

A legal perspective on antibiotic prophylaxis

ADA DIVISION OF LEGAL AFFAIRS

Editor's note: The following statement from the ADA's Division of Legal Affairs is intended as a companion to the advisory statement "Antibiotic Prophylaxis for Dental Patients With Total Joint Replacements," published in the July issue of JADA by the American Dental Association and the American Academy of Orthopaedic Surgeons (JADA 2003;134:895-9). When referring to the advisory statement, readers also should consult this legal statement.

The Advisory Statement on Antibiotic Prophylaxis for Dental Patients with Total Joint Replacements reflects growing concern about the development of microbial resistance owing to the inappropriate use of antibiotics and recognizes that there are risks as well as benefits involved in the use of antibiotics. It delineates the limited circumstances in which antibiotic prophylaxis should be considered for dental patients who have had total joint replacements and cautions physicians and dentists to weigh the perceived potential benefits of antibiotic prophylaxis against the known risks of antibiotic toxicity, allergies and the development of microbial resistance.

But what should the dentist do if the patient brings to the appointment a recommendation for premedication from his or her physician with which the dentist disagrees? Should the dentist ignore the physician's recommendation or simply defer to the physician's judgment?

Neither approach is prudent from a risk management perspective. On the one hand, the physician's recommendation may be based on facts about the patient's medical condition that are not

known to the dentist. On the other, the physician may not be familiar with this advisory statement or that premedication may be indicated for some dental procedures but not for others. The careful dentist will attempt to ascertain the basis for the physician's recommendation and to acquaint the physician with the reasons why the dentist disagrees. Ideally, consensus can be reached. Most dentists would be uncomfortable with the thought of the physician's testifying in a malpractice suit that the dentist failed to follow the physician's treatment recommendation. However, the dentist who blindly follows the physician's recommendation, even though it conflicts with the dentist's professional judgment, will not be able to defend himself or herself by claiming "the devil made me do it" if the patient sues. The courts recognize that each independent professional is ultimately responsible for his or her own treatment decisions.

The answer to this dilemma may lie in the concept of informed consent, which acknowledges the patient's right to autonomous decision making. Informed consent usually can be relied on to protect from legal liability the practitioner who respects the patient's wishes, as long as the practitioner is acting within the standard of care. However, for informed consent to be legally binding, it is incumbent on the practitioner to inform the patient of all reasonable treatment options and the risks and benefits of each. In the situation in question, the dentist would be prudent to inform the patient when the dentist's treatment recommendations differ from those of the patient's physician and even encourage the patient to discuss the treatment options with his or her physician before making a decision. All discussions with the patient and the patient's physician should be well-documented. Of course, allowing the patient to choose assumes that both the dentist's and the physician's treatment recommendations are acceptable.

Dentists are not obligated to render treatment that they deem not to be in the patient's best interest, simply because the patient requests it. In such circumstances, referral to another practitioner may be the only solution. ■

The above information should not be construed as legal advice or a standard of care. A dentist should always consult his or her own attorney for answers to the dentist's specific legal questions.