

## **A Legal Perspective on Claims Outcomes**

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In my role with CNA HealthPro claims, I am frequently asked by dentists about malpractice claims outcomes. Usually, these questions arise after a dentist has heard through the grapevine that a case has been resolved, either by settlement or verdict, at what seems an unreasonable cost. I am asked why CNA HealthPro settled such a case, or why it went to trial, or why we agreed to pay such a sum for a particular injury.

Each case is its own unique story. However, there are factors that commonly affect claims outcomes that are often part of the explanation to these inquiries. While these do not explain every outcome, they are something to consider the next time you are trying to figure out a claim scenario you have heard about.

The vast majority of claims are resolved without going to trial. Under the PPP policy, we need the insured's consent to settle. This being the case, here are some of the scenarios and factors that may influence dentists' decisions to settle and forgo their day in court. The following four claims scenarios usually end with a negotiated settlement:

**1. *Liability for the injury is not contested, and the claimant makes a reasonable demand for compensation.***

In this instance, the best outcome for all involved is an expeditious settlement of the claim.

**2. *Liability is debatable, a reasonable demand is made and the dentist decides to settle.***

In this instance, the inherent uncertainty of trial, the potential lost income and personal time associated with deposition and trial, or the desire to reconcile with the patient motivates the insured in the direction of settlement.

**3. *Liability is debatable, potential damages are high and the dentist is wary of personal exposure.***

This is rare, but it can occur in cases involving severe damage, such as severe nerve injury, brain injury or death. This decision is financially motivated.

**4. *The claim is medically defensible, but non-medical issues make a trial undesirable.***

This occurs primarily when the plaintiff's condition will garner sympathy or when outside issues, such as billing or charting irregularities, would cast the dentist in an unfavorable light.

On the other hand, certain cases are destined to go to trial. These include the following:

**1. *The claim is without merit, but the claimant refuses to drop it voluntarily.***

CNA HealthPro vigorously defends frivolous claims, with the assistance of the dentist.

**2. *The claim should be settled but is not, because the claimant insists on his or her day in court.***

While not common, some claims are emotionally charged to the point where money is not the issue. Instead, the plaintiff seeks vindication by a jury.

**3. *The parties cannot agree on a reasonable settlement figure.***

In these cases, the patient's monetary expectations are often influenced by high-profile verdicts reported in the media or anecdotes heard from friends or family.

While this does not explain all of the scenarios that may motivate a particular resolution, it should give you insight into understanding certain outcomes and help you make a reasonable decision should you ever be confronted with a professional liability claim.



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