Teledentistry: A Double-Edged Sword?

Case Study

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Introduction

During the recent pandemic, and most particularly when dental offices were either closed or open only for true emergencies, “examinations” by many dentists were often restricted to verbal communications by telephone or with a visual assist via computer cameras. A number of states adopted regulations that permit expanded allowances for non-in-person treatments, and some even permit dentists to conduct these patient interactions outside of their states of licensure.

Furthermore, new American Dental Association (ADA) billing codes have been added to account for teledentistry meetings, both directly between dentist and patient, and with a professional dental (hygienist, therapist) intermediary. Statements from various state authorities and dental boards, whether official or not, made it clear that the treatment standards for teledentistry were the same as for in-person dental care with this new trend.

For years, dentists have routinely conducted teledentistry visits with their patients of record, perhaps without even realizing it, by speaking with them to discuss a newly developed complaint or a post-procedure complication, or to refill previously prescribed medications. However, the newly expanded universe of teledentistry has opened to include patients never before

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Case Discussion

In March of 2020, a 61-year-old woman who had not seen a dentist for years complained to her friend about something bothering the underside of her tongue near the back of the mouth. She did not know a dentist to consult, and she was hesitant to seek care at a hospital emergency department (ED). She did not wish to subject herself to a high-infection-risk venue, and she knew that hospital facilities and workers were stretched very thin to the point that she might not even be accepted for evaluation or treatment. The friend volunteered that she could contact her own general dentist to see if he could help out, and she did so.

The dentist agreed to visit with the patient over a video conferencing platform, although he had never done that before, and they arranged to "meet" the following day. A remarkably clear picture and sound appeared as they both logged on to their respective computers. The patient was asked whether she had any medical problems or took any medications regularly, and she responded that she did not. She said that she was prone to developing "canker sores" for most of her adult life, and she thought that she had a bothersome one under her tongue now. She wanted to make sure of it because she felt uncomfortable "for about 2 weeks."

Directly in front of her laptop's camera, but without any additional ambient lighting, she opened her mouth as wide as possible, pulling her tongue out of the way with a spoon handle to try to show the dentist the area of concern. The dentist found it difficult to visualize anything in the area other than a normal-appearing tongue and lingual gingiva. He was completely unable to see the floor of the patient's mouth and inferior aspect of her tongue. The dentist said that he could not see anything abnormal but that he was not overly concerned, especially given her history of aphthous ulcers. He advised the patient to rinse often with salt water, apply a topical ointment that was available for order online, and just "tough it out." The patient followed the instructions, but continued to be bothered in that area.

The first time she saw this dentist in his office was not until July of 2020. Clinical examination revealed that she had a readily apparent erosive lesion at the junction of the inferior aspect of the tongue and the floor of the mouth. The dentist was able to visualize it only by having an assistant retract the tongue and shine a bright office light in the patient's mouth.

When he referred the patient to an oral surgeon for a biopsy, this was the first time he learned that the patient had a 45-pack-year history of cigarette smoking. He had not asked and she had not offered it during the teledentistry visit. Following receipt of the biopsy report diagnosing squamous cell carcinoma, the oral surgeon referred the patient to a head and neck surgeon, who performed a work-up that established that the patient had Stage III disease. It was treated with ablative surgery and radiation therapy; her prognosis is guarded, and she has significant eating and general function compromises.

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As dentistry changes, so must our approaches to risk management. While it is true that dentists have been speaking to and consulting with their patients by telephone for many years, the recent addition of videoconferencing as part of that process has provided new advantages, but new challenges as well. Every dentist knows that visual access to certain parts of the mouth is difficult under the best of circumstances, even in office settings and with overhead, focused lighting; however, patients likely do not realize these limitations.

Therefore, when a teledentistry visit involving videoconferencing platforms takes place, it is incumbent on the dentist to advise the patient from the start that diagnostic and treatment capabilities are restricted, perhaps significantly when compared with in-person assessments. Make sure the patient understands this by putting it in writing and obtaining the patient's signature before the teledentistry visit. Similarly, the taking of medical, dental, and social histories should be done in the same manner as if the patient were being seen in person. Failing to do so, as was the situation regarding the patient's smoking history in this case study, might deprive the dentist of information specifically relevant to the complaints expressed, thereby increasing the risk of a missed diagnosis.

Dentists should view the positions of certain jurisdictions regarding standard of care – sometimes with accompanying statutes – very seriously. By understanding that they might be in a circumstance whereby they will be held to the same treatment standards in a teledentistry visit as in an office visit, with the potential for related malpractice and/or state board claims, dentists can and should consider the limits of their patient-related abilities, modify the bounds of teledentistry visits, and thoroughly explain these considerations to these patients.

In the same vein, dentists should document teledentistry visits just as they would an office visit, including advising patients to follow up with them or another dentist in person as soon as possible and reasonable as is customary. Had the dentist in this case study done so, there would have been documentation in the patient's record indicating the dentist advised the patient of the importance of follow-up, so that if the patient, as here, delayed doing so for 4 months, a stronger and more protective liability stance could have been taken in the event of a lawsuit or board action, in addition to better protecting the patient's health.

Significant differences exist between teledentistry visits with existing patients versus those who are not patients of record. With the former, the dentist already has a record containing history, treatment, radiographs, and perhaps other diagnostics, so he or she is able to contextualize teledentistry complaints into the entire patient picture. When new patients have teledentistry visits, the dentist has merely a snapshot of the clinical situation, injecting a greater liability risk into the assessment and treatment process. It is true that medicine has been using teledentistry visits for new patients for some time and with success, likely because medical diagnoses are most often based on detailed history taking and assessment of areas, which are typically much easier to visualize than inside the oral cavity.

Finally, we address our thoughts as to how malpractice claims might evolve when the allegations are based on actions or inactions over a video platform. As we have expressed in prior case studies, malpractice claims must be proven through expert testimony asserting opinions of what the particular standard of care means and how it was departed from. With the current form of teledentistry, there is little in the way of experience to be able to consider who is viewed as an expert in such a litigation and what the standard of care specifically is in a given situation. We now have recent input from states in offering statutory guidance that teledentistry standards of care are no different from office standards of care: if that is how courts will interpret and allow evidence to come before them, it should be viewed by the dental community with concern, because examining a patient through a computer camera is far different from doing so in a dental chair.

Summary Suggestions

Dentists providing teledentistry services may find the following tips helpful in preventing liability exposure:

- If, during a teledentistry visit, the dentist determines that the issues presented go beyond safe and beneficial boundaries, then he or she should refer the patient to a site where in-person care can be provided, such as a hospital ED, a dental

This education is ideally set forth in writing requiring the patient's signature prior to the teledentistry appointment.

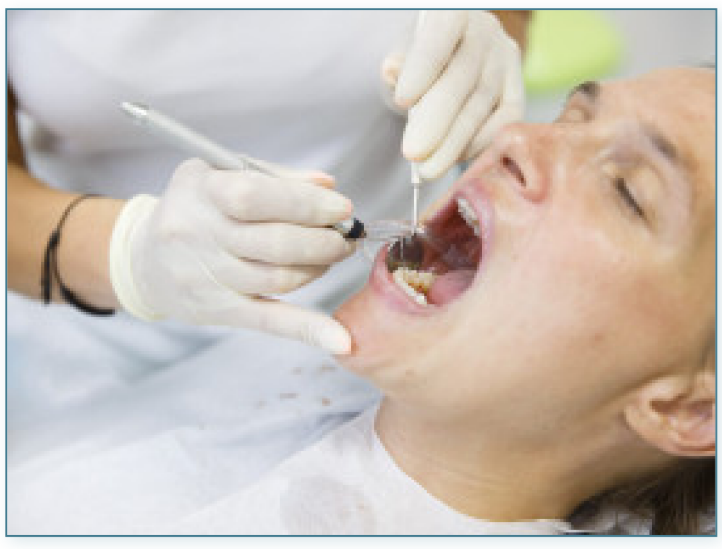
- When teledentistry is used, the dentist must have an appropriate method of documenting the patient encounter and maintaining HIPAA considerations regarding every aspect of the interaction.
- During the COVID-19 pandemic, many state boards of dentistry have relaxed their teledentistry regulations to improve access to care. In some of these states, the changes might be permanent, whereas other states may revert to previous standards. It is essential that the dentist who uses teledentistry be knowledgeable of his or her state's then-current regulations.

Conclusion

It is almost certain that communication technology will continue to morph and advance. As a result, it is likely that, going forward, these changes will affect the way teledentistry will be practiced. It will be incumbent on dentists to stay abreast of new developments in the technology and adjust their approach to teledentistry in response to them.

Note that this case presentation includes circumstances from several different closed cases, in order to demonstrate certain legal and risk management principles, and that identifying facts and personal characteristics were modified to protect identities. The content within is not the original work of MedPro Group but has been published with consent of the author. Nothing contained in this article should be construed as legal, medical, or dental advice. Because the facts applicable to your situation may vary, or the laws applicable in your jurisdiction may differ, please contact your personal or business attorney or other professional advisors if you have any questions related to your legal or medical obligations or rights, state or federal laws, contract interpretation, or other legal questions.

Additional Risk Tips content



[Patient With Periodontal Disease Sues Dentist After Refusing Treatment]

Risk Tips

Dentists must simultaneously balance patient desires and needs. In this case study, a patient with gum disease sues their dentist after refusing treatment.

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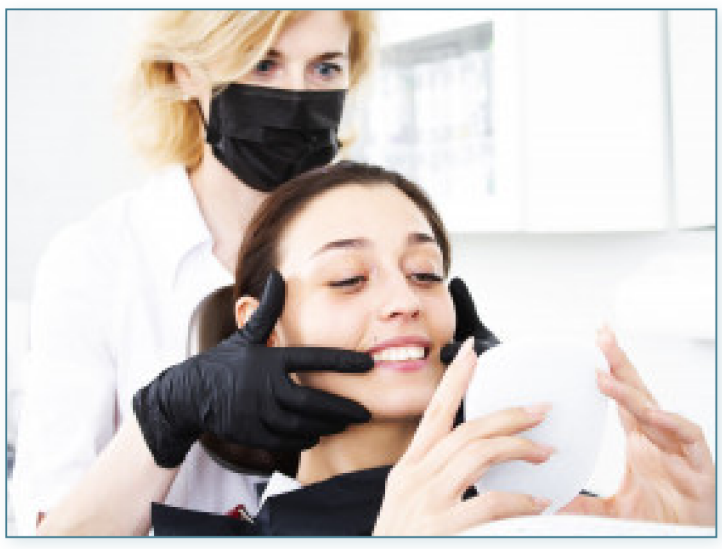
Unforseeable Seizure Sparks Lawsuit Against Dentist

Risk Tips

Dental procedures carry risk for the patient and the operating dentist. In this case study, a patient sues a dentist after suffering an unforeseeable seizure.



Three Dentists Sued for Malocclusion Mismanagement

Risk Tips

Dental malocclusions require careful treatment planning. In this case study, a patient sues three dentists for mismanaging their underbite treatment.

All data is derived from MedPro Group records and calculations; claims data range is 2013-2022 unless otherwise indicated.

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