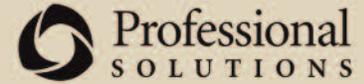




DENTAL Insights



PROFESSIONAL SOLUTIONS INSURANCE COMPANY BRINGS YOU PRACTICAL TIPS FOR AVOIDING A MALPRACTICE ALLEGATION

SUMMER 2011

Quality Documentation and Office Practices Serve to Better Defend the Dental Professional

It is vital to focus on important details—such as documentation, patient education and patient refusals—for effective risk management in a dental practice.

Mary Pat Nagle twice had periodontal surgery and had been dissatisfied with a number of dentists before she found Todd Carroll, DDS, on the Internet. Dr. Carroll was a general dentist who performed a laser procedure designed to achieve similar results to periodontal surgery without the cutting and suturing. Laser periodontal therapy is a relatively new technology that uses the energy output of a laser to selectively remove and destroy infected periodontal tissue instead of a scalpel. Purported advantages include improved visualization, tissue sterilization, reduction in bacteremia, decreased swelling and pain, and faster healing.

When Mary Pat first saw Dr. Carroll in January 2006, she brought the records

The patient signed an extensive informed consent form where she agreed she understood the procedure's risks.

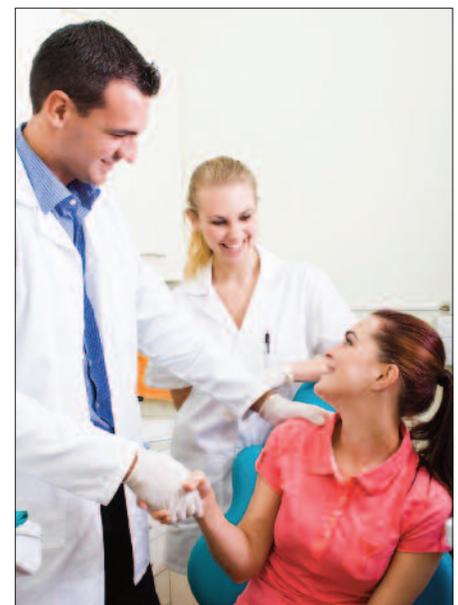
from three prior treaters. At this visit, Mary Pat was placed in a room to watch a video and read a brochure about the laser procedure.

Dr. Carroll then evaluated Mary Pat, made recommendations about his proposed treatment plan, and advised Mary Pat about the process. He made it clear that this technique required very strict patient compliance for it to be successful. One of the things Mary Pat would need to do was stop smoking post-procedure. Dr. Carroll explained why smoking could impact the success of the procedure, and Mary Pat agreed to stop. The laser procedure was scheduled for a month later.

Mary Pat signed the documentation, including extensive informed consent forms, where she agreed she understood the risks and would comply with the detailed post-procedure regimen. The consent form also stated there could be complications or even further treatment required. In other words, there were no guarantees.

Procedure Performed without Incident

The laser procedure was performed in early March 2006, went as planned and the post-procedure period was



without incident. But by fall 2007, Mary Pat had consistent periodontal problems, despite Dr. Carroll's conservative efforts to resolve them. Dr. Carroll suspected Mary Pat had begun smoking again, even though she claimed to have quit. However, he did not record his suspicions in the notes.

Dr. Carroll continued with conservative treatment without success through December 2008. At that time, Dr. Carroll recommended Mary Pat repeat the procedure and have deep scaling done in the area. However, Mary Pat opted not to heed this advice.

Continued from page 1

Dr. Carroll continued to provide treatment even after the patient declined to follow his advice.

Nonetheless, Mary Pat kept seeing Dr. Carroll throughout 2009. Thinking Mary Pat would come around, Dr. Carroll provided her with regular treatment during that timeframe, while he continued to advise her to have the scaling done and the laser procedure repeated.

Dr. Carroll's notes in June 2009 indicated Mary Pat's periodontal situation was worsening, and he offered to perform the laser procedure—now a much more extensive treatment—at a reduced price. Dr. Carroll told Mary Pat that if she didn't agree to the treatment plan, he would refer her to a periodontist. Dr. Carroll recalled that



Mary Pat resisted this as well, since the reason she came to Dr. Carroll was to avoid more surgery.

Patient Discontinues Treatment

Mary Pat never returned for treatment after that June 2009 visit. However, Dr. Carroll called her repeatedly for another six months. The documentation for this timeframe showed Mary Pat's response to these phone calls was that she would call back if she had problems.

Dr. Carroll's records were varied:

- He typically wrote his own progress notes, but sometimes they were written by his assistants or hygienists but not initialed.

Continued on page 3

What Can We Learn?

There were a number of ways Dr. Carroll may have prevented Mary Pat's lawsuit from going as far as it did or have protected himself had the lawsuit progressed:

- **Problem patients.** Mary Pat had a history of periodontal surgeries, performed by specialists, and she was unhappy with prior treatments. A patient who is dissatisfied with prior care may be more likely to criticize current treaters. The fact that Mary Pat obtained records from prior treaters, rather than have the dentist contact them, was an early indication of her past dissatisfaction.
- **Informed consent process.** Because Mary Pat had specific expectations, Dr. Carroll should have spent additional time documenting the informed consent process during the first visits. Instead, he relied on a comprehensive consent form and the fact that the patient was provided with a video and brochure about the procedure. Though the informed consent form itself was in depth and signed on the visit before the procedure was performed, Dr. Carroll's notes were not detailed. Plus, there was no documentation that Mary Pat actually watched the video or read the brochure.
- **Post-procedure recommendations.** Since smoking was a potential reason for Mary Pat's condition deteriorating, Dr. Carroll could have taken more care to document his recommendations about not smoking, as well as Mary Pat's assurances that she was not smoking. If Dr. Carroll would have included dates and details about these conversations in his progress notes, the defense could have made a case that Mary Pat was contributorily negligent for not following the dentist's advice.
- **Patient follow up and referral.** More frequent periodontal maintenance visits, including any necessary deep scaling/root planing, may be a temporary treatment option depending on the depth of the residual pocket depths. While not a

Dr. Carroll explained why the patient must stop smoking post procedure.

- Computer-generated notes often were recorded by the hygienists or assistants with Dr. Carroll's approval.
- There were detailed computerized billing records and computer-generated pocket probings.
- Some handwritten probings and treatment plans were documented between February 2006 and June 2009.

The fact that the records were in different formats, written by different people, created the potential for a confusing situation.

Dr. Carroll's Records Requested

From late 2009 to early 2010, Mary Pat requested all her records from Dr. Carroll. Due to staff turnover and a family emergency, the records were

not promptly sent. Mary Pat became angry about the delay, and she also claimed that calls to Dr. Carroll were not returned—an allegation Dr. Carroll denied.

Mary Pat then filed a lawsuit against Dr. Carroll. In the suit, Mary Pat asserted she was not informed about the possible need for future laser treatment or periodontal surgery, and thus, she had not provided her informed consent. She claimed that if she would have known that she might need this, she would not have had the laser procedure performed. She further alleged Dr. Carroll continued to treat her even though he knew conservative care would not solve her issues, and he should have referred her to a specialist earlier. Finally, she contended that the extensive second laser surgery Dr. Carroll proposed was unnecessary.

The suit was eventually dismissed on a technical legal motion after some long, costly and unpleasant litigation. 🌀

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.



Linda J. Hay is a member of Alholm, Monahan, Klauke, Hay & Oldenburg, L.L.C., a law firm that is certified as a Women's Business Enterprise, located

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permanent solution, these may stabilize the patient's periodontal status and better define the extent of the surgical site for any follow up periodontal surgery. In any event, Dr. Carroll could have better documented his early recognition of the patient's problems post procedure and his recommendations to have another procedure done or see a specialist. His records should have clearly identified his recommendations and that Mary Pat understood them.

- **Discontinuing treatment.** Mary Pat knew why her problems necessitated an additional procedure or referral to a specialist but refused anyway. Whenever a patient refuses to follow a dentist's advice, it is critically important to document the patient's refusal in detail. Dr. Carroll should have made the difficult decision to discontinue treatment much earlier when Mary Pat declined to have the second procedure or see a specialist.
- **Terminating the doctor/patient relationship.** It was also unclear when Dr. Carroll ceased being Mary Pat's dentist.

The back and forth communication after June 2009 may have extended the timeframe of care, which could have extended the statute of limitations for filing a lawsuit. Dr. Carroll should have sent a letter or made an entry to his records to establish an end to the dentist-patient relationship. Such a letter must be thoughtfully prepared to accomplish its purpose without making the patient even more disgruntled.

- **Office practices.** Mary Pat might not have pursued the lawsuit had there been better communication and a prompt, complete production of her records. In this case, the confusion regarding the records complicated the situation and made the patient more dissatisfied. This was the trigger that ultimately prompted the lawsuit. Good office practices, combined with a good bedside manner, may avert a claim.
- **Consistency of records.** Dr. Carroll had numerous records from different sources. An overlap between his electronic and handwritten notes made it more difficult to follow and determine who authored what. 🌀

How to Avoid Getting Blamed for Dental Insurers' Actions

If you're like many dentists, you have patients who complain about the way their dental insurers authorize and reimburse for services. You even may have had patients who faulted you for not resolving these issues on their behalf.

While no one can be expected to remember all the requirements and coverages of the various dental plans with which the practice is affiliated, the following steps can help improve patient satisfaction and your practice's risk management as a result. As an added bonus, you'll also save time, improve efficiencies and speed insurance claims turn-around.

- **Assign a staff member** to become knowledgeable about the various plans accepted by your practice and serve as a "patient advocate" with third-party payers. This person must be able to work with patients and insurers alike—and keep a cool head during what may be heated, emotional discussions. One caveat: if the staff member is out of the office, this person's knowledge base also will be unavailable.

- **Create a summary of insurance plan requirements and coverages.** This can contain a bulleted list of pre-determinations requirements, co-pays, coverage exclusions, or billing procedures/requirements. Make sure to regularly review the document and update it as needed. If your office is computerized, this information can be kept electronically for ease of access and editing.



A step further is to develop charts or spreadsheets with the various procedures included/excluded from the primary plans with which your practice is affiliated, especially for those you do frequently. The time spent to create and maintain these guides will be much less than the time it will save. Additionally, patients will have an idea of what might be covered and what is not—reducing patient surprises.

- **Educate your patients on their insurance coverage requirements.** Patient brochures can be useful for answering questions such as: Do patients need pre-determination approval for some procedures or treatments? Who should patients contact with billing or insurance questions?
- **Contact the insurance plans and request copies of their member materials.** Ask them for advice on how the practice can better process claims for plan members. Find a contact person at each insurance company who can be contacted when problems arise.

Helping your patients become better informed reduces the risk they will blame you for their dental insurers' actions. In addition, they will tend to view your practice as an advocate for their dental care needs, resulting in greater patient satisfaction. ☺

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