

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 2007 Prevention of Infective Endocarditis – Recommendations by the American Heart Association published in the June issue of JADA by the American Heart Association. When referring to the 2007 Recommendations, readers also should consult this legal statement.

The 2007 AHA Recommendations is a departure from past AHA recommendations. The AHA states that the 2007 Recommendations were developed through an evidence based approach, and were written in an attempt to reduce ambiguities about who might be eligible for antibiotic prophylaxis and under what conditions, and what antibiotics to use.

The ADA always recommends that a dentist exercise his or her independent professional judgment in applying any guideline, as necessary in any clinical situation. Nevertheless, dentists should certainly be aware that, while the precise standard of care may vary from state to state, these guidelines will likely be cited in any malpractice litigation as some evidence of the standard of care.

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? The courts recognize that each independent professional is ultimately responsible for his or her own treatment decisions. Nevertheless, the goal should be consensus among the professionals involved. To reach consensus, communication is needed. For example, 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 hand, the physician may not be familiar with this advisory statement or that premedication may be indicated in some situations but not in others. The careful dentist will attempt to ascertain the basis for the physician's recommendations and to acquaint the physician with the reasons why the dentist disagrees.

If consensus cannot be reached, the answer 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 in the patient's record. Oral communications should be noted and electronic communications printed out for the record. 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.