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Elements of a Malpractice Action

- **Duty**
- **Breach of the standard of care**
- **Causation**
- **Damages**
- **Example**
 - No x-rays for 10 years subsequent Dx of carious lesions
 - small lesion(s)
 - large lesion(s)
 - endodontic involvement

Initiation of a Malpractice Claim

- **Notice Prior to Suit**
 - Attorney's Request for Records:
 - Do not withhold
 - Attorney's Request for Meeting
 - Feedback from patient or colleague
 - 180 Day Letter
 - Establish separate claim file

Initiation of a Malpractice Claim

- **Notice after suit**
 - Summons
 - Assignment of Counsel
 - Investigation
 - Answer and Initial Discovery
 - Depositions
 - Experts
 - Trial, Arbitration, Mediation, or Settlement
 - Consent to settle
 - NPDB and OSDB

Malpractice Law

- **Statute of Limitations: 1 year**
 - 180 Day Letter
 - Discovery Rule
- **Informed Consent**
 - Risks, benefits and alternatives
 - Frequent and serious complications
 - Documentation
 - signed form and/or progress note
 - refusal of recommended care

Frequent Allegations

- **Complications associated with:**
 - **Root Canal Therapy**
 - failed treatment: informed consent for information/handout
 - broken instruments
 - **Extractions**
 - nerve damage
 - infection
 - **Failure to Diagnose Periodontal Disease**
 - periodic x-rays
 - referrals

Frequent Allegations

- **TMJ Injuries**
 - traumatic, i.e.: extraction
 - occlusal
 - orthodontia
- **Aesthetic Injuries**
- **Orthodontic Injuries**
 - root resorption
 - unnecessary extraction
 - TMJ problems
 - cavities
- **Abandonment**
- **Failure to refer**
 - GD held to same standard as specialist

Practice Tips

- ① Document informed consent (risks, benefits, and alternatives) when appropriate
- ② Thoroughly document refusals and non-compliance
- ③ Document referrals
- ④ Collection efforts and statute of limitations
- ⑤ Respond to complaints/inquires promptly and professionally
- ⑥ Be honest and open with patients regarding complications
- ⑦ Record all significant Dx, Tx and communications
- ⑧ Retention of records
- ⑨ Never alter records
- ⑩ Maintain appropriate records
 - health history
 - x-rays
 - periodontal charting