

# Protecting Your License Against Common State Board of Dentistry Matters

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# Today's Speakers



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# Objectives

## List

Understand the role, authority and mission of dental licensing boards.

## Understand

Describe common patient complaints filed with dental licensing boards.

## Identify

Discuss possible outcomes of the disciplinary process, including strategies to proactively protect your license.

# The State Board of Dentistry

- What is the mission of the State Board of Dentistry?
- Notice of a complaint
- National Practitioner Data Bank (NPDB) stats

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# State Board of Dentistry

- A state board of dentistry, board of dental examiners, or similar agency of state government, promulgates rules/regulations associated with dental practice.
- Its authority is limited to that granted by the state legislature and typically includes:
  - Promulgation of rules and regulations to enable the board to perform its duties
  - Establishment of licensure qualifications
  - Issuance of licenses to qualified individuals
  - Establishment of standards of practice and professional conduct
  - Taking disciplinary action against those who engage in misconduct
- The state board of dentistry exists to **protect the public** and promote the health and safety of its consumers.

# State Board of Dentistry Matters – Contact Your Risk Manager/Supervisor/Owner Immediately!

A notice of complaint/investigation may allege professional misconduct and may include:

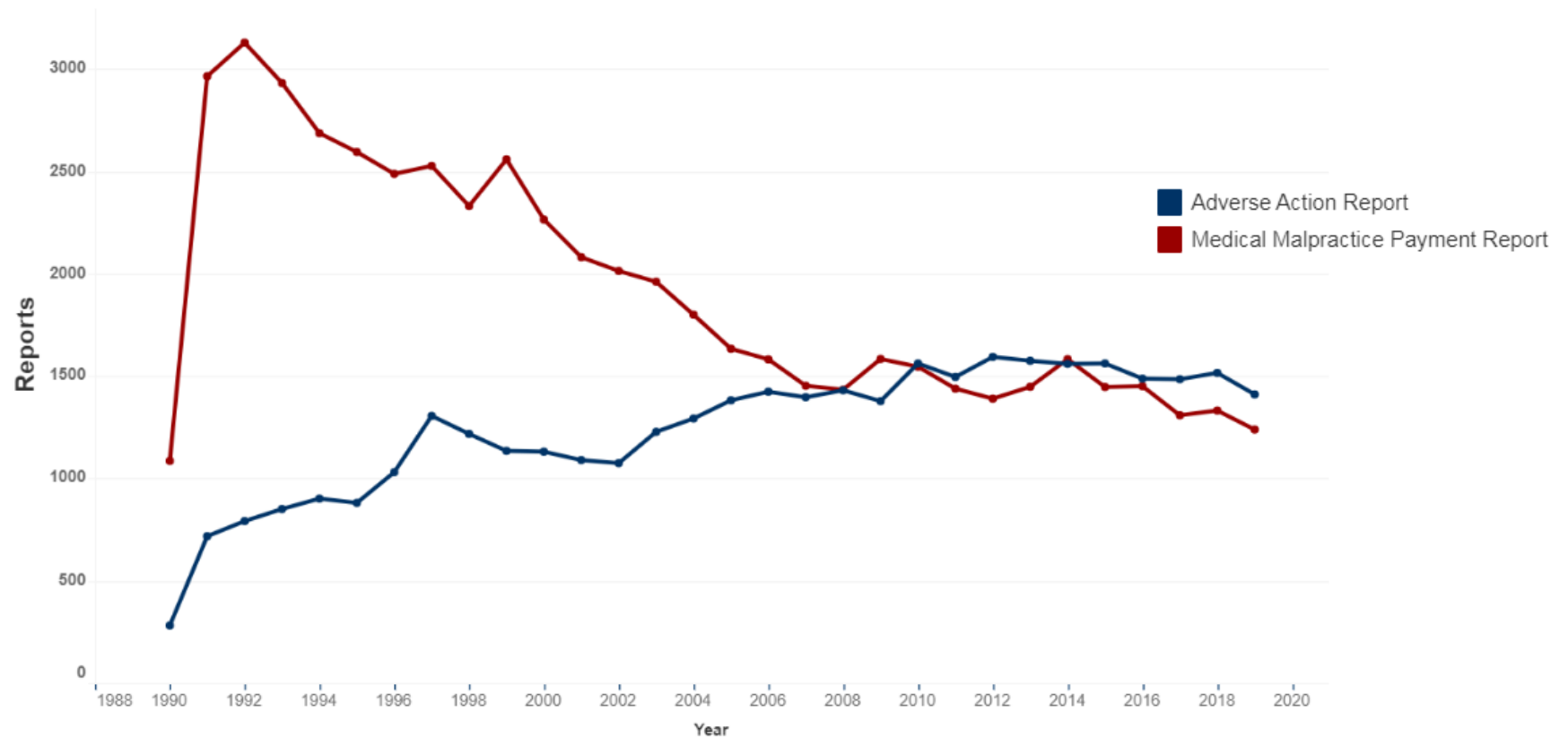
- A letter from your State Board of Dentistry
- A copy of the complaint
- An “Order to Show Cause,” directing the licensee to respond in writing within a specified period of time.
- A Statement from a patient indicating that he/she may be considering filing a complaint

**Contact Your Risk Manager/Supervisor/Owner immediately if you have received any one of the above-referenced notices.**



# NPDB\* – Reported Adverse Actions Against Dentists

Report Type by Year





# License Protection (LP) Case Study

**Periodontal Treatment and  
Patient Dissatisfaction**



# LP Case Study: Periodontal Treatment and Patient Dissatisfaction

**Practitioner:** General Dentist

**Patient:** 45 year-old female

**Patient History:** periodontal disease, smoker, bruxism

**Risk Management Topics:** periodontal health assessment and management; referrals; informed refusal; documentation and recordkeeping

## **Facts:**

- Patient of the general dentist for more than 20 years
- Past referrals to periodontist refused
- Referred again after re-assessment: patient accepted
- Periodontal surgery resulted in exposed crown margins.
- Patient was very dissatisfied with esthetic outcome and filed a complaint with the dental licensing board.
- The incident initiated with Claim Department for support.



# LP Case Study: Periodontal Treatment and Patient Dissatisfaction

## **Incident Review and Assessment:**

- The claim professional reviewed the case with the insured and assigned legal counsel.
- Complied with request for records and narrative
- Attorney/insured discussion: sanctions probable
- Licensing board initial assessment interview:
  - The Board proposed a consent agreement.
  - The dentist considered consent agreement terms.
  - The dentist later agreed to sign the consent agreement and waive a hearing.
  - Dentist's self-assessment: inadequate recordkeeping; inadequate patient management and referral process for periodontal disease

# LP Case Study: Periodontal Treatment and Patient Dissatisfaction

## Further Analysis:

- Patient: refused dentist's recommendations; inadequate compliance with home care/recalls
- The Board recognized the patient's responsibilities, but the dentist must meet the standard of care (SOC).
- Several SOC concerns:
  - One full-mouth radiographic series, more than 20 years ago
  - Referred patient to periodontist 3 times during 8 years with no documented informed refusal
  - Three documented periodontal exams, but no pocket depths or other findings were recorded.



# Outcome

- Consent order signed:
  - Three-year license probation
  - \$1,000 fine
  - Required CE within 1 year:  
risk management;  
periodontal diagnosis;  
general diagnosis and  
treatment planning (8  
hours each topic)



## LP Case Study: Risk Management Recommendations

- **Perform and document comprehensive periodontal exams** and charting for all patients. If providing periodontal disease therapy, meet the standard of care.
- **Obtain appropriate and diagnostic radiographs**, as well as other diagnostic information in order to fulfill the patient's needs and the standard of care.
- **For patients that refuse periodontal therapy and/or referral, document informed refusal.** Fully discuss your assessment of the disease status and the risks associated with refusing referral/treatment.
- **Refuse patient demands for other treatment** that would fall below the standard of care.
- **Re-assess periodontal condition for all patients to meet the standard of care**, including patients who have previously refused periodontal referral/treatment. Update the periodontal charting, findings and diagnosis.
- **Follow professional standards and state requirements for dismissal** if you decide to terminate the doctor-patient relationship based upon the patient's refusal to accept your referral.

# Common State Board of Dentistry Complaints

- License Protection vs. Professional Liability
- Self-Reporting
- Top Allegations





# License Protection (LP) vs. Professional Liability (PL)

## *What is the difference?*

While LP matters may be independent of any PL action, licensing boards may require that **reports be submitted to the board as a result of a PL judgment or settlement against the dentist.**



### License Protection vs. Professional Liability. What is the difference?

#### License Protection

**Inquiry by the State Board of Dentistry,** arising from a complaint.

**Allegations can be directly related to a dentist's clinical responsibilities,** and they can be of a nonclinical nature, such as physical abuse, unprofessional behavior, or fraud.

**The State Board of Dentistry can suspend or revoke a license.** Its primary mission is to protect the public from unsafe practice.

#### Professional Liability

**Civil lawsuit** arising from a patient's malpractice claim.

**Allegations are related to clinical practice** and professional responsibilities.

**The civil justice system cannot suspend or revoke your license to practice.** Professional liability lawsuits serve to fairly compensate patients who assert that they have suffered injury or damage as the result of professional negligence.

**A professional liability claim with or without a civil lawsuit** may result in a license protection inquiry.



# License Protection

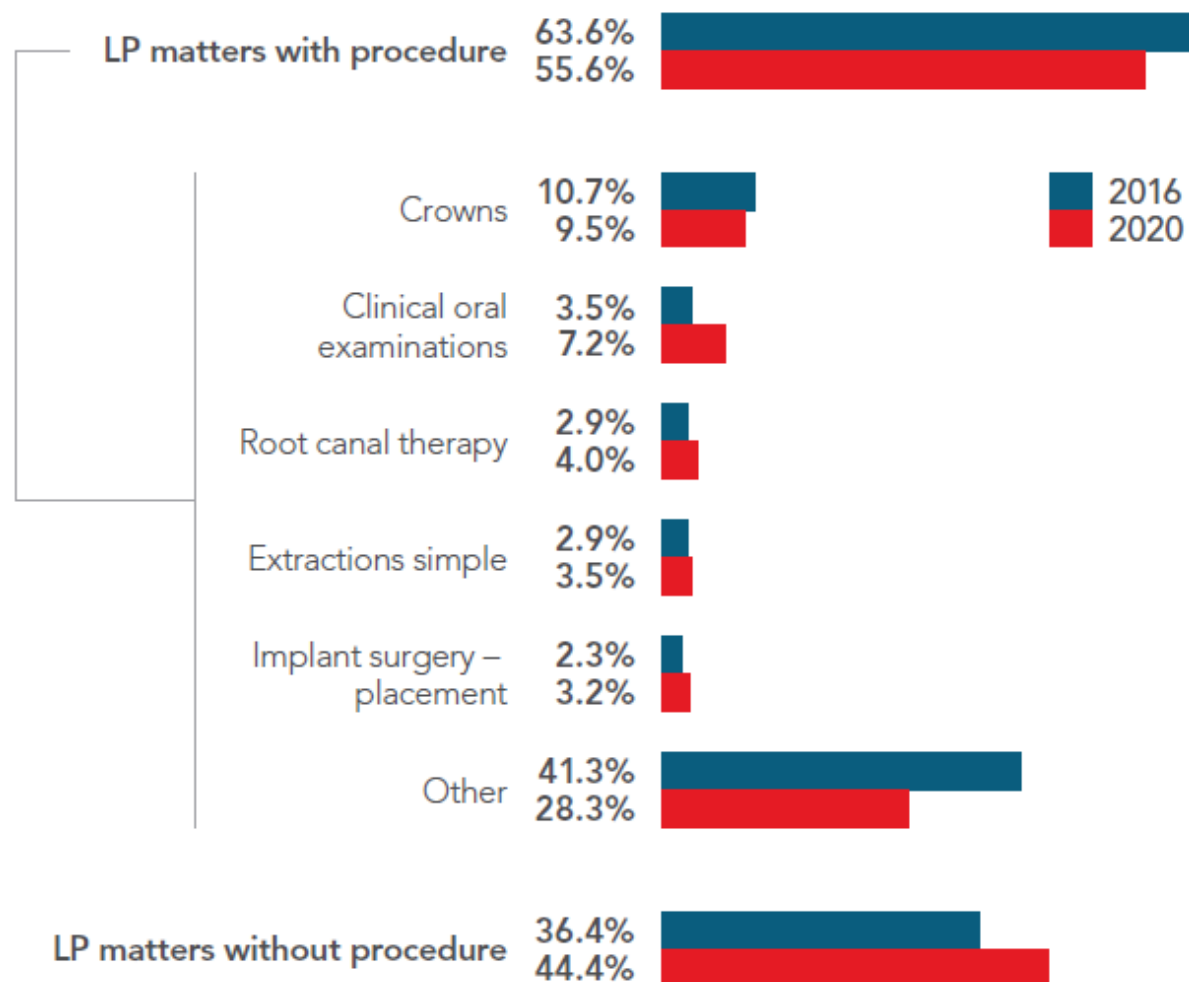
- Patients may seek to pursue a licensing complaint when they are unable to obtain legal counsel to represent them in a malpractice suit.
- Licensing board complaints also may be submitted by non-patient third parties, such as other healthcare providers, including dentists and dental insurance companies. States also may permit anonymous complaint submissions.
- Although states may have some flexibility regarding the investigation of license complaints, many state legislatures have enacted legislation that requires the state dental board to investigate **every complaint** filed against a dental licensee.
- According to the new Dentist's Advantage/CNA Dental Claim Report, *Dental Professional Liability Claim Report: 2nd Edition*, the average number of annual LP matters has increased by 10 percent since the 2016 claim report, while the average payment per LP matter increased by 8.1 percent (from \$4,096 to \$4,428).

# License Protection – Self-Reporting

- Important issue: dentists often overlook state self-reporting requirements
- Self-reporting requirements may apply to criminal convictions and other legal actions not directly related to the delivery of healthcare services.
- Self-reports also may be required for patient care, such as a patient death or hospitalization, whether directly related to the dental care provided or not.
- Review, understand and comply with your state requirements.

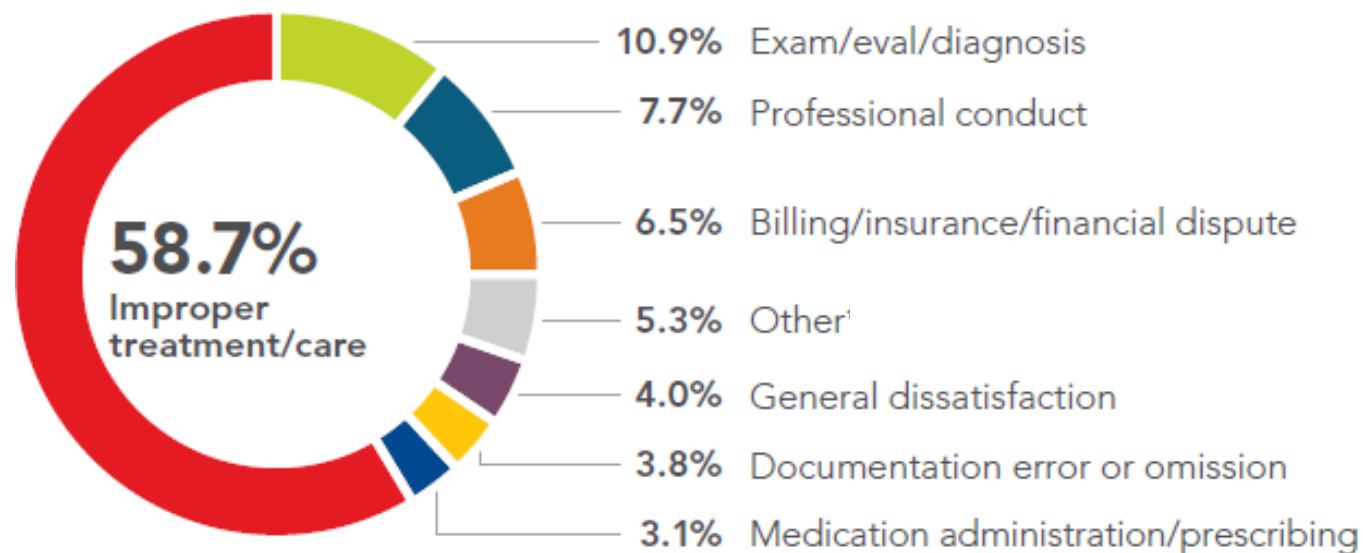
# Analysis of Top LP Matters with Procedure

- Although the overall dataset includes 70 to 80 unique dental procedures associated with LP matters, this list includes the top five procedures, representing 55.6% of all LP matters.
- 44.4% of LP matters in the 2020 claim dataset were not associated with a specific dental procedure, compared to 36.4% in the 2016 dataset. (Example: professional misconduct)

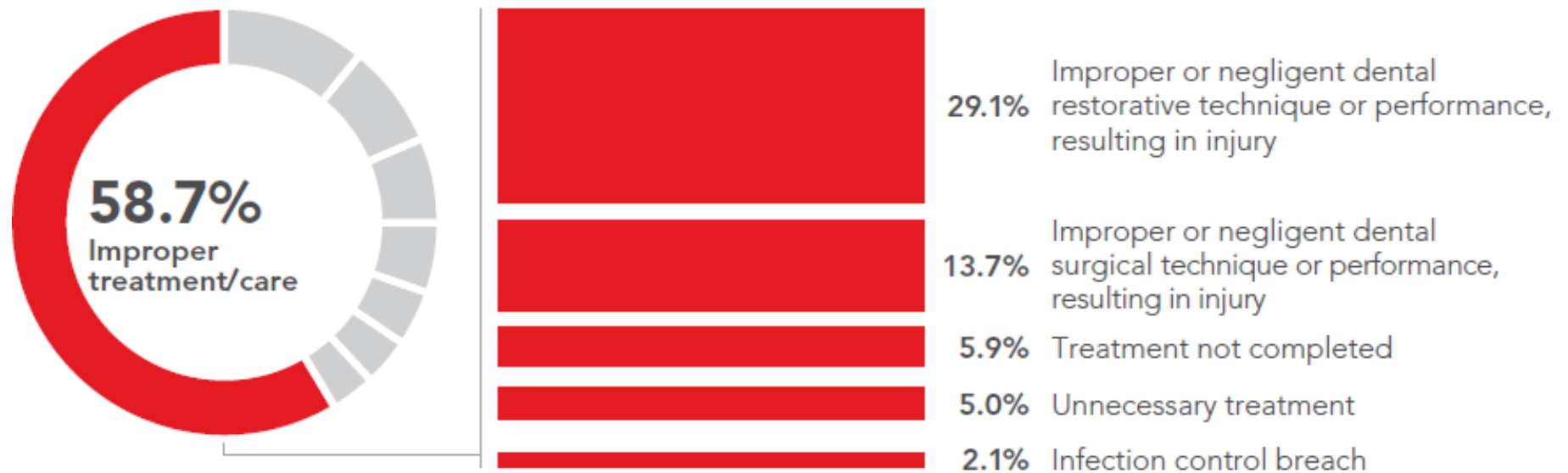


# License Protection - Analysis by Allegation

- **Improper treatment/care** significantly exceeds other closed LP matter allegation categories at 58.7%.
- This category includes allegations of a **restorative or surgical standard of care breach**, as well as allegations of **treatment not being completed, unnecessary treatment** and **infection control breaches**.



# License Protection - Improper Treatment and Care



- **Improper treatment/care** complaints may allege substandard treatment, or may be initiated due to patient frustration, anger, or miscommunication/lack of communication between the patient and dentist.

# License Protection (LP) Case Study

Allegations of Care and  
Documentation Lapses



## LP Case Study: Care and documentation lapses

- A board complaint alleged treatment/documentation lapses for multiple patients.
- Given the scope and nature of the complaint, the board requested:
  - Complete dental records for 10 patients.
  - Information and records related to infection control/sterilization.
  - Nitrous oxide analgesia administration records.
  - Required education and training records.
  - Amalgam separator maintenance logs.
- Following a one year investigation, the board found substandard recordkeeping, including incomplete medical histories, undocumented consultations, missing progress notes and inadequate/incomplete sterilization logs.
- The dentist received a fine and admonition, with conditional license restrictions and continuing education requirements.

# The Disciplinary Process

- The Disciplinary Process
- Response
- Licensee Rights

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# The Disciplinary Process

- The dental licensing board (or in some states, the board of health or another agency) is authorized and/or mandated to investigate all complaints in the interest of protecting public health and safety.
- Irrespective of their merit or final outcome, all complaints and board investigations instituted against a licensee may pose significant emotional and professional impact upon a dentist and other dental practice personnel.



## Response and Process

- Note that licensing board response deadlines are often very short.
- Swift action is needed and, in many cases, an extension request may be appropriate.
- **Contact Your Risk Manager/Supervisor/Owner immediately.**
- Begin to compile the requested information.
- Discuss the investigation and response with your assigned claim professional and/or attorney before proceeding.
- The board may require submission of *original radiographs* and will not accept copies. Therefore, always duplicate the radiographs and maintain copies. Do not send original records without first creating acceptable copies.

## Response and Process

- When the investigating agency receives the requested records and/or other documents, it will then proceed in accordance with the state's professional complaint review process.
- Requirements during the review process may include:
  - Requests for additional documentation.
  - Narrative reports from the dentist.
  - Patient and/or dentist interviews.
  - On-site assessment of the dental practice.
  - A hearing (format and process may vary significantly by state).

# Licensee Rights During the Disciplinary Process: Understand Specific State Rules and Regulations

- Right to legal representation.
  - A dentist should never submit to an interview with the state licensing board or state investigator without first consulting with legal counsel.
  - Legal counsel should be present for any interview, settlement conference or other type of conference or hearing proposed by the board or investigator.
- Right to ask questions/inquire.
- Right to a hearing or administrative review.
- Right to submit written information for consideration.
- Right to engage and present expert input.
- Other letters of support.

# License Protection (LP) Case Study

**Complaint Resulting from a  
Professional Liability Action**



## LP Case Study: Complaint resulting from a professional liability action

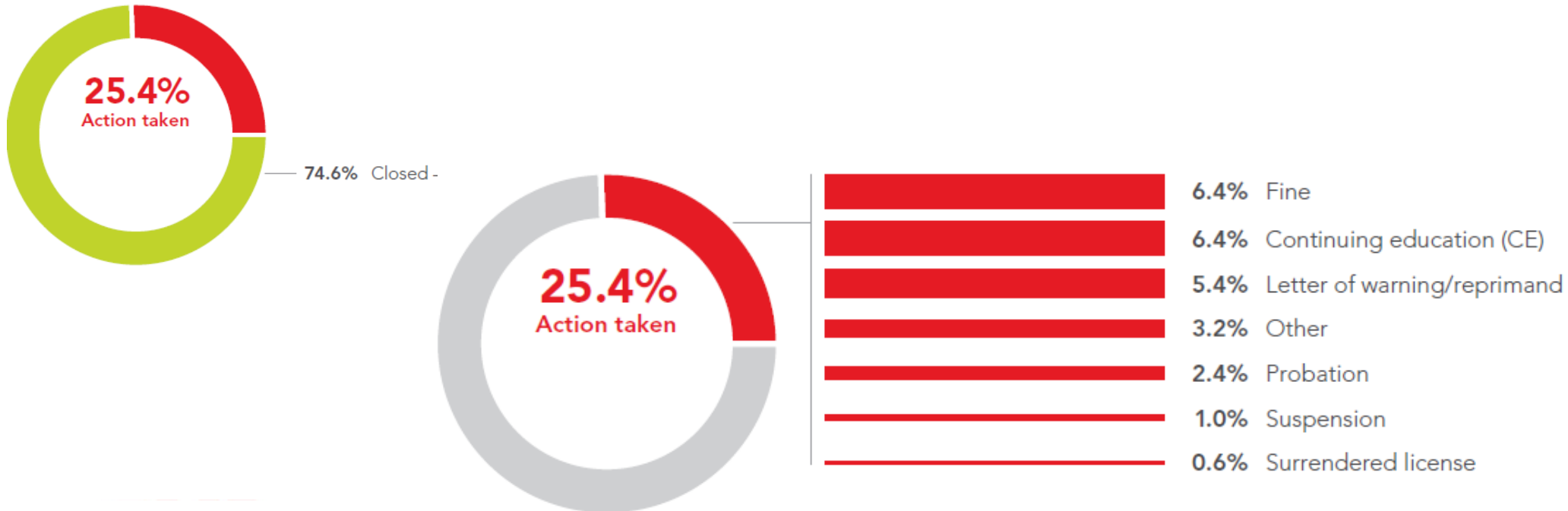
- A licensing board investigation resulted from a professional liability action related to the damage of a healthy tooth during dental implant placement.
- Following settlement of the PL claim and required board notification, the licensing board initiated an investigation.
- After comprehensive review of the case records, the board's clinical expert opined that the standard of care had been breached.
- Following a two-year investigation, the dentist decided to voluntarily relinquish his dental license in lieu of facing the significant costs associated with proposed disciplinary sanctions.

# Risk Control Recommendations

- Outcomes
- “Do’s and Don’ts”

# License Protection – Analysis of Board Actions

- Disciplinary actions imposed by the licensing board may include one or more sanctions, such as fines, public reprimands, continuing education, monitoring, remediation, practice restrictions or suspension, and license revocation. These actions may affect a dentist's licensure and ability to practice.





# If You Have a License Complaint...



- ▶ **Cooperate** with all Dental Board inquiries, whether you believe them to be frivolous or not. It is the responsibility of the Board to make these determinations.
- ▶ **Contact** your risk manager, the practice owner, your insurer immediately!
- ▶ **Secure and sequester** the file to prevent alteration - Do NOT add or delete any information in the patient's chart!
- ▶ **Comply** with all investigations.
- ▶ **Agree to and satisfy** patient requests for copies of their records, according to state and federal requirements.
- ▶ Try to resolve license situations on your own (without legal or risk management guidance).
- ▶ Call patients to discuss a legal/regulatory matter without speaking with your attorney first.
- ▶ Speak with anyone about the case other than your risk manager, the practice owner, your insurer, and/or your attorney.


# License Protection (LP) Case Study

**Allegations of Unnecessary and  
Substandard Treatment**



## LP Case Study: Unnecessary and substandard treatment

- A patient's spouse filed a licensing board complaint.
- The complaint asserted unnecessary and substandard treatment involving the patient's care for:
  - Multiple extractions.
  - Dental implant placement.
  - Implant supported restorations.
- The board engaged a prosthodontist expert who opined:
  - "Questionable" care provided.
  - Quality of the work: failure to adhere to the standard of care.
  - Multiple acts of gross negligence.
- A citation resulted in fines, continuing education and restricted practice.



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# Resources

- Dentist's Advantage risk management resources. <https://www.dentists-advantage.com/Prevention-Education>
- CNA 2016 Dental Professional Liability Claim Report. <https://www.dentists-advantage.com/Prevention-Education/Claim-Reports>
- Dentist's Advantage/CNA Dental Professional Liability Claim Report: 2<sup>nd</sup> Edition. <https://www.dentists-advantage.com/Prevention-Education/Claim-Reports>
- National Practitioner Databank (NPDB). <https://www.npdb.hrsa.gov>; Public Data Analysis Tool. <https://www.npdb.hrsa.gov/analysistool/>
- American Association of Dental Boards (AADB)
  - List of state dental licensing boards. <https://www.dentalboards.org/state-board-list>
  - Access state dental practice acts. <https://www.dentalboards.org/practice-act>
  - Investigation clearinghouse information. <https://www.dentalboards.org/clearinghouse>
  - Clearinghouse self query. <https://www.dentalboards.org/assets/QUERY%20FORM.pdf>