



Ounce of Prevention

Risk Management Advice from PLP

This feature is prepared by the College's Professional Liability Program (PLP) to offer guidance to members regarding the prevention of malpractice claims, or the minimization of the magnitude of an existing claim.

Treatment Elective? Informed Consent Standards Raised

SCENARIO 1

Elective Treatment WITHOUT Informed Consent - Not Defendable

Mr. Madd presented to Dr. Black for a cleaning and check-up. After examining his teeth, Dr. Black advised Mr. Madd that he needed to have four silver fillings replaced in molar teeth. Mr. Madd scheduled two appointments the following week. Dr. Black proceeded to replace the four amalgam restorations with resins. Shortly thereafter, Mr. Madd experienced pain in the restored teeth. Dr. Black adjusted the occlusion, but his symptoms continued. Eventually, Mr. Madd presented to a new dentist who informed him that three of the four teeth required endodontic treatment.

Mr. Madd subsequently filed a claim against Dr. Black alleging that the restorations did not need to be replaced, he was not told they were to be replaced with white fillings, and they were poorly done. Mr. Madd alleged that Dr. Black was responsible for the need for endodontic treatment, post/cores and crowns on the three teeth.

Discussion

In reviewing Dr. Black's records, PLP staff had the following concerns:

- There was no indication in the records as to why the restorations in the four teeth were required. Dr. Black explained that the amalgams

were leaking, but this was not documented in the records. Although bitewing radiographs were taken, they showed no evidence of decay.

- The records included no evidence of a discussion of treatment options, including the advantages and disadvantages of the various available restorative materials. There was, therefore, no evidence of informed consent for treatment.
- The pretreatment radiographs showed that the existing amalgam restorations in the teeth were quite deep. There was no evidence that Mr. Madd was informed that there was a risk that endodontic treatment might be necessary following replacement of the restorations. This should have been part of the informed consent process.

PLP recommended settlement of the claim and Dr. Black agreed. The reason: the treatment could not be justified by the records and there was no documented informed consent. If the records had shown that the restorations were necessary, PLP could have argued that, even if the risk of possible irreversible pulpitis had been disclosed, Mr. Madd would have consented to treatment because it was necessary.

On the bright side, PLP used the fact that the pre-existing restorations were deep to contend that the need for endodontic treatment was not because

of improper restorative technique, but would have been required in any event due to the depth of the existing restorations. PLP subsequently negotiated a settlement amount and obtained Mr. Madd's full and final release in favour of Dr. Black. This release stated specifically that Dr. Black had not admitted liability.

SCENARIO 2

Elective Treatment WITH Informed Consent - Defendable

Ms. Gaap presented to Dr. White with a diastema between teeth 11 and 21. Dr. White noted there were moderate resin restorations in both teeth and recommended PFM crowns. The crowns were prepared and initially temporarily cemented, then permanently cemented one month later. Two months after permanent cementation, Ms. Gaap presented with pain in tooth 11. Dr. White referred her to an endodontist who diagnosed irreversible pulpitis and recommended endodontic treatment. Unfortunately, Ms. Gaap's symptoms did not resolve following endodontic treatment of tooth 11. Apical surgery was then performed, but her symptoms persisted. Eventually, the tooth was extracted by another dentist and was replaced with an implant.

Ms. Gaap telephoned Dr. White alleging she was responsible for the loss of tooth 11 because she had not warned her that endodontic treatment might

Ounce of Prevention




be necessary. She demanded Dr. White pay for the cost of the endodontic treatment, endodontic surgery, and the implant.

Discussion

PLP was able to defend this case because:

- Full crowns on teeth 11 and 21 were a reasonable treatment option.
- The records clearly showed that Dr. White discussed treatment options, risks and benefits, prior to preparing the teeth for crowns. The options discussed included no treatment, orthodontics, veneers and full crowns. Dr. White informed Ms. Gaap that the need for endodontic treatment was a risk associated with the placement of crowns. Informed consent was obtained.
- Working models showed the teeth were prepared conservatively.
- The crowns were initially cemented temporarily and the records showed that the teeth were asymptomatic when they were permanently cemented.
- Records from subsequent dentists showed the crowns had good contour, adaptation and aesthetics.
- The claimant was referred, in a timely fashion, to an endodontist for evaluation and treatment.

If you have questions about how to handle a particular situation with a patient, call PLP and one of our claims examiners will be happy to assist you. Just call 416-934-5600 or toll free at 1-877-817-3757.

If you have questions or comments about this article, contact Dr. Judi Purvs, Dental Claims Advisor at 416-934-5600, ext. 3103, toll free at 1-877-817-3757 or e-mail at jpurvs@rcdso.org. 

PLP POINTERS

1. Information that needs to be provided to the patient during an informed consent discussion includes:
 - The nature of the proposed treatment.
 - The benefits, risks and side effects of the treatment.
 - Alternatives to the treatment, and these alternatives may include no treatment.
 - The consequences of not having the treatment.
2. The patient must also be given the opportunity to ask questions about the proposed treatment.
3. The discussion needs to be documented in detail. Remember the courts generally take the view that :

If it is not in the records, it did not happen!

Informed Consent - A Legal Perspective

In a publication entitled, *Informed Consent in 2001: "Don't Leave the Office Without It."*, published by the RCDSO as a special supplement to the June 2001 issue of *Dispatch*, Eleanore A. Cronk, then a litigator and now Madame Justice Cronk of the Court of Appeal of Ontario, wrote,

It is [...] important [...] to be aware that the courts may impose a higher standard of disclosure in relation to cosmetic treatments and procedures than in the case of medically or therapeutically necessary treatments and procedures. This flows from the reasoning that when the non-essential elective procedure or treatment is undertaken, any type of level of risk may be that much more material for the person's decision to consent to it being performed. This is

so, arguably, because a patient may be presumed to be more likely to forgo non-essential, elective treatments or procedures if they carry with them significant risk of serious consequences.

In other words, it becomes even more important to discuss the risks associated with treatment when it is cosmetic. When treatment is necessary, it can be argued that the patient would have consented to it even if the risks had been disclosed because there really was no choice. When treatment is cosmetic or elective, this is not the case.

The full version of the Cronk article will be included in the privacy tool kit slated for distribution to every Ontario dentist at the end November.