Legal Issues in Orthodontics : Review

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Abstract

Although a small number of health care providers (including orthodontists) have decided to "go bare" and practice without professional liability insurance, the overwhelming majority are insured against loss from professional negligence by one of the dozen or so carriers. This review present possible Legal issue and its related suggestions.

Key words: Negligence, Legal aspects. Liability.

Introduction

Health has always been a matter of universal concern, but at no other time in history has it assumed the legal and political ramifications that it has today, not only in India, but also throughout the world. It is estimated that 98,000 people die every year in the United States because of mistakes committed by medical professionals. Medical negligence arises from an act or omission by a medical practitioner, which no reasonably competent and careful practitioner would have committed. What is expected of a medical practitioner is 'reasonably skilful behaviour' adopting the 'ordinary skills' and practices of the profession with 'ordinary care'[1] Pursuits of money rather than the pursuit of excellence appears to be the most important motive force in patient care.This review of article gives few of possible law suits against orthodontist, suggestions and typical steps to be followed in these regards.

Incidence of Law Suits

Approximately 47% of lawsuits against orthodontists are based on poor interaction between the orthodontist and the orthodontist's staff and the patient or parent. Another 40% are initiated as a result of second orthodontist criticism. Approximately 6% are in retaliation for collection attempts, and only 3% or less, according to our statistics, are as a result of poor treatment results[1].

Approximately one out of every 10 orthodontists will be involved in a malpractice case every year. These statistics, however, do not reflect that some orthodontists will have multiple suits filed against them[1].

Rationale Behind Law Suite

The primary reason is failure to keep patients informed of progress or lack of progress--unwillingness on the part of the orthodontist to speak with the patient or parent about various problems or concerns they may have, and a confrontational style rather than an accommodational one if problems do occur. It is important to sit down with these people, understand their concerns, and attempt to resolve the problems in a caring fashion[2].

As mentioned, fewer than 3% of the orthodontic negligence cases are initiated as a result of a poor treatment result. If a vast majority of orthodontic malpractice cases are initiated for reasons other than treatment result, then it is incumbent on the orthodontist to develop a style of interaction with patients and parents that demonstrates a concern for their care and their well-being. If this is done, patients will be substantially less inclined to file a claim[1-3].

Reason to Refuse Treatment

Health-care practitioners are permitted to refuse treatment to anyone providing the refusal is not based on race, religion, national origin, or disability--including someone who is HIV-positive. Personality characteristics and personality compatibility can most certainly be a basis for refusing treatment. Each orthodontist will determine which personality characteristics are unacceptable to them. It suggest that each orthodontist reflect on those personality characteristics that they feel would cause them not to be able to be compassionate and caring and accommodating, and screen for them in attempting to evaluate patients[4].

TMJ dysfunction, periodontal disease, and root resorption play a major role in the majority of orthodontic negligence actions. However, several other areas appear with significant frequency, including wrong tooth extraction and orthognathic surgery problems. In the past several years, failure to provide antibiotic coverage for patients with various cardiac problems has been named on several occasions[5]. These problems appear to be avoidable if the proper amount of time and care is taken in the initial examination and in preparing a diagnosis and treatment plan. Also of substantial importance is failure to obtain adequate informed consent. It is my opinion and that of other defense lawyers that careful informed consent will substantially reduce the incidence of orthodontic negligence cases[3-4].

Instead of remedial types of collection procedures such as collection agencies, small claims courts, or local magistrates, better financial procedures should be in place prior to beginning treatment. First of all, perform a credit evaluation through a local credit bureau. Second, make intelligent credit decisions based on these credit reports. Next, increase the initial fee so that the monthly payments are decreased and made over a shorter number of months. If someone is not credit-worthy, don't offer credit. Suggest that other forms of payment be used, such as borrowing money from relatives or from a savings and loan or banking institution[5].

Cases Comes Under Negligence

It is important to remember that less than 3% of the negligence cases are initiated as a result of poor results. Nevertheless, it is important for the orthodontist to spend a great deal of time with the patient and parent prior to treatment indicating the importance of cooperation. Informed consent should be obtained from the patient and parent, and feedback should be provided to the patient and parent as treatment progresses. If treatment is not progressing as expected, progress reviews should be had with both patient and parent present, correspondence should be generated, and at some point, if cooperation doesn't improve, treatment should be discontinued[1-6].

The topic with the thought that discontinuation should be used judiciously. As an example, it may be necessary for a child patient who has received several warnings regarding poor hygiene and in the orthodontist's opinion, continuing treatment presents the possibility of irreversible tissue damage due to poor cooperation[7].

The procedure followed and recommend consists of at least two prior warnings, both orally and in writing to the parents, as well as a consultation to explain the deficiency and the potential problems that may arise. After these have been given, if the deficient cooperation continues and the judgment of the orthodontist is that continuing treatment under these conditions poses the risk of irreversible harm to the dental tissues, then a final correspondence is sent indicating that the patient or parent has the option of transferring to another orthodontist, or that they present for appliance removal, since the complications for continuing orthodontics under these conditions of non-cooperation are such that you will not do so[8].

Hence, it must be stated that the orthodontist will continue to treat the patient for a period of time--I suggest two to three months--or until another orthodontist's services are secured or the appliances are removed, whichever comes first. However, this must be confirmed with local counsel regarding abandonment in your jurisdiction[8]. Your procedure should be included with the material on informed consent that is both discussed with the patient and parent prior to treatment and included in the informed-consent letter sent immediately after the conference. At the end of the letter, the patient or parent should acknowledge acceptance of the terms and conditions of

treatment by signing and returning a copy for the orthodontist's records. It further place the same termination information in the office policy manual given to patients. This manual also discusses how the office functions and other patient responsibilities[3,5,7,8,9].

The identical analysis must be used, except now the decision as to which harm is greater--continuing in the face of non-cooperation or removing the appliances--has an added component of leaving some of an extraction space, if it has not yet been closed. It is my position that the only time treatment may be discontinued is to protect the patient's health, dental or otherwise, from irreversible harm[9].

Merely telling the truth and answer the questions as honestly as possible after carefully reviewing all the records that are available. You must understand that there are two types of witnesses. One is a fact witness and the other is an expert witness. A fact witness, as is often the case with subsequent treaters, is merely testifying as to his or her clinical examination findings, diagnosis and treatment plan, and treatment[10]. The fact witness is not required to give expert testimony about negligence on the part of the prior orthodontist or the standard of care[11].

On the other hand, the expert witness is being retained and paid to provide testimony as to the standard of care with regard to this particular type of procedure, whether the first orthodontist breached that standard of care, and whether that breach was the cause of the damages to the patient[9,10,11].

Professional Malpractice

Professional malpractice insurance carriers more than likely require the insured to advise the company of "incidents". Incidents may be difficult to define in some cases, but one clear incident would be if a parent or patient said they were very dissatisfied with the work performed and that they intended to sue[12]. The mere occurrence of a poor outcome doesn't necessarily rise to the level of an incident. Dropping an instrument on a patient, perhaps injuring an eye or a cheek should be considered an incident to be reported[13]. If the orthodontist is to err in any particular direction, err in the direction of reporting the incident to the insurance carrier so that you have complied with policy terms if, in fact, your policy requires reporting of incidents[14].

In most large jurisdictions, three or four years is not uncommon from the time the plaintiff's lawyer requests records to the time a case goes to trial. Many times it may take longer. It is a long time, many years of considering all the various aspects of the case on the orthodontist's part. There are many hours or days of depositions, answering interrogatories, reviewing records, writing narratives, and meeting with lawyers, attending pretrial conferences, trial dates scheduled and cancelled, and awakening every morning and going to sleep every night considering the problem. It is a stressful, ego-deflating, and difficult period. Therefore, every attempt should be made to avoid litigation[11,12,13,14,15].

Conclusion

To avoid litigation the extra time in preparing higher quality diagnostic records, in discussing informed consent, in documenting proper treatment records, and in talking to patients and parents is well worth it to avoid the monumental efforts that will be required if a lawsuit is filed[16].

First and foremost, collect all the records, and review them with your insurance-appointed counsel and your personal counsel in an unbiased fashion to determine precisely what happened to cause the patient to file a lawsuit. Next, with the assistance of both counsels, retain an expert witness, provide him or her with all the records, and obtain an opinion from the expert as to whether your treatment complied with the standard of care. Be sure that the attorney or attorneys representing you are people you can work with and for whom you have respect. If not, insist on a new attorney[1-11].

Orthodontists are taking these suits much too seriously. They are taking them as personal affronts to their professional ability, even though in the vast majority of cases they have nothing to do with treatment results. If stress levels become too high, it is important to seek the professional help of a psychologist or a psychiatrist. Peer groups and support groups are being formed and may be helpful[11-15].

One of the most successful ways of relieving the stress that builds up after a lawsuit is filed is to take the case to trial and win the case. The vindication and euphoria that is felt is unlike any other. However, it does take courage to do so. Frank consultation with both counsels will determine whether there is a good chance of success. If there is, and the records are good and the orthodontist defendant will make a good witness, and there is a good expert witness, in the vast majority of cases there is no reason not to defend the case. Too often, I have heard of orthodontists settling cases they should have taken to trial. This is not good for them and not good for the profession.

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