How To Respond To A Patient Complaint Against A Dentist

By Matthew Wilton

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Is the information in this article relevant to dentists outside Ontario?

Our firm has acted for dentists outside of Ontario in responding to patient complaints to a regulator. The methodology is essentially the same for every dental regulator in Canada. The Complaints Committee for the relevant province is charged with the responsibility for making decisions with respect to complaints from members of the public. In each province or territory, the Complaints Committee will consider the appropriate standards of practice applicable in the circumstances, and make a decision based on those standards of practice. It is my opinion that the contents of this article will be relevant, and of assistance, to all dentists across Canada in responding to complaints. The methodology is the same, and the basic approach should be the same.

I am setting out below a list of the types of patient complaints I have assisted dentists on. This should demonstrate for all dentists across Canada that the types of complaints we act on are similar to the complaints that all Canadian dentists must deal with:

1) Recommending unnecessary restorations;
2) Failing to put a crown on a root canal treated tooth leading to a tooth fracture;
3) Failing to obtain an informed consent in respect of an expensive crown and bridge case;
4) Failing to monitor the patient’s periodontal status adequately;
5) Leaving a separated instrument in a patient’s endodontically treated tooth;
6) Failing to provide follow up care following extraction of a patient’s tooth;
7) In respect of treating a child under sedation, failing to obtain an informed consent from the parent during a procedure, when more work needs to be done;
8) Releasing information to a step parent or noncustodial parent in the face of the custodial parent’s objection;
9) Making sexually inappropriate comments to a patient;
10) Touching a patient inappropriately;
11) After administrating oral sedation, releasing a patient without ensuring the patient is sufficiently recovered to be released;
12) Breaching patient confidentiality by disclosing patient information to a relative without appropriate consent;
13) Improperly performing root canal therapy;
14) Improperly placing implants without the appropriate pre-treatment investigation to place the implants properly;
15) Recommending and installing implants when the patient’s dentition will not support implants;
16) Recommending unnecessary cosmetic treatment where the patient’s dentition or oral health suggests that such cosmetic work is contraindicated;
17) Being rude to a patient;
18) Recommending Invisalign treatment solely for the purpose of benefiting the dentist financially;
19) Recommending Invisalign treatment in circumstances where the patient is not a good candidate for orthodontic treatment;
20) Overcharging a patient for orthodontic treatment;
21) Not adequately warning a patient as to the likely cost and length of treatment for orthodontic treatment;
22) Failing to warn a patient about the risk of not treating a particular dental problem;
23) Billing for a complicated extraction when the extraction was not complicated;
24) Overbilling units of scaling;
25) Failing to adequately warn the patient of the risk of parathesia;
26) Failing to refer the patient to a dental specialist;
27) Failing to have adequate infection controls in the office;
28) Failing to follow the Anaesthesia Guidelines;
29) Acting in a conflict of interest;
30) Recommending unnecessary dental appliances, including night guards;
31) Insurance fraud; and
32) Insurance overbilling.

These are just a sample of some of the hundreds of complaints I have assisted dentists with. I have developed a reasonable understanding of the standards of practice in these various areas, that can be of assistance in assisting any dentists in Canada in responding to a complaint.

Why is it important to make an effective response?

Dentists will be familiar with unfortunate colleagues who have had their names published to the entire profession because of professional misconduct. The vast majority of such cases begin with a simple letter or email from a patient complaining about some aspect of their dental care. It used to be a favourite cliché of lawyers acting for dentists, that for the price of stamp a patient could complain about their dentist. Society has evolved, and a large number of patient complaints are now made by email. The patient doesn’t even need to invest in a stamp! Patients can complain more quickly, and it is often the case that when the patient comes back from a dental appointment and is angry and in pain, that patient can fire off an email complaint instantly. There is now less time for “cooling off” or sober second thoughts. This, in conjunction with increased patient expectations, have led to complaints against dentists increasing.
Another consequence of the information age in which we live, is that negative information gets disseminated widely and quickly. An adverse outcome, even at a Complaints Committee level, can be publicized online by a disgruntled patient on numerous web sites. Patients are also going online, in droves, to post reviews on websites such as “RateMDs” or “Rate a Dentist”.

In Ontario, the RCDS has amended its by-laws effective October 1, 2015 to expand the information available to the public on that College’s Public Register. The net result of this transparency initiative is that dentists in Ontario who are ordered by the Investigations Complaints and Reports Committee (the ICRC) to take specified continuing education courses as a result of a practice issue raised by a complaint, will have that disposition posted on the Public Register of the RCDS. In addition, dentists who receive oral cautions from the ICRC in any decisions released after October 1, 2015 will have that information posted on the Public Register. On our firm’s website you will find our article dealing with the RCDS transparency initiative, which explains in full the nature of these changes.

What is important for Ontario dentists to understand is that it is now more important than ever to deal effectively with responses to patient complaints.

In Ontario, the ICRC is now articulating in every decision whether a patient complaint identifies a risk of directly affecting patient care or safety or the public interest. If the ICRC identifies clinical issues which require remediation or significant improvement, they will order Ontario dentists to take specified continuing education or remediation courses.

More serious patient complaints may be referred to the Discipline Committee for a hearing. If a complaint is not appropriately dealt with from the outset, this increases the chances of a referral to the Discipline Committee. Dentists will be aware that a conviction for professional misconduct at the Discipline Committee will be published, and will receive wide circulation amongst the dental profession. In Ontario, the RCDS publishes a magazine called “the Dispatch” which includes all Discipline Committee summaries including convictions. When a dentist is convicted of professional misconduct, his or her name typically will appear in the RCDS Dispatch. This has a chilling effect upon a dentist’s referral base.

Another reason for taking patient complaints very seriously from the outset is the negative consequence for dentists of having a Discipline Committee conviction, or even a prior negative Complaints Committee decision, on their record. In Ontario, the RCDS ICRC is permitted to review the dentist’s prior history at the RCDS. Therefore, each complaint, even if it if is dismissed by the ICRC, can be reviewed if a similar, subsequent complaint is received.
In Ontario we are seeing the RCDS rely upon a dentist’s prior complaint history in making current decisions in current complaints. If the prior history involves criticism of the dentist’s clinical skills in a particular area, and the current complaint involves that area, it increases the chances that the ICRC will either refer the matter to discipline, or make an order that the dentist must take courses, or appear for an oral caution. For example, if there are three prior decisions involving deficient endodontic treatment, and if the dentist has already been ordered to take continuing education courses dealing with endodontic retraining, then the ICRC is likely to treat that dentist more harshly, because the prior history demonstrates a clinical deficiency in that area.

Transparency amendments have changed the approach to responding to complaints.

As indicated above, in Ontario the RCDS has amended its by-laws effective October 1, 2015. The net effect of the amendments is where the ICRC orders dentists to take continuing education courses, that information will be posted on the Public Register. In order to lessen the risk of this occurring, we have been advising dentists at an early stage of the complaint process to consider immediately taking courses to address clinical deficiencies identified by complaints. For example, if the patient complains about a dentist’s failure to recommend a crown after a root canal treatment and restoration, and if the dentist’s response is that he did have this discussion with the patient, but it is not charted, then we will advise the dentist that he will be criticized for this charting error. In Ontario, the ICRC expects that dentists will keep records with respect to informed consent discussions. If the dentist’s records do not record this informed consent discussion, then that dentist will be criticized. Typically, in those circumstances, the dentist will be ordered by the ICRC to take a course in recordkeeping, and perhaps a course in informed consent. Our practice has changed, so that if we identify at any early stage this deficiency in the dentist’s recordkeeping, we will suggest to the dentist that he immediately enroll in a recordkeeping course and informed consent course. In this way, by the time the matter is decided by the ICRC, that dentist has already taken courses that the ICRC would likely order the dentist to take. This will lessen the likelihood that the ICRC will order the dentist to take courses, which in turn will avoid the embarrassment of having this information posted on the RCDS Public Register.

This approach represents a paradigm shift in the way that we address patient complaints. Where it is clear that a dentist has made errors, or not followed standards of practice, we see no sense in waiting for the ICRC to order the dentist to take courses to fix these concerns. In Ontario, the RCDS will assist lawyers who act for dentists in identifying appropriate courses, to address the dentist’s clinical deficiencies. This is why dentists require specialized legal advice to respond to
complaints. If the best approach is to acknowledge practice deficiencies, the dentist needs to be assured that the lawyer’s advice to make these acknowledgments is well-founded. You don’t want to own up to practice deficiencies that are not necessarily obvious.

In addition, a dentist convicted of professional misconduct after a Discipline Committee hearing is at greater risk, in the event further patient complaints are received. A dentist who is convicted of professional misconduct more than once will be punished more harshly as a result of the previous conviction.

Are you scared yet? All these factors make it necessary to put your best foot forward, from the outset of the complaint.

Our firms’ approach to patient complaints

Our firm has been acting on behalf of dentists at the RCDS for the last 24 years. Our firm also acts for numerous other professionals, including physicians, lawyers, psychologists, pharmacists, chiropractors and massage therapists. Our firm has assisted dentists in Ontario in hundreds of patient complaints. Our considerable experience acting for dentists has provided our firm with a reasonable level of knowledge with respect to various aspects of dentistry and dental practice. We are not dentists, but we have sufficient experience to be able to spot issues that might not be apparent to lawyers with less experience in the field of dentistry.

Our approach to patient complaints is to take every step necessary to put an effective defence forward, from the outset. Typically, we follow the following steps in responding to a patient complaint:

1) The dentist must prepare a response, in her own words, to the issues raised in the complaint;

2) The dentist must transcribe all handwritten chart entries so that they are easily legible for the lawyer, and the RCDS;

3) If any other staff members or dentists in the practice have information with respect to the complaint, those witnesses will be interviewed. For example, a dental hygienist or dental assistant may recall the informed consent discussion before a patient agreed to have a root canal. The receptionist may recall a patient yelling loudly at the dentist, or swearing or acting inappropriately;

4) We consider whether an expert opinion would assist the dentist. It may strike dentists as unusual that an expert opinion would be considered at the Complaints
Committee level. However if the complaint is serious enough, the provision of a timely expert opinion may defuse the complaint at an early stage; and

5) It may be necessary for us to request other records from the RCDS. An x-ray may be in the possession of another dentist. The RCDS typically collects patient records from all prior and subsequent treating practitioners. We are very careful to review all records to see if there is any assistance to be rendered to the dentist, by the contents of those records.

6) As indicated above, we are now recommending to our dentist clients who have made mistakes that are identified in patient complaints to be proactive and address those mistakes by taking a course or courses well before the ICRC makes a decision. In this way the dentist can lessen the possibility that courses will be ordered that will be publicly disclosed. This requires the lawyer and the dentist to agree together on issues where it is clear that the dentist has made mistakes.

Do you really need a lawyer to respond to a patient complaint?

Dentists routinely regularly respond to patient complaints without the benefit of legal advice. Dentists are able to have complaints against them dismissed without the benefit of legal assistance. However, given the significant negative consequences of an adverse complaint decision, it is always the best advice for you to obtain legal advice. Litigation lawyers are trained to identify issues of concern, and in assisting clients to express themselves succinctly and effectively. Defending a dental complaint is initially based on written advocacy, explaining the dentist’s position. As advocates, lawyers should be able to write efficiently and focus on the appropriate issues. Not all lawyers will have sufficient familiarity with issues of professional misconduct and dentistry in order to render the specific expert assistance required to effectively deal with these matters. You would be well advised to retain a lawyer who has acted for dentists before, and has knowledge of both the complaints process and dentistry, then you will be much better served by retaining that lawyer.

Most importantly, lawyers provide an objective opinion with respect to the merits of a complaint. I am routinely obliged to tell dentists that their regulator will find that they acted inappropriately, or that they committed professional misconduct. It is sometimes necessary to hear this perspective from an objective third party in order to make the best of a bad situation. There is no tactical benefit to taking a position that is destined to be rejected by the Complaints Committee.
Appropriate tone and language

It is essential that the dentist’s written complaint response be written in a respectful and professional tone. There is nothing worse than a dentist who writes a letter that insults the patient. If a patient complains that a dentist was rude and aggressive, then it certainly doesn’t help the dentist’s cause to write a letter that is rude and aggressive as well. There is nothing to be gained by insulting the patient or the patient’s intelligence. As part of the process your response will be given to the patient/complainant to comment upon.

There is a way to subtly communicate to the Complaints Committee that a patient is an unpleasant individual, without stating this directly or by being insulting. From time to time I have acted for dentists who have been the subject of a complaint by a patient who has mental health issues. There are also ways to communicate this information without being seen as being insulting or demeaning to the patient. For example, at the start of most dentist’s complaint response letters, we recommend providing a summary of the relevant dental history, and medical history. Information about patient’s mental health or medications can be referenced in this section.

Importance of responding to all issues

Patients may write disorganized and rambling letters. It is important that the dentist appreciate all of the relevant issues that are raised. A typical issue that dentists may miss is the issue of informed consent. Patients may complain that they did not understand that when they had a large restoration performed, that it might increase the risk of requiring a root canal on that tooth. This directly raises the issue of whether an informed consent was obtained. The patient will not mention the concept of informed consent, although the ICRC will address this issue. Patients will also not complain that the dentist’s records are deficient or that the dentist failed to follow the Anaesthesia Guidelines. However, an experienced lawyer should know that these issues will be directly at issue, and considered by the RCDS, and help you respond accordingly.

Importance of obtaining corroborating evidence

A typical step in responding to a patient complaint is to interview other witnesses who have information with respect to a matter. In many circumstances, I will have to interview all of the staff of a dentist’s office. Where a patient has acted rudely or belligerently, it may be necessary to obtain corroborating evidence from all the other employees. Dental treatment issues also require corroborating evidence. The dental assistant may recall what information you told the patient, concerning
informed consent. The dental hygienist may be able to comment with respect to the patient’s poor oral hygiene, if that is a relevant issue. All of this information should be gathered from the outset.

Use of Experts

If I believe that a patient complaint raises a standards of practice issue that may be assisted by having an expert opinion, I will routinely recommend to dentists that even at the ICRC stage, that we obtain an expert opinion. Our firm has a roster of experts that we utilize for RCDS complaint matters. The provision of an expert opinion at an early stage may defuse a potentially troubling situation, or may highlight deficiencies in the treatment or the record. Typical examples of obtaining an expert opinion include the following types of complaints.

a) Recommending unnecessary restorations;

b) Performing unnecessary root canal treatments; and

c) Failing to obtain an informed consent for a complicated implant, crown and bridge or cosmetic dentistry case.

It is the lawyer's job to contact the expert, and instruct the expert. If a dentist chooses to do this himself or herself, this may cause significant evidence problems down the road. In a serious case that ends up at the Discipline Committee, if a dentist has spoken directly with the expert, that expert will be cross-examined by the Prosecution at the Discipline Committee hearing concerning the specifics of any dialogue with the dentist. If a dentist has advised the expert, “look this is the way I always perform root canals. I have done this a hundred other times”, then the expert will be obliged to recount the information provided by the dentist. This could fatally prejudice the dentist at a discipline hearing. This is why it is always necessary for your lawyer to instruct the expert.

Be consistent

One of the virtues of retaining experienced legal counsel is that you can make sure that your version of events is consistent from the outset. If a matter becomes more serious, and ends up at the Discipline Committee, there is nothing worse than a dentist being obliged to change his position with respect to factual and dentistry issues. If you take a position in writing prematurely, without the benefit of all the records or x-rays or input from other witnesses, then you will be stuck with that version of events. If you try to change your story between the time of a complaint response letter, and a referral to the Discipline Committee, then you will
be painted as not credible. This is why it is of great benefit to conduct all necessary witness interviews, and obtain all relevant records at an early stage, so that you can put forward a coherent and consistent version of events from the start.

**Is the person complaining a patient?**

From time to time I see husbands complain about dental treatment received by wives, or parents complain about adult children’s dental treatment. In these circumstances, it is necessary for the dentist or his lawyer to ask the College to obtain confirmation that the patient themselves wishes to make the complaint. There is no right for a parent of an adult child to make a complaint on the child’s behalf, unless the child consents as well.

**Complaints by ex-employees or Associates**

This is becoming a growth industry. If you fire an individual, there is always the risk that the disgruntled employee will make a complaint to the RCDS with respect to some aspect of your dental practice. Complaints from former Associates, dental assistants and dental hygienists can be especially devastating. I have seen several dentist-clients of mine receive lengthy suspensions, as a result of complaints from disgruntled ex-employees or Associates. The ex-employee may be preparing a list of problem files in the office, so that when she is fired, or when she leaves the practice, she can make a very focused complaint against the dentist. In Ontario, the RCDS has no choice but to investigate these complaints. If an ex-employee provides specific information naming patients, you should know that in Ontario the RCDS has the authority to attend your practice, and remove and review these patient charts, if circumstances suggest that an act of misconduct has taken place.

**The key is effective written advocacy**

Most patient complaints are dealt with solely on the basis of the patient’s written complaint, and the dentist’s written response. It is therefore critical that the dentist’s communications with the regulator be effective, and to the point. Litigation lawyers quickly learn that any trier of fact, whether it is a Judge or a Discipline Committee or a Complaints Committee, has a limited attention span. It is essential that written responses to complaints contain only the information necessary to advance the dentist’s position. One of the biggest failings of dentists who act on their own behalf in responding to complaints is that the complaints letters are long and rambling, and contain irrelevant content. The following are the types of comments that appear regularly in complaint letters written by dentists, that are simply not relevant at the Complaints Committee level:
1. I have always been nice to Mrs. Jones and her son, and have always treated them kindly.

2. I have worked in this Community for 35 years without a complaint.

3. I have bent over backwards to help this patient and her family, and I cannot believe that she is now complaining about me.

4. Mr. Jones has poor personal hygiene and is very unpleasant and aggressive to all my staff.

5. I have done much good work in my Community, and I have 15 patients who will attest what a wonderful person I am.

6. When I received Ms. Chin’s complaint, I was emotional and very upset, and I have not been sleeping well for the past several weeks. The complaint has also caused my wife migraine headaches.

7. I have a bad back and I am on medication for this, and I am also currently suffering from depression.

8. I cannot believe that Mrs. Jones has betrayed my trust in her and her family. I am devastated by her complaint, and can’t believe that she would double cross me in this way.

9. I reported this incident to my liability insurer and the liability insurer has told me that they have no concerns with respect to the dentistry that I did.

10. I have been doing restorations in this fashion for the last 20 years and nobody else has complained about the way I do them.

11. The patient is very stupid.

12. The patient is cheap and does not wish to pay for any dentistry.

13. Even if I had offered to do a crown on that tooth the patient would have been too cheap to pay for it.

The problem with all of the above comments are that they are not typically relevant to what a Complaints Committee must consider with respect to a standards of practice complaint against a dentist. Throwing yourself on the mercy of the Complaints Committee, because you consider yourself compassionate or kind
(while an understandable impulse), is not a submission that would be given any weight by a Complaints Committee. The Complaints Committee has a job to do: to look at dentistry issues and the dentist’s dealings with the patient. The regulator will typically not be swayed by any emotional appeals, or by any attacks on the patient’s integrity. The complaint response letter has to put forward all of the important information that the dentist wishes the Committee to rely upon, in reaching a decision that the dentist has acted properly. Too much verbiage detracts from the dentist’s core message, and may cause the Complaints Committee to conclude that the dentist doesn’t really have a proper and effective response to the Complaint. Put forward only the relevant and helpful facts. Focus on the core risks identified by the complaint. Further, the complainant will see your response, and as a result, it should not be offensive to the patient.

I have yet to read a Complaints Committee decision where the Complaints Committee is insulting to the patient. Therefore, any dentist’s complaint response letter that insults the patient is not serving any useful purpose. I have read hundreds of Complaints Committee decisions in the last 24 years. While issues about a patient’s oral health and dentition are entirely appropriate, personal invective is not.

**Is there insurance for dental complaints?**

I am currently associated with the Canadian Dental Protective Association, which is not an insurer, but which renders assistance to dentist members in respect of most complaint matters. The CDPA was established by Ontario dentists, and to this day is run by dentists. The CDPA uses a roster of lawyers who are all very experienced in dental legal issues. The CDPA also provides continuing education to dentists with respect to risk management issues. Perhaps the most valuable aspect of the CDPA program is that the CDPA offers risk management advice, initially not from lawyers but from trained dental advisors. The CDPA utilizes dental advisors who have a great deal of experience in dealing with patient complaint issues. This is a useful resource for dentists who may not wish to contact a lawyer, or who may not need to contact a lawyer. You would be amazed at the level of knowledge that a skilled dental advisor can bring to a complaint issue, in spotting issues relating to patient and business concerns that dentists have. The CDPA dental advisors receive regular training and input with respect to developments in the area of professional regulation. The dental advisors also regularly meet with the RCDS and other officials who impart their wisdom with respect to the complaints process. From acting for other dentist clients, I am also aware that the CDSPI offers insurance coverage that may cover dentist complaints. You need to make sure that the particular coverage you have through CDSPI covers RCDS dentists’ complaints. Typically there is a $1,000.00 deductible, and a $100,000.00 limit for legal fees.
Even though lawyers may be expensive, this is usually far more than enough money to cover legal fees!