Legal Bite Question of the Issue

Negligent Referrals

By Frank Recker, DDS, JD

Q: Is there any way I can be liable for referring my patients to a specialist if the outcome is substandard in some way and the patient sues the specialist?

A: Generally speaking, no, because they are independent practitioners over whom you exercise no control. You are not directing them how to perform any specific procedure. They are using their independent judgment and skills.

On the other hand, if you knew or should have known that a certain specialist has little skill or training in a specific area of dentistry (such as implants) or that you have seen multiple failures emanating from his/her office, or you know they do not practice within the standard of care in some respect, then you could be at risk for making a negligent referral if an adverse outcome is experienced by your patient. One example is just assuming that an oral and maxillofacial surgeon or periodontist is proficient at placing implants. That could be a totally erroneous assumption.

Another example would be referring to an orthodontist that does not take diagnostic records required by the relevant standard of care. If you were aware that an orthodontist routinely begins orthodontic treatment at the first consultation appointment with a new patient, and does not take pretreatment cephalometric radiographs, perform tracings and conduct an appropriate analysis, and also does not take and analyze diagnostic models before commencing treatment, you could be liable if the treatment outcome is adverse and below the standard of care. A diligent plaintiff’s attorney would delve into the treatment performed on his client, and very possibly make you an additional defendant for failure to exercise due diligence in making the referral.

In summary, you have a duty to know the training, experience, practices and protocols of the specialist to whom you refer. You should also obtain a first-hand knowledge of their typical treatment outcomes for the services you are contemplating for your patient.