



PerioDontaLetter



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Winter

From Our Office to Yours....

State dental boards hold great power over dental licensees. Their primary focus is not the welfare of the dental profession, but in serving the public interest. This could directly impact the ability of a doctor to earn a living. Such authority should never be taken lightly!

The good news for practicing dentists is that in more recent cases there appears to be an effort to ensure that board members and jurors understand that The Standard of Care does not mean perfection in practice.

*This current winter issue of **The PerioDontaLetter** discusses the prevention of dental errors which lead to state board complaints.*

As always, we welcome any of your comments, questions and suggestions pertaining to this important matter.

Avoiding State Dental Board and Malpractice Complaints

The Standard of Care defines what a reasonable and prudent dentist would do in a like or similar situation in a like or similar locale. This definition is important to remember!

It requires a doctor who renders a dental service have that degree of knowledge and ability expected of dentists who provide specific treatment in the locale in which they practice, or a similar community.

Dentists are required to keep abreast of the times and to practice in accordance with the approved methods and means of treatment in general use.

And, they are obligated to use their best judgment and reasonable

care in the exercise of their knowledge and ability.

Board actions and malpractice complaints against dentists have included implant failures, often in the “esthetic zone” (Figure 1); implants placed in the inferior alveolar canal; (Figure 7); implants which cannot be restored due to inappropriate surgical planning and poor placement (Figure 8); failure to diagnose periodontal disease (Figures 2 and 3); swallowed objects (Figures 4 and 5); faulty bridges or crowns (Figure 6); fractured root tips left in bone; missed diagnoses; post-treatment infections; fractured jaws; failure to prescribe; extraction

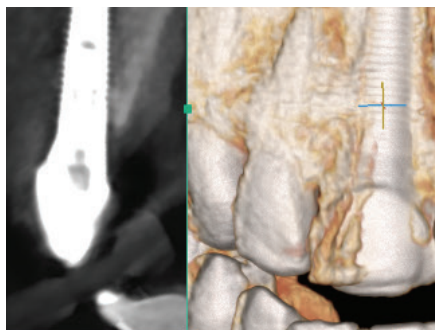
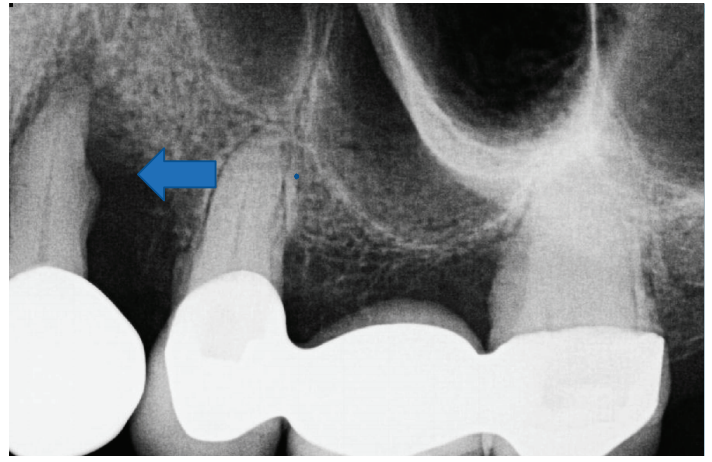
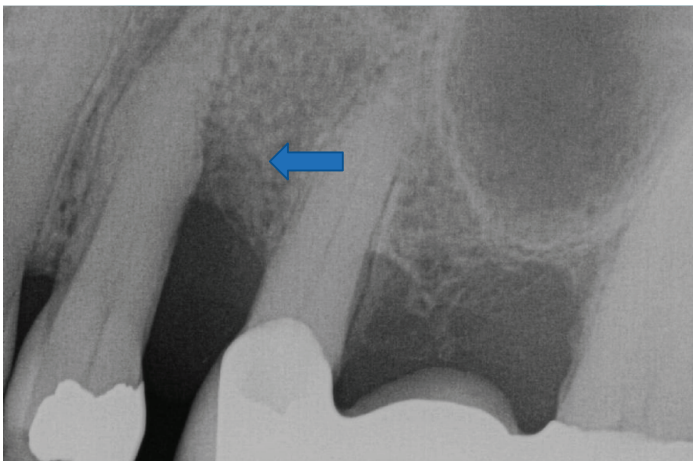


Figure 1. This cone beam scan revealed the lack of adequate labial bone, which resulted in the failure of this implant, a malpractice settlement and state board complaint.



Figures 2 and 3. A dental board investigation discovered that prior to placing a crown on the upper left first premolar, the treating dentist did not have any periodontal probing records, and within one year, this tooth was determined to be hopeless due to advanced periodontal disease.

of the wrong tooth, and chemical burns and lacerations.

One of a dentist's fundamental duties is to take a comprehensive medical and dental history of the patient's condition prior to treatment. In order to make a diagnosis, the dentist must first determine the patient's history, and it is an accepted rule of proper dental care that a patient's history must be taken by the dentist.

Failure to ask the proper questions necessary to elicit an adequate history, or failure to heed the patient's complaints and observations, can be as much a dereliction of duty by the dentist as any act or commission in the course of his services.

Inadequate Record Keeping

The most common breach of The Standard of Care is inadequate record keeping.

How many times have we heard attorneys say that the dentist normally does this or that, but was remiss in putting it into their patient's records? If it isn't written in the patient's

record, in the eyes of the law, it doesn't happen.

There is no chance of winning a lawsuit or board case without good dental records. Dental records need to contain sufficient information to support the diagnosis, justify the treatment and document the course and results of treatment accurately.

Documentation of treatment must include records of drugs prescribed dispensed or administered.

While most dentists take every precaution to prevent accidents, stuff happens. Dentists can eliminate or reduce the risk of a lawsuit or regulatory action by declining to treat certain patients. It is important to know who not to treat for many different reasons — for example, patients who will not follow their advice. One of the most valuable lessons dentists can learn is who not to treat.

Twelve Rules to Avoid Malpractice and State Board Complaints

Twelve rules can be commonly applied to avoid having to appear

before a state dental board or facing a malpractice complaint:

1. Over document what was done and why.

2. Never alter or falsify records.

3. Have patients sign and initial an informed consent document describing the likely results and unintended consequences of their proposed treatment. Underpromise and overdeliver the results!

4. **Anything not written down, never happened.** A signed informed consent to treatment is the ultimate communication with patients.

5. If patients refuse treatment, have them sign an informed refusal to treat document. This new communication is becoming very important today, and should be a separate form which is kept in the patient's record.

6. Build good relationships with patients. Communicate with them. Make and document follow-up phone calls to resolve conflicts

7. Should a patient demand a refund, seriously consider their request to avoid further conflict. If a refund is given, it should always be accompanied by a release of liability from the patient. Refunds of patient payments avoid the necessity of

making a report to the state dental board.

8. Board complaints must never be minimized! State dental boards can take away dental licenses, impose fines and recommend suspensions. Dentists should appear at hearings themselves, or with counsel who is conversant with board issues. Staff members should never be sent to represent their dentist.

9. Never, ever, go into a board hearing or malpractice lawsuit without a lawyer who is conversant with board issues and licensure! This is not your area of expertise and the process without representation could seriously jeopardize your case's outcome.

10. Don't overreact to a board complaint. Always cooperate with board requests and recognize that they will always try to treat you fairly. There are different levels of discipline and the revocation of a dental license is extremely unusual reserved only for the most extreme circumstances.

11. When placing implants, avoid the lingual and mandibular nerve. While not The Standard of Care, CBCT (cone beam computed

tomography) analysis is a major assist in treatment planning implant cases and helps to avoid surgical complications. React immediately to an injury to the nerve. Take out or back screw an implant. If necessary, refer the patient to an oral or neurovascular surgeon.

12. When a doctor-patient conflict arises, it is very important to notify your malpractice insurance carrier, as they are a great source of advice and can help mitigate any conflict between you and your patient.

Undiagnosed Periodontal Disease

Undiagnosed periodontal disease has consistently been a major source of dental board complaints.

Currently, a new trend in dental board complaints revolves around the systemic manifestations of the failure to diagnose periodontal disease, e.g., heart attacks, stroke, diabetes and pulmonary disease.

Without periodontal charting and complete records, your ability to defend yourself against a complaint is virtually impossible.

Complications from A Swallowed Object

Another major source of dental board complaints is swallowed objects.

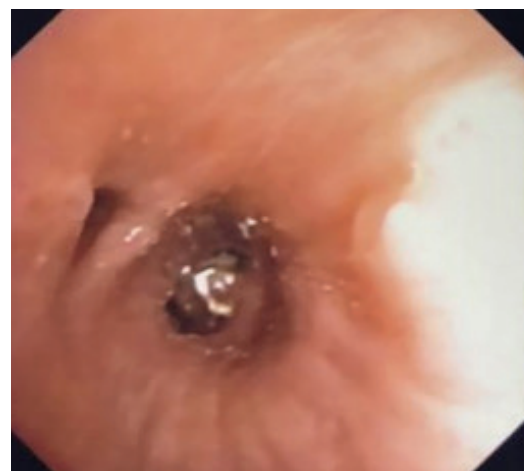
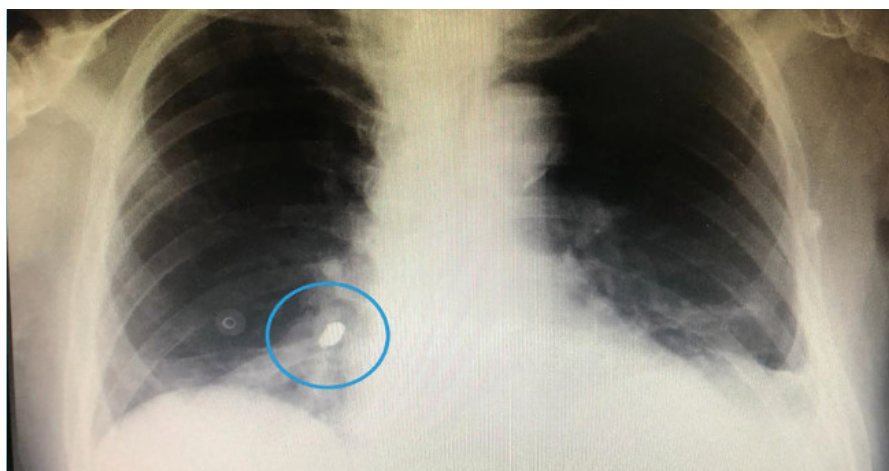
Under the 80/20 Rule, when a patient swallows an object, 80 percent of the time it will go into the stomach and eventually pass without complication; and 20 percent of the time, the patient may aspirate the object into the lung..

If an object is swallowed, the proper protocol is to:

1. Immediately discontinue the procedure and check for ABCs — Airway, Breathing and Circulation.

2. If the patient is breathing normally and is stable, personally take the patient to the emergency room or X-ray facility for a chest X-ray. This indicates to the patient the level of commitment from the dentist.

3. If the object went into the stomach, it is probably already in the intestine. Have the patient monitor for any pain or complications and wait for eventual passage. This is the usual protocol for hospitals.



Figures 4 and 5. An aspirated dental crown was found in a patient's lower right lobe bronchus. Fortunately it was retrieved by the treating pulmonologist.

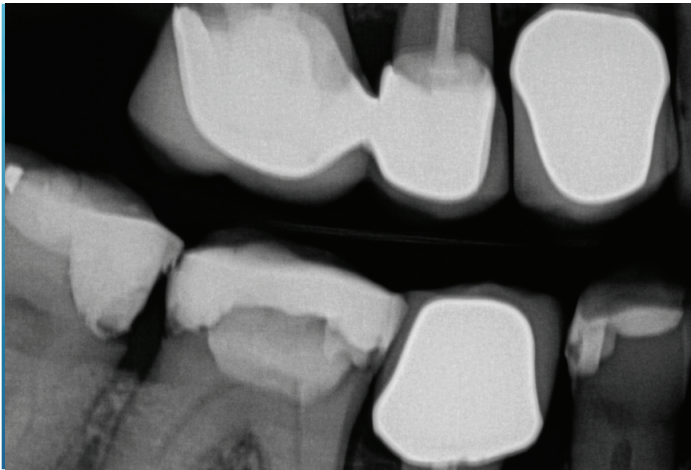


Figure 6. These crowns were judged to be faulty, resulting in a malpractice settlement, state board complaint, and the dentist was required to take a crown and bridge course.

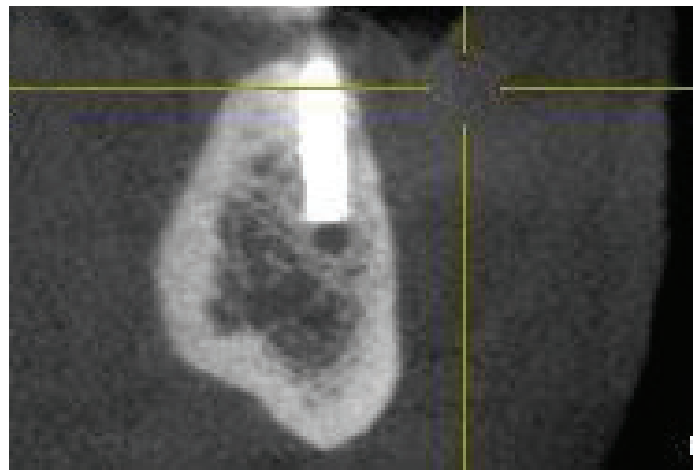


Figure 7. This implant was placed into the inferior alveolar canal, resulting in permanent nerve damage, a malpractice settlement and a state board complaint.

4. If the object is in the lung, it must be immediately removed by trained personnel in a hospital setting.

Many clinicians use a 4x4 gauze in the back of the oral cavity to minimize the chances of a patient swallowing a foreign object.

The State Dental Board Complaint Process

State dental boards meet throughout the year to review complaints brought against practicing dentists.

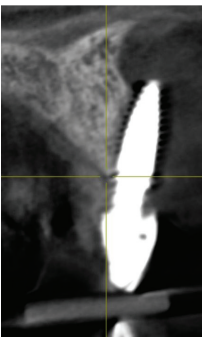


Figure 8. This implant was not placed in bone and should have been removed prior to restoration.

Sometimes these complaints are brought anonymously.

In their deliberations, state boards consider mitigating circumstances and aggravating circumstances.

Mitigating Circumstances lessen the gravity of an offense or mistake. In dentistry, that can mean a great number of things.

For example, a dentist does everything possible to please the patient, but the patient is unreasonable. Or, the patient did not follow the dentist's instructions.

Aggravating Circumstances make a problem worse or more serious. Again, in dentistry, that can mean a great number of things.

For example, another dentist says or documents the dental work is inferior, the dentist did not follow up on patient problems and complaints adequately; or the dentist did not respond to board complaints, or did not show up in person or respond to a board hearing to defend him or herself.

How to Protect Your License

Licensure is the strongest form of regulation used today. Under state law, licensed individuals are the only persons who meet the minimum qualifications necessary to practice their profession. As such, your license to practice dental medicine may be your most important possession. So do everything in your power to protect it.

Dentists need to make sure they understand the dental complaint process and what they need to do to defend themselves against losing their license. Any transgression that may violate state laws and rules may result in sanctions involving their license.

Dentistry is changing. New products, techniques, services and philosophies are emerging every day, changing The Standard of Care. Practice evidence-based dentistry. Stay informed. Plan for change, determine your position in the new dentistry. Know the advantages and the risks.

