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Refer Now or Regret Later: Is the Treatment Within Your Level of Training and Experience?

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Once a quarter, the *Journal* features 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 everyone can apply to their practice.

A general dentist's decision not to refer a patient results in an untoward outcome.

A 35-year-old patient of record presents to his general dentist, Dr. Scott, for an evaluation of a toothache in his lower left molar area. After conducting a pulp vitality test and reviewing the radiograph, Dr. Scott recommends root canal treatment on tooth No. 19. He chooses not to refer the patient to an endodontist in order to boost his office's production, which has been suffering lately because of the sluggish economy. He informs the patient of the risks, benefits, and alternatives, as well as the risks involved in not having the treatment. However, he does not document the details of the conversation with the patient in the chart. The financial coordinator then discusses the cost of the root canal treatment with the patient. Due to a last-minute cancellation in the afternoon schedule, the patient is scheduled for an emergency palliative treatment by Dr. Scott that day. The patient is then reappointed to come back in one week for the root canal therapy to be performed by Dr. Scott's business partner, Dr. Asad.

When the patient arrives a week later for treatment, he is surprised to learn that Dr. Asad is not a specialist. The patient asks Dr. Asad why a specialist is not performing the treatment. Dr. Asad assures the patient that he has performed "many" root canal procedures and "there is nothing to worry about."

Dr. Asad assumes that because the patient is already a patient of record and has undergone previous root canal therapy, an informed consent discussion is not necessary. He reviews the initial radiograph and notices that the canals are slightly curved, making the procedure somewhat complicated. However, Dr. Asad views the procedure as a challenge and as an opportunity to increase his expertise with molar endodontic treatment.

He anesthetizes the patient and proceeds with cleaning the canals. Due to his lack of experience with performing molar root canals, the procedure takes longer than anticipated. Feeling the need for haste, Dr. Asad then proceeds with filling the canals and placing a cotton

pellet and the temporary filling material to seal the access. After reviewing the working and postop radiographs, Dr. Asad notices that the gutta percha and sealer extend 2 mm past the mesial root. The radiographs also reveal that the gutta percha extended 1-2 mm beyond the apex in the distal root. Dr. Asad instructs the patient to call if the pain returns, but does not mention the overfill. The treatment coordinator schedules the patient for a postoperative appointment in two weeks.

Three days later, the patient returns complaining of pain and a numb lip. After performing an evaluation and taking several radiographs at different angles, Dr. Scott notices the overfill. He prescribes a different pain medication and advises the patient to keep his appointment with Dr. Asad the following week for the postoperative evaluation. Meanwhile, Dr. Scott contacts a colleague who is an endodontist. The endodontist believes the problem is caused by excess sealer and gutta percha impinging upon the inferior alveolar nerve.

Dr. Scott documents the conversation in the chart but does not relay his findings to Dr. Asad. The following day, the patient calls to report that his condition is not getting better. At this point, the patient is extremely agitated and angry. He is advised to come in for another evaluation. Dr. Asad informs the patient about the overfill and decides to refer him to an oral and maxillofacial surgeon.

The following day, Dr. Asad contacts the patient to follow up on his visit with the oral surgeon. The patient informs Dr. Asad of the surgeon's recommendation to extract the tooth and states he was not convinced by the surgeon's treatment recommendation. Dr. Asad arranges for the patient to be evaluated by two endodontists who, after examining the patient, also agree with the surgeon's recommendation. The patient returns to the oral surgeon and following the extraction, his pain and numbness in the area of tooth No. 19 is resolved.

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Approximately six months later, Dr. Asad receives a letter from an attorney stating that the patient is suing him for the failed endodontic treatment, the loss of tooth No. 19, and the costs associated with the extraction and replacement of the tooth with an implant. The patient alleges he was unable to work for several months because of the extent of his pain and additional treatment, and therefore is also requesting compensation for lost wages. Dr. Asad contacts TDIC when he receives notice of the lawsuit. TDIC performs a thorough investigation and recommends settling the case.

During the Discovery

After reviewing the information provided by Dr. Asad, TDIC discovered that Dr. Asad failed to obtain an informed consent form for the procedure from the patient. TDIC also discovered that Dr. Scott's and Dr. Asad's failures to refer the patient to an endodontist initially, as well as their failures to immediately disclose the overfill and refer the patient to a specialist, resulted in the patient's decision to pursue legal action.

Lessons Learned

What lessons can we learn from reviewing this case?

Referrals

Many patients expect their general dentist to perform all aspects of their treatment, including specialty procedures. Very often, the general dentist performs root canal therapy with positive results. However, untoward results do occur. The decision whether to refer a patient to an endodontist or any other specialist requires careful evaluation of the specifics of the case. In this case, it was determined that the patient should have been referred to an endodontist initially. The decision to refer should have been based on the location of the tooth, accessibility, anatomy of the root structure, calcification of the pulp, whether the tooth has been previously treated, the patient's general health and attitude toward treatment, and most importantly, the doctor's level of experience.

With today's economic crisis, more and more general dentists may be tempted to base their decision to refer on the level of their practice's production rather than their ability to perform the specialty procedure. However, this option could potentially result in an increased cost to the practice when the treatment outcome is not successful. When a general dentist performs procedures normally performed by a specialist, he or she will be held to the standard of care of a specialist. Therefore, not only it is important to be able to determine the potential for complications, but to promptly recognize the occurrence of an adverse situation in order to properly treat or quickly refer the patient to a specialist.

Referrals are required for many reasons, especially when a patient's treatment needs are beyond the level of training and experience of the dentist. A referral can take place anytime, including after an initial exam or evaluation, at the time a patient's advanced condition is noted or during the course of ongoing treatment. When you refer a patient to a specialist, thoroughly docu-

ment the referral in the patient's chart. Include a description of the problem, the name and specialty of the referral dentist, the reason for the referral and whether the patient has agreed to the referral. Work with the specialist to ensure a successful treatment outcome for the patient. If an issue or problem arises, respond quickly, and attempt to resolve the issue in a timely manner. The ideal is to have already formulated a plan to resolve the situation at the time the patient is advised of the problem.

Informed Consent

Informed consent is a dialogue between dentist and patient. An informed consent discussion should include risks, benefits, and alternatives to the recommended treatment, including not having treatment. Patients should not be expected to consent to treatment without having been given the information necessary to make an informed decision.

In this case, even though the patient had been a patient of record for many years and had undergone previous root canals, Dr. Asad should not have assumed that obtaining an informed consent was unnecessary. Informed consent discussions and forms are tools to aid in promoting patient understanding and consent. They serve as documentation that the discussion took place and that the patient consented to treatment.

When Patients Refuse to See the Specialist

Even though in this case the patient was not given the option to have the root canal treatment performed by an endodontist, some patients will choose not to follow through with referral recommendations. In these situations, it is important not to let patients fall through the cracks. Explain in detail to the patient all risks

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involved in not seeking treatment with the specialist. Remind the patient why you are making the referral and encourage him or her to see the specialist. Document your conversation and the patient's response in the chart.

Additionally, write a follow-up letter to the patient explaining his or her current dental condition, the reason for the referral, and the potential risks associated with not following through with the referral. Place a copy of the letter in the patient's chart. If the patient does not comply with your treatment plan or recommendations, consider whether dismissing the patient may be the best course of action. If you decide to allow the patient to stay in the practice and act in a noncompliant manner, you may be at risk for future allegations of medical negligence it the patient's condition worsens and causes injury.

Documentation Is Your Best Defense

Complete and thorough documentation is essential for defending allegations of professional negligence. Dentists should be especially cognizant of documenting all patient complaints and the steps taken to resolve them. Document your observation using objective terms. Also, document the informed consent discussion and have the patient sign a consent form at the time of your discussion. By signing a written informed consent document, the patient attests to the fact that the nature of the treatment, the risks, benefits, alternatives, and consequences of each have been explained to his or her satisfaction and that he or she has had the opportunity to ask questions and have them answered.

Dr. Scott informed the patient about the risks, benefits, and alternatives, as well as risks associated with not having the treatment; however, he failed to document his conversation in the patient's chart. It was also up to Dr. Asad to confirm with the patient that the informed consent discussion occurred regardless of the patient's previous root canals. Each procedure can be different and requires a separate discussion as well as documentation.

Communication Between Colleagues

When several practitioners are treating a patient, they should talk to one another to mutually resolve any issues that may arise. The patient's record should reflect communication with the other practitioners and include notes on their progress with the patient. Practitioners should agree to support one another, stick to the treatment plan, and inform the others if and when the plan changes or any complications arise. It is the referring dentist's responsibility to follow up with patients and referral practitioners about the status and progress of each referral.

Following up with patients not only demonstrates your concern, but also provides the opportunity to monitor the patient's situation and react appropriately, should complications arise. Call the patient at home the same day in which he or she underwent treatment. Document the discussion in the patient's chart, including any report of the absence of problems. Be sure to get the patient back into the office for follow-up and completion of any unfinished treatment. ■■■■

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