



AN OUNCE OF PREVENTION

This feature in *Dispatch* has been prepared by the College's Professional Liability Program (PLP) to offer guidance to members

regarding the prevention of malpractice claims or the minimization of the magnitude of an existing claim.



Advice About Treating Patients Who Are Not Ontario Residents

It is not unusual for dentists who are registered to practise in Ontario to provide professional services for people who do not ordinarily reside within the province.

Visitors, tourists and athletes may suffer from a dental condition that requires immediate treatment. Some patients, normally residents in the United States, may come to Canada for elective treatment, such as implants, because of favourable currency exchange rates and the reputation of certain dentists.

As a general principle, your malpractice insurance covers you for professional services provided in Ontario while you were a member of the College.

There are significant incentives for a US resident to commence action in his or her own jurisdiction, rather than instruct Ontario counsel.

- It may be more convenient for a resident of the United States who is dissatisfied with the dental services provided to bring a lawsuit in his or her own state rather than travel to Canada to instruct Canadian legal counsel to commence an action in this jurisdiction.
- Damage awards in the United States are usually much more generous.

If you are sued by an US resident in American courts for professional services provided in Ontario, you will still be afforded coverage under your policy in the absence of any other policy violations.

However, an action against a dentist in a United States court raises significant concerns that are not found in defending an action in Ontario courts.

- Your policy limit is \$2 million, subject to additional elective excess coverage for up to a total of \$10 million, while damage awards in the United States are much higher than awards here in Ontario.
- Your policy limit is expressed in Canadian dollars, so your coverage could significantly be reduced by the exchange rate.
- Damage awards in the US more frequently include punitive and exemplary damages for which no coverage is afforded under the policy.
- You will need to attend for depositions and for trial in whatever jurisdiction the plaintiff has chosen and that means you will incur loss of income, travel costs and increased time away from your practice.

If an action is commenced against an Ontario dentist in the United States,

PLP STAFF READY TO HELP

If you have any questions about how to handle a particular situation with a patient, call PLP and one of our claims examiners will be happy to assist you. Our numbers are 416-934-5600 or toll-free at 1-877-817-3757.

PLP would most likely protest the jurisdiction of the American court over the subject matter of the litigation.

It is traditional to use the expression “conflict of laws” or “private international law” to describe the body of principles and rules applicable to transnational cases involving private relationships containing legally relevant foreign elements.

The questions that arise in conflict of law disputes are:

- Has the court the jurisdiction to hear the dispute?
- If yes, what system of law should apply?

Although there are many facts that the

court should consider when resolving conflict of law issues, the domicile of the plaintiff is an important one.

It is important to note that if the American resident were enticed to Canada for elective procedures through advertising in US media, there would be a greater likelihood that the U.S. court will conclude that it should accept jurisdiction.

If you have any questions about this article, please contact:

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Risk Management Advice

In order to avoid additional costs and the sheer inconvenience of litigating in another jurisdiction, dentists who treat non-Ontario residents should consider having the patient agree that the courts and the law of the province of Ontario shall be used exclusively for any dispute which may arise between the dentist and the patient. “Governing law” and “jurisdiction” clauses are common in transnational commercial transactions.

You may wish to incorporate the wording suggested in this article into your current consent form or patient agreement to assist in keeping any disputes in Ontario courts. This wording is a suggestion only and your own legal advisor can draft the actual wording to be used in your practice. It would be preferable to personalize the clauses by using the actual name of the patient in lieu of “patient” and your name in lieu of “dentist.” Although the consent should be signed in the normal course, you should have the patient initial beside both of these clauses.

In summary, you need to be aware that if you treat patients who reside outside of Ontario, there are certain risks.

Suggested Wording to be Considered for Addition to Consent Documentation or Patient Agreement

GOVERNING LAW

The patient agrees that the relationship between himself or herself and the dentist shall be governed and construed in accordance with the laws of the province of Ontario.

JURISDICTION

The patient acknowledges that the treatment/service is to be performed in the province of Ontario, and agrees that the courts of the province of Ontario shall have exclusive jurisdiction to adjudicate any complaint, demand, claim or cause of action, whether based on alleged breach of contract or alleged negligence arising out of the treatment.

The patient hereby agrees that he or she will commence any such legal proceedings in the province of Ontario and only in the province of Ontario and hereby submits to the jurisdiction of that province.

PATIENT SIGNATURE

PATIENT NAME (PRINTED)

DATE

PLACE (NAME OF CITY)

WITNESS SIGNATURE

WITNESS NAME (PRINTED)