

THE ENDO CORNER

ENDODONTICS
LIMITED, P.C.

A PUBLICATION OF **DRS. FLEISHER, GOLDBERG, FLEISCHMAN, BARKAN, ABRAMS, SCHULTZ & WALTERS**



EDUCATION &
INSIGHT



LEGAL PERILS/PEARLS

By **ROBERT FLEISHER, DMD**

From time to time, we'd like to offer some ideas to protect ourselves from the predator tort-system that allows anyone and everyone their day in court even when it is for frivolous greedy motives. None of what we offer here is to be construed as legal advice, for that consult with your attorney.

First let's be realistic. There are some dentists performing procedures that don't meet the standard of care, and if they don't get it, they will, in fact, get it in the courtroom. What concerns all of us are cases without merit that nonetheless find us going through stressful depositions and the nightmare of courtroom appearances. It's these unwarranted cases we need to eliminate and that can be accomplished by our own vigilance.

Documentation is often a weak link in protecting yourself from a lawsuit. Lawyers love to play on our lapses. A trick used in the court room entails the plaintiff's attorney asking you if something is important like, "Doctor, is it important to know if the pulp you removed from that tooth is infected?" Naturally, he is leading you, and you must respond, "Yes." He then asks, "Is it important to put information like that in the medical record?" Now you have no choice but to say, "Yes." Then he makes you look like a complete idiot by then asking, "Is the status of the pulp noted in your records?" Whereby you then say, "No." He has now made you look foolish in front of your peers (people with mostly high school education or less) on the jury. Sure you can go on to explain that even though you didn't note the status of the pulp on the chart, you most certainly know it wasn't infected, because you didn't prescribe any antibiotic. True or not, you still look foolish, inept and at minimum careless in your duties.

You must note anything and everything that could be important in the courtroom. If a pulp is vital, hyperemic, necrotic or draining pus, you had better make note of what you found. Writing that you started endo on tooth #20 is not enough.

I remember acting as the expert witness for a colleague who was being sued unjustly. The

plaintiff's attorney asked him if the mother was present during the procedure, and he stated that she was in the waiting room. Then he was asked if he called the mother in after the treatment. He said he did and that he explained how the procedure went. Now, I don't know how he remembered all this from four years ago considering I didn't know what I had for breakfast that day (some expert, huh?). Actually, I suspect that his attorney told him to give those answers.

I learned something that day. Write in the chart who was present during the treatment and make note of who you spoke with before and after treatment. You will look pretty silly if on the witness stand you say the patient was the only one there and then the husband swears that he was in the room too. He's probably telling the truth, but you sure don't remember these details unless you made a note. You also look pretty thorough when you can say with confidence that you discussed the procedure with the husband and wife. "How do you remember that, Doctor?" "It's right here in the chart, sir."

Sure, there are things we don't note because they are done with every patient. You don't have to note that you said "Good morning," at least not yet. You don't have to note that the mother wasn't present during treatment if it is your strict policy that the parent is never allowed to be present and your staff can attest to that in court. You can always use the defense that you only notate exceptions to your rules, but that is becoming less of a defense as the court and layman juries like to see as much as possible when judging the merits of a case. The main lesson to be learned is that you should get in the habit of making lots of simple notes using codes to expedite your entries while getting the information into the patient record. I use AP to mean *advised patient*. It saves lots of time rather than writing out every word for things you note over and over. OO means *offered options*. Just like you abbreviate certain words, you have to devise abbreviations for phases or you'll spend the entire visit making notes and doing very little treatment.

One of the biggest losses for dentists in court occurred a few years ago when patients sued over untreated periodontal disease. Even though the dentist told the patient every visit that they needed to do better home care, that they were developing pockets and that they should see the periodontist, the old timers never wrote it in the charts. These became no-brainers for the lawyers. Certainly many patients were told, but like many who never hear warnings until it's too late, they forgot, or claim they never heard the warnings or they outright lie for the glitter of the legal lottery that might just reward them with enough money for gum treatment and a large screen television. Get in the habit of writing APBH for *advised patient they need to do better homecare*. See how easy that is. Ref Perio is all you have to write for *recommended referral for periodontal treatment* followed by the name of a periodontist. Their claims that you ignored their periodontal condition will have no merit when you can show that over the years you made these recommendations and they were ignored.

You don't have to get obsessive with your documentation, just thorough. Try to detail anything that could prove you communicated instructions, options and explanations to your patients. You don't have to spend all day making notes if you put together abbreviations for common things you tell patients over and over again.

Good documentation can keep you out of court by the mere fact that many plaintiffs' attorneys will look at a well-documented chart and won't even take the case. They are rather bright and don't want to waste time on hard cases unless the reward is substantial. They are looking for the slam-dunk, like those cases with no informed consent anywhere to be found in the patient record. In a future issue we will touch upon informed consent to better protect us from the predators of the legal profession.