



American
Association of
Orthodontists

My Life. My Smile. My Orthodontist.™

This information is not intended to serve as legal advice. It is designed to provide you with a summary of some of the practical and legal issues that arise as to the topic presented. Each case is different. You should consult with a licensed attorney in your state who is knowledgeable of the topic prior to acting on the information provided in this summary. If you need any assistance in locating an attorney, contact AAO's General Counsel.

SECOND OPINIONS

Dentists have a history of being critical of the work performed by other dentists. In the book titled *Avoiding Medical Malpractice* by Arthur H. Bernstein, there is a chapter on gratuitous criticism of other practitioners. The book states:

"Before the era of malpractice risk, it was not unusual to have a dentist look into the mouth of a new patient and exclaim 'Who did that to you?' There would follow an expensive correction of prior dental work. Among physicians, comments of this kind can drive the patient to sue the one who previously treated him. Not many of these incidents are revealed in the malpractice claims and suits, since the cause of the action stated usually is the alleged improper previous care, not the condemnatory remarks of the subsequent physician. Nevertheless, the manner of describing the prior medical judgment or service can incite a patient not only to blame a doctor, but to sue him as the aftermath

of a new physician's volunteered estimation of the quality of previous professional care. It is possible to word one's comments about previous professional work in a way that does not label it as malpractice."

Many practitioners who provide second opinions fail to recognize that any suit brought as a result of their comments may, at a minimum, result in substantial time requirements on their part for attending depositions and going to trial on behalf of the patient. In a worst case scenario, the patient may decide to sue both the initial orthodontist and the practitioner who provided the second opinion.

Nevertheless, orthodontists should answer their patients' questions honestly and follow applicable ethical rules in giving second opinions. The purpose of this Summary is to give AAO members the tools to successfully render objective second opinions.

Rules of Ethics

Principle I of the AAO's *Principles of Ethics and Code of Professional Conduct* states:

Members shall be dedicated to providing the highest quality orthodontic care to their patients within the bounds of the clinical aspects of the patient's condition, and with due consideration being given to the needs and desires of the patient.

Advisory Opinion D states:

It is ethical to provide a second opinion to a patient as long as it is qualified as to whether or not it is based on a review of the treating practitioner's records and treatment history.

Advisory Opinion E states:

A second opinion should include a diagnosis and treatment plan recommended to the patient. It must be honest and focus on the facts presented. It is unethical to propound a specific technique, philosophy, training or ability as superior without acknowledging that each orthodontist uses different techniques based on training and experience, and that the second opinion is based on an orthodontist's individual perspective. A second opinion must disclose to the patient any conflict of interest of the member providing the opinion.

Advisory Opinion F states:

Patients should be informed of their oral health status without disparaging comments about the patient's prior treatment which are not supported by known facts.

Principle III of the AAO's *Principles of Ethics and Code of Professional Conduct* states:

Members shall recognize and abide by the laws that apply to the practice of orthodontics in their jurisdiction.

Advisory Opinion F states:

Members with first-hand knowledge that a colleague rendered faulty treatment or is engaged in illegal actions must report such matter to the appropriate agency, as required by law.

Principle VI of the AAO's *Principles of Ethics and Code of Professional Conduct* states:

Members shall be dedicated to generating public confidence in the orthodontic specialty by improving the quality and availability of orthodontic care to the public.

Advisory Opinion D states:

It is not unethical to accept for treatment or complete treatment on a patient who has an outstanding balance with a previous practitioner.

Advisory Opinion E states:

It is not unethical to remove appliances from, or to continue treatment of, a patient not of record upon request by that patient; provided, that substantial effort should be made to determine the reason for the request from the patient and, with the patient's consent, consult with the patient's practitioner prior to such removal or continuation of treatment. If such consent is not obtained, the patient need not be accepted for treatment unless an emergency situation is presented.

Avoidance of Liability

If you say or write anything untruthful that damages another orthodontist's professional reputation, he/she could sue you for defamation of character. If the comments were spoken, it is known as slander. Statements made in writing are called libel.

Slander, in general, is not actionable unless actual damages are proved. However, there are exceptions to this rule. One exception is for those utterances affecting the plaintiff in his or her business, trade or profession.

In addition to a cause of action based on defamation, state laws, through statutes or court cases, may provide for other causes of action due to an injury to the plaintiff's economic relations. One example is an action for tortious interference with the prior orthodontist's contract or relationship with the patient.

In short, when presented with requests for second opinions, orthodontists should consider the legal implications of such requests. Orthodontists rendering second opinions could be unwarily involved in litigation because of the consult.

Risk Management Tips

1. Avoid criticizing the work of other dentists. It is best to handle any professional incompetence you perceive through peer review.
2. Help the patient secure the services of a specialist, if indicated. Failure to properly refer a patient to a specialist may be a basis for a malpractice lawsuit. If you make a referral to a specific individual, make sure that you are familiar with the individual's professional reputation.
3. Properly document all of your work for the patient, i.e., all facts supporting your opinion, exactly what you said in your opinion, etc.