
The National Society of Dental Practitioners and the Dentist's Advantage Insurance Program for Dentists

RISK MANAGEMENT ARTICLE

Terminating the Dentist/Patient Relationship

By: Mark Buczko, CPCU, CIC, RPLU

What happens if a patient shows up for an appointment inebriated? What if they become abusive to your staff? What if a patient is unwilling to follow a recommended course of treatment, repeatedly misses appointments, refuses to provide their medical history or is chronically late on their payments?

How do you terminate your relationship with a patient you don't want to do business with?

If handled incorrectly, such a situation may result in allegations of abandonment and litigation. In this article you'll learn when a dentist/patient relationship exists, what obligations that relationship entails and the process for terminating that relationship in professional manner.

When is the dentist/patient relationship established?

Once the dentist/patient relationship is established, as a medical professional, you have certain responsibilities you are required by law to observe. Take a look at the three situations below. Has a dentist/patient relationship has been established in any? In all?

1. You're at a colleague's office providing coverage while they are on vacation. One of their patients call. A tooth is giving them pain. You recommend they come in for treatment.
2. You receive a call from an individual you do not know. They inquire whether you are accepting new patients and what insurance you accept. They make an appointment.
3. You are at a friend's birthday party and one of their neighbor's learns you are a dentist and describes a problem they are having. You ask a number of questions and take a quick look in their mouth. You suggest a solution and invite them to call your office.

How the court system views the dentist/patient relationship can vary by state, but in general, it is defined as: "Once you provide professional advice, intending the patient to rely on it, you have established a dentist/patient relationship."¹

In situations #1 and #2 above the dentists offers assistance, but does not offer advice. In #3, though the encounter does not occur in an office setting, the dentist offers professional advice and a possible solution. Among the scenarios presented, this is the only case of having established a dentist/patient relationship.

How can breaking that relationship lead to litigation?

It can happen quite easily. Let's look at another situation, this one a real life case that resulted in a malpractice lawsuit against the dentist.

© *Dentist's Advantage, 2016* © *The National Society of Dental Practitioners, 2016*

Risk Management services are provided by Dentist's Advantage and the NSDP to assist the insured in fulfilling his or her responsibilities for the control of potential loss-producing situations involving their dental operations. The information contained in this document is not intended as legal advice. Laws are under constant review by courts and the states and are different in each jurisdiction. For legal advice relating to any subject addressed in this document, dentists are advised to seek the services of a local personal attorney. The information is provided "AS IS" without warranty of any kind and Dentist's Advantage and NSDP expressly disclaims all warranties and conditions with regard to any information contained, including all implied warranties of merchantability and fitness for a particular purpose. Dentist's Advantage and NSDP assume no liability of any kind for information and data contained or for any legal course of action you may take or diagnosis or treatment made in reliance thereon.

The National Society of Dental Practitioners and the Dentist's Advantage Insurance Program for Dentists

RISK MANAGEMENT ARTICLE

A dentist was placing a 4-unit bridge, from 12 – 15 on a 'difficult' patient when the patient swallowed the bridge. The dentist did not offer any suggestions, but simply said it is not likely that the bridge would pass through the patient's system naturally.

The patient went home, not sure what to do. Later that day she called the dentist and said she thought she needed to go to the emergency room. The dentist said, "Do what you have to do."

The patient went to the ER and the bridge was recovered endoscopically. Afterwards the patient tried several times to reach out to the dentist to schedule a follow-up appointment. The dentist refused to see the patient.

The frustrated patient contacted an attorney and filed a lawsuit alleging malpractice and abandonment. The insurance carrier could not find an expert witness willing to testify on the dentist's behalf. The case was settled prior to trial. The patient was paid \$27,500 by the dentist's insurer.

What qualifies as "abandonment"?

The legal definition of patient abandonment is, "... a form of medical malpractice that occurs when a physician terminates the doctor-patient relationship without reasonable notice or reasonable excuse, and fails to provide the patient with an opportunity to find a qualified replacement care provider."²

For abandonment to occur: a dentist/patient relationship must exist, the abandonment must occur when the patient is still undergoing treatment, the patient is not given sufficient time to find a replacement dentist, and the patient suffers an injury as a result.

How can the relationship be terminated successfully?

The following are the five ways the dentist/patient relationship can be successfully terminated:

1. Both parties mutually agree to end the relationship
2. The patient's course of treatment is completed
3. The dentist or the patient dies
4. The patient decides to unilaterally terminate
5. The dentist decides to unilaterally terminate

With #4, the patient may decide to terminate the relationship because they've moved or simply decided to change dentists. In the remainder of this article we will discuss #5, when and how the dentist can solely terminate the relationship without being accused of abandonment.

The expectations of the patient

To avoid allegations of professional negligence or abandonment, the dentist must be cognizant of the expectations of their clients. At minimum, the dentist should:

- Always have their patients' best interest in mind

© *Dentist's Advantage, 2016* © *The National Society of Dental Practitioners, 2016*

Risk Management services are provided by Dentist's Advantage and the NSDP to assist the insured in fulfilling his or her responsibilities for the control of potential loss-producing situations involving their dental operations. The information contained in this document is not intended as legal advice. Laws are under constant review by courts and the states and are different in each jurisdiction. For legal advice relating to any subject addressed in this document, dentists are advised to seek the services of a local personal attorney. The information is provided "AS IS" without warranty of any kind and Dentist's Advantage and NSDP expressly disclaims all warranties and conditions with regard to any information contained, including all implied warranties of merchantability and fitness for a particular purpose. Dentist's Advantage and NSDP assume no liability of any kind for information and data contained or for any legal course of action you may take or diagnosis or treatment made in reliance thereon.

The National Society of Dental Practitioners and the Dentist's Advantage Insurance Program for Dentists

RISK MANAGEMENT ARTICLE

- Communicate treatment options in terms they understand
- Ask for consent for all treatment, both written and verbal
- Perform dental procedures competently
- Maintain a professional office environment
- Work with them on the financial aspects of the relationship

Failure to meet your clients' expectations gives them ammunition they can use against you in the courtroom.

The expectations of the dentist

When making your case to end the relationship, it is important to be able to show how the patient failed to meet your expectations. At minimum, the patient should:

- Keep appointments as scheduled
- Comply with their treatment plan
- Comply with consent
- Cooperate with office staff
- Pay fees when due
- Provide complete and honest information regarding health issues

Legal requirements to consider

Before dismissing a patient, check your specific state requirements as there may be unique policies or regulations in your state. If you abide by the following legal considerations, you'll strengthen your case and help defuse any potential problems.

- Provide sufficient notice of dismissal:
 - 30 days is generally sufficient, though some states may vary; Georgia requires 45 days
 - Factor in time for certified mail delivery
 - Use a service that provides proof-of-delivery
- In the notice of dismissal state the reason(s) for the termination, such as:
 - Noncompliance with treatment or appointments
 - Verbal abuse directed at you, your staff or other patients
 - Nonpayment of fees
 - Patient fraud, such as seeking narcotics
 - Other forms of inappropriate behavior
 - A communication breakdown that makes it impossible to provide quality care
- You must provide care up to a logical point where the patient's health is not in danger
- Federal and state laws prohibit discrimination. You may NOT dismissing a patient from your practice due to:
 - Race, color, religion, gender, national origin

© *Dentist's Advantage, 2016* © *The National Society of Dental Practitioners, 2016*

Risk Management services are provided by Dentist's Advantage and the NSDP to assist the insured in fulfilling his or her responsibilities for the control of potential loss-producing situations involving their dental operations. The information contained in this document is not intended as legal advice. Laws are under constant review by courts and the states and are different in each jurisdiction. For legal advice relating to any subject addressed in this document, dentists are advised to seek the services of a local personal attorney. The information is provided "AS IS" without warranty of any kind and Dentist's Advantage and NSDP expressly disclaims all warranties and conditions with regard to any information contained, including all implied warranties of merchantability and fitness for a particular purpose. Dentist's Advantage and NSDP assume no liability of any kind for information and data contained or for any legal course of action you may take or diagnosis or treatment made in reliance thereon.

The National Society of Dental Practitioners and the Dentist's Advantage Insurance Program for Dentists

RISK MANAGEMENT ARTICLE

- Sexual orientation, marital status
- Disability, medical condition
- Help the patient find a new dentist:
 - While you may not want to specifically name a new dentist, provide resources such as the American Dental Association or your state and/or local dental association
 - Once the patient has a new dentist, promptly forward a copy of their records to the new office
 - Do NOT disparage the patient with their new dentist; explain that there were compatibility differences; you do not have to provide any details

Additional Risk Management Concerns

Even with the best laid plans, things can go awry and a patient can still file a lawsuit. Should that occur, your documentation, specifically the patient's chart, can help your defense. Here are some Do's and Don'ts for charting:

- Include objective observations and actions, such as:
 - Missed appointments
 - Payment issues
 - Non-compliance
 - Problems with staff
 - Aggressive or threatening actions
- Do not include any subjective comments, such as:
 - Disparaging remarks about your patient
 - Patient is a "drug seeker," "rude," "vulgar," "profane" or "crazy"

Even if a patient does not file a lawsuit, they can still file a complaint with your state board of dentistry. Ensure proper documentation is in place. Should a lawsuit or complaint be filed, immediately contact your professional liability insurer.

How handling a patient dismissal properly can avoid problems

Earlier in this article we discussed a real life case gone wrong. The dentist ultimately was sued and his insurance company forced to settle. Here is another real life case, of a dismissal done correctly.

An elderly female patient presents with extensive tooth loss. The dentist recommends extraction of the remaining teeth and fabrication of traditional dentures. The patient agrees with the treatment plan.

Several weeks later the dentures are delivered. Over the next eight weeks the patient returns to the office 28 times for adjustments. During the last several visits the patient becomes belligerent and abusive to the staff.

When asked to make yet another adjustment, frustrated, the dentist tosses the dentures on the tray, causing them to crack. The dentist hands the denture to the patient and tells her she will receive a check for the total amount of fees she has paid.

© Dentist's Advantage, 2016 © The National Society of Dental Practitioners, 2016

Risk Management services are provided by Dentist's Advantage and the NSDP to assist the insured in fulfilling his or her responsibilities for the control of potential loss-producing situations involving their dental operations. The information contained in this document is not intended as legal advice. Laws are under constant review by courts and the states and are different in each jurisdiction. For legal advice relating to any subject addressed in this document, dentists are advised to seek the services of a local personal attorney. The information is provided "AS IS" without warranty of any kind and Dentist's Advantage and NSDP expressly disclaims all warranties and conditions with regard to any information contained, including all implied warranties of merchantability and fitness for a particular purpose. Dentist's Advantage and NSDP assume no liability of any kind for information and data contained or for any legal course of action you may take or diagnosis or treatment made in reliance thereon.

The National Society of Dental Practitioners and the Dentist's Advantage Insurance Program for Dentists

RISK MANAGEMENT ARTICLE

The dentist tells the patient that, from his perspective, the dentist/patient relationship has been compromised beyond repair and she will be dismissed from the practice. The patient was appalled and threatened to sue the dentist.

The doctor follows up on the discussion with the patient by sending an appropriate dismissal letter, giving adequate notice, a professional explanation for his actions and offering suggestions for finding a replacement dentist. No legal action is taken by the patient.

While ending any relationship is never easy, you have every right to terminate your relationship with a difficult patient. Just be aware of the potential pitfalls, obey the law, adhere to the risk management suggestions outlined and if still unsure how to proceed, seek the advice of legal counsel.

Resources

¹Nolo Network, "What is patient abandonment?" www.nolo.com, November 2015.

²Laurance Jerrold, DDS, JD, "Dental Risk Management: The Doctor/Patient Relationship," *Dental Economics*, November 2015.

© *Dentist's Advantage, 2016* © *The National Society of Dental Practitioners, 2016*

Risk Management services are provided by Dentist's Advantage and the NSDP to assist the insured in fulfilling his or her responsibilities for the control of potential loss-producing situations involving their dental operations. The information contained in this document is not intended as legal advice. Laws are under constant review by courts and the states and are different in each jurisdiction. For legal advice relating to any subject addressed in this document, dentists are advised to seek the services of a local personal attorney. The information is provided "AS IS" without warranty of any kind and Dentist's Advantage and NSDP expressly disclaims all warranties and conditions with regard to any information contained, including all implied warranties of merchantability and fitness for a particular purpose. Dentist's Advantage and NSDP assume no liability of any kind for information and data contained or for any legal course of action you may take or diagnosis or treatment made in reliance thereon.