



## CNA HealthPro

### Coping With a Malpractice Suit: A Defense Attorney's Perspective

*By Charles Lynn Lowder, Esq.*

Being sued for malpractice is a traumatic experience for any dentist. Dentists are highly self-motivated professionals who are used to being in control of their destinies. As defendants, though, dentists often feel swept along by events, lacking the ability to direct the outcome of the legal process.

This feeling is understandable. However, some practitioners cope with the litigation experience better than others. These dentists are able to minimize the disorientation and fear of the unknown by adjusting their attitude and approach.

As an attorney who has represented many healthcare practitioners in malpractice cases, I offer the following strategies to help dentist defendants reduce the stress of litigation and increase their effective participation in such cases. Also included are practical tips for working more smoothly with your defense attorney.

#### **Developing a Constructive Attitude**

*View the lawsuit as a simple fact of professional life, rather than as a personal attack.* We live in a litigious society, and lawsuits arise for a number of reasons, not the least of which is simply a patient's or attorney's desire to make money.

*Recognize that this is your lawsuit, meriting your time and involvement.* Your commitment to seeing the process through is one of the key determinants of the success or failure of the defense.

#### **Working with Your Attorney**

*Communicate your willingness to cooperate fully and enthusiastically in defense efforts.* While it is natural to express feelings of uncertainty and concern, let your lawyer know that you are ready to do what is necessary. Focusing on the issue at hand will help you channel some of the negative emotions.

*Be candid, open and cooperative with your defense lawyer.* Mutual trust is the key. To work effectively as a team, you must be willing to exchange information freely and work together to develop the defense strategy.

*Understand your responsibilities.* You should acquaint your attorney with the treatment issues; your attorney is responsible for ensuring that you understand the legal process. Knowing how the treatment proceeded relative to the standard of care will help your attorney formulate an effective defense.

*Be willing to go over the entire course of treatment.* There is no substitute for carefully reconstructing the events in question visit by visit, record by record, line by line. Your willingness and good attitude in this phase will help your attorney build a solid factual foundation.

## Discovery and Trial

*Know when the suit needs to be on your mental “front burner.”* In addition to the trial itself and your own deposition, be ready to attend the plaintiff’s deposition and the plaintiff’s expert’s deposition. Be prepared to discuss with your attorney any clinical issues that arise during the discovery phase.

*Prepare carefully for your deposition.* Be ready to discuss every aspect of treatment, from diagnosis through treatment plan. This includes the plaintiff’s history and physical examination, test results, your differential diagnosis, the treatment plan, and your clinical goals and prognosis. Try to achieve as objective a view of events as possible; this will help you present the facts more clearly and compellingly.

*Ensure that you have ample time to prepare for your testimony.* Effective testimony requires more than an hour or two of casual preparation. Should your case come to trial, your attorney will need to rehearse your direct examination and potential cross-examination. Your attitude and enthusiasm at this stage will influence your credibility with the jury.

## Afterward

*Keep the lawsuit in perspective.* Enduring a malpractice suit and having your clinical judgment called into question is certainly a daunting experience. But the occasional lawsuit is an occupational hazard. Balance it against the many satisfied patients you have treated and the rewarding aspects of your chosen career.

*Learn and grow from the experience.* Adversity does build character, and practitioners often come out of lawsuits stronger and more self-aware. They also have new respect for such practice “details” as patient selection, informed consent, scheduling, follow-up and record keeping.

*Charles Lynn Lowder is an attorney with extensive experience defending practitioners in malpractice cases.*

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