

Liability Implications Associated With Jousting in Dentistry

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Definition

In dentistry, jousting refers to a dentist being critical of another dentist's treatment and assuming inadequate care was provided to a patient. In turn, this perspective by one dentist may motivate a patient to allege malpractice against the dentist that provided the care.

Closed Claims Analysis

To illustrate how jousting can lead directly to malpractice claims, an analysis of MedPro Group dental cases closed between 2009 and 2022 (with at least \$50,000 total dollars paid in expense and indemnity) indicated that jousting accounted for 18 percent of all cases and 18 percent of total dollars paid.¹ Below are details of this dental case analysis:

- Jousting claims outpaced the average growth of all cases year over year (average growth over year was 21 percent).
- Jousting claims were noted most often in implant cases (23 percent), restoration cases (19 percent), and root canal cases (15 percent).
- Jousting was noted most often in conjunction with documentation-related factors (34 percent of all jousting cases involved documentation); additional related factors included informed consent (16 percent) and patient selection issues (18 percent).
- Cases with both jousting and documentation risk factors are 26 percent more expensive to resolve than the average of all cases.

Possible Outcomes

As the case analysis above shows, jousting can produce many negative outcomes. Further, patients may recall their previous experience in a subjective — not objective — manner, so

dentists may not hear all the facts. They may only hear part of the story as well, so they should consider communicating with previous dentists to get more facts and see previous dental records. Notations in the previous dentist's records regarding the patient's cooperation and compliance may be enlightening and prove useful in terms of treatment planning, patient education, and informed consent.

If a dentist makes assumptions and concludes subpar care was provided by another dentist when examining a new patient, a patient may be influenced by the jousting and may seek retribution by filing a lawsuit. If the patient asserts a claim against the previous dentist, then the dental records from both dentists will be examined in a malpractice case. The new dentist may also be called as a material witness in a court trial or a plaintiff's attorney considering the dentist's criticism as expert testimony.

Not only can a dentist become part of a lawsuit, but also professional relationships between dentists can become strained and compromised and a dentist's professional reputation can be destroyed. They may not have the opportunity to explain the care rendered, which can lead to loss of practice and finances.

Jousting also may change the way patients perceive dentistry and pursue dental care. They may lose faith and trust in dentistry as a result and discontinue treatment, which may affect their health.

Ethical Perspective

According to the American Dental Association (ADA) Code of Ethics, "Patients should be informed of their present oral health status without disparaging comment about prior services."² Therefore, jousting is considered unethical.

It is incumbent upon every dentist to conduct themselves in an ethical and professional manner and to always do and say what is in the best interest of the patient's health. However, treating new patients with previous negative experiences can present challenges, so it is best not to speculate or guess when discussing previous treatment. Although a dentist's clinical skills and decisions are essential to patient safety and satisfaction, other unknown variables may have played an important role.

Strategies to Consider

To avoid the liability implications associated with jousting, following are some strategies dentists can use:

- Be wary of multiple opinions and patients with a long history of previous dentists.
- Ask the patient to describe the previous treatment and recommendations received, including any medications prescribed and how they were taken. Be cautious of patients who will not reveal the previous dentist's name nor give permission to contact that dentist.
- If a patient asks whether a previous dentist provided inadequate care, do not comment on that treatment and instead specify what you found upon examination and your recommendations.
- Do not document anything in the patient record that reflects criticism of the previous dentist's treatment. Simply state what can be substantiated.
- Follow dental ethical guidelines including the ADA Code of Ethics mentioned previously.
- Be thoughtful toward your fellow colleague/dentist, and don't perceive the situation as a competitive one.
- Be sure to practice thinking rationally and morally. Be more diligent and practice optimum restraint in selecting your words, especially about fellow dentists.
- Maintain the best interest of the patient as the top priority, but not at the expense of the dentistry profession and professional ethics.

In Summary

Most dentists have seen situations of past dental care that seemed inappropriate and ineffective. They have also heard patients relay unsupported, critical comments about another dentist's care, which can erode patient trust and compliance as well as increase the dentist's liability exposure. Dentists should be cautious about what words they use about other dentists and uphold dental ethical guidelines to avoid any jousting.

Resources

For more information, please see the module on jousting in MedPro's Dental Risk Focus continuing education series at www.medpro.com/jousting-in-dentistry-od. This program reviews two case studies and offers .5 hour of continuing dental education (CDE) credit.

Endnotes

¹ MedPro Group dental cases closed with \geq \$50,000 total dollars paid (expense + indemnity), 2009–2022.

² American Dental Association. (n.d.). *ADA principles of ethics and code of professional conduct*. Retrieved from www.ada.org/en/about-the-ada/principles-of-ethics-code-of-professional-conduct/justice

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