Dental Risk Management: The Doctor/Patient Relationship

A Peer-Reviewed Publication
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Educational Objectives
The overall goal of this course is to provide the reader with information on various legal topics that have been the basis of liability for actions against dentists. Upon completion of this course, the reader will be able to do the following:
1. List and describe the contractual “duties” that a dentist owes his or her patients.
2. List and describe recognized legal justifications for terminating the doctor/patient relationship.
3. List and describe the differences between termination and abandonment of the doctor/patient relationship.
4. List and describe when and how discontinuation of active treatment may occur.

Abstract
The nature of the doctor/patient relationship essentially forms a simple contract, with contractual duties existing on the parts of both the dentist and the patient. Establishing a doctor/patient relationship may take place formally in the office setting or informally, such as by giving verbal advice in a social setting. There are legal ways in which to terminate a doctor/patient relationship, and it is important to follow a number of steps to establish this and to avoid being found to have abandoned a patient. In addition, there are valid and legal reasons for discontinuing active treatment of a patient. Hypothetical situations in this article demonstrate important elements of dental risk management with respect to the doctor/patient relationship.

Introduction
In order for a patient to succeed in a malpractice suit against a dentist, the plaintiff (the patient) must prove that the defendant (the dentist) had a duty to conform to an established standard of care, that the duty was breached, and that the breach of the duty was the proximate or direct cause of any injuries sustained. There can be no duty owed a patient unless a doctor/patient relationship has been established. This article deals with the establishment of this relationship and how to legally and ethically terminate it.

The Contract
A very basic but useful definition of a tort is that it is a civil wrong, based on a special relationship or implied by law. In the dental health care setting, this special relationship is the consensual one between the dentist and the patient. The nature of this doctor/patient relationship essentially forms a simple contract. In essence, patients seek professional services from a practitioner, with the expectation that their professional needs will be addressed, resulting in a “cure” of some type. The doctor, on the other hand, consensually agrees to treat the patient, with the expectations of effecting such a “cure” and receiving compensation for the professional services rendered. As with most contracts, there exist responsibilities and obligations on the part of each party. The contractual duties that a dentist owes his or her patients are as follows:

- The dentist and his/her staff will be properly credentialed, registered, and/or licensed.
- Neither the dentist nor his/her staff will practice beyond the scope of duties allowed by their respective licenses, as defined by law.
- The dentist will employ, appropriately train, and adequately supervise competent personnel.
- The dentist will not use experimental procedures on patients, nor will he/she undertake to perform procedures for which he/she is not qualified.
- The dentist will keep current with scientific and technological advances within his/her field.
- The dentist will obtain patients’ informed consent prior to treatment and again should the clinical situation warrant it.
- The dentist will be reasonably available for emergencies and will not abandon patients.
- The dentist will charge a reasonable fee for services rendered and will complete care in a timely manner.
- The dentist will keep patients informed as to their clinical progress and will maintain appropriate and accurate records of the treatment rendered.
- The dentist and staff will maintain patient confidentiality.
- If necessary, appropriate consultations and referrals will be made.
- The dentist and staff will comply with all regulatory rules and regulations pertaining to the scope of his/her practice, as defined by the applicable law, and will abide by the Code of Ethics.

All the above are examples of implied duties that dentists owe their patients. These obligations should be contrasted with those listed below – the implied duties that patients owe their dentists:

- All instructions will be followed, e.g., postoperative instructions; home-care instructions; cooperation with treatment such as wearing elastics, controlling diet, conducting oral hygiene, etc.
- Appointments will be kept.
- Fees for services will be paid.
- Patients will conform to generally accepted modes of behavior.
- Patients will be truthful regarding their health history and other administrative inquiries.

Now that all the rights and obligations of both parties are known, we can apply them to the dentist/patient relationship.

Establishing the Doctor/Patient Relationship
It is quite easy to establish a dentist/patient relationship. This can occur quite informally, such as when a person attending a cocktail party, upon finding out you are a dentist,
asks for your opinion concerning a dental problem. If you offer professional advice intending the patient to rely on it, and that person does so to his/her detriment, you have just established a legally recognized professional relationship with the patient. If, because of your actions, it is found that a doctor/patient relationship exists, the diagnostic treatment you provided and/or your professional opinion related to the patient’s concern(s) would now be judged according to the appropriate standard of care. Considerations such as whether you formally examined the patient, whether the activity occurred in an out-of-office setting, and whether you charged a fee for your services are all quite irrelevant.

Where you offer professional advice — whether in-office or informally in an out-of-office setting — is irrelevant for the establishment of a doctor/patient relationship.

Practitioners often wonder whether they are required to accept everyone who presents themselves to their office for treatment as a patient. No, you’re not! Courts have routinely stated that professional practitioners are not in the same category as common carriers or innkeepers and need not open their doors to all who seek their services. You are, however, prohibited from discriminating against and refusing services to any person based solely on the fact that he/she might be a member of one of many legally protected classes of people. Some of the more common examples leading to charges of illegal discrimination are based on refusing to treat patients because of their race, religion, gender, sexual orientation, national origin, handicapping condition, etc. However, it is legal to discriminate based on such criteria as limiting one’s practice to a particular specialty; the inability of the patient to assume the financial obligations associated with treatment; and a patient’s inability to abide by reasonably constructed office protocol, rules and regulations, etc. This holds true even when the person is a member of a protected class, since the discrimination is such that it would apply to everyone evenhandedly. Obviously, the caveat here is that the onus to prove that one engaged in a legal form of discrimination rests with the dentist.

**Terminating the Doctor/Patient Relationship**

One of the more difficult risk management issues is terminating the doctor/patient relationship. This task can often lead to legal problems if not handled in an appropriate manner. There are several recognized legal justifications for terminating the doctor/patient relationship:

- Both parties agree to end it.  
- The patient is cured or a course of treatment is completed.  
- The dentist or the patient dies.  
- The patient decides to unilaterally terminate.  
- The dentist decides to unilaterally terminate.  

Examples of the first are when the patient’s employer purchases a new dental benefits plan for his/her employees and the current dentist is not a member, or when a patient moves out of the area. In both situations, the parting is usually amicable and not problematic. The second and third are both self-explanatory; however, the second carries the caveat that the patient should be made aware of the fact that the course of treatment has been completed. In the fourth scenario, the patient essentially abandons the doctor, usually over fiscal, administrative, management, or personality issues, as well as unhappiness with the results of the treatment rendered. However, it is the last one that causes practitioners the greatest degree of consternation. In order to unilaterally terminate a patient from your practice and not run the risk of abandoning the patient, the following procedure should be followed:

1. The patient must be given sufficient notice of the dentist’s intent to withdraw as the practitioner of record. A letter to this effect should be sent both by Certified Mail with a return receipt requested, as well as by regular mail, using a certificate of mailing. Using both methods and documenting this fact assures that the patient was either notified or a valid attempt to do so was made.
2. This letter should inform the patient of the reason(s) you are terminating your professional relationship with him/her. These legally accepted reasons are based on the premise that the patient breached one or more of the five obligations he/she owed you implicit in the doctor/patient “contract.”
   - The patient not following instructions or cooperating in care;  
   - All the times the patient broke, missed, and/or canceled appointments;  
   - The patient’s failure to meet his/her financial obligations to compensate you for the professional services you rendered, etc.;  
   - All instances when he/she was abusive and/or disruptive to the staff or to others in the office; and  
   - Instances where the patient was less than forthcoming regarding his/her medical status, history, or administrative inquiries.
3. If the patient is at a point in treatment such that continued care is still required, he/she should be strongly urged to seek it. You should state in the letter that you will provide him/her with adequate time and assistance to seek substitute or alternative care. Give the patient notice of a specific time frame during which he/she should seek out a new dentist, e.g., 45 days. This time period will vary depending upon whether one is a generalist or a specialist, as well as on the geographic and temporal availability of other practitioners. During this period of time you should inform the patient that you will be available for emergency care or consultations, or to offer a referral, if necessary.
Abandonment of the Patient

One question that always looms is, if a dentist does dismiss a patient from his/her practice, doesn’t that act in and of itself constitute the tort of abandonment? The answer is a qualified no. Abandonment may be defined in the following ways:

- Not giving the patient any further appointments or refusing to treat him/her before his/her course of treatment is completed, without having a legally recognized reason to do so. There is an exception: You cannot dismiss a patient who is in extremis even if you have a legally recognized basis for terminating the doctor/patient relationship. Thus, unless a patient of record is in a life-threatening situation, is bleeding profusely, is suffering from significant swelling, is in excruciating pain, etc., you have a legally recognized right to terminate the doctor/patient relationship upon providing proper notice and following accepted protocol, should you choose to do so.

- Not being available to a patient who requires follow-up therapy. Thus, performing a surgical procedure that has a high probability of postoperative negative sequelae, being unavailable for whatever reason, and not providing for substitute or emergency coverage should the negative sequelae materialize have been viewed as patient abandonment. There is an exception: You cannot extend or prolong treatment for nonclinical reasons, e.g., past-due accounts.

Abandonment is very difficult for the patient to prove if you follow the guidelines previously stated and have sufficient documentation to support your action. This brings us to the distinction between terminating the doctor/patient relationship and discontinuing treatment.

Discontinuing Active Treatment

Doctors have the unfettered right to discontinue active treatment if, in their best judgment, the patient’s best interests are served by doing so. This can be done without running the risk of having abandoned the patient. The classic example of this occurs in the orthodontic setting. If during active treatment the doctor discovers negative sequelae such...
as decalcifications, periodontal breakdown, root resorption, caries, or TMD, the doctor may decide that it is appropriate to discontinue active treatment rather than stay the course, risk exacerbation of the negative sequelae, and subsequently cause severe injury to the patient. In this circumstance, treatment is discontinued, but the patient remains a patient of record. Rather than dismissing the patient from the practice, the doctor may follow the results, such as they are, with the intention of re-initiating treatment once the patient’s status warrants the resumption of care, or, if treatment has to be stopped indefinitely or permanently, a decision has to be made to forgo or employ a specific retention modality. In other words, the doctor/patient relationship is ongoing. The patient must, of course, consent to the discontinuation of treatment. If he/she refuses, then the doctor always has the option of terminating the doctor/patient relationship based on the patient’s failure to follow medically necessary recommendations.

**Hypothetical Risk Management Problem and Analysis**

Examine the following hypothetical problem and identify the risk management issues presented.

My name is Dr. Doesmost Things. I practice in Your-town, USA. I perform all phases of general dentistry except molar endodontics, hard-tissue impaction surgery, implants, and sophisticated orthodontics. The other day, Mr. Painin DeButt came to my office stating that he had a toothache in a back molar. His former dentist had recently died, and now he needed a new dentist. He told me that at his last dental appointment, his prior dentist said that all work had been completed except for some on one tooth, which was the one the patient was presently complaining of. He said he knew he needed a root canal, but he kept putting it off because he always heard it was a painful procedure. I don’t like Mr. DeButt or people like him, and I’m not going to accept him as a patient. I have had enough trouble with his kind in the past.

The last person like Mr. DeButt that I treated was Ms. Constantly Tardy. She was always either late or just never showed up for her appointments. She never followed any home-care advice or my postoperative instructions. On top of that, it was always a fight just to get paid.

I tell you, these people always cause problems. I was finally able to get rid of Mr. DeButt because he lost his job and moved out of state to where the job market was a little better.

Last week while I was watching the kids play soccer down at the school yard, one of the other parents, Iwanta Freebe, a local attorney, came over and we got to talking.

I told him about not accepting Mr. DeButt as a patient, and he said I was lucky that I didn’t get sued for illegal discrimination. I told him I never considered it. I mean, don’t I have the right to treat only those patients whom I want to treat? Well, we got to talking some more, and I asked him some legal questions regarding what to do in the future about such patients, and he gave me a few ideas. He then asked me some questions about what to do about some dental problems and a swelling he was having, so I told him what I thought he should do.

The next thing you know, Mr. Freebe is suing me because the advice I gave him was wrong, he developed some weird infection in his throat, and had to be hospitalized for a few days. I mean, how was I to know how bad an infection he had? We were out on the soccer field; I couldn’t take X-rays or anything. I just told him what to do based on what he told me. Mr. DeButt, Ms. Tardy, and Mr. Freebe: three people I can live without.

**Identification of Risk Management Problems**

1. Possible civil rights violations by refusing treatment if the individual was a member of a legally protected class of people.
2. Poor patient management regarding recognition of facts, allowing for termination of the dentist/patient relationship.

**Analysis of Risk Management Problems**

1. Under both federal and state law, a dental office is a place of public accommodation. Therefore, dentists are prohibited from discrimination regarding patient acceptance if such discrimination is based solely on the fact that the patient is a member of a protected class of people. Generally speaking, one cannot discriminate solely on the basis of such issues as race, religion, national origin, gender, handicapping condition, etc. One can, however, refuse to accept patients for other reasons. The burden of proving that the discrimination was legal falls on the doctor. Since Mr. DeButt needed a root canal on a posterior tooth, and since Dr. Things didn’t perform molar root canals as part of his practice, he could legally decline to accept Mr. DeButt as a patient on that basis, without being subject to charges of illegal discrimination to which he otherwise may or may not have been found liable.

**In declining patients, the burden of proving that the discrimination was legal falls on the doctor.**

2. The facts revealed that Ms. Tardy breached at least three implied covenants owed Dr. Things as a result of an
established dentist/patient relationship: (1) not following postoperative instructions, (2) not keeping regularly scheduled appointments, and (3) not paying for professional services rendered. These breaches provided a legal basis that Dr. Things could have used to terminate his professional relationship with Ms. Tardy. In order to effectively do that, Dr. Things would have had to provide documentation via written notice of his intent to withdraw as Ms. Tardy’s dentist. Ms. Tardy should also have been informed of the need for continued treatment. Dr. Things’s withdrawal letter would have had to indicate his availability for a limited but reasonable time to provide emergency treatment, etc., and also that upon written request, Ms. Tardy’s records would be transferred to her or to a subsequent treating practitioner.

3. The facts of this case also reveal how easy it is to establish a dentist/patient relationship. All that is required is to proffer a professional opinion on which you expect the patient to rely. Irrelevant factors include whether a complete examination was performed, whether a fee for the services rendered was charged, and whether the professional services were rendered in an office setting. Dr. Things provided Mr. Freebe with professional advice for a dental problem. He believed his advice was correct, and he expected the patient to rely on the information provided. Apparently, Dr. Things was incorrect, resulting in Mr. Freebe suffering an injury for which he now seeks monetary damages.

If a practitioner is not willing to assume the responsibility and exposure to risk accompanying the provision of professional advice given in an out-of-office setting, then prudent risk management dictates not providing such an opinion.

Summary
The contractual obligations and duties of both patients and dentists must be understood within the doctor/patient relationship and the contract that this represents. By understanding the significance and ramifications of the contractual duties, dental risk management can be used to control situations such as terminating the patient/docotor relationship and discontinuing active treatment to minimize the risk of being sued by the patient.

References
1. Irvin v. Smith, 31 P3d 934 (Kan. 2001)
3. 61 Am Jur 2d Physicians, Surgeons, and Other Healers; Sec. 130
5. McGulpin v. Blessner, 43 NW2d 121 (Iowa 1950)
6. Weiss v. Rojanasathit, 975 SW2d 113 (Mo. 1998)
10. Urrutia v. Patino, 297 SW 512, App 10 SW2d 582 (Texas 1927)

Author Profile
Dr. Jerrold is a third generation orthodontist who is currently the Dean and Program Director of the Jacksonville University School of Orthodontics. He practiced both orthodontics and law on Long Island, New York before transitioning into full time academia. He received his predoctoral training at NYU, completed a general practice residency, and then returned to NYU for his orthodontic training. He received his Juris Doctor degree from Touro University Fuchsberg School of Law and followed that up with a certificate program in Bioethics and the Medical Humanities from Columbia University.

Larry is the Section Editor for Litigation, Legislation and Ethics in the AJODO. He has contributed over 150 articles on clinical, dentolegal and ethical topics to the literature and has presented approximately 200 lectures for professional organizations across North America. In addition, he has been a risk management consultant to numerous dental malpractice insurance carriers across the country.

He loves golf and enjoys getting worse as the years go by. An avid reader he dreams of writing the great American novel one day. He and his wife Barbara live in Jacksonville with Duke, their golden retriever / chow mix. Their two children have chosen to remain in New York. Neither the kids nor the dog plans on going into orthodontics.

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   a. had a duty to conform to an established standard of care
   b. that the duty was breached
   c. that the breach of the duty was the proximate cause of any injuries sustained
   d. all of the above

2. A tort is a civil wrong, based on a special relationship or implied by law.
   a. True
   b. False

3. The nature of the doctor/patient relationship essentially forms a simple contract.
   a. True
   b. False

4. The contractual duties that a dentist owes his or her patients include that __________.
   a. neither the dentist nor his/her staff will practice beyond the scope of duties allowed by their respective licenses, as defined by law
   b. the dentist will keep current with scientific and technological advances within his/her field
   c. the dentist will charge a reasonable fee for services rendered and will complete care in a timely manner
   d. all of the above

5. It is a choice rather than a contractual duty that a dentist will be reasonably available for emergencies.
   a. True
   b. False

6. A dentist may use experimental procedures on patients provided he/she believes this to be appropriate care.
   a. True
   b. False

7. It is a contractual duty that the dentist and his/her staff will be properly credentialed, registered, and/or licensed.
   a. True
   b. False

8. Patients’ implied duties that they owe their dentist include that __________.
   a. appointments will be kept and fees for services will be paid
   b. they will conform to generally accepted modes of behavior
   c. all instructions will be followed
   d. all of the above

9. Patients are entitled to withhold information regarding their health history from their dentist, and would not be failing their implied duties.
   a. True
   b. False

10. A dentist/patient relationship can be formed informally, such as when attending a cocktail party, with/without intending to do so.
    a. True
    b. False

11. Any time you offer professional advice intending the patient to rely on it, and that person does so to his/her detriment, you have just established a legally recognized professional relationship with the patient.
    a. True
    b. False

12. Where you offer professional advice is irrelevant for the establishment of a doctor/patient relationship.
    a. True
    b. False

13. It is legal for a dentist to discriminate based on such criteria as __________.
    a. limiting one’s practice to a particular specialty
    b. a patient's inability to abide by reasonably constructed office protocol
    c. the inability of the patient to assume the financial obligations associated with treatment
    d. all of the above

14. The onus to prove that one engaged in a legal form of discrimination rests with the patient.
    a. True
    b. False

15. One of the more difficult risk management issues is terminating the dentist/patient relationship.
    a. True
    b. False

16. __________, this is a legal justification for terminating the doctor/patient relationship.
    a. If the patient is cured or a course of treatment is completed
    b. If the dentist or the patient dies
    c. If the dentist or the patient unilaterally decides to terminate the relationship, or both bilaterally agree to end the relationship
    d. all of the above

17. The patient must be given sufficient notice of the dentist’s intent to withdraw as the practitioner of record.
    a. True
    b. False

18. If you terminate the doctor/patient relationship, you are legally required to make a specific recommendation to a subsequent treating provider.
    a. True
    b. False

19. You cannot make a referral to a practitioner you know to be unqualified or impaired in some manner.
    a. True
    b. False

20. If you are duplicating a patient’s records for the patient to take, you cannot legally charge the patient for these.
    a. True
    b. False

21. When you are attempting to terminate the doctor/patient relationship, it may not be prudent to place a financial stumbling block in the patient’s way.
    a. True
    b. False

22. It is important to continually document, whether in writing or digitally, in the patient’s chart all instances relating to issues that include __________.
    a. the patient not following instructions or cooperating in care
    b. all instances when he/she was abusive and/or disruptive to the staff or to others in the office
    c. all the times the patient broke, missed, and/or canceled appointments
    d. all of the above

23. If you change your mind after you have dismissed patients from your practice, it is acceptable to subsequently accept them back as patients.
    a. True
    b. False

24. If you do not give a patient any further appointments or refuse to treat him/her before his/her course of treatment is completed, this act constitutes the tort of abandonment.
    a. True
    b. False

25. You have a legally recognized right to terminate the doctor/patient relationship upon providing proper notice and following accepted protocol.
    a. True
    b. False

26. If you wish to discontinue a patient’s active treatment, and if in your best judgment the patient’s best interests are served by doing so, you must obtain a second opinion before doing so.
    a. True
    b. False

27. The patient must consent to the discontinuation of treatment.
    a. True
    b. False

28. The risk of possible civil rights violations by refusing treatment if the individual was a member of a legally protected class of people does not apply to a dentist because he/she has a right to choose which patients to treat.
    a. True
    b. False

29. In declining patients, the burden of proving that the discrimination was legal falls on the doctor.
    a. True
    b. False

30. Prudent risk management dictates not providing professional advice in an out-of-office setting.
    a. True
    b. False
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EDUCATIONAL OBJECTIVES
1. List and describe the contractual “duties” that a dentist owes his or her patients.
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