“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.

Dr Andy Wolff: So much literature out there tells dentists how to do things—whether it is placing implants or improving efficacy with the newest technology—but there are no books on how 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 medical 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.

By the time a nerve is damaged, there are an area where nerves 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—cases like this show that mistakes really can happen to anybody.

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.

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, the case had not been notified to the National Health Service. Almost everything happened too quickly, and the surgeon was not even aware of the possibility of a mistake.

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$200 to 300. The result was that the patient now has to live with chronic pain for the rest of her life.

Can improved diagnosis and normal functioning eventually?

Mostly, damage is irreversible. 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 irreversible, although there are some microsurgery procedures that may improve the situation. Interventions like this, however, carry extremely high risks themselves 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 realize it initially. Because the sinus runs on both sides of the face and the unaffected side often functions normally. Imagine losing your 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.

How can 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.

These cases have an almost equal occurrence. Of course, overtreatment leaves the dentist in a bad position. It raises the question of why he or she treated the patient unnecessarily in the first place and did so poorly in the second; it leaves him or her doubly guilty. If a mistake occurred after a reasonable treatment plan had been formulated, it is comparatively less bad. Sometimes, even a patient dies while undergoing therapy, this does not need to involve a distinct fault of the clinician.

An American dentist was recently charged because his patient died after he extracted 30 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.

This 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 prevent 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 anesthesia. 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 to 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 con-
cern, this alone can prevent litigation in many cases. Of course, if a nerve is
damaged, there needs to be a settle-
mant of same 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 per-
forming a certain treatment just be-
cause in the dentist’s experience it is
considered to be right. External scien-
tific evidence should be implemented.
Also, every single finding should be
taken into account in determining
how to treat the individual patient: diagnos-
sis, radiographs, periodontal analyses,
age, health status, literature and so on.

Neglecting these related aspects can
very likely lead to misconduct.

Avoiding overtreatment. Cheap dentistry needs
to be fast, yet I have documented
cases in which patients have re-
turned for retreatment of a simple
problem up to 70 times in two years.
If you add up the time those patients
invest only to have a poor outcome, it
is striking. However, it is not possible
for there to be elite dental practices
solely. For legal purposes, dental
treatment does not need to be ex-
quisite, but it has to be reasonable.

Maybe it is a problem of today that
patients have increasing expectations
regarding the service or technologies
their dentist should be using.

That is certainly part of the same
problem. Advertising that promises
people a new Hollywood smile in
two hours forms the basis of patients’
beliefs or expectations regarding
treatment. Dentists should not be
tempted to involve themselves in
this kind of misguided pressure.

Measures to prevent malpractice
should begin as early as possible, but
where should prevention start?

Personally, I think legal regulation
should be extended, such as specific
laws or by-laws concerning the
amount of experience and training,
for example, required in order to per-
form certain procedures. Basically, it
is just what common sense calls for
and everybody will agree if they
think about it should one be allowed
to place an implant after attending
a speakers’ corner talk or looking over
a colleague’s shoulder? No, yet this is
often what happens.

A second measure could focus on
undergraduate education. Dental
schools should devote more time to
prevention of lawsuits. This aspect
is neglected in the curriculum, al-
though it is an essential part of
dentistry. General awareness of the
subject needs to be raised and this
alone would help prevent mistakes.

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 inter-
view.