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Inadequate Informed Consent Leads to Legal Action Against Dentist

Case Study

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As a dentist, obtaining proper informed consent is crucial to ensure patients are aware of all the potential risks and outcomes of undergoing treatment. In this case study, a dentist fails to inform a patient about all the possible negative outcomes associated with dental implants, and when the patient's implants eventually fail, the dentist is sued for malpractice.

Key Concepts

- Obtaining Informed Consent
- How proper informed consent can mitigate malpractice risk
- Recording/documenting patient interactions

with a complete denture, which had been changed once and modified several times. She wore a lower removable partial denture which replaced 5 missing teeth and was very satisfied with every aspect of it. After seeing many recent television commercials talking about the great benefits of implants and implant-supported prostheses, she met with and discussed with her general dentist of many years, Dr. C, the potential for having upper implants (only), to be followed with a fixed bridge.

After examining W, clinically and radiographically, Dr. C determined that W had adequate bone anteriorly for implant placement, but placing posterior implants would require bilateral sinus lifts and grafting, which were procedures that W was unwilling to undergo. So, they both agreed that 4 upper anterior implants would be placed by Dr. C such that a semi-precision removable partial would later be fabricated and placed after implant osseointegration.

Dr. C had taken many courses regarding both the surgical and restorative aspects of implants and had incorporated that into his practice. Dr. C was very technically oriented, which was reflected in his dentistry and in his office infrastructure: among the systems installed in each of his operating suites was a camera/audio set-up, about which he advised his patients, and which was legally permissible – according to his business attorneys – in his state of practice. In this regard, the consultation visits with W were recorded, as were informed consent discussions and the dental procedures. Based upon this system, Dr. C did not employ “consent forms”, but instead conducted what he believed were casual, thorough, back-and-forth spoken interactions, very specific to each patient, to address what he believed were the important pieces of information to make his patients informed consumers.

On the day of surgery, Dr. C placed 4 maxillary implants without any apparent complications. He instructed W as to his usual post-operative protocols, and she followed all of them precisely. Two weeks after surgery, while wearing her existing denture, as modified by Dr. C for that purpose, she presented to the office with inflamed tissues around all the surgical sites, but no signs of infection; no antibiotics were prescribed, but the need for excellent hygiene was reiterated. At a month after surgery, the patient appeared similarly from a clinical standpoint, stating that she was cleaning the areas and rinsing as instructed. Dr. C took a panoramic radiograph and saw what he feared were the beginning stages of implant loss, with some loss of bone at the coronal aspects of all the implants. That situation worsened still, as demonstrated on another panoramic several weeks later.

Dr. C reached the conclusion that the implants were failing and that they should be removed. After explaining this to W, who agreed, he proceeded to remove them, which was an easy process, given their mobility upon flap elevation. Dr. C relined the denture and replaced it, telling W that he would place a new set of implants after the area fully healed. W said that she did not want more implant surgery but would rather just keep her denture and receive a refund for the fees she paid for the implants. Dr. C was unwilling to give a refund, explaining to W that he performed every step of the procedures properly, so he did not understand why he should be returning what was a significant fee. Despite W’s repeated request, Dr. C remained unwilling.

Legal Action

Upset about what she viewed as Dr. C’s inappropriate stance, she contacted an attorney. As a first step, the attorney requested W’s full set of records from Dr. C, who immediately provided copies of his chart and radiographs. When the attorney looked through what was provided, she asked W if she had signed a “consent form,” to which W responded that she had not; but she told her attorney that there was a discussion before the procedure, which she believed was recorded. So, the attorney then requested a copy of all visual and audio records involving W, which were provided.

The attorney consulted with a dental expert who examined the records, but no errors in technique were found by that expert. However, the expert advised the attorney that there was no evidence in any of the recordings that W had been advised of the possibility of implant failure, which was, according to the expert, a foreseeable and routinely advised risk. On behalf of W, her attorney instituted a malpractice lawsuit in which the sole claim was the failure to have obtained informed consent prior to the placement of implants.

Dr. C was provided with legal counsel by his malpractice carrier. Dr. C’s attorney raised the issue with Dr. C of not having advised W of the potential risk of implant loss, to which Dr. C responded that he “always does that.” Not until Dr. C viewed and listened to all recordings involving W did he acknowledge that he had apparently forgotten to advise W of that risk. With Dr.

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Takeaways

While the various states might differ as to whether conversations may lawfully be recorded, and under what conditions that may occur, Dr. C's jurisdiction did allow for exactly what he did (local attorneys are the best sources to learn whether recordings are permissible, and if so, the conditions under which they are). But dentists who choose to avail themselves of laws which allow for recording patient conversations should be aware that, in the event of litigation, those recordings might become available to other parties to the litigation and their attorneys. It is quite common for dentists who are sued to testify as to their usual course of conduct in practice, whether clinically or in communication; here, had a recording not been available, Dr. C would have likely – and seemingly in good faith – testified that, as he told his attorney, he “always” advises patients of the risk at issue, and that would have resulted in differing testimony by the opposing litigants, to be determined by a jury. But in this case, there was no dispute because of the tangible evidence that existed.

Dentists may have varying reasons for wanting to record their interactions with their patients, from memorializing conversations, to documenting their clinical techniques and results, to wanting to do periodic self-reviews to make sure that their practice methods are working. Regardless of their intended use, recordings are clear and unwavering evidence of all actual events at hand, whether intended or not. So, as valuable as they might be, they can make their way back to surface in a litigation situation, whether that litigation involves a patient, business associate, or staff member.

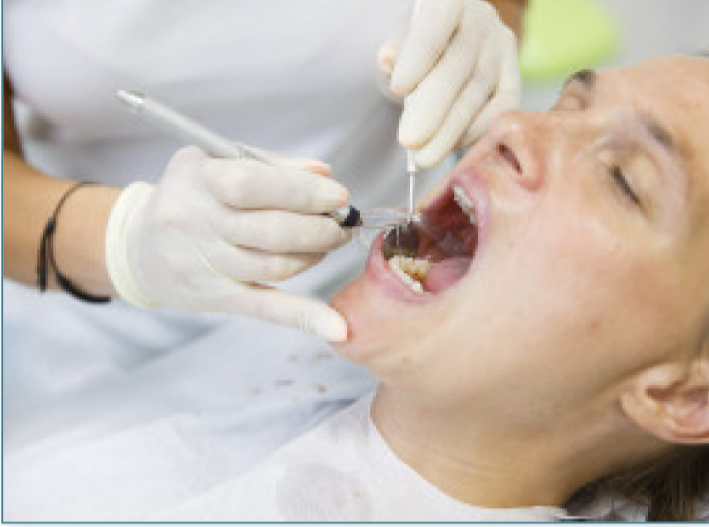
Addressing the clinical picture discussed in this case study, it is a simple fact that implants do, at times, fail, despite all having been properly performed. The same goes for a variety of other dental procedures. But as the plaintiff's expert in this case appropriately noted, the fact that a result was undesired, alone, does not mean that there was actionable malpractice; for a malpractice case to succeed, there must not only be an injury, but that injury must have been caused by negligent treatment.

Next, we address the issue of informed consent. Although the specifics will differ between states, the concepts are generally constant: prior to a patient undergoing a procedure, they are entitled to be advised of the information necessary for them to become an educated consumer, to be able to make an intelligent choice as to what they might opt to undergo, or not. Here, even though the procedure was properly performed, the fact that W was not made an educated consumer in advance, and the procedure she agreed to without adequate knowledge led to an undesired result, led to a valid and viable lawsuit.

Finally, we note, without comment, that Dr. C opted against providing W with the fee refund she requested, and that was presumably a factor which led her to retain an attorney and institute suit. It is an entirely open question as to what actions W would have taken, if any, in the face of failed implants, if she had been given the refund she sought.

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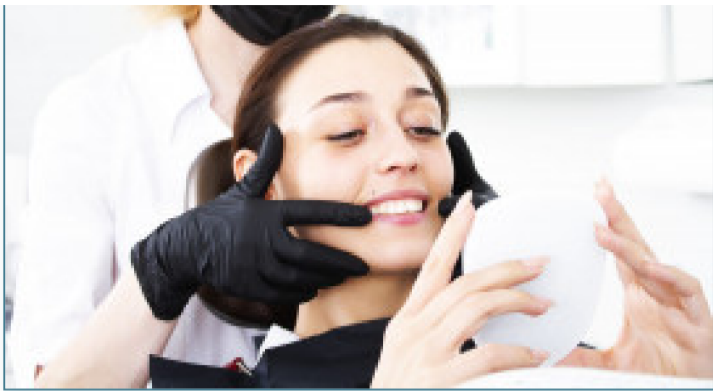
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