“Patients tend to go to court more often nowadays”

An interview with Dr Andy Wolff, Israel

Be it a careless error or a case of misjudgement, even the most experienced practitioner can make a mistake. In fact, statistics indicate that it is likely that every general dentist will be involved in a malpractice suit at some point in his or her career. Israeli-based dentist Dr Andy Wolff has worked as a medical expert in dental malpractice litigation for many years and has seen almost everything, ranging from slight negligence to severe overtreatment. Dental Tribune had the opportunity to speak with him recently about the steady increase in litigation in the field and simple measures that can help prevent many malpractice incidents in the first place.

Dental Tribune: Dr Wolff, you have been a medical expert in dental malpractice litigation for many years now. Why is it so important to increase awareness of this topic?

Dr Andy Wolff: So much literature out there tells dentists how to do things—whether it is placing implants or improving efficacy with new technology—but there are no books on how not to do things or, more precisely, what can happen when something has gone wrong. This aspect is no less important, both for the patient affected and for the clinician, who might be facing legal consequences.

Many may think that it is not relevant to them, but every smart physician knows that things occasionally go wrong and no one is immune. By documenting dental malpractice incidents and by talking and writing about these, I aim to raise awareness and therefore help prevent future incidents.

In your experience, what types of malpractice are most common?

There are definitely many cases in the neurological field. As a medical expert, I am confronted with many instances of damaged nerves caused while placing an implant, during tooth extractions or through an injection. It is common and it happens quickly. Typically, it is an inadvertent mistake, because the clinician was either in hurry or impatient. However, the consequences for the patient are mostly very dramatic and often beyond repair.

Aside from nerve damage, is there an area where mistakes are more likely?

If I had to choose one, I would say it is implants. I recently had a very disconcerting case where an oral surgeon did all the preliminary examinations and damage—cases like this show that mistakes really can happen to anyone.

So expertise does not preclude mistakes, but there are undoubtedly also cases that result from negligence and hubris.

I certainly see many cases in which dentists have carried out a treatment for which they were not qualified. I remember an incident in which a general practitioner injured nerves on both sides of the mouth during an implant treatment. That is truly unbelievable; I have seen many cases over the years, but nothing quite like that.

In another case, a dentist extracted a third molar without the requisite training. He should have referred the patient to a specialist, but he chose to do it himself—possibly because it earned him another US$100 to US$200 per tooth—yet with the result that the patient now has to live with chronic pain for the rest of her life.

Can injurious nerve damage be reversed?

No. There are exceptions, of course, either if the damage was not too severe or if the nerve was inside a canal. Potentially, an injured nerve can regain function over time. However, if it is an exposed nerve, such as the lingual nerve, the damage is generally irreparable. Although there are some microsurgery procedures that may improve the situation. Interventions like this, however, carry extremely high risks and are risky and might even aggravate the situation.

With the consequence that patients partially lose sensation in the mouth or face?

Yes. Another consequential damage, of which I only recently learnt, is loss of sense of smell. Patients whose sinus has been injured often lose their ability to smell. Sometimes, they may not even realise it initially. Because the sinus runs on both sides of the face and the unaffected side often functions normally, it is impossible to loss of sense of smell completely owing to a defective bilateral sinus lift procedure—that would be a fairly serious impairment of a person’s quality of life.

Have malpractice incidents become more common over the last decades?

I would say so. At least, litigation has increased. Of course, there have always been cases of malpractice, but patients tend to go to court more often nowadays. Perhaps you could call it an ‘Americanisation’ phenomenon: almost every problem is taken to court, with the result that dentists are paying increasingly higher insurance fees because the treatment risks are so high today.

How common is legal action in dental malpractice cases?

An American dentist was recently charged because his patient died after he extracted 20 teeth in one procedure. I have performed such extensive treatment in the past, it depends on the need for the treatment and how it is done. Probably, that case in the US was the result of a combination of many things. For instance, did the dentist act in accordance with state-of-the-art practice? If not, he is at fault. If he did, one has to remember that dentists cannot rise above today’s level of knowledge and technology. Let us say an impaired patient files charges for something that happened to him 20 years ago that would have been preventable with the latest medical treatment. He, of course, makes a claim, but the dentist could not be sued for it if he or she treated the patient according to the best knowledge available at that time.

That is a very important aspect when writing expert reports on dental malpractice: did the dentist act to the best of his or her ability and according to the current knowledge or with gross negligence? That is what makes the difference.

What can medical professionals do to protect themselves against legal disputes arising from high-risk procedures they intend to perform?

Patients should not only be warned of the possible consequences of a certain procedure, but also be advised of the alternatives—and one of those alternatives is not proceeding with treatment at all. In my opinion, the patient should always understand both options: the risks of a particular treatment and what could happen if nothing is done. Only then should the patient be asked to sign a declaration of consent.

Unfortunately, the reality is often quite different. Patients are often asked to sign declarations of consent on their way into surgery or while already under anaesthetic. Even if they had questions then, there would be no time to answer them properly. Although it should be of major concern for every dentist to thoroughly inform the patient of the risks, as well as alternative treatment methods, before he or she is asked to sign a consent form, I am constantly confronted with the opposite.

So, you are saying that consultation should be of similar importance to treatment?

Absolutely. In my opinion, building mutual trust between doctor and patient is key, avoiding malpractice and consequential charges. If patients feel that their condition is
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being properly treated, and that money is not the dentist’s first concern, this alone can prevent litigation in many cases. Of course, if a nerve is damaged, there needs to be a settlement of some kind, but if a bridge fails, for example, instead of filing charges the patient will return for further treatment if there is a solid, trust-based relationship.

Time, communication, trust—what else is important when it comes to preventing malpractice?

One more basic rule every dentist should follow is adhering to evidence-based dentistry. This means not performing a certain treatment just because in the dentist’s experience it is considered to be right. External scientific evidence should be implemented. Also, every single finding should be taken into account when determining how to treat the individual patient: diagnosis, radiographs, periodontal analyses, age, health status, literature and so on. Neglecting these related aspects can very likely lead to misconduct.

Neglecting these related aspects can very likely lead to misconduct. Dentists are humans too; only he who does nothing makes no mistakes at all. For legal purposes, dental treatment does not need to be exquisitely, but it has to be reasonable.

As I said earlier, mistakes are not always avoidable, but they should at least not arise out of negligence, hubris or greed. Apart from that, there will always be cases of medical malpractice. Dentists are humans too; only he who does nothing makes no mistakes at all.

Thank you very much for the interview.