Dollars and Sense: Collecting Fees and Dismissing Patients

Eric Ploumis DMD, JD

Abstract: Money and ethics often conflict. But being effective in collecting what you are owed is not in conflict with being ethical. There is nothing unethical about charging a fair fee, rendering competent services and collecting your fee. In the next several pages, we will explore issues that impact on fee collection efforts from three different perspectives: legal, practical and ethical. The legal nuances associated with fee collections and the process for terminating non-paying patients from your practice will be discussed.

Section One: Legal Considerations

The Federal Truth-in-Lending Regulations

A patient who doesn’t know what to pay will be less likely to pay it in a timely fashion. Informing your patients of the cost of orthodontic treatment is a prerequisite to successful collections. It is also a federal law. Federal Truth-in-Lending Regulations (15 USCA sec. 1601 et seq.) are federal consumer protection statutes first passed in 1968. These statutes apply to any consumer transaction, including the purchase of dental services. For the purposes of the truth-in-lending statute, the orthodontist is a creditor, the patient a consumer. Compliance requires that patients be clearly informed, in writing, of their financial obligations.

This consumer protection statute is designed to safeguard a consumer from creditors who hide excessive charges in the fine print or fail to inform the consumer of charges associated with a transaction. Compliance with the Federal Truth-in-Lending Statute does not require elaborate forms. You should have a written contract with your patients discussing your mutual obligations; a section of this agreement should review your fee and the terms for payment to ensure statutory compliance.
The regulations apply whenever a dentist intends to charge a patient interest, service fees or late fees on any unpaid balance. The regulations also apply when a dentist's contract with a patient permits payment over four or more installments, not including the down payment. Even if there are no specific finance charges associated with the installments, the law assumes these charges are built in and the dentist is still a creditor for the purposes of the regulation. If you discount your fee for payment-in-full up front, the patient who pays in installments should be made aware of this option in writing.

The Fair Debt Collection Practices Act

What steps are you legally allowed to take in an effort to collect your fee? Collections efforts must comply with federal, state and local guidelines. Most state and local statutes are modeled on a 1977 federal statute known as the Consumer Credit Protection Act, also known as the Fair Debt Collection Practices Act (15 USCA sec. 1692 et seq.), hereafter FDCPA. Many state and local debt-collection statutes are more restrictive than the federal one, however, if they provide less protection to the debtor, the safeguards built into the federal statute prevails.

Knowledge of the FDCPA will provide us with guidance as to what constitutes abusive debt collection practices and provide a reference point to more local statutes. Understanding and avoiding abusive debt-collection practices will help us to implement collection protocols that are legal, ethical and effective. The Fair Debt Collection Practices Act begins by stating: “There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices. Existing laws and procedures for redressing these injuries are inadequate to protect consumers.” If we follow the strictures of the statute, even when they may not specifically apply to us, we will have some guidance on how to proceed with collecting fees owed to us. Under the FDCPA and under many state collection statutes, a dentist attempting to collect a fee is prohibited from the following actions:

• A dentist may not communicate, or threaten to communicate, with the patient's employer that a patient is in arrears. You are permitted to call a patient at work but you may not do so if the patient or the patient's employer asks you not to.

• You may not threaten to take action against the patient that is either illegal, that you have no intention of doing, or that you do not ordinarily take. For example, you may not threaten to sue a patient for a fee if you have no intention of doing so and, as a matter of course, never sue to
collect a fee. You may, however, threaten to turn the patient over to collections if you regularly
do so. You may never threaten a patient with physical harm.

• You may not communicate with the patient or any member of his or her family or household with
such frequency or at such unusual hours or in such a manner as can reasonably be expected to
abuse or harass the patient. You are only allowed to call a patient between the hours of 8:00 a.m.
and 9:00 p.m. unless you know these hours to be disruptive; however, you may call a patient at
other hours if attempts to reach him during the permitted hours are unsuccessful. While there is
no generally accepted calling frequency, legal precedent suggests that contacting the patient more
than twice a week about an overdue account is excessive.

• You may not communicate with anyone other than the patient, the patient's spouse, parent (if the
patient is a minor), guardian, executor or administrator. For example, you may not discuss a
delinquent account with a patient's fiancé, sibling, child, coworker, or roommate.

• You may not knowingly attempt to collect, or assert a right to any collection fee, attorney's fee,
court cost or expense, unless such charges are justly due and legally chargeable to the patient.
Unless your original contract or truth-in-lending form specifies that you will seek reimbursement
for any fees incurred as a consequence of your collection efforts, you may not threaten to or add
them on at a later date.

While the purpose of this statute is to protect the consumer from unethical and overly aggressive
collections tactics, we shall see that it is possible to comply assiduously with the letter and spirit of the
law and still pursue a delinquent account aggressively.

Statute of Limitations

All too often, suing a patient to collect a fee triggers a retaliatory malpractice claim. By waiting
until they think their patient is no longer within the statutory time frame to sue for malpractice, the savvy
practitioner may think it is now safe to initiate a suit to recover an unpaid fee. It is only after misinformed
dentists are served with papers alleging malpractice that they realize that their attempts to collect a small
sum will in turn cost them a big one. The following are a couple of tolling provisions that extend the
period of time that patients have to initiate a lawsuit.

Toll for Infancy
If the patient is an infant (in most jurisdictions this means under the age of 18) the statute may be tolled (suspended) until the child reaches majority. In other words, a child does not lose his or her right to sue you for malpractice until how ever long statutory period is after his 18th birthday. This toll for infancy is very important to us as orthodontists since we treat a large number of minors. Often, we wrongly assume that since the statute of limitations for malpractice appears to have expired, aggressive fee collection efforts may be pursued against the responsible party, usually the parents without any malpractice repercussions. Any collection effort should be tempered with the knowledge that the parents can sue on the child’s behalf until the child reaches the legal age or majority. After that, the child has the right to sue on his or her own behalf, often for several more years.

*Continuous Treatment*

In many jurisdictions, another exception to the basic statute of limitations governing malpractice is called the continuous treatment doctrine. Simply put, any continual treatment pertaining to the initial therapy prevents the clock from running for statute of limitations purposes. The statute of limitations on a patient’s claim does not begin to tick down from the day you remove the braces; it begins to run from when you either formally dismiss a patient from your practice or they come in for that last retainer check. We all have patients who, despite being chronically behind on their account, shamelessly manage to come in month after month. Be advised that each time they return to your office, they may be resetting the clock on the statute of limitations thereby making it more difficult to pursue their delinquent account safely.

*Dismissal verses Abandonment*

One of the thorniest problems we face is how to dismiss a patient who fails to pay for treatment. Misconceptions abound regarding how best to dismiss an active patient, or even whether we can do so legally. Dismissing non-paying patients is an extremely effective collections tool. Following established legal guidelines will reduce the risk of being accused of having abandoned the non-paying dismissed patient. When a dentist agrees to treat a patient, a legal contract is formed. Each party to a contract for dental services agrees to conform to both the express and implied terms of that contract. For example, the dentist agrees to competently perform certain procedures in exchange for remuneration from the patient.

The doctor-patient contract may be terminated at any time during treatment. While the patient may end treatment at any time for any reason, a dentist must be able to point to a specific reason why
treatment is being terminated. Acceptable reasons to terminate treatment usually involve the failure of the patient to fulfill any of the express or implied contractual duties they owe the dentist. If treatment is being provided for an agreed upon fee, non-payment of that fee is a breach of a patient's duty and is a legally acceptable reason for a dentist to terminate the doctor patient relationship. If a dentist decides to dismiss a patient for failure to pay for dental treatment, he or she should take steps to avoid a claim of abandonment by the patient. Inform the patient of the arrears and give them an opportunity to “cure” the default. If resolution is forthcoming, send a certified letter to the patient informing him of your decision to discontinue treatment. The letter should include the following:

- the reason you are discontinuing treatment;
- an offer to treat the patient on an emergency basis for a reasonable period of time until alternative care can be secured;
- the importance of seeking continued care with an alternative provider and the risks involved in the failure to do so; and
- notification that the patient's records are available to either the patient or to a subsequent treating practitioner.

The key element in a dismissal letter is notice. The patient must have notice that he is being dismissed, when the dismissal becomes effective, and notice of the consequences for failing to seek alternative care. By following these legal requisites when dismissing a patient for nonpayment of a fee, you will minimize the risk of a claim of abandonment by the patient.

Section Two: Practical Considerations

Fundamentals of a Fee Collection Protocol

Having examined some of the laws impacting upon collections efforts, it is now time to utilize this knowledge to create a simple and effective protocol to collect outstanding account balances. Before any attempt is made to collect a delinquent account, indeed before an account even becomes delinquent, three background essentials that need to be in place to insure successful collections. They are:

- A clear understanding of who the patient and who the financially responsible party is.
- A clear understanding of when an account is delinquent.
- A clear understanding of what the fees are.
A Clear Understanding of Who the Patient and Who the Responsible Party Is

Before we can collect a fee, we need to know who is responsible for paying it. If we need to undertake a collections effort, we need to know as much about the responsible party as we possibly can by the end of the initial visit. You will never have a better information-gathering opportunity than during the initial encounter. Check over your patient information form. At a minimum, for collections purposes you should be asking the following:

- Name of patient
- Age of patient
- Address of patient
- Name of financially responsible party (even for adults)
- Address of financially responsible party
- Phone numbers: home, work (if a minor, mother and father work), emergency
- Name of person who referred patient
- Name of dentist
- Name of physician
- Social security number

Each of these has a specific collections purpose. Obviously, you need to know the patient’s name. His or her age is helpful for several reasons. If the patient is a minor (under the age of 18 in most states), he or she lacks the capacity to form a legal contract with you. If you begin treatment, a minor has no legal obligation to pay you and you may be committing a battery by doing so. A patient’s age also alerts you to the statute of limitations issues.

The address tells you where to send the bill and can be an instant credit check. While prejudging a patient’s financial status is never a sure thing, a patient’s address can be an indicator of his or her ability to pay and can suggest that a customized payment plan may be advisable. If possible, inquire how long a patient has been at his or her current address.

Even if the responsible party is the patient, asking who the responsible party is reinforces the fact that somebody is responsible for paying you. Is the responsible-party address different that the patient’s?
Is it a post office box? If so, why? Is it a divorce case? If this is the case, you need more information. Many collections headaches arise from divorce issues and you do not want to be caught in the crossfire.

Get as many different phone numbers as possible. In the event that you need to pursue a fee, calling at work usually gets more of a response than calling at home. When you call someone at work, you usually don’t get an answering machine and more often than not, you will be put through directly.

Having the name of the person who referred the patient, as well as that of the patient’s dentist and physician, will prove helpful later if you cannot find a non-paying patient. Chances are that even if a deadbeat patient isn’t taking your calls or answering your letters, they have not severed all contact with their friends and other health-care professionals. In the event that you need to skip-trace a delinquent account, these numbers will assist you.

A person is not required to reveal his or her social security number, but when someone chooses not to, you have another credit alert. Usually people who refuse to provide a social security number on an information form do so because they are aware of the value of the number in skip-tracing and enforcing judgments. The same goes for people who refuse to give a street address or a phone number and provide you only a post-office box. They may be privacy freaks, but they may also be poor payers.

With all of the above in mind, review and revise your patient history form. Make sure you are asking enough information to enable you to put a collections effort into play if necessary.

**A Clear Understanding of When an Account is Delinquent**

Have a clear office policy of what constitutes a delinquent account and what steps you need to take to address one. The farther behind a patient’s account gets, the less likely you are to collect it. As orthodontists, we usually bill monthly. An account that is two billing cycles behind should be considered delinquent and deserves immediate attention.

You should personally look over your statements every month. It is your money that is not being collected. Your staff gets paid each week regardless of who hasn’t paid you. If you stay on top of your accounts and begin your collections efforts promptly, the number of accounts you have to deal with will shrink to next to nothing. Then, and only then, can you delegate the job of reviewing your statements to a trusted staff member.

**A Clear Understanding of What the Fees Are**
When we discussed legal considerations, we reviewed the need for a truth-in-lending form. Either you or a trained staff member should review the fee plan with the patient as carefully as you do the treatment plan. Very often, patients listen more attentively to your fee presentation than your case presentation. My preference is to have the doctor discuss the fees with the patient. If you delegate this duty, train your staff to pick up the clues that may indicate that a patient may be a slow payer. No matter who discusses the fee structure, make sure you leave nothing to the patient’s imagination.

**The Collections Effort**

Using our knowledge of the legal issues involved and building upon the fundamentals we just discussed, the actual collections efforts should go smoothly. You need to be systematic and timely to be effective. The following is a suggested protocol.

**First Effort:** Your first contact should be when a patient’s account is thirty days past due. Begin your collections effort by jotting a note on their statement that reads something like: “Please call if you have any questions about your account” or “Please bring your account up to date.” The doctor, not a staff member, should write the note and either initial or sign it. The response from those patients who “just forgot” is dramatic. This will be your single most effective collections tool.

Often, the doctor is seen as distant from the financial concerns of the practice. Often, the doctor either feels discussing money is unseemly (something I will address in the final section) or, he feels embarrassed bringing it up. Patients pick up on this, and those looking for a reason not to pay you will have it. Unless you let your patients know that you expect them to pay you promptly, you should not expect to be paid promptly. That is why it is important that you, not a staff member, initial this first collections effort. Try not to do this with a phone call. A phone call takes too much of your time; is usually delegated to a staff member who really doesn’t relish the job and will not do it well; and, more often than not, requires repeated efforts to successfully contact the debtor. All you want is for the patient to bring the account up to date. A letter invites only this response.

**Second Effort:** Although the response to your first effort will bring in many of your easily collected overdue accounts, you will still have a handful of accounts that require your attention. At this point, you are in the 60-90 day past due range and you need to be a bit more decisive (After 90 days an uncollected dollar is worth only 72 cents). At this point you need to send a real collections letter. It
should inform the patient how much they owe you and welcome them to call your office to discuss their account. Be sure to keep copies of all letters you send the patient. Keep in mind that no matter what your fees, patients think orthodontics is expensive. Your statement will often be permanently positioned at the bottom of the patient’s pile of bills and unless you take some action to move yourself to the top you may never get paid. Unlike the utility, cable, luxury car or private school bill, our bill does not have a “must pay” imperative attached to it. We have not conditioned our patients to take it seriously, and there is very little penalty attached to paying us late.

Remember, the Truth-in-Lending Statute does not allow for retroactively adding a penalty for paying late. I suggest that you inform the patient, in writing, at the initial fee presentation that there is a penalty for paying late, either through an interest charge or a late payment fee. You can always waive the penalty, but you cannot add it. Virtually every other creditor charges late fees and people are conditioned to paying them. There is no reason we should not keep the option available to us and use it.

Third Effort: If your patient becomes more than 90 days plus in arrears, you need to send a very decisive letter, one that spells out the potential penalty in store for failure to pay. Like the last letter, this should not say too much, but it should inform the patient that you will not be able to continue treatment unless the account is brought up to date. Be careful not to give patients the idea that you are abandoning them, but do let them know that you reserve the right to dismiss them. What usually happens at this point is that the responsible party will call to discuss developing new payment schedule. You are under no obligation to accept this overture and very often, fairly but firmly insisting on being paid will get you paid. If you do choose to work something out with the patient, do not accept smaller payments over a greater number of months.

Legally, what is occurring is that you and the patient are forming a new contract. You should be prepared to dictate the new terms. Whatever you agree to should be backed up with some guaranteed payment method such as a series of post-dated checks, a non-recourse credit card authorization or permission to draw the money directly from the patient’s checking account each month. A promise to pay that isn’t backed up by one of these initiatives will put you right back behind the eight ball when your next statement comes out.

I do not like collections agencies. Why should you give up 20 to 50 percent of your money to let them collect for you? Collections agencies don’t know and don’t care about your relationship with the
patient. Their heavy-handedness can often provoke a patient, invoke a retaliatory lawsuit, or result in a complaint to a disciplinary or regulatory agency. Following the simple protocol outlined above should be just as effective as using a collections agency; the difference being, you get to keep all of the money and still maintain a good rapport with your patient.

What if your patient promises to pay, but instead of paying the $200 a month you agreed upon, begins to send you check for $20 a month? If you accept this check on a regular basis without protest, you have reached what is known in legal jargon as a new “accord and satisfaction.” This means that the patient has unilaterally renegotiated his contract with you and you have accepted these terms. What if your patient owes you $1,000 and sends you a check for $500 marked “payment in full.” If you accept the check, you have indeed been “paid in full.” There is nothing you can write on the check that will negate the words “paid in full” if they are clearly written on the check. You have two choices: cash the check and accept it as full payment, or return it to the patient.

These efforts at collecting overdue accounts will resolve most of your outstanding account balances but remember, successful resolutions decrease exponentially with the amount of time the account is in arrears. If you still have not been successful in working something out by this point, you either have to accept the fact that you are working for nothing or cut your losses and dismiss the patient from your practice.

**Dismissing the Patient:**

You have no obligation to continue to work for nothing. If you follow the guidelines discussed above, you will be perfectly within your rights to inform the patient you will not continue their treatment. In the legal section on dismissal, we learned that notice is the key element in patient dismissal. To be sure that the patient gets fair notice, this letter must be sent by certified mail, return-receipt requested. The legal presumption is that the addressee received the letter even if it is returned to you. The addressee is responsible for knowing what is in that letter and failure to pick it up does not absolve a responsible party of that burden. You should send another copy of the dismissal letter at the same time you send the certified one, but place this copy in a plain white envelope and handwrite their address. More often than not, it is this letter that the patient responds to.

Virtually without exception, your office will get a call right after the letter is received. Most often, the response is one of incredulity: “I never knew I owed you money,” or “I never received a bill.”
Take it in stride, insist that the account be brought up to date and continue with treatment. Dismissing the patient is a tactic of last resort, but it is one that is certain to get results as long as you do it by the book.

_Suing a Patient:_

Suing a patient to collect your fee is not an option in my collections protocol. If you implement this collections protocol as previously described, you should never have an account that is delinquent enough to warrant filing a lawsuit, even in small claims court. Begin your collection efforts early and cut loose the non-payers early. Structure your fee schedule so that even if you have to dismiss a patient, you are at least at a break-even point. A non-payer understands why he or she is being dismissed and will call you to make arrangements to pay. If you sue that same person to collect your fee, you are needlessly antagonizing him, inviting him to respond with a complaint to the state dental board or to file a retaliatory lawsuit. Even if you win your suit, you are often left with a judgment that is difficult, if not impossible, to collect. There is no reason that we, as orthodontists who have the luxury of presenting clear fee arrangements for an ongoing treatment plan, ever have to resort to a lawsuit to collect our fee.

**Section Three: Ethical Considerations**

Can we, as health-care professionals, reconcile our duty to provide ethical and compassionate care with aggressive fee collections? I submit that it is the ethical practitioner who takes money out of the doctor/patient equation. Having an office full of patients who are up to date financially creates an environment that allows us to focus on what we do best: creating beautiful smiles.

Parents are aware when their child’s account is in arrears. They often don’t come in for their child’s appointment, break appointments, and fail to respond to your efforts to discuss treatment. In the end, the child suffers as treatment drags on. Doctors have the tendency to get frustrated with the broken appointments and lack of cooperation, and ultimately just want to “get it over with.” Some doctors tell me they insert a “financial wire” in the hope that by dragging out treatment, they will eventually get paid. Not only is this unethical but it places the doctor in jeopardy with the regulatory bodies in his state. Once financial issues begin to impact on treatment issues, you have begun sliding down the slippery slope of ethical ambiguity. Taking money out of the treatment equation is liberating for both the doctor and the patient. We need to stop thinking that the business side of orthodontics has
nothing to do with the clinical side. They are intimately related, and the sooner we acknowledge this intimacy, the better we can render top-quality care to our patients.

I am an attorney, but like you, I am also an orthodontist. Because I wear two hats, I am privy to the “secrets” of many of our peers. The preceding advice is the distillation of hundreds of consultations with other professionals. It is field-tested. I urge each of you to consult with a local attorney who is well versed in collections issues. Have him or her assist you in shaping an effective collections policy in your office.

This article looked at collections from three distinct perspectives. Reread it at your leisure. Pick it apart, customize it, adapt it to fit your personality and office structure. If you would like samples of any of the letters or forms I have mentioned, send me a stamped, self-addressed envelope.

Dr. Ploumis is an associate clinical professor in orthodontics at New York University College of Dentistry. He practices orthodontics and law in New York City, New York.