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Patient's Unrealistic Cosmetic Expectations Lead to Lawsuit

Caroline Orvis was a 67-year-old affluent socialite—someone who took great pains to maintain an appearance younger than her years. She dyed her hair a deep red color and talked regularly of plastic surgery to maintain her appearance. Her clothes and accessories suggested money was not an issue.

Caroline pulled out a photograph of herself taken 25 years earlier and told the dentist she wanted her teeth to look like they did in the picture.

Dr. Bell treated Caroline from October 1999 to April 2001—starting with a full-mouth reconstruction of approximately 20 teeth incorporating upper and lower fixed bridgework. This work came at a significant cost and was paid for out of Caroline's own pocket.

While there was no initial documentation about Caroline's expectations, the records noted she had numerous complaints about the appearance of her new teeth.

Patient Sees Another Dentist

In April 2001, Caroline left Dr. Bell's care and immediately went to see another dentist, Dr. Michael. Caroline told Dr. Michael that she did not like her appearance after the work done by Dr. Bell and that was the primary reason she was seeking Dr. Michael's care. She also had vague complaints of TMJ pain, which she attributed to the poor quality of Dr. Bell's work.

After explaining these concerns to Dr. Michael, Caroline pulled out a photograph of herself taken 25 years earlier. She showed the picture to Dr. Michael and told him she wanted her teeth to look like they did in the picture. She wanted all of Dr. Bell's work redone.

Caroline said she understood the time and expense issues as she had recently had similar work done by Dr. Bell. She explained she had the financial means, and that she really wanted to achieve a more attractive appearance. Dr. Michael, hesitant to be too blunt with a new patient, explained he could redo the work, but he cautioned that the result might not be the same as the picture. He told her he would do his best to address her concerns, and he felt he could achieve better aesthetics than she had now.

Dr. Michael's records contained a copy of the photograph but no documentation of the conversations. Nor were there any records of Caroline's oral or written consent to the treatment.

Dr. Michael proceeded to redo the bridges placed by Dr. Bell over the next year. During that time, Caroline had constant complaints about the appearance of her teeth, which were noted in the records. She wanted her teeth to be much whiter than Dr. Michael recommended for her age and she felt the new reconstruction made her teeth look like "Chiclets." Dr. Michael redid at least one bridge in an attempt to satisfy Caroline, but she left his care in 2002.

Around that same time, she went to another dentist for her TMJ complaints. That dentist eventually diagnosed her with TMD, and treatment was given for that condition.

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The defense team responded that the dentists had acted appropriately.

Lawsuit Commences

Caroline's next stop was her lawyer's office, which happened to be the firm where her husband was a partner. Although Mr. Orvis did not personally handle his wife's claim, his partner did. In late 2002, Caroline sued both Drs. Bell and Michael, alleging breach of contract and dental negligence.

In the course of the case, Caroline's attorney sought to pit Dr. Michael against Dr. Bell. Dr. Michael refused to criticize Dr. Bell's prior reconstructive work, but unfortunately, that left him with no explanation for why he would redo a full-mouth reconstruction other than for purely aesthetic purposes. This played into Caroline's claim that Dr. Michael never told her she wouldn't look like she did in her 25-year-old photograph.

In the lawsuit, Caroline Orvis made demands for:

- $25,000 in damages for Dr. Michael's work
- $19,000 for Dr. Bell's work
- Additional cost for her TMD treatment

Had she known she wouldn't end up looking dramatically younger, Caroline contended she never would have agreed

to the time, cost and pain associated with these two courses of care. Specifically, she claimed both dentists "guaranteed" she would look like the picture she brought in, and that they both assured her the work would be done within four to six months. Moreover, she alleged Dr. Michael failed to diagnose and treat the TMD problem and made the condition worse.

The Defense Weighs in

Drs. Bell and Michael countered that they had acted appropriately, that Caroline clearly needed the restorative work due to the condition of her mouth, and that her options for restoration were limited. According to both dentists, the restorative work was successful and the cosmetic result was good.

Drs. Bell and Michael both felt Caroline Orvis' expectation for her appearance was not reasonable, and they had discussed this with her. They were adamant that they never would have guaranteed Caroline that she would look 25 years younger as a result of the

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What Can We Learn?

- **Informed consent.** It was a huge risk to pursue such an expensive and involved course of care without the patient's full informed consent about the risks, benefits, alternatives and recommendations. This is especially true given that Caroline Orvis' dissatisfaction with her appearance was the only true basis for the redo of the reconstruction.
- **Guarantees.** While they are used for products like a lawn tractor or a washing machine, the human element and the subjectivity of individual expectations should steer dentists away from using such terms.
- **Physician communication.** Dr. Michael should have discussed the case with Dr. Bell, and he should have been wary of redoing a full-mouth reconstruction so soon after Dr. Bell's treatment. A conversation between the two dentists may have shed light on the fact that this patient's expectations were unrealistic and she would never be satisfied.
- **Referral.** The minute the patient complained of TMJ discomfort, she should have been referred to a specialist, and treatment discontinued until the joint was comfortable.
- **Documentation.** Both Drs. Bell and Michael should have had more detailed documentation, especially given the cost of the treatment and Caroline Orvis' constant dissatisfaction. In particular, the photograph should have contained a note signifying that the patient was told she would never look 25 years younger.
- **Evaluation.** Rather than beginning treatment immediately, Dr. Michael should have required Caroline to take time to think about the pros and cons of redoing the work.
- **Aesthetic focus.** When a patient is overly concerned with aesthetics, the dentist should not only document existing clinical conditions, chief complaint, treatment options, and informed consent, but also provide prosthetic try-ins and receive/document patient approval (i.e., aesthetic appearance) before finalizing a permanent prosthesis.

restorative work, and they never would have promised the work would be completed in the time she claimed.

Throughout discovery in the case, Caroline identified almost 20 dentists she had seen over time. These treaters' records showed that Caroline had similar issues with many of them. She was often dissatisfied and hopped from practitioner to practitioner. Because of the large number of treating dentists, the discovery process was prolonged.

None of these dentists were critical of the defendants, and neither Dr. Bell nor Dr. Michael criticized each other's care. The defendants both retained well-qualified experts who strongly defended the care provided by both dentists.

Case Finally Goes to Trial

In 2006, after the experts had been deposed and the case was close to trial, Caroline flew to Ohio to treat with a dentist named Dr. Yellen who rendered opinions critical of Drs. Bell and Michael. Caroline's counsel then identified Dr. Yellen as another expert, and the defense objected to this late attempt to bolster Caroline Orvis' case. The court agreed and barred Dr. Yellen's testimony from trial.

Finally, in 2007, the case proceeded to a jury trial. The trial lasted approximately a week and a half, and Drs. Bell and Michael were found not liable in the care and treatment of Caroline Orvis. Though she appealed, an appellate court affirmed the jury verdict in 2009—seven years after the case commenced.

This case study was derived from the files of Linda Hay, J.D. All names used in *Dental Insights* case studies are fictitious to protect patient privacy. The author thanks attorney Tammera E. Banasek, J.D., also of Alholm, Monahan, Klauke, Hay & Oldenburg, for her participation in the preparation of this case study.

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Technology Alert: Cell Phones

Do you still allow your patients and staff to use their cell phones in your practice? If so, it may be time to enact a cell phone policy.

A majority of cell phones today are more than phones—they contain cameras that give their users the ability to take photos and even video surreptitiously. In addition, Blackberries, iPhones and Palms (and some laptops) have digital photography and recording capabilities.

In the medical arena, hospitals have long banned the use of cell phones in many areas, especially patient care areas. Initially, they took this step because of electromagnetic interference with electronic equipment. More recently, however, there has been heightened concern about the camera function of cell phones, and the need to protect patient confidentiality and privacy, as well as avoid HIPAA violations and fines.

Another concern for dentists is patients who use their cell phones to text during appointments. Not only is this rude, these patients are not giving the dentist their full attention and are at a higher risk of noncompliance. Just as cell phones and other handheld devices may affect the cockpit controls of an airplane, the use of these devices can interfere with dentist/patient communications.

Many offices post a notice prominently in their reception area, asking that cell phones and other wireless devices be turned off out of respect for other patients and in keeping with the practice's mission of protecting patient privacy. Others recognize that many patients use the calendar function on their phones to make appointments, so they only ask that cell phones be turned off when the patient enters the treatment room.

Whatever you decide, be aware that many of the same concerns will apply to your employees. So, it may be wise to consider limiting your staff's cell phone use to specifically designated, non-patient areas during break times.

On a related note, make sure your practice's wireless network is secure from unauthorized access to your patients' personal health information. For guidance, go to the HIPAA website, www.hhs.gov/ocr/privacy/index.html or contact an IT specialist.

Expert answers to your questions about ...

Dealing With an Emergency in Your Office

Q: We recently had a new mother come into our dental office feeling weak before her appointment. She turned out to be fine, but the incident made us think about our ability to deal with a real emergency. Should we just call "911" ... or do we need to do more?

A: You're smart to think about this issue before an emergency situation occurs. While not every dental practice must address every possible emergency situation, it's important to consider the patient's perspective.

Patients have preconceived notions of what a healthcare professional should be responsible for. Many patients may assume you and your office staff are trained, equipped and able to deal with a medical emergency in your office.

That's why your employees should be trained to handle patient emergencies, especially your treatment staff. Even nonclinical employees should know who to call for help and be able to render basic first aid.

The degree and amount of emergency training and equipment your practice need will vary based on your:

- Patient population
- Location
- Scope of practice
- Proximity to urgent care

For example, one practice might require all staff members to be trained in CPR. Whereas another, because of its close proximity to a hospital, may elect to require CPR training for only one-half its staff.

If you do elect CPR training, your practice should pay for regular refresher courses and compensate employees for their time to take the classes. Other options include conducting in-house training or tying certification to employee bonuses.

The important thing is to make it easy for your employees to abide by your requirements and to make sure to monitor their compliance.

What are the Basics?

Many dentists find prepackaged emergency response kits from medical supply houses to be well worth the cost. Obviously, someone on your staff in must be trained to appropriately use the kit. (However, be cautious about any dental personnel administering medical drugs in an emergency situation, due to liability concerns.)

Any emergency kit should be kept where it will be quickly and easily accessible in an emergency. All members of your staff should be able to locate and use it immediately. What's more, your practice's emergency kit should be checked regularly to ensure it is up to date and ready for the next emergency.

Procedures and Policies

It's important to keep the plan's procedures and policies for handling in-office emergencies in your practice's office manual. Reinforce this information in your practice's new staff orientation, as well as in regular staff meetings or in-services.

Many offices also perform annual or semi-annual "drills" to ensure that their staffs are prepared to promptly and professionally respond. The bottom line is to develop a formal, written emergency plan that can be customized to your practice.

Preparing for emergencies and having the proper policies and training in place is an important part of the overall office procedure. Each new staff member should be familiar with your crisis procedures and ready in the event of an emergency.

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Dental Insights is published quarterly for policyholders of Professional Solutions Insurance Company.