The National Society of Dental Practitioners
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Special Considerations for Treating Minors: Part 1

By Jennifer Flynn, CPHRM

Most healthcare professionals are well-versed when it comes to the requirements for consent, privacy, and confidentiality in the treatment of adult patients. However, there are special considerations for pediatric patients, including infants, children, and adolescents, that dental professionals must keep in mind.

Informed consent

Most dentists are aware of the consent requirements for adult patients. Minors have special considerations that dental professionals should keep in mind. When is informed consent needed? What if a teenager is not accompanied by an adult? What if care is refused?

Consent laws vary by state. Some require written consent before treatment, while others allow verbal consent. This article offers general guidance, but it is still important to check your state's specific requirements.

The American Dental Association (ADA) states dentists are:

> *"Required to provide information to patients/parents about the dental health problems the dentist observes, the nature of any proposed treatment, the potential benefits and risks associated with that treatment, any alternatives to the treatment proposed, and the potential risks and benefits of alternative treatments, including no treatment."*

In order for a parent or guardian to give informed consent they must:

- Be informed that any treatment or diagnostic procedure is voluntary
- Understand the potential benefits and risks of treatment
- Have an opportunity to ask questions

Who can consent to care?

In the case of a minor, the informed consent process must involve a parent or legal guardian. If a parent has a shared custody agreement, they may or may not have been given legal authority to consent to dental care by the court. Be sure to confirm and document whether a parent has this authority.

In the case of a legal guardianship, a guardianship establishes a legal relationship between a child and an adult who isn't the child's parent, but it does not end the legal relationship between the child and the child's biological parents. The biological parents can still be legally required to provide financial support for the child, while a legal guardian may care for the child on a daily basis.

The dentist has the right to ask for a copy of a custody order or guardianship agreement. Do NOT simply take the word of an individual that such an order exists. A copy of the document should be kept in the patient's dental record, and should be checked annually to ensure it is up-to-date.

For instance, when a child lives with a grandparent, but not their biological parents, it is advisable to document in the health care record a copy of the court order that appointed the guardian in order to verify that the guardian is authorized to consent to dental treatment on behalf of the minor child.

Who is not able to consent?

Just because an adult is accompanying a minor patient, does not mean they are legally able to consent to their dental treatment without showing proof of that legal authority. This includes:

- Grandparents
- Step-parents
- Babysitters
- Child care workers
- Adult siblings
- Family friends
- Biological parents who have lost the legal authority

Determining who can consent to a child's dental care is an especially salient issue today, when blended and nontraditional families are more commonplace than ever. It can be helpful to distinguish who is the legal guardian, the financially responsible party, and who is merely a "responsible adult".

A legal guardian is legally authorized to grant consent for the minor's care as a parent or proxy.

A financially responsible party is someone who is financially responsible for the minor, and they may or may not be authorized to grant consent for the minor's care.

A responsible adult is someone who accompanies the minor to their appointment.

It's okay for an older sibling, grandparent or family friend to accompany the minor to the appointment. Just to be aware these individuals may not be authorized to grant consent. If they are, ask to see a copy of the court order which details their consent abilities and retain a copy in the patient's dental record.

How is consent documented?

Some states allow oral discussions, which should be documented in the patient's dental record, while others require written consent. If you use an informed consent form to help document the consent process, it should include:

- Legal name and date of birth of patient
- Legal name and relationship to the person granting consent
- Copy of court order detailing ability to consent to dental care (if applicable)
- Patient's diagnosis
- Nature and purpose of the proposed treatment

continued, pg 2 ...

This newsletter is prepared by the staff of the National Society of Dental Practitioners, Inc.

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The opinions expressed are not intended to provide legal advice, but are attempts to summarize general principles and emerging trends in the law. Legal matters should be referred to an attorney.

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- Potential benefits and risks associated with treatment
- Alternative treatments (including no treatment)
- Place for parent to indicate that all questions have been asked and adequately answered
- Places for signatures of the parent or legal guardian, dentist, and a staff member as a witness

Unaccompanied children

If a minor arrives for an appointment for a simple or routine treatment that has already been discussed and consented to by the parent or guardian, it is permissible to proceed with treatment if you are comfortable. However, issues may arise:

- Absence of a parent or guardian can delay treatment
- There could be behavior management issues with the child
- In the event of an emergency, it is helpful to have a parent or guardian present

In order to avoid potential issues, consider implementing a policy requiring a parent, legal guardian, or responsible adult be present in the office during the entire appointment.

Although a 16 or 17 year-old may be old enough to drive, they cannot consent to their own dental care as they are still considered to be minors. If they arrive alone for routine care, it is acceptable to proceed if the care has already been consented to by a parent or guardian, and it is documented in the patient's health care record.

Refusal of care

When a parent or guardian refuses the recommended treatment plan, avoid becoming defensive and try to determine the reason behind the refusal. They may not understand the plan, lack money or insurance, or it may be problematic to return for follow-up appointments.

Parents or guardians who refuse treatment for a minor should be asked to sign an informed refusal form. The form should include the same information as an informed consent document, with these additions:

- The risks of not accepting treatment
- A statement that the parent is voluntarily refusing treatment for the minor child
- The signature of a witness

If you feel failing to provide the recommended treatment places the minor at risk, to protect them and yourself, refer the parent and child to another dentist for a second opinion.

Risk management recommendations

- Learn your state's laws regarding informed consent for minor patients
- Require a parent or guardian attend the initial appointment with the minor
- Distinguish who is the legal guardian, the financially responsible party, and who is the responsible adult
- Request a copy of the guardianship decree from divorced parents or a legal guardian prior to initiating treatment and place it in the minor's records
- Learn whether your state requires written or verbal consent prior to treatment
- Require adult patients, parents or guardians to sign an agreement consenting to routine dental procedures and diagnostic tests
- Contact a parent or guardian prior to making any change in the plan of care when minors show up for care without a parent/guardian
- Consider implementing a policy that requires a parent or guardian to be present in the office during the entire appointment

RESOURCES

American Academy of Pediatric Dentistry (AAPD). Reference Manual: Guideline on Informed Consent. Pediatr Dent 2015;37(special issue):315-7.
CNA, NSO, HPSO. Adolescent Patient: Safeguards Protect Rights and Help Minimize Liability. Healthcare Perspective. 2017;(13):1-8.
English, A. and Ford, C.A. The HIPAA Privacy Rule and Adolescents: Legal Questions and Clinical Challenges. Perspect Sex Reprod Health. 2004 Mar-Apr;36(2):80-6.
National District Attorneys Association. Minor Consent to Treatment Laws. 2013. http://www.ndaa.org/pdf/Minor%20Consent%20to%20Medical%20Treatment%20(2).pdf

Dental Expressions® – From the CNA Claim Files

Medication, Medical Consultation and Related Medical Complication

An accurate, thorough, and current medical history represents an essential tool in providing quality dental care. It also protects both the patient and you from unnecessary risks. Failure to obtain, update, and *investigate the patient's medical history* have all been alleged in professional liability claims asserted against dentists.

Each dental patient is unique, presenting challenges and risks that may lead to adverse outcomes. Providers must understand an individual's dental history, medical history,

current dental/medical conditions, past and current medications, social history and other factors: all may be critical to the delivery of safe and effective oral health care.

The following claim scenario serves as an important reminder about the need to establish consistent and effective medical consultation processes, ensure that patient instructions and recommendations are clearly communicated, and to maintain accurate and complete clinical treatment records. Treating to the standard of care may also include assessing and applying the latest clinical guidelines and recommendations that apply to the patient's unique history and circumstances.

Practitioner: General practitioner

Claimant: 84 year-old female; 15-year history of warfarin anti-coagulant therapy

Risk management topics

Medical consultation; recordkeeping; clinical best practices or guidelines

Facts

On the initial appointment, patient indicated that she had a history of pulmonary embolism, hypertension, stroke, cancer, heart murmur, heart attack. She had undergone open heart surgery to place an artificial mitral valve and pacemaker. Patient was taking a number of medications including warfarin. On examination, teeth 4 and 5 had Class II mobility. One year later, the dentist recommended extraction of teeth 4 and 5. He recommended that the patient stop taking all medications, including warfarin, seven days prior to the extraction appointment. *The dentist also requested that the patient consult her physician prior to doing so.* Eight days later, teeth 4 and 5 were uneventfully extracted with little bleeding. On the day following surgery, the patient suffered a massive cerebrovascular accident and died 6 months later.

Key allegations

Failure to obtain medical consultation; improper medication advice; failure to request appropriate diagnostic tests, including INR to evaluate coagulation time

Claimed injury/damages

Massive debilitating stroke, followed by death

Analysis:

- Accurate documentation. The chart note to "stop Warfarin 7 days prior" appeared to be a directive to the patient to stop taking the medication. The dentist stated that this was a question for the patient and that she was to ask her physician about discontinuing the anticoagulant. However, there were no quotation marks (if a patient question) and no question-mark (if a question from the patient to the dentist, or vice versa.)
- Medical consultation. Dentists should not rely upon a patient's communication to the medical professional. The dentist should directly contact other practitioners about proposed treatment, pertinent medical history and appropriate related medical advice.
- Clinical best practices or guidelines. A hematologist and two general dentists were deposed as expert witnesses. The hematologist stated that the risk of clot development and stroke for this patient far outweighed any risk of bleeding for uncomplicated tooth extractions. He estimated that the cessation of warfarin increased the patient's risk of stroke by 10 times. He described the patient's stroke as "massive," affecting the middle cerebral artery, one of the main arteries to the brain. Death within one year of such an event is not uncommon. The dentists opined that for most patients, anticoagulant medication should continue during dental procedures, due to the risk of thromboembolism and related morbidity.
- Proximal cause. There was an apparent causal relationship between the discontinuation of the warfarin and the patient's stroke, as the stroke occurred one day after the dental procedure.
- Damages. Although elderly, the patient was self-sufficient prior to the stroke. At deposition, the patient's daughter effectively described her mother as vital and active prior to the incident—in contrast to the last six months of her life—languishing, and unable to speak or move.

Outcome: Defense experts recommended against going to trial: settlement and expenses totaled over seven figures.

According to the American Dental Association* and other sources, the latest information available supports the statements made by dental experts in this claim. Again, each patient is unique: there certainly may be situations in which it will be in the patient's best interest to alter their medication regimen. It is critical however to assess the relative risk and severity of potential outcomes associated with such recommendations. Failure to ensure direct consultation with a patient's physician, medical specialist, or other medical provider responsible the patient's medical care and medication management may result is serious consequences for the patient and the dentist.

Note that this claim is summarized briefly in table 30 (Closed Professional Liability Claim with Indemnity Payment of $1 Million or More) of the *CNA Dental Professional Liability 2016 Claim Report*, now available on the Dentist's Advantage website http://www.dentists-advantage.com/sites/DA/rskmgt/Pages/DentalClaimStudy.aspx. The report identifies liability patterns and trends, focusing on claims that resulted in indemnity payments $10,000 to $1 Million. Parts 1 and 2 of the report provide an overview of CNA dental professional liability closed claims and board actions in terms of both frequency of occurrence and severity of loss. The accompanying case scenarios provide examples of the types of lapses that can result in patient injury and negligence allegations. Part 3 offers risk management information and recommendations on the specific practice issues – such as informed consent, referral and documentation – that play a significant role in many or most professional liability claims.

Article by: Ronald Zentz, RPh, DDS, FAGD, CNA Dental Risk Control

RESOURCES

*American Dental Association Oral Health Topics: "Anticoagulant and Antiplatelet Medications and Dental Procedures" at www.ada.org/en/member-center/oral-health-topics/anticoagulant-antiplatelet-medications-and-dental-

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Volume 33 | No. 1

IN THIS ISSUE

Special Considerations for Treating Minors: Part 1 **1-2**

Dental Expressions® – From the CNA Claim Files **3**

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As a member, you have access to a full range of helpful information that you can use everyday in your practice. They include:

- **Dental Office Forms** – Our Dental Office Forms system represents one of the valuable and useful tools we provide to assist you in managing your practice in the safest way possible. Included in this library are dozens of Record Keeping Forms and Consent Forms. Some examples are:
  - Record Keeping Forms
  - Consent Forms
  - Chart Review Checklist
  - Consultation/Biopsy Request
  - Post Extraction Instructions
- **Articles** – Browse through our articles index for a specific risk management-related topic.
- **NSDP Newsletters** – Read past issues of the NSDP newsletters.
- **Risk Management Webinars** – Our webinars are open to all dentists to learn about risk exposures they might face in their daily practice. Our free web-based-seminars feature presentations made by industry leaders in the insurance and healthcare fields.
- **Risk Management Alerts** - Periodic alerts to recent changes in dental practice, dental regulation and trends in dentistry.

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