Legal Bite Question of the Issue

What’s My Liability?

By Frank Recker, DDS, JD

Q: I am a periodontist who was asked to work in a dental practice that was recently purchased by a DSO. The selling dentist, who was retiring, performed periodontal treatment but was not a periodontist. I went into the office for a day and saw a horrific mess with virtually no charting in the patient records, no diagnostic data, no treatment planning, no informed consents, and it goes on. What is my liability if I decide to treat these patients and what should I advise them, if anything?

A: Any potential liability could be addressed by the employer agreeing to indemnify and hold you harmless from any legal action taken as a result of the periodontal treatment, or lack thereof, on any existing patient. Of course that will not prevent you from actually being sued or undergoing a multitude of depositions. The patients need to be told the truth, i.e., that the former owner was not a periodontist and that in your professional opinion the care rendered by him will need to be modified, or perhaps started over, with no charge to them. A second option would be for the DSO to find a periodontal practice that is willing to accept those patients and have the DSO pay the fees. While there is no “clean” fix to the situation, fully advising the patients will go a long way to avoid any legal actions. Most importantly, do your best to see that the periodontal patients receive quality care, even if it means a financial burden to the employer. Of course, the former owner who treated the patients remains liable for any malpractice. For that reason, be sure to document the patient’s current condition by creating thorough records before any treatment is rendered.