

RISK MANAGEMENT ARTICLE

I Left Something Behind!

The Importance of Properly Handling Issues with Retained Foreign Objects

Most dentists think of malpractice as performing a procedure improperly, or in other words, below the standard of care. However, malpractice also includes not only substandard treatment, but also the failure to properly act. For many dentists, one of the most stressful parts of practicing dentistry is the on-going threat of a patient bringing a lawsuit alleging the dentist committed malpractice. Being cognizant of potential risks is paramount to protecting the dentist's livelihood. Just as important, is knowing how to properly handle a situation when things go wrong.

The failure to act can include failure to diagnose, failure to prescribe medication, failure to refer, and failure to inform a patient of a condition or adverse event. One adverse event that provides the basis for a handful of claims is the retention of a foreign object. The two most common foreign object claims are separation of an endodontic file and the breakage of an instrument during extractions. If you are thinking to yourself, "files and other instruments break all the time, it's not malpractice when this occurs!" you would be correct. What creates legal liability in these situations is when the dentist fails to properly handle the situation. Although the specific standard of care varies slightly from state to state, the standard regarding properly addressing retained foreign objects is nearly identical country-wide. When a foreign object is retained in the patient's body, a dentist has a duty to:

- (1) recognize that a foreign object has been retained;
- (2) inform the patient of the retained object;
- (3) attempt retrieval; and
- (4) refer to a specialist if retrieval is unsuccessful.

The following is an example of a claim that proved disastrous when the dentist failed to fulfill his duties as set forth above. Note that this example represents an actual claim, with the names, minor facts, and locations changed for the purposes of confidentiality:

Dr. Evans had been practicing for nearly 20 years. He performed all aspects of general dentistry including surgical extractions. He had an excellent reputation in his community, and had never had a claim, lawsuit or Board Complaint filed against him.

Several years ago, Dr. Evans performed a surgical extraction of a lower wisdom tooth on a young man. The extraction was uneventful with no apparent complications. The post-op appointments went well with notes of good healing and no complaints. The patient relocated and Dr. Evans never saw the patient again.

Approximately 4 years after the extraction, Dr. Evans was served with a lawsuit alleging that during the extraction, he had left behind the tip of a broken instrument in the patient's jaw and the patient was now suffering from trigeminal neuralgia as the result of the retained object. At the outset of the case, Dr. Evans was convinced that not only did he not leave behind any foreign objects during the procedure, but that even if he did, the object could not have possibly caused the serious injury of which the patient now complains.

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Unfortunately, Dr. Evans did not take a post-op x-ray to confirm that there were no objects left behind in the patient's jaw. There were no notes in the chart of a broken instrument, and neither he nor his assistant recalls noticing whether an instrument had broken during the procedure.

The lawsuit drug on for over three years. In that time, the foreign object was removed and was identified as the tip of an elevator, of the same type used by Dr. Evans during the extraction. A review of all of the medical and dental records revealed that there was no other explanation for the presence of the object, and that the tip of the instrument must have broken off during Dr. Evans' procedure without him knowing.

Although extremely rare, the patient's neurologist and pain specialist both confirmed that the trigeminal neuralgia was caused by the foreign object. Unfortunately, the condition is severe and the patient is expected to suffer significant facial pain for the remainder of his life.

The case was ultimately settled for nearly a million dollars.

Although this case is along the lines of a worst-case scenario, it is important to appreciate that the risks of leaving behind a foreign object during any procedure can prove to be catastrophic. We all know that instruments break during extractions and other procedures all of the time. The breakage can be caused by many things, but in most cases, it is not due to any negligence on the part of the dentist. As explained previously, in this situation, the duty of care requires that Dr. Evans recognize the breakage, immediately inform the patient, attempt retrieval, and refer to a specialist if retrieval is not successful. In Dr. Evans' case, because he did not recognize the breakage of the elevator he also failed to fulfill the remainder of his duties to the patient. This resulted in a case that was nearly impossible to defend.

The important take-away from this story is this: without exception, always confirm that no foreign objects remain after an extraction (the same could be said for root canal therapy). Always take a post-operative x-ray after an extraction., even if the tooth comes out in a single piece. Further, make sure that the post-op x-ray visualizes the entire surgical field. If the extraction includes a 3rd molar, take the extra step of taking a pano rather than just a PA. Yes, it is costlier and takes more time, but had Dr. Evans taken a pano after this procedure all of this could have been avoided. The patient could have been immediately referred to an oral surgeon and had the object removed before the trigeminal neuralgia developed. Dr. Evans could have avoided enduring three years of litigation, and avoided a nearly million-dollar payment from his insurance policy. Most importantly, the young man could have lived his life without ongoing unrelenting pain.

In addition to post-op x-rays, you should routinely completely inspect your surgical instruments after each procedure (and before the assistant removes them for sterilization). Be sure to educate your assistants in helping you with these inspections and ensure your assistant is familiar with each of the instruments you use for each procedure. Again, had Dr. Evans (or his assistant) noticed that the tip of the elevator was broken after the procedure, it would have prompted a thorough search for the object, including, again, a post-op x-ray or possibly checking the suction traps.

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Importantly, if you do suspect that an instrument has broken during a procedure, do a thorough search for the object. If you are unable to locate the object, even if you suspect the object was removed with the suction, refer the patient to an oral surgeon to perform additional exploration. When it comes to adverse events, documentation is vital. Document why you suspect an instrument separated, document that you advised the patient, document the steps you went through to locate the object, document if you were able to successfully retrieve the object, and document if a referral was made. Although frustrating and seemingly unfair, when it comes to litigation, if you did not document it, it did not happen.

In summary, while a broken instrument creates potential liability for dentists, understanding your duties, and proper documentation can help protect you from a lawsuit.

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