



The importance of a good relationship between patient/dentist based on the obtaining of an informed consent to prevent lawsuits

La importancia de una buena relación paciente/cirujano dentista apoyada en la obtención del consentimiento informado para la prevención de procesos judiciales

Karina Tonini dos Santos,* Cléa Adas Saliba Garbin,§ Antonio Carlos Pacheco Filho*

ABSTRACT

The increased number of law suits in the Dentistry field constitutes an international trend. Patients well informed by the media and supported by the law sue their dentists, when they judge they were victim of bad practice. Professionals even with all discussion about this subject do not have the habit of prevent themselves. It is known that for a defensive practice the best way to avoid litigation is a good relationship with patient, based on dialog and on informed consent. This relation is very important, since patients who rely on their dentists rarely take them to justice. Hence, this article discusses the importance of this relation, as well as the obtaining of informed consent in order to prevent lawsuits.

Key words: Lawsuit, dentistry, informed consent.

Palabras clave: Procesos judiciales, odontología, consentimiento informado.

RESUMEN

La tendencia mundial del aumento del número de procesos judiciales en el área de la odontología constituye un problema internacional. Los pacientes, cada vez más informados por los medios y respaldados por la ley, promueven acciones contra los cirujanos dentistas, cuando juzgan que fueron víctimas de una mala práctica. Sin embargo los profesionales dentales, aun con la importancia en esta cuestión, no han tenido el hábito de la prevención. Se sabe que para una práctica defensiva, la mejor medida para evitar litigios es una buena relación con el paciente, basada en el diálogo y en el consentimiento informado. Esta relación es importante, debido a que los pacientes que tienen confianza en su dentista raramente se involucrarán en procesos judiciales. Este artículo discute la importancia de esta relación y de la obtención del consentimiento informado para la prevención de procesos judiciales.

INTRODUCTION

Nowadays, in the most diverse fields, the human being when feeling impaired look for judicial means to solve conflicts, moral and material damages, which he judged he was victim of. In health field, more specifically in Dentistry, is not different. The dental surgeon became a target of law suits especially when the litigation is formed under civil responsibility.¹ However, the majority of professionals, despite the intense discussion about this subject, doesn't use to prevent themselves against complaints.

The patient, a consumer of dental services, has become more conscious of his legal rights, guaranteed by law and reinforced by the media. Generally, they are supposed victims of an error in a dental treatment.

As a result, they ask for an order to a competent magistrate to evaluate the case and to judge if there was a professional error.

However, it has not been very discussed the fact of patient be co-responsible for the treatment outcome, because in a doctor/dentist-patient relation the treat, even implicit, foresee obligations for both parts.

* Graduate Student.

§ Adjunct Professor.

Department of Pediatric and Preventive Dentistry, Araçatuba School of Dentistry, UNESP-São Paulo State University, Brazil.

Este artículo puede ser consultado en versión completa en: www.medigraphic.com/facultadodontologiaunam

Many authors have talked about the importance of professional carrying out a «defensive practice», showing the evidence of a good relation patient/dentist based on the obtaining of informed consent as being one of the most efficient measure to avoid complaints related to treatment and possible law suits.² Therefore, the present study has the aim of discussing the importance of these measures on the prevention of litigation.

PROFESSIONAL AND PATIENT RESPONSIBILITY

In order to live in society and for a good social convivality it is necessarily an obligation the existence of rules. This means that the essential condition for the existence of a society is its political organization and by means of a Public Power, the establishment of a group of laws observed by all its members.

During a dental treatment, the main characters of this scenario, dentist and patient, also have to respect certain rules for their outcome be the best possible and mainly in order to the patient expectation be reached.

In view of that, the dental surgeon has to do his part: to create and stimulate preventive strategies to avoid oral diseases; to perform resolute and rehabilitator diagnostic in a legal way; to favor and to promote a respectful and permanent communication with patients, their relatives and legal representants; to integrate a treatment that includes full medical history, as well as a validated informed consent; to determine a diagnostic in the right time, as well as a prognostic and treatment plan according to ethical and scientific bases.³

On the other side, the patient is also responsible for obtaining the expected outcome. All right foresee an obligation, i.e. the patient has the right of being well treated, with respect, seriousness, attention and dignity. Also it is his right to refuse to continue the treatment, after being adequately informed about the same. However, since the treatment has started, he has the duty of following in a properly way the recommendations and treatments prescribed, under penalty of being responsible for the failure of his cure, or the aggravation of his disease.⁴

If these obligations are not accomplished, by the professional or the patient, both must answer by their acts, guilty or not, corresponding to what is denominated responsibility.

The civil responsibility is defined as the juridical duty of answering for one's own acts and for the others, always when these acts violate the rights of other people protected by the law, as well as to repair the damage one caused.⁵

The professional's responsibility is about the obligation the agent has of responding for his professional acts and suffering its consequences.³ One is considered guilty, when in litigation, if negligence is confirmed, awkwardness or imprudence. Summarizing, awkwardness is determined as the technical inability for a specific activity or function, imprudence consists of an action carried out in an inadequate, hastened or premature way and negligence is characterized by an omitted conduct.

The guilty is due to the patient, the supposed victim of error, when the cause of damage is himself, characterized by: no attendance to medical prescription or negligence; neglect of treatment or imprudence; auto medication or awkwardness.

The patient's obligation is to help his dentist in his own treatment to obtain the expected result. Patient and dentist should use all ways and tools to get the expected outcome, in an esthetic treatment or in the cure of a disease.

PROFESSIONAL/PATIENT RELATION

The fact is, for everything goes well, for patient and professional can feel satisfied at the end of treatment, it is essential to maintain a good relationship. This relation implies on communication and trust, based on the information of the informed consent.⁶

Graskemper,⁷ 2007, discusses about the fact that the consolidation of a relationship of mutual confidence between patient/professional decreases the probability of law suits. People rarely sue who they like or they trust. Therefore, dentists have to learn to hear their patients, to understand body language and to learn techniques that allow patients feel well and confident. Wood,⁸ 2001, also emphasizes the importance of patients to get involved with their diagnostic, through the knowledge of the reasons they had to look for a professional help and their expectations.

The treatment plan must be well explained, and the limitations have to be well defined, so that the patient won't create expectations beyond the possibilities of treatment.⁹ The principal complaint from patient when he looks for dental care must be the first question to be resolved, at the end of treatment the patient has to be asked about his satisfaction, if his perspectives were reached.

In this point of view, the knowledge of real needs and patient's expectations is fundamental, because there are some patient's expectations related to his treatment outcome that the dentist will never be able to correspond. This fact makes it a potential litigation. Another important factor is that what is considered a

need for the professional not always is a need for the patient.

An example of this question was the result of a study conducted by Tortopidis¹⁰ et al. 2007, which objective was to evaluate the need for esthetic treatment through the view of patients and dentists. The researchers observed a great discrepancy and discordance between patient and dentist perception.

When it happens there is a great possibility of patient think his needs were not satisfied and look for judicial way to be recompensed. This fact can be noticed on the studies from Moles, Simper and Bedi,¹¹ (data) and from Hapcook¹² (2006), who verified the majority of patients complaints to the Professional Council was related to restorative procedures.

Many authors, studying the ability of communication between dentist and patient verified a very big gap in this process, and they correlated this fault as the beginning of complaints.¹³⁻¹⁵ There are on the literature several validated instruments which can indicate this deficiency and help the dental surgeon to detect where are these faults.

It is important to emphasize that the dental students, from the beginning, in the dental school, must develop the ability of communication with their patients,¹⁶ so that later, as professionals, they will know to develop a relationship with patient looking for confidence and empathy.

Many times the absence of a discipline responsible for Legal Odontology and Bioethics on the curricula of university courses also contributes for the occurrence of a practice of bad quality on the dental office and the deterioration of the dentist image on the society.¹⁷ Garbin¹⁸ et al. 2004, report the necessity of the dental surgeon be ethically prepared so he can face his obligation, being more conscious and humanitarian with his patients.

OBTAINING OF INFORMED CONSENT

The dental surgeon should reveal all his ability with the patient during the obtaining of informed consent, so the given consent is really informed and not obtained under pressure.¹⁹

The information about treatment must be given in a clear, objective way, according the patient language, emphasizing risks, benefits, all alternatives of available treatments and their costs.²⁰ Beside this, it must be allowed to patient all kind of questions and elucidation from the dentist.²¹

It has to be maintained the patient's autonomy principle, which considers three basic requirements to be valid: liberty of decision, sufficient explanation and

competency to decide. The consent represents not only a human right, being a professional's compromise, but also it will serve as a preventive way against patients complaints, many times without motive.¹⁷

According to Galán Cortez²² (2000) it must be performed considerations of subjective and objective character when informing the patient. The cultural level, age, personal, familiar and social situation of patient are subjective characteristics, and the case emergency, the treatment needs, the dangerousness of the intervention, the possible rejection of patient to treatment after receiving information are objective characteristics that must be considered.

Lopez-Nicolas²³ et al, 2007, verified that of the 52 cases of complaints involving cases or dental error at Professional Association in Murcia city, Spain, only in 12 cases there were informed consent reported, however all of them were inappropriate, contributing to professional be more vulnerable.

FINAL CONSIDERATIONS

The clinical practice of professional must be conducted according to the four fundamental principles of bioethics: not slanderer, beneficence, autonomy and justice. The criteria of responsibility will be leaded by these principles, which will involve all possible professional situations of infringements of precepts.

The patients must be alert about their obligations and rights at the moment the treatment proposed by the dentist is initiated. Patients many timed don't pay attention to the orientations given by the professional, because they are nervous or excited with the treatment.

Patients have to understand that, besides their rights, they have to accomplished their duties in this social relation and follow all the recommendations given by their dentist, acting in a sincere way with the professional who are trying to help in the cure of their disease.

The dental surgeon needs to be conscious of his responsibility as professional, and carries out in a certain way a «defensive» practice. Together with his patient, one must perform a good relationship based on communication, confidence and on informed consent. This relation is of great important, since patients who trust on their dentist rarely take them to justice.

REFERENCES

1. Santoro V, De Donno A, Dell'Erba A, Introna F. Esthetics and implantology: medico-legal aspects. *Minerva Stomatol* 2007; 56 (1-2): 45-51.

2. Panting G. How to avoid being sued in clinical practice. *Postgrad Med J* 2004; 80 (941): 165-8.
3. Estrada JT. Comisión Nacional de Arbitraje Médico CONAMED. *Revista Odontológica Mexicana* 2007; 11 (2):103-8.
4. Johnston JW. Patient responsibilities. *J Mich Dent Assoc* 2006; 88 (11): 14.
5. Carnahan CW. *The dentist and law*. Saint Louis: The C. V. Mosby Company; 1955.
6. Calero JMP. Implicaciones éticas y jurídicas de la práctica odontológica. *Revista Odontológica Mexicana* 2007; 11 (2): 62.
7. Graskemper JP. A new perspective on dental malpractice: practice enhancement through risk management. *J Am Dent Assoc* 2002; 133 (6): 752-7.
8. Wood H. Managing malpractice liability: tips to limit your risk. *J Indiana Dent Assoc* 2001; 80 (3): 12-4.
9. Mazurat NM, Mazurat RD. Discuss before fabricating: communicating the realities of partial denture therapy. Part I: patient expectations. *J Can Dent Assoc* 2003; 69 (2): 90-4.
10. Tortopidis D, Hatzikvriakos A, Kokoti M, Menexes G, Tsiggos N. Evaluation of the relationship between subjects' perception and professional assessment of esthetic treatment needs. *J Esthet Restor Dent* 2007; 19 (3): 154-62.
11. Moles DR, Simper RD, Bedi R. Dental negligence: a study of cases assessed at one specialized advisory practice. *Br Dent J* 1998; 184 (3): 130-3.
12. Hapcook CP. Dental malpractice claims: percentages and procedures. *J Am Dent Assoc* 2006; 137 (10): 1444-5.
13. Lahti S, Tuutti H, Hausen H, Kääriäinen R. Comparison of ideal and actual behavior of patients and dentists during dental treatment. *Community Dent Oral Epidemiol* 1995; 23 (6): 374-8.
14. Milgrom P, Cullen T, Whitney C, Fiset L, Conrad D, Getz T. Frustrating patient visits. *J Public Health Dent* 1996; 56 (1): 6-11.
15. Imanaka M, Nomumra Y, Tamaki Y, Akimoto N, Ishikawa C, Takage H, and others. Validity and reliability of patient satisfaction questionnaires in a dental school in Japan. *Eur J Dent Educ* 2007; 11 (1): 29-37.
16. White JG, Kruger C, Snyman WD. Development and implementation of communication skills in dentistry: an example from South Africa. *Eur J Dent Educ* 2008; 12 (1): 29-34.
17. Estrada JT. Ethics: a problem for odontologists. *Acta Bioeth* 2006; 12 (1): 75-80.
18. Garbin CAS, Garbin AJI, Barbosa ALP, Mariano TQ. Education in dental school and its repercussion in the formation ethics of professional of health. *Rev Paul Odontol* 2004; 26 (5): 20-4.
19. Alford DM. The clinical record: recognizing its value in litigation. *Geriatr Nurs* 2003; 24 (4): 228-30.
20. Dubé-Baril C. The personalized consent form: an optional, but useful tool. *J Can Dent Assoc* 2004; 70 (2): 89-92.
21. Pollack BR. Risk management in the dental office. *Dent Clin North Am* 1985; 29 (3): 557-80.
22. Galan CJC. *Aspectos legales de la relación clínica*. Jarpyo: Madrid; 2000.
23. Lopez-Nicolas M, Falcón M, Perez-Carceles MB, Osuna E, Luna A. Informed consent in dental malpractice claims. A retrospective study. *Int Dent J* 2007; 57 (3): 168-72.

Address correspondence:

Dr. Cléa Adas Saliba Garbin

Department of Pediatric and Preventive Dentistry,
Araçatuba School of Dentistry, José Bonifácio, 1193.
Vila Mendonça. Araçatuba-SP. Brazil. 16015-150.
Phone: +55-18-3636-3249. Fax: +55-18-3636-3332.
E mail: kktionini@yahoo.com. br cgarbin@foa.unesp.br