Legal Bite Question of the Issue

Should I Settle?

By Frank Recker, DDS, JD

Q: I have a pending malpractice suit in which my malpractice carrier, through legal counsel, has obtained opinions from potential experts that seem to be critical of my care. In particular, they criticize my record keeping, but the suit is related to an implant failure. They are encouraging me to "settle." Does this make sense?

A: Possibly. A malpractice suit requires a legal relationship between the dentist and the patient, which is normally easily established. The plaintiff must also establish that the dentist's failure to meet the obligations required by that legal relationship - that is, rendering care "within the standard of care." The last components required for a malpractice suit to "get to court," are sufficient proof that whatever you allegedly did or didn't do "within the standard of care" resulted in, or "proximately caused," the alleged damages to the patient.

For example, if you failed to take a medical history and the patient died because of a bleeding condition you would have discovered with a medical history, such would demonstrate the connection between the lack of a medical history (substandard care) and the 'damage' (bleeding to death) suffered by the patient.

In many cases, while an expert is critical of a failure to have complete records, or the failure to have complete periodontal charting, etc., these failures cannot be shown to have "resulted in" or "caused" the alleged damage to the patient.

Remember, the vast majority of dental malpractice cases are settled before trial. Unquestionably, many are settled that could have been successfully defended. But the dynamics of trying a case often make it more cost effective for an insurance carrier to encourage settlement, rather than incur the costs and any risk of loss. And perhaps equally often, the defendant dentist doesn’t want to go near the courtroom!