

## **Ep #64: How to Get Support During Malpractice Liability Cases with Dr. Brad Boeke**



### **Full Episode Transcript**

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**Dr. David Phelps and Evan Harris**

**[Dentist Freedom Blueprint](http://www.DentistFreedomBlueprint.com) with Dr. David Phelps and Evan Harris**

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You are listening to the *Dentist Freedom Blueprint* podcast, with David Phelps and Evan Harris. Navigating you through the uncharted waters of a turbulent economy with straight-forward advice to transform your practice into a self-sufficient cash machine, compound your net worth assets, and multiply, multiply, multiply your passive cash flow streams.

David: Hello everyone, this is Dr. David Phelps from the Freedom Founders mastermind community and *Dentist Freedom Blueprint* podcast. Back today with another great interview. You're going to love this one. This is from a gentleman, a fellow colleague, who I got to know—gosh, it's probably been 16, 17 years ago—we happened to both be going to the same gym.

I think he was jealous because I was pumping these big weights and he was hoping he could... nah, actually, it was the other way around. My good friend Dr. Brad Boeke is with me this morning. The guy can pump a lot more weights than I can.

We both have a lot in common in that we both have gone through struggles in life. You know, those ups and downs, when things didn't always go right. I'm sure everybody listening to this podcast today can relate, either you're going through some tough times in life or you have in the past or you will in the future.

Brad has become a great inspiration to many, many dentists. You're going to find out why here in just a couple minutes. So Brad, let me just bring you on right now. Brad, how are you doing today?

Brad: David, I'm just fine as frog fur, my friend. It is a gorgeous day here in Texas.

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David: Now, Brad, you're not a native to Texas. You've been in Texas a long time. But like me, I didn't go through school, all my training in Texas. You got your degrees from University of Iowa, right? And dental school as well, correct?

Brad: I did. I went to the University of Iowa undergrad and dental school both. I took one summer where there was no good farm work to do in Iowa, as the only part time job up there, and I went to SMU and took some organic chemistry. But other than that, all my education was in Iowa. I graduated in 1982. The snow was coming down on April 15<sup>th</sup> which is close to the time we're recording this and I decided that wasn't anything I wanted to stick around for for the rest of my life. So I headed to Texas.

David: Other than knowing Texas is a big state and the weather is warmer, was there anything else that gave you an inclination to come to Texas? I'm just curious.

Brad: My mother lived here and my sister lived here and I spent a lot of time my senior year visiting Texas off and on. I just love the place. I just love the place. I had an associateship all lined up in Knoxville, Iowa and I knew that the Texas State Boards were not real fond of out-of-state people. So I took my credits dental exam and I had a license for like twelve other states but I gave it a shot and took the Texas State Board and started practicing dentistry here in October of 1982.

David: 1982. All right, excellent. We can go into a lot of topics and you and I have a lot of things we can go into. Today we want to take one particular one and that has to do with malpractice liability cases. You've got a special, I'd say it is a special passion for helping other doctors, other

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dentists with that particular pathway, the process that one goes through.

Let me say this first of all, if somebody is sued by a patient, Brad, should they feel really bad? I mean, does that make them a bad dentist? Should they just crawl inside a hole and never come out again? Because that's the way I think a lot of people feel if they get sued. Give me some framework on that.

Brad: Sure, David. You know, I think one of the greatest problems certainly in our culture is we believe malpractice is when there is a bad result or something bad happens. Something goes wrong, let's put it that way. Something goes wrong. And that's not true.

Malpractice is when something goes wrong and you don't take any effort to help rectify the problem. If malpractice were simply when something went wrong, that would be ridiculous because that would mean that the person makes absolutely no mistakes in their life. I don't know about you, but I haven't met that guy yet or that lady yet.

Things go wrong. It's not that things go wrong. It's that people either try and hide it or they don't try and help the patient rectify it. Patients don't see that. They just know that something went wrong. That somebody needs to pay. They get excited and as we know there's a plethora of attorneys out there with nothing else to do so they'll take these cases in an attempt to, I don't want to say extort the insurance companies, but to get the insurance companies to pay something even if the dentist really didn't do anything wrong.

They're a business and they are in the business of protecting dentists from malpractice suits, but they're in a

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business to make money. So even if you don't do anything wrong, in some cases, they'll pay. They'll pay just because it's going to cost a lot more to defend it.

Depending upon the type of policy you have, you may not have a choice as to whether or not the case gets defended or the case is settled. But in the long run, you end up paying in a lot of other ways.

David: Brad, it's not even, as you said if something goes wrong, it can be just a fact that there was an expectation that a patient had. Because let's face it, when people have dental problems and particularly when they need a lot of rehabilitation because they've lost teeth, you know, all the issues that we have to deal with in dentistry, a wide range of issues.

If the patient thinks that by going to be treated that everything's going to be quote "perfect" in their mind and then they don't get in their mind a "perfect" result where everything's back to where it was when they had all their natural dentition, nothing was ever wrong. That can incite a suit there, right? If there's just not good communication between the doctor's office and the patient who is accepting treatment.

Let's say you're talking about dentures. I mean, dentures by themselves, a big issue, right? Because what's perfect about a denture? Nothing. Then you go to implants or cosmetic dentistry. I mean all these things. There's a big, wide range of what I think people expect.

Some people are happy just to be more functional or to have the smile line just look a whole lot better. But there's other people, Brad, that are like perfectionists, right? Meeting their level of expectation can be very difficult. So

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you already said it, but we live in a very litigious society today. People, when something doesn't go right in their life, in this case in their mouth, with their teeth, with how they feel, how they look, they're quick to want to blame somebody.

Then yeah, there's attorneys out there hand over fist ready to say, "Hey, come talk to me because..." There's a guy in the Dallas area, he says, "I'm the hammer. I'm going to get you what your just reward is." That's a big problem. So that's what we face.

With the insurance companies I think a lot of dentists feel like, "Well that's why I pay my malpractice premium because I've got an insurance company that's going to back me up. They provide me an attorney. It's all paid for and they're going to take care of me."

So go a little bit deeper into why that's not always the case. You alluded to it because the insurance company is in business to make money. But they also still need to give an outcome to the dentist. But what can go wrong in that relationship, for the dentist in this case?

Brad: Oh, David, so many things. First of all, you need to realize that your malpractice carrier is the one who picks your attorney. Yes, your attorney I think in a perfect world works for you and to defend you but they actually work for the malpractice carrier and if the malpractice carrier wants them to get a settlement, they'll get a settlement.

The thing that is different is that—okay, here's the analogy I use. When your patient needs a root canal, you are the practitioner. You are not emotionally involved. You are there to do the treatment. A lot of us are very good chairside with the, "I'm going to take good care of you,"

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pat you on the shoulder kind of thing. But in the end, you're the practitioner and to you, it's just another day at the office.

When a dentist gets sued, the emotions and the stress that are created by that process, while you'll get the occasionally "it's going to be okay" from your malpractice carrier and your lawyer, that's not their job. Their job is to defend the suit. So what I offer as far as coaching goes in my new endeavor, Malpractice Mentor, is I'm there to help the dentist to be their advocate. To be there for them to talk about the stress. To help guide them through the process.

These folks are on your side. Don't get me wrong. I don't want to indicate that they're not there to help you, but they're there as the practitioner. They're there for the suit. They're not there for you. They'll send you a letter that kind of outlines the process, but to you, to the practitioner who gets sued, it is an incredibly long, drawn out emotional battle that you really don't have anybody to talk to or anybody to guide you.

As dentists, we don't want to tell people that we're being sued. We're not going to go to our buddies and go, "Hey, guess what? I got sued. How about you guys? Tell me your experience." No, you hope that they never find out that you got sued.

So you don't really want to mention it even though you feel like there's a big scarlet letter on your forehead that says, "Oh my gosh, I'm being sued and you all know about it." So you tend to go talk to your family. Well there's the blind leading the blind. You're under enough stress. They have stresses of their own. You dump all this



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stuff on them. They don't know what to say other than, "It's going to be okay."

So you don't really have any place to go for consulting, for guidance, if you will. It's not the purpose of your attorney and your malpractice carrier to help guide you emotionally through this process. They're the practitioners. Just like you don't sit there chairside and spend your efforts guiding your patient emotionally through the process. They don't do that for you in the malpractice scenario.

David: You're right, Brad. There is a stigma in society associated with any kind of lawsuit but I think it's a very bad stigma. You're right, as a practitioner, as a dentist, you don't have anybody to turn to. Nobody understands, except other dentists. And again, that's not something you run to the dental conference and run up and down the aisles and shout up and down about. It's something you just—maybe a trusted friend but who has a trusted friend that has the experience in this, right?

Brad: Exactly.

David: So that's the problem, no one really does. But let me ask you this question. When an insurance company finds it's in their best interest to settle a case, they've looked at it and they decide, like you said, if the case drags on into depositions and into trial, any kind of a lawsuit, it takes a lot of time and obviously a lot of billable hours for an attorney.

Sometimes the insurance company will make a risk evaluation and say to themselves and to the attorney, "Look, let's just settle this thing. Let's try to settle with the other side. Let's just pay out some lump sum of money and be done with it." They make a determination.



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Now how does that affect the dentist who will be absolved of the suit, the suit will go away, but does that affect the National Practitioners Database, does that go against them? Or what's involved there?

Brad: It goes against them in a couple of ways, David. One you alluded to, the National Practitioners Database. There will be a public record that the doctor has been sued and that they settled. There are many cases where the dentist wants to do that immediately. The stress for them is so great they will oftentimes tell their malpractice carrier, "Look, just settle it. Just get it to go away." But there's more to it than that besides the National Practitioners Database.

Emotionally it changes the dentist and it changes the way the dentist does dentistry. Let me kind of explain. If you're sued, let's say you had a root canal that went bad and the tooth was extracted. You begin to look at your abilities to do certain procedures, especially the ones that you got sued for and it begins to affect the way that you diagnose.

I've seen numerous, numerous cases where doctors would talk about the drop in production at their office and they can't figure out why. After I speak with them long enough, quite frankly, they're a little gun shy to diagnose. They change the way they diagnose. They change the way that they interact with their team.

For instance, if there's bad documentation and the doctor normally had their assistants do the documentation, all of a sudden, they become micromanagers of documentation. They take the time out of their day to do the documentation they used to turn over to their assistants.

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Well, all of a sudden, one of two things happens. You either have to stay late at the office which creates more stress so that you can micromanage the documentation or you do it during the day which of course cuts down on your ability to see the number of patients that you normally used to see. It's those kind of nuances that we forget about.

People know about the National Practitioners Database. Obviously, it's more and more available through Google and the web now to find out about your doctor. That's a fairly well known fact. The things that I help manage are the things that you would never even think of.

People say, "Well, my malpractice carrier pays out the money, so I'm really not anything out of pocket." Well guess again. They'll try and recoup it through higher premiums. The stress that you go through over a long period of time wears not only on you but also on your family. And guess what? I think it's bad enough, divorces are not cheap.

So there are all kinds of unforeseen financial catastrophes that come along with a malpractice suit. People need to be aware of those because they're very insidious. They creep in there and they begin to affect your personal life which can affect your financial life. It affects your practice which obviously impacts your finances. They're very insidious. They're like periodontal disease. You don't know about it until it's at its very end stages. That's what happens with these malpractice suits. That's one of the things that I help coach dentists on.

David: Brad, you and I have both been blessed, honored, and privileged to have the opportunity to speak at a lot of

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different dental conferences. As a speaker, we get to kind of get behind the scenes with other lecturers, practitioners.

Can we both be forthright and let our listeners know that when we go to take clinical courses, continuing education, and we see these great results, whether it's implants or cosmetics or endo or whatever it is, that every one of those great lecturers also have plenty of their cases that didn't go exactly right. Not the ones that they show up on the screen.

But I think again, what we feel is if we have a case that doesn't go right and we end up being sued particularly for it. Again, we feel badly. So I'm just trying to paint the picture here, you said earlier, nobody is perfect. Even the best clinicians out there have had their cases that didn't go exactly the way they wanted them to, correct?

Brad: That's absolutely correct, David. One of the best things I ever learned in dental school was I had a very wise professor in family dentistry at the University of Iowa who told us, "If you see enough patients, you will be sued." It's not a matter of if you're sued. If you see enough patients, you will be sued. Now, I have a friend that that practice is in Commerce, Texas, one of the reasons I asked him, "Why do you practice in Commerce?"

Well he had been involved in an auto accident and he had gotten sued. Being sued was so traumatic to him that he moved his practice to Commerce because he knows that in small towns you're less likely to be sued. That's how traumatic that experience was for him that he actually changed where he practiced because he didn't want to have to deal with the litigation. The fact of life is, if you

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see enough patients, you will be sued. Especially with the jackpot mentality in this society.

Sometimes, not sometimes, probably the greatest number of cases that I handle as an expert witness are people with buyer's remorse. You tell the patient, "Look, here's what I would do. You do these implants to stabilize this and to do that." You know like I know, so many patients think, "Well I'm just going to go with what my insurance will pay for." Or, "I'm just going to go for what is the cheapest." Because to them, they believe the results are going to be the same.

The vast majority of cases that I see, probably 80 percent, are people with buyer's remorse, where you make them the denture or you do the extraction instead of the root canal. All of a sudden, they wish they'd done it differently. Even though you presented those options and they chose to do the one that is the least expensive, once they find out that, "Oh gosh, maybe I should have done the more expensive thing," they all of a sudden sue you as if it was your fault that they chose the lesser treatment. I see it time after time after time.

There was a recent case where a lady, going back ten years said, "I don't want to do implants. I don't want to do implants. What can you do for me?"

The doctor says, "Listen, I think you should do these implants."

"No, no, no. I don't want to do implants."

So they do bridge work and the bridge work didn't give her the result that she wanted and she goes and gets somebody else to do implants and she sues the guy who

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originally told her to get implants and she turned him down.

Now you think there is no way that that kind of suit is going to be successful, let me tell you, that is one of the cases that I had to actually go to court and testify for. This woman deciding all of a sudden that implants was the way she should have gone.

She sued this other doctor for doing this bridge work and it made it all the way to court even though they had recommended implants and she had turned them down. We had records going back, like I said, over a decade, where a doctor would say, "You know, I would do a..."

"Nah, I don't want to do an implant."

So she'd been turning it down for a decade or more but she sued the doctor who did exactly what she wanted. It's crazy. Some of it out there is so crazy that you'll find yourself walking in circles in your backyard trying to figure out how this happened to you.

David:

Yeah, it doesn't matter whether or not you have documented all this or not. A patient can still file suit. Anybody can file suit. It doesn't matter what you've got. Then you have to prove that you did everything, you documented everything. But that still takes a lot of time and as you said, a lot of emotional stress to go through that process until either it's settled or a summary judgment for you as the defendant is granted.

Brad, last question I've got and I think this is a big one. How should a dentist who has been sued, served notice that they're being sued, how should the dentist deal with their staff? Because the staff is going to know. They're

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going to have to be involved to some extent because as far as records and they were there when the patient was being treated or treatment plans were being discussed. How should they deal with their staff so again, they don't walk in the office every day and feel like they're being stared at because now they're the dentist who is being sued.

Brad: That's a great question, David. First of all, when you are sued, like I said, it's very all-encompassing to you. You'll find yourself with many sleepless nights. You'll find yourself with a great deal of stress. Shorter temper. Change in diagnosing. All that kind of thing. In the beginning, your team will buy into some of that but I'll be real honest with you.

After a while, it's like the news. It becomes old hat and they don't really pay attention to it the way you do. It's like the dentist who shot the lion in Africa. Oh my god, you would have thought that lion was on everybody's Christmas list. You know? That poor guy had to shut down his practice for a month. Now I'm sure everybody and their mother that used to be his patient is going back because, "Oh yeah, it's Dr. Jones. It's not just the bad guy who shot the lion. It's Dr. Jones." That's what happens with your team, David.

In the beginning, it's traumatic for everyone involved. Then it just becomes yesterday's news and everybody sees it's business as usual and things go on. The thing you have to watch out for, like I said, is that even though it goes away in the minds of other people, you will find it bubbling up to the surface in your head all the time. The thing you need to watch out for is less that the team treats

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you differently than you treat the team differently because of the stress and the emotions that you're feeling.

You don't want to lose your best chairside because you all of a sudden start barking at her when you didn't used to and she's sorry you got sued but it's not her fault. So she's going to go someplace else. That's one of the other consequences that I coach doctors on is their emotional response to not only their loved ones but to their team. And to watch out for something like that.

There's another financial thing that happens if you're not coached correctly. You start to lose team members because of the way that you react. Not the way that they react to you but the way you react. As we know, when you lose a very valuable team member, it costs you a boatload of money in retraining and the disruption to your practice. It's one of those unforeseen, insidious consequences of being sued.

David: So I think the point here then, Brad, is that when a suit happens we feel like we have malpractice insurance, we have a carrier behind us, we have an attorney behind us, but there's all of this collateral damage that the insurance carrier and the attorney representing you but by way of the insurance carrier, is not there to provide that help with that collateral damage.

You really need somebody that's been there, that's helped in this case other dentists get through that because all these other, we call them non-financial, but as you said, they become financial aspects. If you're so stressed out that you lose staff members, you stop diagnosing and treating patients the way you know they should be treated. If your marriage were to fall apart



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because of the stress. The practice could fall apart because you just can't get up and go anymore.

There's a huge part of this that's not covered by your insurance. So you need help with this and that's why frankly, Brad, I would recommend that any dentist that's going through this kind of scenario that they enlist in the "Dr. Brad Boeke School of Recovering Self Esteem for Dentists." I know that's not the name of the course you have.

You actually have a great website that people can go to to get more information. That's [www.malpracticementor.com](http://www.malpracticementor.com). That's malpractice mentor dot com if you'd like to connect with Brad and find a little bit more about how he's helped and is helping a lot of dentists through the precarious situation that a suit can throw you into.

It's something as you said, Brad, you treat enough patients, it's going to happen. So don't feel badly when it does but realize there is the support outside of your insurance carrier to help you get through it. Avail yourself of it. Don't try to do it by yourself. Don't try to buck up and think you're strong enough to do it. You've got to have help. You've got to have someone else that can walk you through it. Brad Boeke, you're the guy I would turn to because you're a standup guy and I appreciate you very much for your time today.

By the way, people who want to know how to spell your last name, I should have said it earlier but it's B-O-E-K-E, Dr. Brad Boeke, Garland, Texas. Man, thank you so much. Let's get back and do this again because there's a

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lot of topics I'd like to go into with you. You cover a lot of areas in dentistry and in life. That's what it's about.

Brad: Thank you, David. I appreciate it.

David: All right. Take care.

Brad: Thanks, David.

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