

her patients, a process, whereby the doctor enters into a dialogue with the patient. It is during this dialogue that benefit and risk issues are disclosed along with many other parameters of treatment. The patient is free to ask questions in order to identify the risks and benefits of the contemplated procedure. This process of questions and answers help the patient to make an "informed" decision about whether he or she wishes the dentist to proceed.

Once the dentist has provided all the material information necessary to enable the patient to make an "informed" decision (i.e., informed consent) the question then shifts to the law of evidence and the question becomes whether the dentist can prove that this was delivered. Some form of a written document is essential if at some point in the future a dispute regarding informed consent should arise.

To make the point, the signing of a written document giving consent in the Court's eyes, is not the be all and end all to prove that the dentist has the patient's "informed consent." The dentist needs to be in a position to prove that the patient was provided with all relevant material information in order to make an "informed" decision. There may be other methods to prove that the relevant information was delivered to the patient such as having the patient initial a handout that was provided with standard contemplated procedures and enclosing that signed copy in the chart or writing or dictating the details into the chart and asking the patient to initial that this information was provided at that time.

It all depends on which method the dentist finds most comfortable to convey the necessary information setting out the risks and benefits to the particular patient.

I should explain the concept a little further. "Informed consent" is the legal "nick name" for the patient's right to be informed about the procedure he/she is about to undergo.

Some legal authors including the Supreme Court of Canada have stated that calling the doctrine "informed consent," is misleading. It is more accurately described and better understood, perhaps if called the dentist's duty to disclose material information. Formerly the law considered non consensual touching in this context as a battery. Battery is an intentional tort that usually accompanies an assault. It has moral overtones as intentional torts such as assaults and batteries, at times are also the subject of separate criminal proceedings. The Court found that such (raising the specter of criminal proceedings) was not appropriate in the dentist-patient context and instead considered that the dentist's failure to provide enough or any material information prior to commencing treatment was better characterized at law as negligence. Negligence arises from want of care and is not regarded as an intentional tort or act.

Getting back then to our discussion of "informed consent", the patient may sign the document outlining risk and benefit and actually not be given enough "material information" by the dentist to understand and therefore agree to the procedure or give his or her "informed consent," at all. The Court may find that the consent was not valid as the patient did not receive enough material information, particularly of the kind that brought home the negative aspects or risks involved, and therefore the dentist was negligent, on that basis. The Court may determine that any reasonable person in the patient's position would not have agreed to the procedure being performed if he or

she had fully understood all the risks associated with it.

At a recent Risk Management Seminar given by CDPA it was suggested that making sure that you, the dentist supplies the relevant information to secure the patient's "informed consent" can be a dialogue or a process. It may make sense to initial letters or treatment plans as you go through them with the patient and have the patient initial them as well or better still: make changes in writing to the document as the patient asks questions and both initial them as you go. This may assist in proving that the treatment plan was thoroughly discussed and understood by the patient.

It is essential that the dentist communicate the necessary material information about the contemplated procedure to the patient to allow the patient to make an "informed" choice. It does not matter how beneficial or necessary the treatment seems to the dentist; the law of "informed consent" requires that the patient decide with the benefit of having been provided with all material information, whether he or she wishes to undergo the treatment.

*Assuming an appointment has been made by the referring dentist, the next step in the process is a welcome letter from my secretary to introduce the new patient to our office. Within the descriptive of the letter is a disclosure regarding the fee for the first appointment. The time is reserved, no reminder is given the patient and if the appointment is missed we contact the patient and if no reply, the referring DDS. What legal responsibility does either office have to make sure that the patient keeps the arranged appointment?*

You cannot force anyone to see you, and at this point in time neither office has a legal obligation

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