

## Avoiding Allegations of Negligent Referral in Dentistry

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Dentists can be accused of “negligent referral” if they refer patients to specialists who mishandle the patients’ cases and cause injuries. This article examines the allegation of negligent referral and offers strategies for how dentists should handle referrals. Following is a case example in which a primary care dentist was accused of negligent referral.

### Case Example: Referral for Removal of an Impacted Molar

Dr. C was a general dentist who had treated a male patient since he was a small child. In his teenage years, the patient began having trouble with his molars. Dr. C examined him and determined that one of the molars was horizontally impacted. Removing a horizontally impacted molar was outside of Dr. C’s scope of expertise, so she referred the patient to Dr. H, a local oral and maxillofacial surgeon whom Dr. C had known and referred to for many years. Although Dr. H used an appropriate method and all necessary care while removing the molar, the patient suffered damage to his lingual nerve (a recognized risk of this procedure). The patient sued Dr. H for malpractice and Dr. C for negligent referral to Dr. H.

In this case, it appears that Dr. C made an appropriate referral for an appropriate reason. Yet she was sued for negligent referral. However, no negligence occurred in this referral. The fact that a provider refers a patient to a certain specialist, and the patient subsequently suffers a suboptimal outcome as a result of treatment from that specialist, does not provide a basis for an allegation of negligent referral. This is true when the patient suffers a recognized complication of a procedure, or even when the specialist makes a mistake, resulting in a patient injury.

Negligent referral occurs when the dentist does not use appropriate care in determining that a referral is necessary or in referring the patient to a qualified specialist – e.g., if the referring provider *knew or should have known* that the specialist was not competent to render the needed care. Lack of competency might result from various factors. For example, the necessary care might be outside the specialist’s scope of practice, or an impairment might jeopardize the specialist’s ability to provide safe care (e.g., an illness, injury, substance abuse, or advanced age).

Every specialist has cases that result in suboptimal outcomes and occasional cases in which errors are made. That does not – in and of itself – make the specialist an inappropriate referral resource. Again, the allegation of negligent referral only applies when the referring provider has reasonable grounds to believe that a patient will have a suboptimal outcome as a result of the specialist’s treatment.

In the previous case example, the patient might have had grounds for a negligent referral allegation if Dr. C had referred the patient to a specialist who had no expertise in, or experience with, removing horizontally impacted molars.

## **Strategies to Avoid Allegations of Negligent Referral**

One effective way to avoid allegations of negligent referral is to give patients choices related to their care. Although occasionally a situation might occur in which there is only “one person for the job,” generally more than one specialist is available, even if some travel is involved. If the primary care dentist knows of several competent specialists in the area, then he/she should provide the patient with a list of these specialists.

The primary care dentist also might suggest that the patient contact his/her insurance carrier to obtain specialist recommendations (and to verify coverage). The dentist also might consider referring the patient to a local dental society to see whether the group recommends any particular specialists. Finally, especially if the case is unusually complicated, it might be appropriate for the primary care dentist to refer the patient to a dental school.

If the patient wants to see a specialist with whom the primary care dentist is not familiar, the dentist should indicate to the patient that he/she simply has no knowledge of the specialist and cannot offer any opinion as to whether this particular specialist would be a good choice.

A more difficult situation occurs if the patient wants to see a specialist who does not inspire the primary care dentist's confidence. One option is for the dentist to indicate that he/she has not worked with this specialist to any extent and would feel more comfortable if the patient sees one of the doctors on the recommended list of specialists that the primary care dentist provided.

Sometimes the patient can be generally resistant to a referral, preferring instead to have the primary care dentist treat the condition. Once the dentist decides on a referral, he/she should stick with that decision despite any appeals from the patient. The likelihood of a suboptimal outcome increases when providers practice stretch the boundaries of their expertise or competency.

## In Summary

Specialty referral is an integral part of dental practice. From a risk perspective, primary care dentists should limit their scopes of practice to procedures for which they are well trained and experienced, and refer difficult cases to qualified specialists. Involving patients in decision-making and offering options for appropriate specialists can support the ultimate goal of high-quality and patient-centered care.

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