
Warnings – written is always best

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An inferior dental block injection was administered to a 17-year-old who required the emergency extraction of his lower right molar tooth. The patient was advised not to bite his lip as he may not feel it due the numbing effects of the local anaesthetic. When the dentist returned to the surgery he noticed that the patient's lip was swollen, but that the lip mucosa was intact. He suggested that the patient must have bitten his lip and warned him against doing this again. Following the extraction of the tooth, the dental assistant repeated the same warning before the patient was dismissed. Two hours later the dentist received a call from the Casualty Department of the local hospital to report that the patient had presented to them with a swollen lip and that part of the lower lip tissue was missing. The injury was subsequently repaired by a plastic surgeon and after six months a small scar remained.

Commentary

Communication is a reflection of respect for autonomy. Obtaining valid informed consent is about effective, two way communication between a patient and the health professional. Rendering good clinical care (beneficence) requires effective communication. Failure to communicate can result in harm to the patient (maleficence). This in turn can have legal consequences (justice). The patient-centred approach used in health care is in keeping with the principle of respect for autonomy. Dental practice is firmly rooted in the principle of "*primum non nocere*" – first do no harm. Beneficence refers to doing good and acting in the patient's best interests. All dentists have the responsibility to provide beneficial treatment, to benefit patients by not inflicting harm, by preventing and removing harm. In the above scenario, it was the dentist's duty to provide pain relief for the extraction (beneficence), but this conflicted with causing harm that resulted from the administration of the local anaesthetic (Maleficence). Once diagnosis has been made, according to the National Health Act of No 61 of 2003, Chapter 2, Section 6, the following information must be given to the patient (User health care service):¹

1. range of diagnostic procedures and treatment options available;
2. benefits, risks, costs and consequences associated with each option;
3. user's right to refuse care, in which case the dentist should explain the implications, risks and obligations of such refusal;
4. furthermore, this information must be provided in a language that the patient understands and in a manner that takes into account the patient's literacy level.

Verbal consent does not withstand litigation. Warnings should form part of the informed consent process and a written consent process would be indicated in this case. Dentists are obligated to warn patients of “material risks” inherent in the proposed treatment or procedure. Risks are regarded as “material” if (i) a reasonable person in the position of the patient, if warned of the risk, would attach significance to it, and (ii) the medical practitioner concerned should have been reasonably aware that the patient, if warned of the risk, would attach significance to it.²

Giving adequate, relevant and appropriate information takes time and one needs to provide for this in the daily. One can do this, for example, by first providing the verbal and/or written patient information – let the patient assimilate it and mull over the options, while you examine another patient.

From a *legal perspective*, it is expected that at the end of the consent process the patient must have:³

1. knowledge of the nature and extent of the harm or risk;
2. an appreciation and understanding of the nature of the harm or risk;
3. consented to the possible harm or assumed the risk; and
4. confirmed consent that is comprehensive (i.e. extends to the entire transaction, inclusive of its consequences).

The “best interest” of patients means that professional decisions of proposed treatments and any reasonable alternatives proposed by the dentist must consider patients’ values and personal preferences. In addition, patients must be informed of possible complications, alternative treatments, advantages and disadvantages of each, costs of each, and expected outcomes. Together, the risks, benefits, and burdens can be balanced. It is only after such consideration that the “best interests” of patients can be assured.⁴

While we need to have respect for autonomy of the patient – the patient also has responsibilities as enunciated in the National Health Act No 61 of 2003, Chapter 2 Item 19: “Duties of the User (Patient)”:⁵

1. adhere to the rules of the establishment when receiving treatment or using the health services or health establishment;
2. subject to Section 14, provide the health care provider with accurate information pertaining to his or her health and co-operate with health care providers when using health services;
3. treat the health care provider with dignity and respect; and
4. sign a discharge certificate or release of liability if he or she refuses to accept recommended treatment.

Every practice needs to have the Department of Health Patients’ Rights and Responsibility Charter clearly visible in their practice. Patients seeking dental care and treatment have a right to expect that they will be safe and not harmed in any way. The duty of care is an important professional and ethical responsibility. There are two sides

to the “duty of care” – what you do and what you omit to do and a failure in either or both can result in a breach of the duty of care. What one does must always be in accordance with a practice that is reasonable and appropriate. A failure to give a patient appropriate pre- and post-operative advice and warnings would be seen as a “breach of duty”.⁶

References

1. South African Parliament. National Health Act of No 61 of 2003, Chapter 2 Section 6. Pretoria.
2. Castell v Dr Greef 1994 (4) SA (c) 408 at 425.
3. McQuoid-Mason DJ, Wylie JS, Dada MA. The National Health Act: some implications for family practice. CME 2006; 24: 12-5.
4. Moodley K, Naidoo S. Ethics and the Dental Team. Van Schaik Publishers, Pretoria, 2010.
5. South African Parliament. National Health Act No 61 of 2003, Chapter 2 Item 19: Duties of the User (patient). Pretoria.
6. Ethics, values and the law. DPL Dental Ethics Module 4: The duty of care. 2009.