



Complaints Corner

Complaints Corner is designed as an educational tool to help Ontario dentists and the public gain a better understanding of the current trends observed by the College's

Complaints Committee. These scenarios are edited versions of some of the cases dealt with by the Committee. The law does not allow for either the dentist or the complainant to be identified. If you have any questions about any of these scenarios, please contact the College's Registrar Irwin Fefergrad at 416-934-5625, toll free at 1-800-565-4591, or by e-mail at ifefergrad@rcdso.org.

THEME: INFORMED CONSENT TO TREATMENT

Case 1

The patient complained that there had been no mention of potential risks prior to the extraction of two wisdom teeth by an oral & maxillofacial surgeon. He subsequently suffered what he described as vicious hiccupping for three days.

The Complaints Committee was satisfied that the patient records supported the member's position that at two prior consultation appointments, he had discussed potential complications. As well, the patient signed an informed consent document.

The Committee understood that dentists must inform patients of material risks or potential complications of treatment.

*To the panel, this is indicated where there is at least the possibility of a known risk occurring **and** where the known risk carries significant health consequences - that is, it can pose a threat to the patient's life, health or comfort - **and** such relevant factors as the patient's age, medical history and medications are taken into account. In the panel's opinion, while hiccupping may be a known side-effect of Valium, and may be a significant consequence, the probability of such an event is remote and it is impossible for a practitioner to anticipate every eventuality.*

No action was taken against the member.

See the table at the end of this article for details on the probability of material risks.

Case 2

The patient alleged that an oral & maxillofacial surgeon did not caution her about the nerve damage that could occur from removal of a painful swollen lesion in the lower left cheek. The member's records included a signed consent form.

The Complaints Committee obtained an opinion from an expert in oral & maxillofacial surgery who examined the patient. In the expert's opinion, the probability of permanent neurological damage from such a procedure in the location concerned was remote. The expert believed that the residual paraesthesia did not follow the pattern normally seen for an injury to the left mental nerve, and it was the result of unforeseen peculiarities specific to the case. In the expert's opinion, the standard of care was followed.

The Committee took no action against the member.

Case 3

The patient alleged that she was not told of possible risks or complications of removal of her partially impacted wisdom teeth. The procedure was difficult and she was referred to an oral & maxillofacial surgeon for its completion. She suffered permanent nerve damage in the area.

The member said he explained that

there was a low risk of complications, including paraesthesia. While he had to take great care because the roots of tooth 48 were in intimate association with the inferior alveolar nerve, he had never had a case of permanent paraesthesia in his many years of experience with extractions.

The Complaints Committee obtained an opinion from an expert in oral & maxillofacial surgery. The expert stated that there was no doubt that this patient was at risk for nerve injury, but the member "shows a woeful disregard for the literature and as a result has seriously underestimated the risks, whatever his own anecdotal experience." The expert concluded that "the explanations prior to obtaining consent were inadequate."

The Committee required the member to attend for an oral caution.

Case 4

The patient complained that she did not sign a consent form prior to a gingival graft procedure and was not properly informed of the risks. She said the graft was unsuccessful and resulted in a life-threatening infection.

The member maintained that he thoroughly discussed the proposed treatment, including options and risks, three times with the patient, once with her physician husband present. She declined to sign the consent form at the first appointment and staff forgot to give it to her again.

In the Complaints Committee's view, "proper informed consent is not conditional solely on a written consent ... For



example, a standard pro forma consent form signed by a patient is merely evidence of some discussion. Confirmation that the discussion was full and complete, that there was disclosure of all necessary information, and that the patient understood the nature of the information must be established by other means, such as individualized letters, notes, patient chart notations and statements by others.”

The Committee believed that the member’s position was amply supported by his patient records and by two members of his staff. The Committee noted that the family dentist had also explained the procedure in detail. The Committee was satisfied that the member obtained the patient’s informed consent to the graft surgery and took no action against the member.

Helpful Suggestions

The theme of consent to treatment was explored in the Complaints Corner in the Oct/Nov 2002 issue of Dispatch. However, consent alone is not enough. The patient must be given all the information necessary to enable a reasonable person in his/her circumstances to make an informed decision about the proposed treatment.

The cases above are samples of those involving informed consent that come before the Complaints Committee. The subject can be challenging. This topic was thoroughly and clearly discussed by Eleanore Cronk in an authoritative and comprehensive article commissioned by RCDSO on the subject called Informed Consent in 2001: Don’t Leave the Office Without It. It was included as an insert with the June 2001 issue of Dispatch. It is available on the College Web site at www.rcdso.org by clicking on expert articles. Or you can call us to request a free copy of the article.


However, it is helpful in this Complaints Corner to highlight just one aspect of this theme — material risks.

Material Risks

All health procedures bear some risk of adverse effects. However, as the panel said in Case 1, a practitioner cannot

anticipate every eventuality. Material risks are those that must be disclosed to a patient. Some writers have defined material risk as any significant risk with a 1% chance of occurring. So, for example, studies indicate a 0.2-1.4% chance of permanent paraesthesia from third molar extraction, and an approximately 30% chance of temporary paraesthesia. While this is a useful yardstick, the courts have not been so quantitative. Neither will research conveniently provide statistical probabilities for all the

risks that may be encountered.

And how are conflicting studies or ranges of probabilities to be interpreted? The following table attempts to be a more realistic guide, albeit very generalized. The main criteria are the probability of the risk occurring and the seriousness of the consequences of the risk. Dentists should also take account of such factors as the patient’s age, medical history, and medications. 

Probability of Serious Consequences Occurring

	Known risk of High Probability: Common or Likely	Known risk of Medium-Low Probability: Possible but Remote	No known risk: Probability Nil, Negligible or Speculative	
Seriousness of Consequences	High/Serious/Grave	DISCLOSE RISK e.g. disfigurement from orthognathic surgery; permanent disability from TMD surgery	DISCLOSE RISK e.g. permanent paraesthesia from routine 3rd molar extraction or lower posterior implant or mandibular block; death from GA	DISCLOSURE NOT REQUIRED e.g. death from LA; stroke from scaling; hearing loss from root planing
	Medium/Significant	DISCLOSE RISK e.g. infection from surgery; RCT from deep filling; temp paraesthesia from 3rd molar extrn; failure of endo treatment	DISCLOSE RISK for cosmetic/elective treatment e.g. debonding of veneers; sensitivity after composites DISCLOSURE NOT REQUIRED for necessary treatment e.g. RCT after shallow fillings	DISCLOSURE NOT REQUIRED e.g. temp paraesthesia from scaling; lockjaw from RCT
	Low/Mild/Common/Obvious	DISCLOSE RISK for cosmetic/elective trt DISCLOSURE NOT REQUIRED for necessary treatment, e.g. bleeding, soreness from cut tissue	DISCLOSURE NOT REQUIRED e.g. sore gums from radiographs; tissue damage from drilling	DISCLOSURE NOT REQUIRED e.g. eye strain from overhead lamp; back strain from dental chair