

Informed Consent/ Standard of Care/Dentists' Duty to Disclose Material Information

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The most recent information bulletin released by the RCDSO called "Staying Safe" is a most welcome document aimed at the subject of risk management in dentistry. One area that receives 27 pages of explanation is "Informed Consent," the legal side of practice management and treatment planning which is sometimes very confusing. Several areas not covered in the member's workbook are laid out in the following dialogue between Robert Tighe and me. *My questions to Robert are italicized.* It is interesting to note how the duty to maintain patient confidentiality can also arise when considering the preliminary legal issues a specialist may encounter when referral of patients occur. This vignette represents unique areas of my practice but hopefully this dialogue will be helpful in establishing protocols of risk management for both specialists and generalists alike; as referrals are a two way street requiring certain protocols from each direction.

Patients are typically referred to my office for either anesthesia or prosthodontics or both. Similar referral scenarios exist for all specialty offices. Many times the patients arrive without little more than a telephone call. On many occasions the initial contact is made by the patient. In order to

develop proper protocol for the present and to develop risk management for the future I now insist on some form of correspondence from the referring dentist in order to identify the problem and to facilitate the referral.

Without signed consent forms are my staff allowed to contact the referring dentist and openly discuss the referral?

The referring dentist has the disclosure issue since it is his/her patient that is affected. It is advisable that the referring dentist have the signed information release forms before the referral takes place for his or her sake. The patient is not your patient and may not become your patient at this point for a variety of reasons. You may decide that you are not the right person to treat the individual for starters. This is a "disclosure of information issue" at law not an "informed consent" issue for the referring dentist. It would be wise for the referring dentist to have signed consent forms to release information to a 3rd party (you) in his or her file.

Release of Information forms regarding contact with other health professionals are not signed until we meet the patient on their first appointment. This may or may not be informed consent?

Actually, this is not an informed consent issue, but a duty of confidentiality issue. The release of information form presumably allows the provider of sensitive health information to satisfy or release him or her from the duty of confidentiality that every dentist owes his or her patient when he or she provides information to 3rd parties or to another health practitioner.

As opposed to release of information forms "informed consent" is, as lawyers and the Courts understand it, another separate legal duty the dentist owes his/her patient. This duty is owed before commencing a procedure.

Consent can be written or oral. Written is preferable as it is easier to prove consent as a matter of satisfying the laws of evidence if there is a dispute in the future. However, the mere fact of a signature on a consent document, which elucidates risk and benefit, does not constitute proof of "informed consent." The content of the form provides only some of the evidentiary basis of the nature and extent of the dialogue between the doctor and the patient.

Securing the patient's "informed consent" can be, depending upon the doctor's techniques or way of operating with his or