



ADA Show Report: Whole Body, Whole Lawsuit?

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SAN FRANCISCO - Is the patient too thin or too fat? Shaky on his feet? Bruised around the neck? If you think that's none of your business, think again. You may be headed for a lawsuit.

Dentists have long recognized and acted on a range of medical problems having little to do with teeth. Now lawyers are exploiting this angle, suing dentists who don't help with problems as diverse as eating disorders and child abuse.

That was the key message Sunday at a recent seminar at the American Dental Association (ADA) 148th Annual Session held in San Francisco. The session focused on "Failure to Diagnose," a category of malpractice claim that includes not only misdiagnosis but also failing to treat or refer patients when necessary.

"It's the most important category," said Michael Peterman of Redwoods Group insurance company. "These cases bubble to the top and they're the most expensive for both sides."

Another panelist, Kathleen M. Roman, MS, of Medical Protective insurance company agreed; her company defends its dentist clients successfully in 82 percent of malpractice suits, but only wins 60 percent of "failure to diagnose" cases.

Such cases fall into two broad categories. First, dentists overlook or misinterpret signs of illness. "We all make mistakes," said panelist Philip R. Barbell, DDS, who also works for the Redwoods group. For example, one orthodontist mistook oral cancer for sensitivity to braces. But if the doctor had paid closer attention, he would have noticed that the patient complained repeatedly of the same pain in the same location -- no matter how much wax he put on her braces.

The second type of failure is harder to understand: The dentist accurately diagnoses a problem but ignores it. Why would anyone do this? Sometimes doctors don't want to refer patients because it means sending business to their competition. Other times they just don't communicate well, Roman said.

A fatal mistake

The panel examined several cases that illustrate the legal pitfalls of an incomplete or sloppy diagnosis. In one example, a migrant worker declined an x-ray before having a damaged tooth extracted, because of the additional expense. The dentist went ahead and pulled the tooth, but the roots were lacerated and the dentist broke the patient's jaw.

The moral of the story, said Peterman? "There is only one standard of care. We can't adjust the standard and say, 'OK, I'm not going to do the x-ray for the migrant worker who can't afford to pay.'"

"The patient cannot dictate the treatment plan," agreed Roman. "Once the dentist has opened a treatment plan, the dentist is obligated to perform the treatment, regardless of the patient's ability to pay." The patient's signature on an informed consent form might provide some defense for a dentist (see more on this below), as would notes in the patient's chart. "If it's not in the chart, it didn't happen," said Dr. Barbell.

If a patient insists on a course of treatment at odds with standards set by the dentist's state dental board, the dentist should refuse treatment and refer the patient elsewhere, said Roman.

But documentation is only part of the dentist's responsibility, the panel noted. In another case study, a dentist carefully noted signs that a very thin patient might be bulimic. But the dentist never referred the patient to a family doctor who could have confirmed the diagnosis. The patient suffered kidney failure and her family sued the dentist.

In short, said Dr. Barbell, the dentist is responsible for more than just the mouth. "The oral cavity is connected to the rest of the body. If you see a serious medical problem, you are obligated to follow through."

Dr. Barbell advised dentists to look at gait, complexion, and mobility. "Can the patient sit in the chair properly and turn their neck in a certain way? You must train yourself to observe the whole patient."

Sometimes that means asking hard questions. For example, a college student visited his dentist and didn't mention he had been using cocaine. The dentist administered lidocaine and the patient died.

No need for pee or clairvoyance

One way to avoid these problems? Have your staff highlight any questions a patient doesn't answer on a medical form, and refuse treatment until the patient answers those questions. "You have an obligation to be a good clinician, but you don't have to be clairvoyant," said Roman. "You can document that the patient lied."

In some cases, dentists should follow up on a problem even when a patient, or the patient's guardian, doesn't tell the truth. In one case, a dentist noticed finger-print bruises around a seven-year-old boy's neck. The boy also flinched when the dentist approached him. But the dentist didn't contact child protective services, and four months later the boy was beaten to death by his mother's boyfriend, resulting in a suit against the dentist.

The doctor didn't report it, says Peterman, because he didn't want to get involved. Yet after searching their records, none of the panelists could find reports of a dentist being sued for referring a patient to child protective services.

A dentist's staff must be vigilant, too. Dentists can be liable for their staff's mistakes -- even for failing to act on information their staff never gave them. Dentists can likewise be held accountable for mistakes made by their partners or dentists in their employ. And, of course, a dentist can be liable for actions taken under the direction of dentist who employs them.

So where does a dentist's diagnostic responsibility end? "I definitely don't think dentists need to have

patients peeing into a bottle," [Tom Limoli Jr.](#), an Atlanta insurance consultant, told DrBicuspid.com. He agreed with the panelists--the answer lies with the state board.

State dental boards lay down guidelines about diagnosis within their standards of care, and it's hard to win a suit against a doctor who has followed them faithfully. State dental associations can usually provide detailed information about these guidelines -- which now include how to respond to ailments that have nothing to do with dentistry.

What of informed consent and denial forms? "A lot of times patients don't understand what they're signing or they don't get a copy to take home," said Limoli. In these cases, the form may not provide much defense for the dentist. So when are consent and denial forms useful?

Limoli gave the example of a patient who needs an \$800 root canal for a tooth that might crack without a protective crown. The patient can't afford the \$1,000 for the crown, and signs an informed denial form saying he understands the risk. "If the patient comes in three or four months later and [complains that] the tooth is cracked, he won't have a leg to stand on," said Limoli. The key here? The risk to the tooth could not be determined before the root canal, so the standard of care did not dictate that the crown be put on.

Dentists looking for good consent forms and other documents should seek out [The Dental Record](#) in Wisconsin, said Limoli.

But none of this matters as much as simply being careful, he said. "A dentist has to exercise plain old common horse sense. When something smells like a rat, it's a rat."