

# Idle Thoughts on the Role of a Dental Expert Witness

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## Idle Thoughts Regarding the Role of the Dental Expert Witness in Document/X-Ray Review for Dental Malpractice Cases

I have often wondered why attorneys wait so long to contact someone like me to render opinions on their dental malpractice cases. By the time I have been contacted, those things deemed important to achieve success for their clients from a legal perspective have long been established and I am brought in to provide the support for their conclusions. While I have been successful in supporting most of the conclusions established, there have been discussions of what might have been if I had been brought in sooner.

My mantra (and one I reiterate every day in my private practice to my staff) can be summed up in a comment made at a continuing education seminar I attended recently. “What isn’t written down hasn’t been done.” While this particular quote was in reference to the communication that should exist between different dental disciplines, it could easily be adapted to what I do as a dental expert witness for the legal profession.

While many malpractice claims do indeed involve actual negligence, some are just instances of poor communication between the doctor and the patient. Unsatisfactory outcomes leading to suits oftentimes are a result of promises not achieved, unrealistic expectations from both parties, lack of technical expertise, improper treatment planning, poor financial discussions and many other examples all to be supported/disputed by what is to be found in the written/digital record of the patient and the doctor’s administrative files.

Clarifying the issues by thorough document/x-ray review or “checking to see if what was written down is what was done” if done well and prior to establishing the course of a case provides attorneys with more information upon which to pursue their cases. Are they true negligence/malpractice cases or cases better served by negotiating/mediating amounts of monies to satisfy all parties involved? Is there sufficient documentation to support the cause of action from the defendant perspective, or does the lack of documentation give the plaintiff’s attorney more legal ground upon which to stand?

In hiring individuals like me, attorneys can be given, for example, a 30 page report supported by pictures/x-rays that convinced a judge upon only glancing at the report to recommend settlement to the other side rather than setting a trial date. It can also mean finding a statement in a deposition given by the defendant dentist (“I just love doing extractions.”) to explain why he failed to refer for said extractions and in the process broke the patient’s jaw.

Rather than decipher notes that read as hieroglyphics to the non-dental professional (#3 MOD Supreme Ultra A3B Universal Flowable Vitrebond 1.7 cc 2% lido w/100,000 epi) when the patient/insurance company was charged for something entirely different (#3 CC) or to have the patient claim he/she was never referred for the visit to the gum specialist when in reality he/she was perhaps referred multiple times (#24 refer perio CT graft poss fren), attorneys can rely on dental experts like me to make sense of that which is written or perhaps NOT written as the case may be.

Those of us who have a background in mediation and peer review before becoming paid experts enjoy the “thrill of the hunt” in establishing motive, intent and ability to render successful dental treatment. The classic he said/she said scenario coupled with a strong desire to “make things right” for all parties involved promotes the atmosphere of a “whodunit”. The successful dental expert witness can see the case in 3 dimensions past, present and future and can predict alternative outcomes from different treatment recommendations. In short, someone like me understands the paths that patients and dentists take when faced with multiple forks in the dental treatment road and better yet, we understand the language of the foreign land in which the attorney often finds him/herself.

The symbiosis to be found in the attorney/expert witness relationship can be immensely satisfying, time saving, economically rewarding and thought provoking.