



Dental Professional Liability | Managing Adverse Events

Treatment of the Wrong Tooth

Please Note

A number of sample risk management forms and letters are available electronically in association with this manual, including written informed consent templates, patient termination letters, records release authorization forms and others. Dentist's Advantage-insured dentists may access these sample documents on the [Dentist's Advantage website](#).

Each PDF sample permits customization: copy and paste the sample text from the PDF template document to a text editing file (MS Word, Apple Pages, etc.); edit text and add your dental practice information where appropriate; save the file to create a blank form for ongoing use. If necessary, customize the text of the form template for specific patient needs. You may wish to include components from various sources if the templates provided do not meet the needs of your practice.

While a number of form templates are available, documents are not available for every dental procedure. We encourage you to create consent forms for those dental procedures you perform frequently. You may wish to use the sample consent forms as an outline and review the manual section on informed consent. Consider consulting your attorney to ensure that your forms comply with state informed consent statutes.

Risk management content and resources are provided for illustrative purposes only. The information is intended to provide only a general overview of the matters discussed and is not intended to establish any standards of care.

Treatment of the Wrong Tooth

Wrong tooth claims usually involve technical errors leading to the performance of dental procedures on the wrong tooth or damage to adjacent teeth. For example, root canal therapy may be performed on the wrong tooth because the rubber dam was incorrectly placed. The reason for this claim can be described as a technical error, which would be discovered immediately upon removing the rubber dam.

Wrong tooth claims also are brought following a dental procedure that was appropriately performed in accordance with the treating dentist's professional judgment. This may occur after a patient consults a second dentist whose philosophy or professional judgment contradicts that of the prior treating dentist. Alternatively, it may occur when patients have not been fully informed of either their dental condition or of the treatment provided.

In certain instances, treatment may be completed on the proper tooth. If more than one tooth in the same area requires treatment, however, the patient may question the necessity of the first treatment if he or she continues to experience symptoms. Although the dentist provided appropriate care for the treated tooth, a wrong tooth claim may arise. A common allegation in wrong tooth claims is that the patient did not provide his or her informed consent for treatment of the tooth in question.

Damages have been requested in wrong tooth claims for:

- Unnecessary past dental expenses
- Future medical or dental expenses to correct the error
- Disfigurement or loss of a body part
- Pain and mental anguish
- Lost wages

Wrong tooth claims resulting from a patient's **perception of error**, either related to the patient's own **opinion** or the opinion of a subsequent treating dentist, can be **defended competently** only with complete and **accurate dental records...**

Managing the Risks of Treating the Wrong Tooth

Recognizing risk factors

Technical errors are typically the reasons the wrong tooth is treated. Technical errors include:

- Inaccurate or incomplete review of dental records
- Lack of concentration
- Incorrect rubber dam placement
- Miscommunication of a referral

These technical errors may lead to:

- Extraction of the wrong tooth
- Initiation or completion of root canal treatment on the wrong tooth
- Preparation of the wrong tooth for restoration
- Incision performed on the wrong side or area of the mouth
- Removal of a crown or other restoration from the wrong tooth
- Errors by a referral dentist based on erroneous or misunderstood instructions from the referring dentist

Controlling the risks

To effectively manage the risk of wrong tooth claims, dentists should minimize the potential for technical errors, obtain the patient's informed consent before starting treatment, and fully document all dental procedures. Proper documentation of all of the above can help defend the dentist against allegations of improper dental treatment.

Also consider protocols to prevent wrong tooth treatments, such as a "time-out" policy, based upon the Joint Commission's Universal Protocol for preventing wrong site surgery. The Universal Protocol is applied in hospitals and outpatient surgery facilities to help prevent wrong site/wrong side surgeries. Integrating components of this approach and involving the entire dental team and the patient in the verification process are important. The online Safety Net Dental Clinic Manual provides information about the "time-out" approach (part of the Universal Protocol) and describes the Joint Commission and American Dental Association (ADA) recommendations for its application in dentistry. See the Adverse Events section of the bibliography for a URL to access this information.

Prevention

In order to reduce the risks of technical errors that result in treatment of the wrong tooth, dentists should:

- Document the reason(s) for extractions at the time of diagnosis. This information may help to prevent mix-ups at the time of surgery, whether in your office or the referral office.
- Review immediately prior to treatment all patient chartings, radiographs, treatment plans, prior treatment progress notes, and medical and dental histories.
- Consistently mount and label all film-based radiographs to minimize the risk of inadvertently misreading them.
- Double check the tooth number and position in the arch prior to initiating any treatment, especially if the intended treatment is irreversible, such as an extraction or endodontic treatment.
- Begin preparation of the tooth before placing the rubber dam to minimize the risk of isolating the wrong tooth.
- Write comprehensive and clear treatment plans, based upon a complete patient charting, examination findings and radiographic interpretation.
- Write progress notes that clearly record the patient's dental needs, identifying those needs that have been treated and those that remain to be treated.
- Provide a clear indication of the treatment to be performed and an accurate identification of the tooth or teeth involved whenever a referral is made to another dentist.
 - Use written referrals and place a copy of the referral in the patient's record.
 - If a referral must be duplicated or transcribed by staff for any reason, require confirmation of the instructions by the prescribing dentist.
 - Engage in a dentist-to-dentist discussion during telephone referrals to minimize communication errors that may occur by using staff personnel as intermediaries.
 - Provide a written follow-up to all telephone referrals. The referring dentist, in addition to the referral dentist, may be subject to malpractice litigation if miscommunication leads the referral dentist to perform dental treatment on the wrong tooth.

Dentists to whom patients are referred also can take steps to minimize technical errors that result in wrong tooth claims.

- Take a new radiograph if the needed diagnostic radiograph is unclear or unavailable from the referring dentist.
- Retain a copy of the radiograph used for treatment, or an original, if available, in the referral dentist's records.
- Contact the referring dentist for discussion or clarification if the treatment for which the patient was referred is unclear or questionable.

Many wrong tooth claims do not allege that the dental procedure was performed incorrectly. Rather, they allege that the patient did not authorize or consent to the procedure. Further, patients may assert that they would not have consented in advance had they been properly informed of the consequences.

In order to reduce the risks of patient misunderstandings resulting in claims alleging treatment of the wrong tooth, dentists should take the following steps.

- Obtain the patient's informed consent prior to treatment. Fully inform the patient or guardian about the recommended procedure and its risks, consequences and alternatives, as well as the ramifications associated with no treatment.
- If additional facts become known during a procedure that dictate a change in treatment, discuss these facts and recommendations with the patient before the treatment change is begun.
 - For example, if the patient has authorized a four-unit bridge, and after preparations have begun it is determined that the bridge should be extended to six units through two additional abutments, the patient must authorize the preparation of two additional teeth.
- Document in the patient healthcare information record all discussions related to informed consent through progress notes and/or informed consent forms. This documentation is especially important when the indicated treatment is irreversible.

Responding to an event

While there is no absolute means of precluding a malpractice claim following treatment of the wrong tooth, the following suggestions will minimize the potential of a claim for fraudulent concealment, which may substantially increase the value of a negligence claim and could result in a punitive damage award.

- If treatment is unintentionally performed on the wrong tooth, *inform the patient* of the error and of any immediate/specific corrective action you recommend or will perform, as well as procedural corrective action(s).
- The specific treatment corrective action may be to place a restoration in an erroneously prepared tooth or to refer the patient to an endodontist for completion of root canal treatment begun on the wrong tooth.
- The process of root cause analysis will help lead to procedural corrective action, which should be addressed thoroughly and quickly. This process and the response answers the questions; "what went wrong?" "why did this occur?" and "how will this error be prevented in the future?"
- Do not intentionally withhold information from a patient about a known error. Most patients will eventually discover the error.
- Do not attempt to conceal the error from the patient in the hope that the patient will discover the error only after the statute of limitations has expired. There is no clear statute of limitations for fraudulent concealment.
- Document in the patient healthcare information record what the patient was told about the error and your proposed corrective action.
- Do not bill the patient for a procedure performed in error. Doing so can provide motivation for the patient to file a malpractice claim.

Documentation

In wrong tooth claims, the patient's attorney will request the dentist's records. The patient healthcare information record should thus include:

- A clear, comprehensive examination charting
- The correct treatment plan
- Receipt of the patient's informed consent for the procedure
- Any referrals or discussions about referrals. (If the claim is related to the treatment of the wrong tooth, the patient may allege that the injury would have been avoided if a specialist had performed the treatment.)
- The dentist's actions following the treatment of the wrong tooth, including:
 - Corrective procedures recommended and/or performed
 - The result of the corrective procedures

Wrong tooth claims resulting from a patient's perception of error, either related to the patient's own opinion or the opinion of a subsequent treating dentist, can be defended appropriately only with complete and accurate dental records justifying the treatment performed. Optimally, these records would include medical and dental histories, radiographs, diagnostic casts, laboratory exams, informed consent documentation, charting, progress notes, clinical photographs, documented referral communications, documented recommendations for second opinions and documentation of all pertinent discussions with the patient and other consulting healthcare providers.

Risk management to minimize the frequency and severity of wrong tooth claims is best achieved by proper diagnostic and procedural techniques and thorough recordkeeping.

For more information call Dentist's Advantage
at 888-778-3981, or navigate to the
Dentist's Advantage website Risk Management section.



In addition to this publication, CNA and Dentist's Advantage have produced additional risk control resources on topics relevant to dental professionals, including: newsletters; articles; forms; letters; and claim scenarios.

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