0633**.
- For Risk Management guidance in **Idaho, Oregon or Washington**, call **800.662.4075**.

Protecting dentists. It's all we do.®

Risk Management Advice Line | 800.733.0633 | tdicinsurance.com