Avoiding Allegations of Negligent Referral in Dentistry

What Is Negligent Referral?
Occasionally, dentists are accused of “negligent referral” — referring patients to specialists who mishandle the patients’ cases and cause injuries. This article examines the concept of negligent referral and offers strategies for how dentists should handle referral situations. To begin, consider the following case study in which a primary care dentist was accused of negligent referral.

CASE EXAMPLE: REFERRAL FOR REMOVAL OF AN IMPACTED MOLAR

Dr. C was a general dentist who had treated a male patient since he was a small child. In his teenage years, the patient began having trouble with his molars. Dr. C did an examination and determined that one of the molars was horizontally impacted. Removing a horizontally impacted molar was outside of Dr. C’s scope of expertise, so she referred the patient to Dr. H, a local oral and maxillofacial surgeon whom Dr. C had known and referred to for many years. Although Dr. H used an appropriate method and all necessary care while removing the molar, the patient suffered damage to his lingual nerve (a recognized risk of this procedure). The patient sued Dr. H for malpractice and Dr. C for negligent referral to Dr. H.

In this case, it appears that Dr. C made an appropriate referral for an appropriate reason. So, how did she end up being sued for negligent referral? The short answer is that she should not have been sued because there was no negligence in this referral.

Negligent referral is exactly what its name implies — the provider does not use appropriate care in determining that a referral is necessary or in referring the patient to a qualified specialist. The mere fact that a provider refers a patient to a certain specialist, and the patient subsequently suffers a suboptimal outcome as a result of treatment from that specialist, does not provide a basis for an allegation of negligent referral. This is true when the patient suffers a recognized complication of a procedure, or even when the specialist makes a mistake, resulting in a patient injury.

Negligent referral occurs when the referring provider knew or should have known that the specialist was not competent to render the needed care. Lack of competency might be the result of various factors. For example, the necessary care might be outside the specialist’s scope of practice, or an impairment might jeopardize the specialist’s ability to provide safe care (e.g., an illness, injury, substance abuse, or even advanced age).
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Every specialist has cases that result in suboptimal outcomes and occasional cases in which errors are made. That does not, in and of itself, make the specialist an inappropriate referral resource. Again, it is only when the referring provider has reasonable grounds to believe that a patient will have a suboptimal outcome as a result of the specialist’s treatment that the allegation of negligent referral applies.

In the previous case example, the patient might have had grounds for a negligent referral allegation if Dr. C had referred the patient to a specialist who had no expertise in, or experience with, removing horizontally impacted molars.

How Can You Avoid Allegations of Negligent Referral?

One effective way to avoid allegations of negligent referral is to give patients choices related to their care. Although occasionally a situation might occur in which there is only “one person for the job,” generally more than one specialist is available, even if some travel is involved. If the primary care dentist knows of several competent specialists in the area, it is appropriate to provide the patient with a list of these specialists and allow the patient to make his/her own choice.

The primary care dentist also might suggest that the patient contact his/her insurance carrier to see which specialist the carrier recommends (and to verify coverage). The dentist also might consider referring the patient to a local dental society to see whether the group recommends any particular specialists. Finally, especially if the case is unusually complicated, it might be appropriate for the primary care dentist to refer the patient to a dental school.

If the patient indicates a desire to see a specialist with whom the primary care dentist is not familiar, a truthful and diplomatic response will suffice. The dentist should indicate to the patient that he/she simply has no knowledge of the specialist and cannot offer any opinion as to whether this particular specialist would be a good choice.

A more difficult situation occurs if the patient expresses an interest in seeing a specialist who does not inspire the primary care dentist’s confidence. This situation requires a great degree of diplomacy. One option is for the dentist to indicate that he/she has not worked with this specialist to any extent and, as such, would feel more comfortable if the patient sees one of the doctors on the recommended list of specialists provided by the primary care dentist.

One final point to consider is if the patient is generally resistant to a referral, preferring instead to have the primary care dentist treat the condition. Referrals are made for a reason; once the dentist decides on a referral, he/she should stick with that decision. The primary dentist should not feel bullied or enticed into providing care that is outside his/her comfort zone. The likelihood of a suboptimal outcome increases when providers practice “on the edge” of their expertise or competency.
Conclusion

Specialty referral is an integral part of dental practice, and will likely be even more so in the future. Primary care dentists who make appropriate referrals are not weak or insecure providers who are not "up to the task." Rather, they are savvy enough to know their limitations and stay within them, resulting in higher quality care for patients. Discretion is the greater part of valor — this is particularly true when dealing with complicated and difficult dental conditions.