

Top 10 Requested Resources

Illinois



1 Records Request

An authorization from a patient to release their records must be in writing. A patient or patient's representative is entitled to receive a copy of the patient's records and may also request that the health care professional direct the copy to another individual or entity. A dental practice must provide the copy within 30 days of receiving the written request. If the health care professional needs more than 30 days, they must provide in writing the reasons and the date by which the records will be provided, which must be no later than 60 days after receiving the written request. Reasonable costs incurred by a health care provider in making copies of medical records shall be reimbursed by the requesting party. The statute lays out specific costs which can be found here: [735 ILCS 5/8-2001](#).

2 Litigation Discovery Process

For civil litigation cases alleging dental malpractice, the discovery process is governed by [Illinois Supreme Court Rules 201-217](#). The rules are broad and allow for the discovery of any matter that is not privileged and relevant to the subject matter involved in the pending action. The information sought need only appear to be reasonably calculated to lead to the discovery of admissible evidence. Litigants in a malpractice suit can issue written questions, requests for production of documents and inspection of property. The defendant may issue a subpoena for records of the treating health care providers and the employers in cases where there is a claim of wage loss. Parties can take depositions (live questioning of parties and witnesses under oath). Unless otherwise agreed upon, depositions must be taken within the county the deponent resides. The plaintiff may be compelled to submit to a physical examination by an expert witness retained by the defendant. Testimony from an expert witness, generally a health care provider, is qualified if it will assist the judge or jury to understand the evidence or determine an issue of fact. Qualifications of the expert are based on their knowledge, skill, experience, training and education.

3 Informed Consent

In Illinois, a patient has the right to be informed of their condition and proposed treatment. [410 ILCS 50/3\(a\)](#). Accordingly, a patient may sue a health care practitioner, including a dentist, if (1) they had a duty to disclose material risks of the treatment; (2) they failed to disclose or adequately disclose such risks; (3) the patient consented to treatment they otherwise would not have consented to as a direct and proximate cause of the practitioner's failure to disclose; and (4) the patient was injured by the treatment as a result of the health care practitioner's failure to provide necessary information.

Informed consent is a process and not just a form; however, consent forms may aid your defense. TDIC has 22 [sample forms](#) in nine languages available for use.

If you choose to write the informed consent entry, be sure to include the date, parties present and issues discussion (nature of treatment,

risks, benefits, alternatives and consequences of each). Note in the patient's chart: "RBAs were discussed and patient consented to treatment." If that notation is the only record of the discussion, the patient's and dentist's signatures next to this entry in the chart is a good practice.

4 Retention of Patient Records

Dentists must keep a record of all dental work performed on each patient. Illinois requires that dental records be maintained for 10 years. [225 ILCS 25/50](#).

Additionally, TDIC recommends the following:

- Active patients — Indefinitely.
- Inactive patients — Patients not seen in the previous two years.
 - Adult patients — Ten years from the date the patient was last seen.
 - Minor patients — Ten years from the date the patient was last seen or seven years past the patient's 18th birthday, whichever is longer.

5 Noneconomic Damages and Prejudgment Interest

Noneconomic damages are damages awarded to compensate a plaintiff for intangible damages including pain and suffering, disability, disfigurement, loss of consortium and loss of society. [735 ILCS 5/2-1115.2\(b\)](#). Illinois does not limit the amount of noneconomic damages a person may recover.

Prejudgment Interest

As of July 1, 2021, prejudgment interest may be awarded to a plaintiff, on award of a judgment, in tort actions for personal injury or wrongful death claims in Illinois at a rate of 6%. Interest will accrue at the date the claim is filed. Prejudgment interest applies to both economic and noneconomic damages but does not apply to punitive damages, sanctions, statutory attorney's fees or statutory costs. Prejudgment interest also applies to future damages. The accrual period is capped at five years. [735 ILCS 5/2-1303\(c\)](#).

6 Standard of Proof for Civil Torts

In Illinois, before a plaintiff can proceed with a lawsuit for dental malpractice, they must obtain an affidavit from a health care professional to attest that the claim is meritorious. The health care professional must be knowledgeable in the relevant issues in the case, must have practiced or taught within the last six years in the same area of dentistry at issue and must be qualified by experience or demonstrate competence in the subject of the case. Further, the health care professional must have the same class of license as the defendant. While there are some exceptions that gives the plaintiff additional time to obtain the affidavit, the case cannot proceed without it, and the defendant can move for dismissal. [735 ILCS 5/2-622](#).

In an action for dental malpractice, the plaintiff bears the burden of proof. The plaintiff must present evidence that there was a relationship between the patient and the dentist, creating a duty of care and that the duty was breached by failure to conform to the standard of care. The standard of care requires that a dentist exercised the same degree of knowledge, skill and ability as an ordinarily careful dentist would exercise under similar circumstances. Expert testimony from a health care provider is required to establish a failure to meet the standard of care, unless the breach is grossly apparent or obvious to a layman. In such civil cases, the level of proof must be only to a preponderance of the evidence, or 51%, or to a reasonable medical probability. Evidence must also be presented that the failure to meet the standard of care caused (to a reasonable medical probability) some harm, which can be physical, emotional and/or monetary.

7 Scope of Practice

You are expected to know the dental laws and regulations specific to your state. You must also know the allowable duties for auxiliaries within your practice and are required to ensure that they are practicing within their scope. Under the doctrine of “respondent superior,” an employer or principal is legally responsible for the wrongful acts of an employee or agent if such acts occur within the scope of the employment or agency. Failure to adhere to these laws and regulations can be grounds for disciplinary action by the dental board and the basis for allegations of professional malpractice. Please refer to your [state dental board](#) for guidance.

8 Reporting of an Adverse Incident

Under the [Illinois Dental Practice Act](#), a dentist must report in writing to the Illinois Department of Financial and Professional Regulation regarding an adverse incident that occurs within 24 hours after the administration of a dental procedure. An adverse occurrence involving the death of a patient must be reported in writing within 72 hours. If the incident involves the permanent organic brain dysfunction of a patient, or the patient is hospitalized for physical injury, the dentist has 30 days to report the incident in writing. A sample dental adverse occurrence report can be found [here](#).

9 Statute of Limitations

Claims that allege medical malpractice must be brought no later than two years from the date the claimant knew or should have known that the defendant’s act was the cause of injury or death. Medical malpractice claims cannot be brought more than four years after the date of the act. [735 ILCS 5/13-212 \(a\)](#).

Claims involving a minor

Actions involving minor patients may be brought no more than eight years from the date of the negligent act but may never be brought after the minor patient’s 22nd birthday. [735 ILCS 5/13-212\(b\)](#).

Claims involving a person with a disability

The statute of limitations for a person with a legal disability does not begin to run until the disability is removed. If a person incurs a legal disability at a time after the claim is filed, the statute of limitations will toll until the disability is removed. [735 ILCS 5/13-212\(d\)](#).

10 Informed Refusal and Supervised Neglect

Just as patients should know the risks, benefits and alternatives of accepting a treatment recommendation, they should also know the potential consequences of refusing a proposed treatment or procedure (e.g., a patient who refuses a recommendation to extract an impacted third molar must understand the potential for continued symptoms, bone loss and serious, potentially life-threatening infection). All states impose a duty on dentists to obtain a patient’s informed refusal whenever refusal holds potentially serious complications. Depending on the circumstances, dentists should be aware of continuing to treat when the patient’s refusal jeopardizes the possibility for a successful outcome or the patient’s health, in which case terminating care may be the only reasonable option. In any case, a patient’s refusal should be thoroughly documented in the chart along with the dentist’s attempts to inform the patient of the consequences of refusal. A patient’s refusal for treatment does not allow a dentist to practice below the standard of care (e.g., refusal to have diagnostic radiographs over a long period is unacceptable). Patients cannot consent to substandard care but can refuse treatment recommendations. A sample informed refusal form can be found on the TDIC website under [sample forms](#).

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State	Cap on Malpractice Non-economic Damages	State Code
Alaska	Limited to \$250,000, but up to \$400,000 when damages are awarded for wrongful death or severe permanent physical impairment.	Alaska Statutes 09.55.549
Arizona	Constitutional provision prohibiting caps	Article II Section 31 of AZ Constitution
California	\$250,000	California Civil Code 3333.2
Hawaii	\$375,000 with limited exceptions for cases involving multiple defendants	Hawaii Revised Statutes 663-8.7 Haw. Rev. Stat. § 607-15.5 (1996)
Idaho	\$250,000, adjusted annually for inflation, \$372,865.27 in 2019	Idaho Code section 6-1603
Illinois	Cap found unconstitutional (was \$500,000 per doctor/healthcare provider, and \$1,000,000 per hospital or other healthcare facility, overturned in <i>LeBron vs. Gottlieb Memorial Hospital</i> , 2010)	
Minnesota	None	
Montana	\$250,000	Montana Code Annotated section 25-9-411
Nevada	\$350,000 from each defendant	Nevada Revised Statutes section 41A.035
New Jersey	None (only punitive damages capped)	
Oregon	\$500,000 cap except for workers compensation claims (<i>Vasquez v. Double Press Mfg</i> , April 4, 2019)	
Pennsylvania	Constitutional provision prohibiting caps	Article III Section 18 of the PA Constitution
Tennessee	\$750,000 for non-catastrophic cases, \$1,000,000 for catastrophic injuries including those to the spinal cord resulting in paraplegia, quadriplegia, amputation of hands/feet, and extensive burns	T.C.A. § 29-39-102
Washington	Cap found unconstitutional (<i>Sofie v. Fireboard Corp</i> , 1989)	

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