

An overview of orthodontic malpractice liability based on a survey and case assessment review

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Abstract

Background: The purpose of this survey study and case review was to identify 1) the common causes related to filing a malpractice claim against an orthodontist and, 2) the factors mitigating against a potential malpractice claim in the United States (U.S). The objectives of the case review were to examine the current state of orthodontic malpractice litigation from a cause and mitigating point of view.

Materials and Methods: Data for this research was collected and reviewed using the following two methods:

- 1) A survey questionnaire on aspects of malpractice liability was electronically distributed to 2,241 active U.S. members of the American Association of Orthodontists (AAO).
- 2) Legal cases were reviewed on the online legal research database Lexis Advance Research, and 35 cases were analyzed.

Results: Survey questionnaire results and legal case review results are as follows:

- 1) 77 orthodontists completed the survey. 9.1% of the respondents reported a malpractice claim having been filed against them with periodontal issues accounting for most of the claims. Survey participants reported good doctor-patient communication as being the most relevant contributory factor and most relevant mitigating factor in malpractice claims.

- 2) Negligence is the main reason patients sue a doctor for clinically related litigation, and failure to obtain a proper informed consent from the patient is the main cause of action for non-clinically related litigation.

Conclusions: Most respondents reported doctor-patient communication, periodontal issues, and a lack of informed consent as the main triggering elements of a lawsuit, which is similar to other studies and case review analysis. Good doctor-patient rapport was ranked as being most helpful in mitigating a potential claim, which is also similar to other studies. Another aspect of the survey questionnaire that was evaluated was whether a non-orthodontist can provide expert testimony against an orthodontist, with most respondents reporting that this is not possible. It has been ruled, though, that a general dentist can be an expert witness and provide expert testimony against an orthodontist in a lawsuit depending on the circumstances. Negligence was the most common cause of clinically related orthodontic litigation, and a failure of the practitioner to obtain a proper informed consent from the patient was the most common cause of non-clinically related orthodontic litigation.

Key words: Orthodontist, malpractice, legal, lawsuit, liability, medicolegal.

How To Report Orthodontist Malpractice

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