Understanding Dental Professional Liability Litigation
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- Explain the concept of tort law and list the four elements of a professional liability tort;
Course Objectives

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• Explain the two subcomponents of “duty” and the implications when they are not met;
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• Describe the concept of legal causation;
• Describe examples of typical damages in a dental malpractice case;
• List common discovery techniques, and how they are utilized in dental malpractice litigation.
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- It is generally not intended to punish the wrongdoer through the imposition of fines or imprisonment.

- The ultimate goal is to put the harmed person in the position they would have been in if the wrong had not occurred.
Duty-

That a duty was owed by the dentist to the patient (i.e., that a dentist-patient relationship existed)
The patient was a 53 year old male with a 30 year history of smoking a pack of cigarettes per day. He had recently relocated to the vicinity of Dr. Y’s office (general dentistry) from another state. He had also recently noticed a 1mm lesion on the inside of his right cheek.

The patient called and made an appointment to be examined by Dr. Y, however, he failed to keep the appointment, and, in fact, never saw Dr. Y.

Approximately 18 months later, after the lesion had grown larger, the patient was seen by Dr. K, who, after appropriate testing, diagnosed squamous cell carcinoma. Extensive, disfiguring surgery was needed to treat this condition.

The patient sued Dr. Y for failing to follow up on the missed appointment and failure to diagnose the cancer while it was in a less advanced stage.

Does he have a case?
What Must the Plaintiff Prove to Prevail?

Duty-

That a duty was owed by the dentist to the patient (i.e., that a dentist-patient relationship existed)

What that duty consisted of (the standard of care)
What Must the Plaintiff Prove to Prevail?

A dentist is negligent if she fails to use the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful dentists would use in the same or similar circumstances. This level of skill, knowledge, and care is sometimes referred to as “the standard of care.” You must determine the level of skill, knowledge, and care that other reasonably careful dentists would use in the same or similar circumstances, based only on the testimony of the expert witnesses (including Dr. Smith, the defendant) who have testified in this case.

CA CJ 1 501
What Must the Plaintiff Prove to Prevail?

Duty-

That a duty was owed by the dentist to the patient (i.e., that a dentist-patient relationship existed)

What that duty consisted of (the standard of care)

Breach of duty-

That the dentist failed in some way to fulfill their duty to the patient
The patient was an 17 year old male Medicaid patient who presented to Dr. S (a general dentist) with what was diagnosed as a horizontally impacted second molar.

While Dr. S would have preferred to refer the patient to an oral surgeon, he was about one week from turning 18, at which time he would lose his Medicaid benefits. The patient’s mother indicated that she could not afford to pay the oral surgeon for the extraction and asked Dr. S to do it while it would still be covered by Medicaid. Dr. S reluctantly agreed.

During the course of the surgery, Dr. S strayed into the lingual plate and caused significant, irreversible damage to the lingual nerve, resulting in parasthesia.

The patient sued Dr. S for deviation from the standard of care resulting in permanent injury.

Does he have a case?
What Must the Plaintiff Prove to Prevail?

Duty-
That a duty was owed by the dentist to the patient (i.e., that a dentist-patient relationship existed)
What that duty consisted of (the standard of care)

Breach of duty-
That the dentist failed in some way to fulfill their duty to the patient

Causation-
That the breach of the duty caused some type of harm to the patient
A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

A person’s negligence may combine with another factor to cause harm. If you find that Dr. Smith’s negligence was a substantial factor in causing Mrs. Jones’ harm, then Dr. Smith is responsible for the harm. Dr. Smith cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing Mrs. Jones’ harm.

CA CJI 430-31
The patient was a 66 year old female who had recently undergone a complete knee replacement. She came to her general dentist, Dr. K, for a routine prophy and exam. During the exam, Dr. K identified an area on #4 which was in need of restoration.

Because Dr. K was aware of the recent knee replacement, she consulted with the patient’s orthopedic surgeon regarding antibiotic premedication. The orthopedic surgeon advised Dr. K that she should premedicate. However, after also consulting the ADA/AAOS guideline on antibiotic premedication, she decided to not premedicate.

The restoration was uneventful, however, about 3 months later, the patient developed an infection in her (replaced) knee. The infection proved to be persistent, ultimately resulting in a second replacement. Cultures from the replaced knee were not consistent with bacteria normally found in the oral cavity.

The patient sued Dr. K for failing to premedicate prior to the restoration, resulting in the knee infection and second replacement.

Does the patient have a case?
What Must the Plaintiff Prove to Prevail?

Duty-
That a duty was owed by the dentist to the patient (i.e., that a dentist-patient relationship existed)
What that duty consisted of (the standard of care)

Breach of duty-
That the dentist failed in some way to fulfill their duty to the patient

Causation-
That the breach of the duty caused some type of harm to the patient

Damages-
That the patient was harmed in some tangible physical, psychological, or financial way
If you decide that Mrs. Jones has proved her claim against Dr. Smith, you must also decide how much money will reasonably compensate Mrs. Jones for the harm. This compensation is called “damages.” The amount of damages must include an award for each item of harm that was caused by Dr. Smith’s wrongful conduct, even if the particular harm could not have been anticipated. Mrs. Jones does not have to prove the exact amount of damages that will provide reasonable compensation of the harm. However, you must not speculate or guess in awarding damages.

CA CJI 3900
The patient was a 56 year old female who was dissatisfied with the appearance of her anterior teeth. She came to Dr. P, a general and cosmetic dentist to discuss the placement of veneers. After a thorough informed consent process and discussion of size, shape and shade of the veneers, she settled on what she desired. The veneers were ordered and properly placed on a Friday. The patient was delighted with their appearance.

On Monday morning, Dr. P had a voicemail message waiting for her from the patient, which indicated that she needed a emergency appointment. She was scheduled for later that day. When she came in, the patient was in tears, stating that the veneers were horrible and made her look like she had “horse teeth.” She demanded that the veneers be redone immediately.

In an attempt satisfy the patient, Dr. P requested an expedited redo by the lab. However, the patient was soon no happier with her new veneers. Two more attempts to satisfy her yielded no better results. Finally, in frustration, Dr. P explained to the patient that she could do nothing further for her, and offered to refer her to a well respected local prosthodontist.

The patient saw the prosthodontist, who also made some adjustments, however, he was also unable to satisfy the patient.

Eventually, the patient sued Dr. P for negligence in recommending, selecting and placing the veneers. She sought a refund of the money she had paid and compensation for the “emotional trauma of having to wear horrific veneers.”

Does the patient have a case?
What Must the Plaintiff Prove to Prevail?

Duty-
That a duty was owed by the dentist to the patient (i.e., that a dentist-patient relationship existed)
What that duty consisted of (the standard of care)

Breach of duty-
That the dentist failed in some way to fulfill their duty to the patient

Causation-
That the breach of the duty caused some type of harm to the patient

Damages-
That the patient was harmed in some tangible physical, psychological, or financial way

The plaintiff must prove all four elements to prevail.
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Intended to clarify issues and establish known facts
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• Depositions-testimony under oath given by a witness who has information relevant to the issues in the case
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  o Fact witnesses-anyone who has factual information relevant to the case
  o Expert witnesses-persons who possess special skill or knowledge relevant to an issue in the case
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MedPro will be with you every step of the way. You have our word on it.
What questions do you have?