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EDIC RISK MANAGEMENT STUDY

Negligent Root Canal Therapy and Extraction Lead to Large Settlement Loss

Paresthesia can occur because of malpractice. It is also a known risk or complication for several treatments and can occur even when the doctor is abiding by the standard of care for the treatment. Further, a doctor can violate the standard of care for informed consent by failing to note the risk of paresthesia, or failing to tell the patient that, alternatively, treatment is available by a specialist, such as an oral surgeon. Finally, if a paresthesia occurs, a doctor can violate the standard of care in several ways during their follow-up care.

Case Study

In April, the patient visited the Insured General Dentist for an oral exam and teeth cleaning. The Dentist noted that tooth #19 was nonvital and recommended a root canal procedure. The Dentist noted from an x-ray that he observed a large positive periapical pathology (PAP) at the tooth's apex, which involved the bone.

Two months later, the Dentist began the root canal, however, the canals were stenotic, which was confirmed on a PA x-ray, with bulbous root tips and cementosis with large intra-radicular radiolucency at the apex of the M&D roots. The Dentist discussed a new treatment plan for surgical extraction, bone graft, and implant placement with the patient. Although it was the Dentist's custom and practice to discuss the risks of a possible nerve injury with the patient, there was no signed informed consent in the file and no notes that an informed consent discussion occurred.

One month later, the patient returned, and the Dentist extracted #19. After the flap incision was made, the Dentist noted preexisting "high horizontal buccal bone loss," indicating a bone defect not visible on the PA image. The bone graft was placed with the GTR membrane.

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Four days later, the patient returned with pain and slight temperature. He was positive for lymphadenopathy and dry socket paste was placed.

Three days after that, the patient reported mild paresthesia at the lower left lip to midline. The suture had torn and the socket was open. The GTR membrane was in place. The patient still had a lot of pain. The patient continued to complain of "mild paresthesia" and pain to his lower left jaw until February of the following year.

The patient stopped treating with the Insured Dentist and his new dentist noted severe jawbone defects in the area of tooth #19 and the position of the mental foramen. The new dentist diagnosed progressive dysesthesia and neuralgia due to an injury to the mental nerve that occurred during the extraction of #19. The new dentist referred the patient to a nerve specialist. No surgical treatment was recommended and instead, the patient was referred to an oral-facial pain specialist.

Lawsuit

The patient filed a lawsuit, alleging post-traumatic injury to the trigeminal nerve and neuropathy.

The plaintiff's trial expert argued that the Insured Dentist should have referred the patient to an endodontist when he encountered difficulty performing the root canal; failed to obtain the patient's informed consent; and removed too much bone at the extraction site, thereby injuring the nerve.

The defense attorney consulted a trial expert who opined that liability was problematic. There was no written or documented verbal informed consent for the root canal or extraction procedures. There was also the issue of why the Insured Dentist did not refer the patient to an oral surgeon after the nerve injury was confirmed.

Due to the patient's extreme pain, the concerns over informed consent, and the failure to provide appropriate after-treatment care, the Insured Dentist agreed to attempt to settle the lawsuit against him.

After several failed negotiations, the claim ultimately resolved for $750,000.

Risk Management Takaways

Paresthesia is a known complication following the extraction of a tooth. A paresthesia outcome does not violate the standard of care, absent other factors. Here, unfortunately, other factors were present.

The Insured Dentist could not prove that he discussed the risks of paresthesia with the patient before beginning treatment. The Dentist should have had the informed consent discussion with the patient, noted the discussion in the patient's file, and asked the patient to sign a specific consent form.

Obtaining informed consent involves explaining to the patient the nature and purpose of the treatment, its benefits and associated risks, as well as any possible alternative treatments, and giving the patient the opportunity to ask questions.

For whatever reason, patients do not possess great memories when it comes to informed consent. Therefore, it is important for dentists to use both written informed consent forms and to document the informed consent discussion in the treatment notes. Not only do studies show that patients understand better when both verbal and written information is given, it is also easier for dentists to prove to factfinders, in the event of litigation, that the patient understood the risks, benefits, and alternatives when the informed consent process is illustrated by the form and by the treatment notes.

Additionally, the patient claimed that the Insured Dentist's follow-up care was negligent. Although the right time to refer to an oral surgeon or other appropriate specialist is a matter of clinical judgment, defending the decision to refer to a specialist after the window of opportunity for corrective treatment has already closed is difficult. The window of treatment for a paresthesia complaint is short.

The best way to ensure symptoms are recognized early is a protocol for regular interaction with the patient. If patients complain of numbness following treatment, the dentist should follow up with them to assess their progress and gather more information.

After several days or a week of loss of feeling or abnormal sensation, an office visit is necessary to objectively assess the situation and set a baseline for improvement. The dentist should map the paresthesia. With the short treatment window in mind, referral should occur as soon as the dentist stops noting improvement.

In the end, it is impossible to say whether more prompt treatment of the patient's paresthesia by a specialist would have been successful here; however, as noted previously, the delay was difficult to defend.

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