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The Prevention of Legal Problems in Dentistry

The dental profession suggests methods of preventing disease in the oral cavity. Likewise, the legal profession also stresses the adage of "an ounce of prevention" and suggests that members of the dental profession might be wise to have periodic legal checkups to prevent litigation.

A review of the literature concerning various court decisions involving dentistry shows that the first dental malpractice suit was in 1850, when a dentist guaranteed, for one year, satisfaction with a set of dentures or refund of the patient's money. This was the first time dentists were warned never to guarantee. Since that time, with the increase in travel, better communication, and education, each succeeding decade shows a marked increase in malpractice litigation.

Of course, when one is confronted with a malpractice suit, statistics are meaningless; an innocent and fully protected dentist may face a situation ranging from distasteful to downright bitter, mean, and vicious. Possible results of a malpractice suit are loss of friendships and loss of professional and social standing even though one may be innocent. These actions are emotionally nerve racking and very costly in time and money.

The resultant publicity is usually bad, no matter what the verdict, and may harm one's practice since the accusations are usually well publicized but a verdict of "not guilty" for the defendant often fails to receive publicity that coincides with such accusations.

The literature also tells us that in most dental malpractice cases, the dentist was not grossly incompetent but obviously did not fulfill his legal obligation to his patient. This legal obligation was established by common law and may vary from state to state, as far as wording is concerned, but the meaning is essentially the same. A common definition of duty owed by the dentist to the patient is that the dentist possesses the skill and learning which is possessed by the average member of his profession in good standing in the community in which he is practicing and that he applies this skill and learning with ordinary and reasonable care. Therefore, the duty consists of both possessing and exercising skill and learning.

At this time there appears to be a trend to extend the base from the accepted standard of care in a particular community to the standard of care for the profession. This concept was noted in a case heard in the state of Washington Supreme Court in 1971. Another case that followed this concept was heard in the North Carolina Supreme Court in 1971 when the court permitted an expert witness from out of state to testify concerning the accepted standard of care for the profession and not for that particular locality. It is also interesting to note that the standard of care for one who claims to be a specialist is based on all persons in that particular specialty regardless of experience, education, or age.

Under our legal system, anyone can sue. Quite often when the duties to the patient are

Received for publication 19 Feb. 1976.

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not met by the dentist, he is considered to be negligent. The absence of care consists of doing something which should not have been done or not doing something that should have been done. The term malpractice is broader, referring to the failure to exercise skill and care, with resultant injury to the patient. In these cases, the burden of proof is usually on the plaintiff-patient. The plaintiff must establish a prima facie case to the satisfaction of the court before the defendant-dentist needs to show that he has not been negligent. The plaintiff-patient in a negligence claim needs to demonstrate that the defendant-dentist failed to use reasonable care and skill and that the plaintiff-patient sustained damage or financial loss.

It is very important to realize that the legal standard of care required of the dental profession is increasing as the actual standard of dental care increases. This usually follows the actual increase in the standard of care for the patient. Therefore, the law is constantly requiring more of the reasonable dentist. This is an example of the progress and professionalism at its best. Some of the factors that have influenced this increase in standard of care required are as follows:

- (1) high speed equipment,
- (2) utilization of "four-handed dentistry,"
- (3) the aspirating syringe,
- (4) the disposable needle,
- (5) utilization of more auxillary personnel,
- (6) fluorides,
- (7) pit and fissure sealants, and
- (8) blood pressures being taken in dental schools.

The acceptable standard of care in 1966 may not be acceptable in 1976. But all the law requires of the dentist is that he act in a reasonable manner under the circumstances. However, using certain procedures that were considered reasonable in 1940, for example, could possibly be considered unreasonable today. With continuing-education courses and better methods of transportation and communication, making more knowledge available to the profession, the actual standard of dental care for patients is increased, which in turn increases the legal standard of care required by the profession.

A review of dental litigation cases over the last ten years reveals that the causes of these actions include broken instruments, in some cases left inside the patient; misalignment of teeth; extraction of the wrong tooth with paresthesia; failure to diagnose and treat oral cancer; failure to diagnose and treat cysts; faulty occlusal adjustments; root tips in sinuses; negligently placing defective bridgework; and, more common, failure to diagnose and inform patient of periodontal condition.

Being in the military service, I have an excellent opportunity to get a geographical view of dental treatment and, in my opinion, with the current trend toward an increased standard of care concept, the number of malpractice suits will continue to increase at the same rate as in the past.

In closing, I would like to briefly mention some recommendations concerning preventive dental litigation.

1. First, try to be above the average standard for your field of practice.
2. Keep accurate, legible records.
3. Be aware of changes in the oral cavity that might suggest the beginning of disease.
4. Keep abreast of the changes concerning patient treatment through publications and continuing-education courses.
5. Learn and observe your legal responsibility to the patient.
6. Do not hesitate to use X-ray procedures both preoperatively and postoperatively; it is an excellent diagnostic tool and serves as an outstanding record.

7. Of course, never guarantee results.
8. Keep professional confidences of your patient strictly privileged.
9. Advise your patient of any absence from practice. Recommend a competent substitute and, if possible, assure his availability.
10. Be courteous and tactful in relations with patients.
11. Take a thorough medical history.
12. Keep all promised appointments.
13. Try to avoid diagnosis and prescription by phone.
14. Refrain from using unapproved or experimental procedures.
15. Make certain proper instructions are given with prescriptions and in the care of the patient.
16. Avoid fields in which you are not properly qualified.
17. Give proper instructions to assistants and make certain they are observed.
18. Be familiar with manufacturers' warnings of possible adverse drug reactions.
19. Most important, be aware of the probable increase in the standard of care from a legal point of view.
20. Report chronic offenders to the appropriate ethics committees.

Preventive measures are obvious and must be implemented. Please do not believe that the cases presented are common. Dental care in the United States is probably the best in the world. These cases were selected from numerous findings. The point is that most malpractice suits can be prevented if common sense and peer-accepted measures are followed. By doing so, dentists can protect the health and confidence of the patient and their own professional reputations.

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