



CNA HealthPro

FAQs – Informed Consent Protection

Q. Does having obtained informed consent provide any protection for a true instance of malpractice?

A. The patient's granting of his or her informed consent acknowledges and accepts that there are risks associated with the proposed treatment when performed within or above the standard of care by the dentist. Of course, every patient assumes that his or her dentist will provide treatment that meets or exceeds the standard of care, that is, what a reasonable and prudent dentist would do in the same or similar circumstances.

Untoward events can and do occur, even when the dentist performs treatment properly. It is in these cases that the patient's informed consent is most helpful to the dentist's defense, as these are the risks the patient assumed when granting informed consent.

The risks associated with a dentist's breach of the standard of care are not contemplated in the informed consent process. Therefore, the patient's granting of informed consent will not prohibit the patient from alleging malpractice. For example, eighteen months into a three year orthodontic case, you note on a periapical film that the roots of the mandibular anteriors have severely resorbed. You say nothing to the patient and continue orthodontic treatment without addressing the resorption. The fact that you listed root resorption on the consent form will not absolve you of malpractice allegations.

Keep in mind that a patient cannot consent to a negligent act and thereby waive the dentist's professional duty to practice within or above the standard of care. If a patient asks you to perform treatment that raises professional concerns as well as your potential liability exposure, do not agree to perform the treatment.

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