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THE EDITOR'S CORNER

A Cautionary Tale

I have written several times in this space about the necessity of maintaining excellent case records. Although my emphasis has been on taking high-quality pre- and post-treatment records for patient diagnosis and treatment, the additional purpose of keeping adequate records for medico-legal defense was emphatically hammered home to me during the past month.

Given my positions as a professor and editor, I am frequently called on to render expert witness in various types of lawsuits. Most of these fall into one of two categories. The first, involving patent infringement, carries little personal emotional baggage. It is surprisingly common in orthodontics for two manufacturers to release essentially identical new products at roughly the same time. Rather than industrial piracy, this usually involves the independent invention of like products to address a need that has been identified in private practice. But if the products are similar enough to give rise to market competition, the situation may result in a lawsuit. Such a case generally involves reviewing the date that each product was first brought to market, the date of the patent application, and any "prior art"—the legal term for anything published before product release that might establish when the concept was first presented in a public forum. Once all the documentation has been examined, the outcome becomes relatively straightforward.

The second type of case is much more stressful for everyone involved. As you have probably guessed, this is the category of professional liability—a claim of malpractice against an orthodontist and staff. I served as a professional witness for the defense recently in a lawsuit that proved to be a frightening illustration of the need for high-quality pre- and post-treatment records. For the sake of confidentiality, I cannot divulge any details beyond the general facts of the case. A patient had undergone comprehensive orthodontic treatment and never questioned the quality of the outcome. It was a beautifully treated case. The plaintiff alleged, however, that the doctor had allowed a registered dental assistant to use a high-speed handpiece

to remove residual cement following bracket removal, and that the assistant had badly damaged the enamel during this process. The plaintiff also claimed that the procedure had caused continual pain at a level of 10 out of 10 on a visual analog scale—the worst pain imaginable. The plaintiff claimed to be suicidal as a result of the enamel damage and to have required psychiatric care. The plaintiff's lawyer produced an expert witness who testified that the complaints were valid, and that to repair the damage would require veneers or crowns on all the teeth and possibly multiple root canals. It was also claimed that these procedures would have to be repeated periodically for the remainder of the patient's life, eventually costing more than a million dollars. Of course, the plaintiff was seeking a substantial judgment against the orthodontist.

Two weeks after having the braces removed, the plaintiff went to a general dentist who took high-quality photographs of every tooth to document that most of them had been damaged and scarred. The photos I reviewed did indeed show that the facial surfaces had been badly abraded, to an extent that could only have been produced by a diamond bur of the type used to cut crown or veneer preparations. It appeared to me that someone had either started veneer preps on most of the teeth and stopped prior to completion or had tried to cut them improperly.

The orthodontist insisted that no damage had been done to the teeth during the debonding procedure. Standard operating procedure in the practice was to take final records immediately after removal of braces; in this case, however, most of the post-treatment photos were so out of focus that it was almost impossible for me to compare the enamel surfaces in the photographs taken by the orthodontic staff to those taken subsequently by the general dentist. Fortunately, I found one photograph, out of the entire ABO series, that

was clear enough to convince me scientifically that the enamel damage was not present at the time the photographs were taken in the orthodontic office. Once I was able to establish that, we essentially had a good-old-fashioned whodunit on our hands. Eventually, the defense team was able to present a strong case that the plaintiff, another assistant known personally by the plaintiff, the general dentist, and the lawyer who filed the suit were all in cahoots, and that the entire case was an effort to extract money from the orthodontist and the practice's liability-insurance carrier. Still, it scared the daylights out of me.

While all the orthodontists I know do everything possible to perform the highest-quality treatment, they sometimes mistakenly believe that delivering service above the prevailing standard of care will protect them from malpractice lawsuits. The case I have described here illustrates painfully that this is not necessarily true. There are patients, doctors, and lawyers out there who are willing to intentionally act in a predatory and fraudulent manner just to make money. Honest, capable, hard-working clinicians have to practice defensively to avoid falling prey to these unscrupulous individuals. Of course, high-quality care is a major part of that strategy, but you should also establish strict practice guidelines regarding lawful delegation of office duties and the quality of pre- and post-treatment records. This should include oversight and review by the orthodontist of all records, including those taken prior to patients' dismissal. If we had not located that one well-focused photograph, the doctor in question would more than likely have been hit with a judgment of a million dollars or more.

Always take excellent care of your patients. Be professional and honest with them, but keep in mind that a few may not reciprocate your courtesy and professionalism. Defensive practice is a necessity in today's legal environment. **RGK**