Managing risk

Lawsuit over nerve injury provides case in point on patient consent.

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Not long ago, a case went to trial in Northern California in which a college professor and part-time minister claimed he suffered a permanent parathesia and dysesthesia of his inferior alveolar, lingual and mylohyoid nerves.

He claimed these injuries resulted from a series of inferior alveolar block injections he received during dental care. He claimed also that he had to retire from teaching and give up his work as a minister because of the injuries. He asked the jury to award him $650,000 for his troubles.

The case contained a number of dental-legal issues that underscore the importance of risk management.

About 300 million inferior alveolar injections are administered each year in the United States. It's estimated that one in 755,000 will result in permanent parathesia, though some experts say one in 350,000 is a more realistic ratio.

The injection technique contains an inherent risk of nicking or traumatizing the nerve because the course of the needle cannot be visualized upon injection. About 40 patients in the United States will suffer a permanent parathesia each year. The question is: should all patients about to receive such an injection be informed of that risk?

Most dentists, both generalists and specialists, do not advise patients that there is a remote chance of temporary or permanent parathesia associated with mandibular block. Patients don't expect to suffer permanent side effects from routine dental care.

A patient who isn't warned of the risk and then suffers a permanent parathesia is likely to start searching for an attorney to bring a case of negligence against the dentist.

In this case, the plaintiff's attorneys alleged a number of scenarios to establish liability against the dentist. These included allegations of unnecessary treatment; a lack of informed consent; contaminated or re-used needles; use of expired or contaminated anesthetic; improper injection technique; a slipped scalpel hitting the nerve during the dental procedure.

Some advise dentists to inform patients of the remote chance of temporary or permanent parathesia before administering an inferior alvelolar block. As dentists are aware, informed consent involves communicating to the patient all of the relevant information the patient should know, or would want to know, about the risk related to a procedure.

Generally, the law does not hold the dentist responsible for a defective product unless the dentist knew or should have known of the product's defects.

Through informed consent, the dentist generally lowers his or her risk of getting hit with a malpractice lawsuit. From a risk management perspective, advising the patient of risks attendant on a procedure eliminates the surprise, disappointment, anger and litigiousness that can follow when things go wrong.

Good recordkeeping goes hand in hand with informed consent. The patient's chart should include this simple notation: "Patient advised of RBA to inferior alveolar block; patient understands and consents to the injection."

The college professor was receiving endodontic therapy on a mandibular molar. Undergoing a standard inferior alveolar injection with the anesthetic prilocaine, the patient received nine to 15 injections over a long series of visits.

Evidence from the dental literature and practice experience was presented at the trial showing a higher incidence of permanent parathesia from the use of prilocaine over lidocaine for alveolar block injections.

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Aside from informed consent, two standard of care issues arose in this case:

- Should a dentist reinject via inferior alveolar block into an area where there was prior nerve trauma?
- What is the dentist's duty once a nerve is traumatized?

On the first question, the dental literature does not show any clinical research that indicates an increased chance of causing a permanent injury if the dentist repeats an inferior alveolar block in a patient with nerve trauma

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from an earlier injection.

But at least one authority on local anesthesia has written that reinjection is contraindicated when prior trauma is known to exist.

The problem is compounded by this issue: if nerve injury occurs before a procedure like root canal therapy is completed, what alternative does the dentist have for pain control?

At trial, it was suggested that alternative anesthetic techniques could have been used—intrapulpal injections, for example, of even general anesthesia. At the very least, it was said, the dentist should have advised the patient of the risk of reinjection into the area of a traumatized nerve, inform the patient of alternatives and allow the patient to decide which path to take.

It was noted, too, that when a patient complains of lip, tongue or gum numbness secondary to the inferior alveolar injection, there are a number of steps a dentist can take to lessen the chance of a claim.

Despite their sympathetic view, the jurors were able to discern the key legal issues and the dental facts—and found that the dentist was not negligent in his treatment protocol.

First, advise the patient that the symptoms are probably due to the needle or anesthetic coming into close contact with or causing actual trauma to the nerve, and that such conditions are typically temporary.

Second, chart the event, when and what took place and what the patient was told. Third, accurately describe the type of sensation the patient is experiencing (complete anesthesia, dysesthesia, burning, tingling) and the area of the altered sensation.

Bring the patient back into the office at least once a month to track the type and extent of the sensation, and to see if healing is taking place. If there are no signs of healing with the first three to six months, refer the patient to a specialist, typically an oral surgeon, for consultation and possible surgical intervention. If reanastamosis is attempted, it is generally performed with six to 18 months after the nerve trauma.

Handle the patient in a confident and competent manner, and always extend lots of sympathy and follow-up contact. If the patient was advised before the procedure that a nerve injury could result from the injection, the chances are better of retaining patient confidence and avoiding litigation.

In the case of the college professor, the jury was sympathetic toward him for his loss of occupation and wages.

Despite their sympathetic view, however, the jurors were able to discern the key legal issues and the dental facts—and found that the dentist was not negligent in his treatment protocol.

The dentist now routinely advises patients of the risks associated with alveolar block injections and keeps better records.