

RISK MANAGEMENT ARTICLE

Why Patients Sue

And how effective communication can help avoid a lawsuit

No healthcare provider welcomes being on the receiving end of legal action from a patient. A lawsuit can leave providers feeling frustrated and disappointed. After all, as a dentist, you are likely committed to delivering quality care and likely pride yourself on your positive relationships with your patients.

Unfortunately, sometimes situations emerge that prompt patients to file lawsuits. But by understanding the reasons behind why patients often file lawsuits can help you take steps to prevent them.

Why a lawsuit?

Based on an analysis of several articles, [Huntington and Kuhn](#) identified four reasons why patients file a lawsuit: (1) a desire to prevent similar (adverse) incidents from occurring; (2) a desire for an explanation as to how and why an injury occurred; (3) a desire for financial compensation to make up for monetary losses, pain, and suffering or to cover the cost of future care for the injured patient; and (4) a desire to hold providers accountable for their actions.

Huntington and Kuhn noted that the dominant theme in the studies was a breakdown in the patient-provider relationship because of unsatisfactory communication. (Although these studies focused on physicians, it's likely the findings would apply to other providers as well, including dentists.) Examples of communication issues included patients feeling providers did not listen to them, did not talk to them openly, did not warn them of future problems, did not understand their perspective, devalued their views, and even misled them.

Establishing a positive relationship that includes effective communication can go a long way to help prevent legal action. Huntington and Kuhn noted that patients tend not to pursue legal action against providers whom they "like and trust."

Notably, protection from legal action is not the only reason to hone your patient communication skills. According to the [Institute for Healthcare Communication](#), effective communication has several other benefits, such as better diagnostic accuracy, greater patient adherence to the plan of care, higher patient satisfaction, and reduced risk of patient harm.

Here are some suggestions for improving your communication skills with patients.

Establish rapport

Rapport helps create a positive relationship with a patient. You and all dental staff can establish rapport by first greeting patients warmly. Smile, make eye contact, and if appropriate, shake hands.

During the encounter, be sure your interaction with the electronic healthcare record (EHR) or your documentation does not overshadow your interaction with the patient. Sit rather than stand to indicate you are not in a hurry. Avoid crossing your arms, which can be off-putting.

Humor, if used appropriately, can help establish rapport. However, do not overuse humor and be aware that what humor is considered to be appropriate can vary considerably from one person to another.

A critical contributing factor to rapport is respect. Demonstrate respect by engaging patients in conversation. Ask them for their input and thoughts on your ideas for treatments or strategies for following treatment instructions. Be sure to check for understanding, particularly when delivering patient education. Align your interactions with the cultural background of the patient. (One resource improving your ability to communicate with those of different cultures is the "Guide to Understanding Effective Communication and Language Assistive Services," published by Think Cultural Health. Access the guide at <https://hclsig.thinkculturalhealth.hhs.gov/>).

Finally, and probably the most important way to establish rapport, is to listen. Focus on what the patient is saying and not on what you plan to say next or on other tasks you still have to complete.

Set expectations

Few people like to be surprised, particularly when it comes to their oral healthcare. That's why dentists need to ensure patients know what to expect from the plan of care, including any procedures that may be necessary, or changes to medications, activities, or diet. Be realistic in what you say. Don't make statements such as, "You'll be fine." Instead, Huntington and Kuhn suggest saying something like, "Barring any unforeseen problems, I see no reason why you shouldn't do very well. I'll certainly do everything I can to help you."

Be clear with patients about the next steps. For example, a patient scheduled for a root canal needs to know what will happen in each phase of the procedure: removing the inflamed pulp, cleaning and disinfecting the surfaces inside the tooth, and filling and sealing the tooth. It would be important for the patient to know that they will likely continue to be numb for several hours after the procedure and that they may experience some sensitivity or discomfort for a few days (though some patients may expect to be pain-free).

Patients also should know what is expected from them. In the case of the root canal example, this could include taking any antibiotics or anti-inflammatory medications as prescribed, avoiding smoking and drinking alcohol, and eating a healthy meal a couple of hours before the appointment. Be clear on any consequences related to not meeting expectations, such as the need to postpone the procedure if the patient fails to take all antibiotics as prescribed. Dentists and dental hygienists should utilize the [teach-back method](#) throughout the patient encounter to ensure all information and instructions are explained properly, in a manner the patient understands and will remember.

Defuse anger

Fear is usually the root cause of anger. Try to determine what the patient is afraid of by listening closely. For example, a patient may say they are upset because a dentist didn't tell them a procedure might cause some temporary numbness or discomfort, but they are really afraid the discomfort may indicate a serious condition or that the treatment isn't working. Once you identify the real issue, you are better able to resolve it.

After hearing the patient out, Huntington and Kuhn recommend expressing empathy, and then apologizing that things have not gone the way the patient hoped or expected. Above all, do not respond defensively nor avoid the patient.

The next step is to address the issue. Ask the patient what they want and explain what can and can't be done. The goal is to re-establish a positive relationship.

Be honest

The dentist-patient relationship must be built on trust, and trust depends on honesty. Being honest includes providing information related to diagnosis and test results, as well as sharing possible adverse outcomes of procedures.

Honesty needs to be maintained when a complication occurs. The dentist should explain why it occurred and how it can be managed.

If the complication occurred because of an error, Huntington and Kuhn recommend disclosing this fact to the patient and offering an apology. In some professions, disclosure is seen as an ethical responsibility. The Patient Safety Network [notes](#) that the components of disclosure most important to patients include an explanation as to why the error occurred, how the error's effects will be minimized, and steps that will be taken to prevent the error from happening in the future. The American Dental Association (ADA) offers a free on-demand program, *Communicating with Patients When Things Go Wrong in Dentistry*, that may aid in these disclosures. Access the course at <https://ebusiness.ada.org/education/viewcourse.aspx?id=635>.

Fears of a lawsuit often make dentists reluctant to disclose. However, patients are more likely to change providers or take other non-legal actions rather than file a lawsuit, especially when the provider is honest about what happened. In addition, some organizations, such as the University of Michigan Health System, have [reported](#) that having a structure for responding to and being transparent about errors reduces the number of malpractice lawsuits.

Dentists also should remember that not all complications and errors are the result of negligence. For instance, *Clostridioides difficile* may occur as a result of antibiotic administration, but that doesn't mean it was wrong to prescribe the antibiotic.

Before disclosing an error, talk with your risk management department or attorney to understand how to best approach the situation. It is also critical to notify your professional liability insurance provider.

Communicating for success

A communication breakdown is a common reason why patients choose to take legal action against providers. By using effective communication techniques (sidebar), you can create a positive relationship that reduces the likelihood of lawsuits and benefits both you and the patient.

4 Es of Communication

The 4 Es communication model is an easy way to promote positive interaction at each patient encounter:

1. **Engage.** Invite patients to share their health stories. Ask open-ended questions to help you find out what matters most to the patient.
2. **Empathize.** Show patients that you see and hear them. Accept their values even if they are different from your own.
3. **Educate.** Ask patients what they know and what they want to know. Answer their questions, provide written information, and ask questions to confirm their understanding.
4. **Enlist.** Forge a partnership by collaborating with patients to make care decisions. Seek agreement on treatment plans and monitor progress.

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