

DentalNotes

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Advice May Prove Beneficial in Avoiding Implant Litigation

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More and more dentists are becoming involved in implant dentistry, either by placing the implants or by completing the prosthetic phase of treatment associated with them. Dental implants provide innovative ways to restore dentitions that, in the not too distant past, would have seemed beyond hope of restoration. However, with this increasing number of implants comes a corresponding rise in related malpractice claims.

National claims statistics demonstrate that implant claims, on average, have a greater severity or dollar value than malpractice claims involving other types of dental procedures. There are several reasons why these claims are consistently more costly. The most obvious reason is that when implants fail, complex and expensive treatment is usually required to return patients to their pre-operative status. Another important factor is that these patients often have very high functional and esthetic expectations for implant treatment. Because implant dentistry is more expensive than other forms of dental treatment, these patients are more likely to attempt to recoup what they perceive to be a major "failed" investment. This attempt is usually in the form of a malpractice lawsuit.

Proper case selection is the most important aspect of implant risk management. Systemic factors, including the patient's overall health and underlying diseases such as diabetes, bleeding disorders, or hypertension are important factors to investigate and address with the patient, prior to recommending dental implants. Local factors, such as the quantity and quality of existing bone, occlusion, ridge morphology, nerve or sinus position, extent of interincisal opening, keratinized gingival width, and the distance between proposed fixture

sites should be carefully evaluated. Other factors, including tobacco and alcohol use, patient cooperation level, treatment expectations, and ability to afford treatment should also be evaluated. Not every patient is a candidate for implants. Denying a patient's request for a particular treatment is never easy, but in the long run, careful patient selection will pay off in terms of protecting your patients and your practice.

Pre-surgical treatment planning is also critical to successful treatment outcomes. Many implant claims including sinus perforation, nerve paresthesia, and poor angulation resulting in the inability to restore the implant, can be attributed to a lack of pre-surgical planning. Good communication between the restorative dentist and the surgeon are essential to good case planning. It is important to share all information that would enhance patient care. Advanced planning by the implant team enables a treatment strategy to be developed early that defines choices and makes the complexities of implant surgery and restoration more manageable. Since many different types of implant-supported restorations can be fabricated using different implant systems, developing a working design of the final restoration prior to the implant placement surgery will minimize the risk of having to restore poorly angled or unusable fixtures.

The most common implant claim involves paresthesia secondary to implant surgery. Certainly, this is a complication that can occur absent of any professional negligence. However, complying with the following guidelines for implant surgery can improve patient outcomes and lower liability exposures. Always obtain the appropriate radiographs and diagnostic models for proper assessment of the implant site. Recognize the magnification distortion factor of the diagnostic radiographs used, evaluate the quality of existing bone, and avoid assuming nerve anatomy when tomography may be indi-

cated. Numerous claims alleging paresthesia/anesthesia secondary to implant placement are due to placement of a fixture that is too long for the available site, resulting in nerve or sinus injury. If the patient refuses the necessary diagnostics, you should refuse to treat the patient. Through good planning, many of these treatment problems can be avoided.

The second most common allegation in implant litigation is implant failure. Offering patients a detailed consultation to explain all aspects of implant placement, restoration, and expected function can reduce these claims. The goal is to set realistic expectations for patients and to continually communicate with them to assess their expectations as the treatment progresses. Claims regarding treatment failure are frequently from patients who mistakenly believe that implants are always successful and permanent. It may be best to explain the prognosis of implants by stating that "things are likely to be improved but nothing is perfect or permanent."

Failed implant litigation may also be avoided by establishing a written policy regarding replacement of failed implants. Such a written policy clearly establishes that the risk of failure does exist and it arranges for this possibility beforehand. For example, some practitioners employ a "sliding scale" for replacement of implants. If you are a specialist, such as a periodontist or oral surgeon, and do not plan to restore the implants yourself, whatever policy you choose consider coordinating it with your restoring dentist. Also, you may want your policy to coincide with the implant manufacturer's policy on replacement.

Another common claim involves general unhappiness with the long term handling of the implant process. This can be avoided by showing patients that you are interested in their care and that you

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stand by your work. Consider giving the patient and restoring dentist an "Implant Prosthesis Document" in the event the patient leaves your care for any reason, such as relocation or switching dental care plans. Such a document should include the implant manufacturer, whether all implants were of the same manufacture; the location and size of each implant; the design and character of the abutment, whether the implant is coated; the type of metal; and any other details that would be important to a subsequent treater. Coordination with the restoring dentist is advisable. Patients will appreciate your attention to detail and long term interest in their care.

Although many dentists consider implant placement and restoration a rewarding procedure that is fairly routine, most patients think of it as major and expensive surgery. Through proper patient selection, thorough communication regarding the procedure, including its benefits and risks, and setting realistic expectations up front, you can do a great deal to avoid litigation down the road.

ADA Launches DVD & Video of HIPAA Privacy Seminar

The ADA is offering a videotape and DVD of the HIPAA privacy seminar held in December 2002. Both products are being marketed through the ADA catalog, and pricing will be \$99.95 for either medium or \$200 for the HIPAA kit and a videotape or DVD as a complete set. The North Carolina Dental Society encourages members to use this product as their primary resource, rather than going outside to the private sector.

Update TMD Information Regularly

You would be prudent to obtain and regularly update TMD information as part of your patients' written medical history. In collecting the information, you should—at a *minimum*—ask the following questions:

- ❖ Difficulty with mouth opening?
- ❖ Joint noises?
- ❖ Jaws getting stuck or locked?
- ❖ Pain, especially with chewing or yawning?
- ❖ Chronic headache, neckache, or toothache?
- ❖ Biting or chewing problems?
- ❖ Grinding or clenching teeth?
- ❖ History of head or neck trauma?
- ❖ Arthritis?

Nine Red Flags to Help Reduce Your Risks

- When a patient refuses an established screening test for cancer, explain the consequences of that refusal and don't mince words. Document the conversation thoroughly in the dental record and have the patient sign a refusal of treatment form.
- Realize that illegible handwriting is a dangerous problem.
- Know the side effects, risks, precautions, and monitoring for the drugs and prescriptions you write.
- Take symptoms that are worrisome seriously, even if they appear nonspecific or another plausible explanation exists. Refer the patient to an appropriate specialist in a timely fashion, if patient symptoms do not improve.
- If you are served with papers from a patient or attorney threatening a lawsuit, resist the temptation to talk with, or write a letter to either party, justifying your treatment.
- Never guarantee a patient good results.
- All key patient contacts need to be documented in the chart.
- Informed consent should be obtained by the dentist performing the procedure – not by the assistant or other staff member.
- Many lawsuits may be avoided, even if untoward events occur, if the practitioner communicates effectively with the patient and family throughout their relationship.

Did You Know....

If you have Travelers *Dentists Office Pac*—the business owners policy developed specifically for Medical Security Insureds, your policy includes a special Utility Services-Direct Damage/Time Element endorsement. With this endorsement, you may be eligible for reimbursement of loss of business income and/or extra expense caused by the interruption of utility services due to loss of water, communication, or power supply to the office.

Check your policy, or call the Travelers Service Center at (800) 597-5658 for more information about how this coverage can work for you. Don't delay! This is one more way that Medical Security, the exclusively endorsed carrier of the North Carolina Dental Society, is working to provide comprehensive insurance coverages to the dentists of North Carolina.

Help Us Contact You!

We are in the process of gathering our customers' current fax numbers and E-mail addresses. Please send that information via E-mail to Barbara O'Neill, Medical Security Account Service Representative, at barbara.oneill@mmicnc.com or fax her at (919) 878-7593.

Thank you for your help with this project!