When a lawsuit looms

What happens though, when a seemingly good patient becomes a real problem patient? For example, you thought that a patient was compliant but have recently discovered by their expected treatment results that they are not following your orders regarding wearing elastics, headgear, etc.

What if you suspect that a patient is considering a malpractice action against you, and he, she or one of the family members wants to continue treating with you. The risk of continuing to care for the patient depends on the situation and the particular patient. As far as treating this patient, who may become a malpractice plaintiff, there is nothing which would legally prohibit the relationship from continuing during the pending malpractice lawsuit. Nevertheless, it is risky to continue. For example, you could make a statement to this patient while rendering treatment, which could be used against you at trial; or that patient could testify about your current office practices and procedures alleging that you have changed them as a result of his or her case. The dentist may want to consider severing that relationship, and you have a right to do so.

In a situation where it becomes evident that the doctor-patient relationship must be terminated, the dentist should be cautious not to abandon that patient. The courts will recognize a claim for abandonment where injury results from an abandonment by the dentist. As far as treating this patient, the dentist's refusal to treat a patient will recognize a claim for abandonment, and/or without giving the patient reasonable time to find substitute care. Patient abandonment can also be alleged as a breach of the duty of care in a dental malpractice case.

Accordingly, the dentist cannot discharge a patient when he or she is in need of immediate treatment for wellbeing; one must first stabilize the patient before terminating the relationship. Once the patient is in a stable condition, they must be given a reasonable amount of time to find a new dentist.

However, prior to taking any action, it is advisable for the dentist to seek legal advice first. Then, with proper preparation, advise the patient in writing that you are discharging him or her as a patient, the basis for discharging him or her, and that you will continue to treat that patient for 30 days (depending upon state law) so he or she can have necessary time to locate a new dentist, with your help and referral. [2]

When a lawsuit looms to all staff, reporting such incidents reinforced implementation, and the importance of which alerts the dentist to the violation of state law for wellbeing; one must first stabilize the patient's condition prior to terminating the relationship. Once the patient is in a stable condition, they must be given a reasonable amount of time to find a new dentist.

Dr. Dennis Tartakow is retired from his orthodontic practice in Palm Beach, Fla., and lives in Marina del Rey, Calif. He is a diplomate of the American Board of Orthodontics and is Editor-in-Chief of Ortho Tribune.

Dr. Gregg Tartakow is practicing orthodontics in Los Angeles, Calif., and lives in Marina del Rey, Calif. His professional accomplishments include fellowships in the World Federation of Orthodontists, Royal Society of Medicine (England), American Academy of Orofacial Pain and the Pierre Fauchard Academy. He is Associate Editor of Ortho Tribune.

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