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The Dentist's Responsibilities with respect to a no-fault Motor Accident Compensation Scheme

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ABSTRACT
The State of Victoria, Australia operates a no-fault accident compensation scheme for the treatment and rehabilitation of those injured on the roads. The administration of the scheme by the Transport Accident Commission includes an in-house clinical panel of clinicians in many disciplines including dentistry who liaise with treating practitioners with the aim of optimizing the outcome for the injured claimants while ensuring that the scheme remains viable. The ethical considerations of this are discussed.

***KEYWORDS*:** Dental injury compensation ethics

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INTRODUCTION

Victoria is the smallest and most densely populated state in mainland Australia. Its population is increasing as is the number of vehicles on the roads. Towns are often scattered outside the main cities and road distances between them are considerable. The prevalence of accidents and subsequent injury caused by fatigue and less than optimal conditions on the roads is therefore high.[1]

The Transport Accident Commission (TAC) is a Victorian Government-owned organisation the role of which is to pay for treatment and benefits for people injured in transport accidents. As a commercial insurer it is funded from payments made by Victorian motorists when they register their vehicles each year. It is also involved in promoting road safety in Victoria and in improving Victoria's trauma system.

The *Transport Accident Act 1986*[2] guides the TAC in the types of benefits it can pay and any conditions that apply. The TAC operates as a "no-fault" scheme. This means that all medical and allied treatment and most benefits will be paid to an injured person regardless of how the accident occurred. It also allows for a combination of no-fault and common law benefits allowing those who can prove fault to pursue further compensation through the courts.

The TAC covers the costs of ambulance, hospital, medical, medications, therapy, dental and nursing services and other treatment that a person needs to treat injuries sustained in a transport accident directly caused by the driving of a car, motorcycle, bus, train or tram. It also pays benefits to people injured in an accident as a driver or passenger in a vehicle, or a pedestrian or cyclist who is hit by a vehicle.

The TAC can also pay for the reasonable cost of other, non-medical services and items a person needs due to injuries from the accident. For example, it will pay travel costs to attend treatment, or for special equipment to help overcome accident injuries. Other types of benefits the TAC can pay include income, impairment and common law benefits.

The types of treatment and benefits the TAC pays for will depend on what can be paid under the legislation, the individual circumstances of the injured person, and what is considered reasonable in relation to the need for and cost of the service. Such decisions are made by the officer assigned

to the case in collaboration with a panel of medical and allied experts whose opinion will guide individual decisions.

DENTAL CONSIDERATIONS

Dental treatment constitutes a small part of the overall costs in the average accident. The need for treatment is usually as a direct result of facial injuries caused by direct impact with parts of a car or falling on to the road in the case of a pedestrian or cyclist. These injuries increase in complexity from simple fractured teeth; to dento-alveolar fractures; Le Forte fractures of the maxillae; mandibular fractures and injury to the temporomandibular joints.

There can also be an indirect association with the accident as is seen in stress induced temporomandibular pain dysfunction syndrome. It is well documented that stress can cause bruxism which in turn will affect the temporomandibular joints[3] and the teeth[4]. A claim that the TAC must bear liability for treatment must be corroborated by the treating psychiatrist or psychologist as well as by the treating dentist.[5]

In an increasing number of cases dental deterioration can be considered to be due to xerostomia occasioned by prolonged use of anticholinergic medication needed to control pain in other parts of the body arising from the accident.[6,7] If liability for the injury has been accepted, then liability for side effects of the drugs prescribed must be accepted also.

People who have suffered a severe acquired head injury requiring lifetime care for their activities of daily living are completely dependent on carers who may or may not be able to adequately manage the dental care of their patient.[8] Difficulties with compliance coupled with a limited insight on the part of the patient will lead to an increase in dental problems that become increasingly difficult to treat as time goes on.[9] Frequently treatment must be delivered under a general anaesthetic. Although the accident did not directly cause the dental problems, it can be considered that if it were not for the accident, the patient would be able to manage their dental needs, as does the rest of the community.

THE ROLE OF THE DENTAL PRACTITIONER

The Victorian Transport Accident Act of 1986 stipulates, "an injured person's dentition can be restored in a manner consistent with the state of pre-accident dental care". All treatment must be related purely to the restoration of those teeth

affected by the accident and no others, even though there may be a need for additional treatment.

The dentist treating the patient's injuries needs to consider which teeth were damaged and whether there are any other related injuries such as disruption of the occlusion due to fractures. The general condition of the patient's mouth should be noted and the extent to which the patient has looked after their teeth in the past. There is no point in providing complex treatment if the patient's dental expectations are low or their capacity to maintain the treatment is impaired. From the compensation point of view, the likelihood of further treatment being needed in the future and the extent of liability of the TAC for this treatment need to be considered.

A treatment plan that takes all of this into consideration is then forwarded to the TAC for consideration. No treatment can be commenced prior to approval being obtained except for emergency treatment aimed at preventing pain and/or imminent deterioration and surgery and allied treatment performed when the patient is an in-patient at a hospital.

THE ROLE OF THE TAC DENTAL CONSULTANT

The TAC employs in-house dental consultants who have access to the circumstances of the accident. They will examine the treatment plan and consider whether a nexus can be made between the accident and the present need for dental treatment, whether the treatment plan addresses the injuries sustained, whether the treatment is consistent with the level of pre-accident dental care, and whether the fees quoted are reasonable

The Dental consultant has no opportunity to examine the patient but may refer for an independent second opinion.

ETHICAL CONSIDERATIONS

The treating practitioner and the dental consultant must decide what is in the best interests of the patient and the TAC in terms of liability.

Example 1:

A fractured maxillary central incisor with pulpal exposure occurred when the patient's head struck the steering wheel of his car. The dentist submitted a treatment plan for that tooth. It can be restored by: a root filling followed either by a bonded composite restoration or post retained crown; extraction and a removable partial denture; or extraction and an osseo-integrated implant retained crown.

The treatment choice should be made taking into consideration the general condition of the patient's mouth and whether the patient is a regular dental attendee who is likely to maintain a complex restoration. The patient must understand the complexities and likelihood of success of any treatment option. This is important if the patient has an acquired brain injury.

The treatment choice should not take in to account demands by the patient for a certain type of treatment or requests for treatment that is in the financial interests of the treating practitioner.

***Example 2*:**

A patient severely injured his back and had pain for some 5 years resulting in the ingestion of large amounts of opiate analgesic medication. During this time he noticed that his teeth were deteriorating to the extent that he sought treatment. The dentist diagnosed a dry mouth (xerostomia) and forwarded a treatment plan aimed at restoring multiple teeth.

Whether or not liability is accepted is made after taking into consideration whether the opiate medication was funded by the TAC for an accident related condition, whether the patient has objective clinical signs of xerostomia and whether the damage is consistent with the caries pattern typical of xerostomia. Wherever possible evidence of the pre-accident dental status is sought by the expert advisor to establish a baseline.

Example 3:

A patient suffering from post-traumatic stress disorder informs his general practitioner that he has a sore jaw. He is then referred to a dentist who submits a plan for an occlusal splint to treat temporomandibular pain dysfunction syndrome.

Treatment choice and liability must take into account whether the TAC accepted liability for post-traumatic stress disorder and whether the patient is attending a psychiatrist or psychologist who can corroborate this. From the treatment plan point of view, it is important that the dentist has properly diagnosed the problem and is sufficiently experienced to treat such problems. Often a discussion between the TAC DentalConsultant and the dentist will clarify this.

Example 4:

A severely injured patient suffered a closed head injury and damage to the brachial plexus of his right arm that is sufficiently

severe for him to be unable to use it. He cannot manage his activities of daily living without the attendance of carers. He needs dental attention on a continuing basis.

Treatment choice and liability must take into account whether, if it were not for the accident, he would be able to manage his dentition properly, whether the carers are adequately trained to maintain his diet and oral hygiene, and whether preventive strategies been implemented. Treatment for this group of patients is usually delegated to special needs dentists who can manage the challenges of this type of ongoing treatment.

PAYMENT FOR DENTAL SERVICES

To keep costs under control TAC publishes a Schedule of Dental Services. This lists common treatments and represents the maximum fee that TAC will pay for each item. The schedule is reviewed yearly. It is generally below the median fee that is charged in private practice.

The treating dentist must therefore consider whether this fee will cover his/her costs, whether he/she will accept this fee as a kindness to an accident victim or whether he/she will ask the patient to pay a gap fee.

The TAC dental consultant can over-ride the scheduled fees if the treatment is unusually complex or the patient is particularly difficult to treat; for example, an acquired brain injury needing treatment under general anaesthesia. Sometimes the patient has particular requirements that can only be obtained from a particular specialist, or the patient is being treated outside Victoria in other states or territories of Australia and the practitioners there refuse to treat the patient for TAC fees.

CONCLUSION

The TAC dental consultant has an ethical responsibility to ensure that the patient is treated appropriately for the injuries sustained in the accident and that public money is being spent wisely.

The treating dentist has an ethical responsibility to ensure that the injuries listed on the treatment plan relate solely to the accident, the treatment is consistent with the level of pre-accident dental care and that the treatment options are in the patient's best interests and not those of the dentist.

When dental trauma is caused by road traffic accidents and/or occupational injuries, there is frequently a need to translate the claims of the victim into financial figures. The calculation of

economic (pecuniary) damages and non-economic (non-pecuniary) damages requires specific training in medico-legal matters as well as an awareness of the inherent pitfalls. In many countries, an Expert Witness (EW) who is registered in courts is usually asked to perform the assessment of a claim for dental damage. In the field of forensic and legal dentistry, an EW can be a dentist with a knowledge and experience in medico-legal matters and in forensic scenarios that is beyond what is expected of a clinical dentist. An EW will use this knowledge to help the Court understand the issues of the case, and thereby reach a just decision regarding the claimed dental damages and/or any professional liability. This knowledge is even more important in penal cases, where crimes such as homicide, sexual violence, domestic violence and child abuse are included. European countries differ in their dental damage evaluations as well as having significant differences in the requirements needed to become a registered EW in Court. In this preliminary work the authors investigate the principal differences in appointing an EW in the judicial systems of Italy and in Croatia with the purpose of widening this investigation to European countries in order to marshal knowledge towards harmonization, best practice and a common ground for dental evaluation and claim compensations (in accordance with the Council of Europe Resolution 75 – 7 Compensation for physical injury or death).[1]

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