

Intro to Oral Surgery

Lecture 4: Medicolegal Considerations

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Objectives:

Understand the concepts of:

- standard of care
- informed consent
- risk reduction
- patient abandonment

Understand the format for properly documented consultations and oral and maxillofacial surgery procedure



Why does this lecture matter?

1. Oral surgery procedures most likely to generate lawsuits or complaints to board
2. Complications occur even when procedures are technically performed well
3. Understanding these concepts protect both you and your patients

common lawsuits in dentistry

dentoalveolar surgical procedures

wrongful tooth extractions

paresthesia/anesthesia (highest payout)

infection/osteomyelitis

mandible fracture

implant failures

endodontics

paresthesia

failure to diagnose/refer:

cancer

perio dx

infection leading to other complications



Complications occur. When do attorneys or the board of dentistry accept/respond to complaints?





Complications occur. When do attorneys or the board of dentistry accept/respond to complaints?



When professional **negligence** has occurred.

to define **negligence** we must understand

Standard Of Care:

that which an ordinarily skilled, educated, and experienced dentist would do (or not do) under similar circumstances

Defined by the profession (often by expert witnesses in a court of law)

Negligence occurs when professionals fail to comply with the **standard of care**



Complications occur. When do attorneys or the board of dentistry accept/respond to complaints?



seek to determine, “with reasonable medical certainty” if the standard of care was breached; or if the treatment rendered was below the standard of care

If so, a malpractice claim can be filed.

Malpractice: professional negligence

Malpractice claims:

The patient must prove **ALL** of the following four elements:

1. existence of a duty
2. breach of that duty
3. damages incurred
4. causation

1. Existence of a **Duty**

A professional relationship **MUST** exist for a duty to exist.

Assumed with doctor-patient relationship

2. Breach of duty

when the duty to provide care that meets the standard of good dental care has been **breached**

standard of care defined by profession by what average practitioners would ordinarily do under similar circumstances

standard of care does not recognize differences in training, but rather what the average professional that performs the procedure would do

3. Damages

Some form of physical or mental damages must be demonstrated.

4. Causation

MUST PROVE that failure to provide standard care was the cause of the patient's injury

dentist's care → patient's injury

Risk Reduction: Do Good Work

1. Only perform procedures you are competent to perform.
2. Provide a good INFORMED consent.
3. Provide follow up visits with high risk situations.
4. Be honest about what has occurred
5. Be compassionate.
6. Do not make promises.
7. Do not criticize another clinician's work.
8. Keep good documentation and chart notes with special focus on high risk content.
9. Chase the problem. Don't let it chase you.



Informed Consent



autonomy vs. paternity

informs patient and protects you

Informed Consent

Physician and patient discussion to include:

1. the specific problem (**diagnosis**)
2. the **proposed treatment**
3. anticipated/common side effects
4. possible complications and approximate frequency of occurrence
5. planned anesthesia and any **material risks** of the anesthesia
6. **treatment alternatives** (to include no treatment)
7. uncertainties about final outcome - no promise for guaranteed success

Three parts:

1. Informing
2. Written consent
3. Documentation in patient's chart of possible complications

Without one, didn't happen.

no consent = battery

Informed Consent

"material risk"

extensive discussion on higher
"material risk", with
documentation to describe why
the procedure was recommended

nerve damage



sinus communication



School of Dentistry

CONSENT FOR REMOVAL OF TEETH, TOOTH ROOTS,
OTHER ORAL SURGERY PROCEDURES, AND
ANESTHESIA

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I hereby authorize Dr(s). to perform the following procedure: and to administer the anesthesia I have chosen, which is: Local Anesthesia

I understand that the purpose of the treatment/procedure/surgery is to treat and possibly correct my diseased oral/maxillofacial tissues. The doctor above has advised me why this procedure should be performed as well as the potential consequences of not having this procedure done. I have been informed of possible alternative treatment, if any. I have also been informed I have the option of no treatment.

The doctor has explained to me that there are certain inherent and potential risks of this procedure. Such operative risks include, but are not limited to:

- Postoperative pain, discomfort and swelling that may necessitate several days of at home recuperation.
- Heavy bleeding that may be prolonged.
- Bruising of the face or neck
- Injury to adjacent teeth and fillings.
- Postoperative infection requiring additional treatment and/or antibioticuse.
- Stretching of the corners of the mouth with resulting cracking or bruising.
- Restricted mouth opening for several days or weeks.
- Changes in the bite or temporomandibular joint (TMJ) problems.
- Decision to leave a small piece of root in the jaw when its removal would require extensive surgery and could damage vital structures such as nerves or the sinus.
- Fracture of the jaw.
- Injury to the nerve under the teeth resulting in numbness or tingling of the chin, lip, cheek, gums and/or tongue on the operated side; this may persist for several weeks, months, or in rare instances permanently.
- Opening into the sinus (a normal cavity situated above the upper teeth) requiring additional treatment.
- Delayed healing, dry socket, or unexpected drug reactions or allergies.
- Other:

Medications, drugs, anesthetics and prescriptions may cause drowsiness and lack of awareness and coordination, which can be increased by the use of alcohol or other drugs; thus, I have been advised not to operate any vehicle, automobile, or hazardous devices, or return to work, while taking such medications and/or drugs; or until fully recovered from the effects of same. I understand and agree not to operate any vehicle or hazardous device for twenty four hours after surgery or until I have fully recovered from the effects of sedative drugs or prescription drugs given to me post-operatively.

I understand that certain anesthetic risks, which could involve serious bodily injury, are inherent in any procedure that requires anesthetic. These risks include discomfort, swelling, bruising, infection, and allergic reactions. There may be inflammation at the site of an intravenous injection (phlebitis) which may cause prolonged discomfort and/or disability, and may require special care. Nausea and vomiting, although uncommon, May be unfortunate side effects of IV anesthesia. Intravenous anesthesia is a serious medical procedure and, although considered safe, carries with it the rare risks of heart irregularities, heart attack, stroke, brain damage, or death.

Informed Consent

A successful informed consent results in the patient acknowledging risks of treatment, agreeing to be treated, and is given the opportunity to ask questions.

Be prepared to provide a written informed consent discussion.

Example(s):

- extraction of #14 with local anesthetic
- extraction of #32 with LA and nitrous oxide

Patient Abandonment

1. Providing care to a patient and then neglecting to provide reasonable access to follow up or emergency care
2. If patient does not follow up; the clinician has the responsibility to try to contact the patient
3. Patient must be informed of discontinuation



Patient Abandonment



Relationship begins once patient is seen in office, has been evaluated, and dentist agrees to treat the patient.

Patient Abandonment

There may be reasons in which a dentist cannot complete a treatment plan.

Examples: patient fails to return, doesn't follow up with recommended consultations

Discontinuing a Patient

1. Documented activities leading to termination
2. Patient warned of termination if undesired activity does not stop
3. Patient informed of harm that can result if such activity continues
4. Patient should be given 30 to 45 days to find a new dentist and must provide emergency care if care is required

Letter of Discontinuation

1. The reasons supporting the decision to discontinue treatment.
2. If applicable, the potential harm caused by the patient (or parent's) undesired activity.
3. Past warnings by the office that did not alter the patient's actions and continued to put the patient at risk (or jeopardized the dentist's ability to achieve an acceptable result).
4. A warning that the patient's treatment has not been completed and that therefore the patient should immediately seek another dentist in the area for immediate examination or consultation. (The clinician should include a warning that, if the patient fails to follow this advice, the patient's dental health may continue to be jeopardized and any treatment progress may be lost or may worsen.)
5. An offer to continue treating the patient for a specified reasonable period and for emergencies until the patient finds another dentist.

OMS Consult Chart Notes

- Chief Complaint
- History present illness
- Review of Systems
- Exam: head and neck, intraoral, dental
- Imaging interpretation
- Assessment/diagnosis
- Plan/treatment
- Informed consent discussion

OMS Procedure Chart Notes

- Pre-operative diagnosis
- Post-operative diagnosis
- Procedure performed
- Surgeon
- Anesthesia
- Description of procedure
- Pertinent findings
- Complications
- Disposition
- Discharge instructions and prescriptions
- Follow up instructions

OMS Follow Up Chart Notes

Subjective
Objective
Asessment
Plan

Conclusions

1. Document everything.
2. Include everything on your informed consent, verbal and written.
3. Be compassionate.
4. Be prepared for complaints/legal action.
5. Notify liability carrier if the risk of a lawsuit is apparent.