



# Recommended vs. Alternative Treatment Options: Is One Enough?

A jury recently awarded more than \$80,000 to a patient for replacement costs of veneers, as well as possible future procedures. The patient claimed the dentist did not provide adequate informed consent prior to placing veneers on teeth Nos. 6-11 and that the treatment was below the standard of care.

WELCOME TO  
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SECTION OF  
THE JOURNAL  
OF THE  
CALIFORNIA  
DENTAL  
ASSOCIATION —  
RISK MANAGEMENT  
CASE STUDY.

Once a quarter, the *Journal* will feature a TDIC risk management case study, which provides analysis and practical advice on a variety of issues related to liability risks. Authored by TDIC risk management analysts, each article presents a case overview and real-life outcome, and reviews learning points and tips which everyone can apply to their practice.

Previously, these types of case studies were featured in *Liability Lifeline*, a quarterly newsletter from TDIC's Risk Management department. For your convenience, these articles have been incorporated into the *Journal* format.

## Background Information

In July 2003, a 50-year-old female presented to her general dentist requesting treatment to straighten and lighten her teeth. She explained she had always been self-conscious of her smile and had been saving money to have them “fixed” before her daughter’s wedding in October.

The dentist performed a thorough exam and recommended veneers on her anterior teeth Nos. 6-11. The patient questioned whether the treatment would be complete before the wedding. The dentist assured her it would be done by then.

The following week, the dentist prepared her teeth for the veneers and scheduled a cementation appointment for three weeks. At the second appointment, the patient approved the veneers’ shape and color. She was extremely happy with the outcome and chose to have the veneers permanently cemented at that visit.

Over the course of the following two weeks, two to three veneers would “pop-off” weekly requiring recementation. Anxious about her daughter’s wedding, she wanted some assurance that the veneers would remain in place. The dentist could not account for the displacement of the veneers and assumed it was a possible

defect in the bonding material. He recommended removing all the veneers, having them remade and cementing them with a different material. Since time now was an issue, he also chose a lab that had a faster turnaround time than his regular lab.

After replacing the veneers, the problem still was not resolved. The dentist explained to the patient she would need to have full porcelain crowns placed on teeth Nos. 6-11. The patient told the dentist she did not want to have anything else done and would just live with her teeth as they were before the veneers were placed. He told her she couldn’t do that due to the preparation of her teeth for veneers, now only full coverage crowns were an option. The patient believed she had no other choice and agreed to have porcelain crowns placed. Knowing how upset the patient was, the dentist adjusted his scheduled to prepare the teeth and place temporary crowns that same day. He explained the permanent crowns could not be delivered until after the wedding, but assured her the temporary crowns would look nice.

The patient did not return to have the permanent crowns cemented and sought the care of a new dentist. She filed

a professional liability lawsuit against the dentist for lack of informed consent and practicing below the standard of care.

In 2004, after a year of investigation, depositions and discovery, the patient's attorney proposed a settlement to the dentist. This amount represented the money that was already spent for the veneers, the cost to place the crowns, the cost to cover possible future root canal therapy, and the future replacement cost of the crowns. The patient was also seeking compensation for lost wages and stress. The dentist did not accept the offer, as he believed a refund for the cost of the veneers was all that was warranted. He felt strongly she was taking advantage of him. The case proceeded to trial.

### Trial

The trial began in 2005. During the trial, the plaintiff's attorney argued the dentist never presented any other treatment options to improve the patient's smile. The attorney explained the duty to obtain informed consent and claimed the defendant breached that duty. He also defined informed consent as a dialogue between the dentist and patient, during which the dentist educates the patient about the diagnosis, nature of recommended treatment, alternative treatment options, and the possible risks and consequences of both. The dentist must give enough information for the patient to make an informed decision to accept or refuse the recommended treatment. The attorney reviewed the three areas of informed consent.

First is the nature of the recommended treatment and why the procedure is being recommended. Second are the risks, complications and benefits of the treatment. Third are the alternatives to the recommended treatment, including no treatment. The attorney made it clear to the jury that his client would not have

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consented to veneers had she known the treatment was irreversible. Additionally, she would have chosen treatment that did not damage her teeth, such as orthodontics or no treatment at all.

The attorney presented two orthodontist experts to discuss other possible treatment options. Both stated the patient was an ideal candidate for orthodontic treatment. Through the use of the patient's chart, they were able to show a history of periodontal probings with pockets of no more than 4 mm, good home care, and conscientious dental maintenance treatment. One of the orthodontists used a PowerPoint presentation to demonstrate the outcome that could have been accomplished using Invisalign. The full-screen presentation summarized the history of orthodontics up to the use of Invisalign for adult patients. The final slide, which was left on the screen for the remainder of the expert's testimony, showed before and possible after pictures of the patient's smile using Invisalign. When questioned, both orthodontists stated the patient's teeth could have been straightened by means other than veneers, which permanently damaged her teeth.

The patient's attorney also called a prosthodontist to testify about the dentist's preparation of the teeth for the veneers. He stated veneers frequently "pop-off" when the teeth have not been prepared properly. He further explained that if veneers are too long, the patient's bite could have been catching

the incisal edge, and the excess force on the veneers could displace them. The prosthodontist used a study model to demonstrate the impact a bite can have on veneers when they are too long.

Finally, the attorney called the patient's new treating general dentist to testify. The dentist explained the facial surface of all the teeth had been overprepared and would likely require future endodontic treatment. The dentist used intraoral pictures of the teeth as well as radiographs to show how close to the pulp each tooth was prepared. He speculated that the previous treating dentist overprepared the teeth to align them with one another, giving the appearance of "straight" teeth.

The defense attorney called one expert orthodontist to testify that in 2003 Invisalign was not the standard of care used for orthodontic treatment on adult patients. He explained that adult patients would have undergone two years in full braces to straighten teeth and correct their bite.

The defense attorney could not find experts to support the dentist's decision to offer veneers as the only treatment option to straighten and lighten the patient's teeth. The defense attorney called the general dentist himself to defend his treatment plan.

When asked why he did not refer the patient to an orthodontist, he explained he had previously referred two of the patient's children to an orthodontist for treatment and believed the patient would contact the orthodontist herself had she wanted to pursue orthodontic treatment. He also explained the three-month time frame to straighten her teeth eliminated orthodontics as an option, leaving veneers as the best alternative.

When asked whether he told the patient the treatment was irreversible, he said he explained the procedure includ-

ing preparing the teeth and assumed she understood it to be irreversible. He acknowledged he did not document the conversation in the chart but was certain of the conversation. He further explained that since she had been a patient for more than 10 years and they had such a good relationship, he did not document all conversations in the chart. He felt their relationship was strong, and if she had been upset or had questions, she would have let him know. He emphasized he wanted his patients to feel like they are part of his family and not just part of a “doctor-patient” relationship.

When questioned about his training in placement of veneers, the dentist stated he had attended courses on the placement of veneers for cosmetic cases. He had received certificates of completion from two highly recognized clinical educators. When questioned about the courses, he said they were mainly weekend courses but some had been four hours of intense instruction. He also testified he had completed 10 large veneer cases in the last three years.

### The Verdict

The jury deliberated for several hours and returned with a 12-0 verdict in favor of the patient. The jury stated the testimony of the plaintiff’s expert definitely played a role in the decision. While Invisalign may not have been the standard of care at that time, using orthodontics to straighten teeth was. The jury further believed the patient’s time restraints should not have impacted the dentist’s obligation to offer all treatment options. The jury also stated they did not believe his short period of training had prepared him for such an involved case. Nor did they think 10 cases qualified any dentist with limited training to undertake such a large veneer case.

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### What lessons can we learn from reviewing this case?

■ Patients have a right to make an informed decision about their treatment. Informed consent is the process of giving patients the information they need to make decisions, including the diagnosis, nature and purpose of the proposed procedure, specific risks of the procedure, likelihood of success, alternatives to the procedure, and consequences of not performing the procedure. Informed consent is more than a signed form in the patient’s file. It is a discussion between dentists and patients.

Document all informed consent discussions in patients’ charts. Make notes about the patient’s decision and any questions that were asked and the answers given. When using a form to facilitate the informed consent discussion, have another staff member witness the patient signing and dating the document. Be sure the witness also signs the document.

Dentistry now provides more options than ever to treat dental conditions. A dentist should be reasonably versed in the latest options as well as the traditional treatments. The prudent dentist has to advise patients of the ideal, as well as lesser treatment, and then if a patient declines ideal care and chooses a lesser treatment, the dentist should obtain and document informed refusal.

In this case, the jury told the attorneys that had the defendant advised the plaintiff of the options, and documented informed refusal, then

they would have voted for the dentist. Indeed, the patient’s attorney advised he would not have taken on the case if there was such documentation.

■ With the fast pace of advances in treatments and technology being made, dentists cannot afford to disregard continuing education. However, taking C.E. courses does not make a dentist competent at any new procedure. In this case, the dentist had taken several continuing education courses on veneers and cosmetic dentistry. His training, however, did not prepare him to undertake a veneer case as involved as this. Although he believed veneers were the best treatment option, he likely should have referred the patient to a specialist. General dentists who perform treatment that is primarily performed by specialists are held to the same standard of care of that specialty. Meaning, they are required to be able to fully recognize and diagnose difficult cases, and anticipate and effectively treat uncommon complications. The jury held the dentist to the standard of the prosthodontist, who was critical of his treatment.

■ Dentists are professionally and ethically responsible to present treatment options that are most appropriate for the patient’s clinical need. It should have been a red flag to the dentist when the patient told him she wanted her teeth “fixed” in three months. Rather than taking the time to educate, he offered the only option that would meet her time frame. Dentists should present and discuss all treatment options that are within the standard of care, and document the patient’s ultimate decision. When a patient is requesting treatment that is below the standard of care, consider withdrawing from further treatment. ■■■■

— ROBYN THOMASON

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