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Chapter 2

COMPLAINTS OF DUTCH DENTAL PATIENTS CONCERNING INFORMED CONSENT¹

I Introduction

On April 1st 1995 the Medical Treatment Contract Act became effective. In this act a number of patient rights have been legally established, such as the right to be informed on matters concerning treatment and the dentist's duty to obtain the patient's consent regarding the treatment he has in mind. In Anglo-American literature this right to information and the dentist's duty to obtain a patient's consent is called 'informed consent'.

Inadequate communication between dentist and patient may lead to problems with regard to informed consent. In combination with the patient's growing awareness of his legal rights (van Lindert, Friele & Verweij, 2000), this could lead to an increase in the number of patient complaints regarding informed consent. This assumption seems to be in agreement with other results of national as well as international studies (Vermaire & Eijkman, 2001; Christensen, 1999; Doyal & Cannell, 1995). However, too little research has been done so far on the topic with regard to the situation in The Netherlands to obtain a clear picture of both number and type of informed consent related complaints in dental practice.

A patient who has complaints concerning his treatment may start civil or criminal or disciplinary procedures. In practice, civil procedures relatively seldom occur and a dentist appearing before a criminal court professionally is an exception (Brands & Eijkman, 2000). Disciplinary procedures are used far more often. Disciplinary procedures are in accordance with disciplinary legislation, which is regulated by the Individual Health Care Professions Act (BIG), or the disciplinary procedures of the Dutch Dental Association and the Association of

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Dutch Dentists. This study deals specifically with the disciplinary rules and procedures of the Dutch Dental Association, which means that the complaints that were analyzed only concerned dentists who are a registered member (about 80% of Dutch dentists is a registered member) of the Dutch Dental Association.

The aim of this study was to obtain a better insight in the extent to which dentists comply with the requirements of informed consent. An inventory was made of the number of those information and consent complaints that have led to a verdict by the Regional Board of Assessment, the Board of Assessment of Dental Specialists or the Board of Appeal of the Dutch Dental Association. The specific questions with regard to our inventory are:

- Has any increase been observed in the number of patient information and consent complaints since the Medical Treatment Contract Act became effective in April 1995?
- What percentage of the total number of patient complaints concern informed consent?
- What are the types of the informed consent complaints, and has any change in the type of complaints occurred after the Medical Treatment Contract Act was introduced?
- How many complaints were substantiated and what sanctions were imposed?

2 Material and methods

The period under investigation ran from 1987, the year that the preliminary design of the Medical Treatment Contract Act was approved by the Government, until 15 November 2000 in order to assess any shifts over the time and any differences that may have occurred between the period before and after the enforcement of the Medical Treatment Contract Act. All complaints that were dealt with by the Dutch Dental Association during this period of time were analyzed and categorized, a total of 916. First of all, the complaints were divided into two groups: complaints related to informed consent and complaints not related to informed consent. In doing so we not only studied the complaint as such but also the considerations of the Regional Board of Assessment, the Board of Assessment of Dental Specialists or the Board of Appeal, whereby it was sufficient if one of the two parties would judge the complaint (even partly) as being related to informed consent. Subsequently we verified whether or not a complaint had been substantiated and if so, what sanctions were imposed.

For the classification of the complaints a category system was used as developed for a similar study by the Dutch Consumers' Organization.

This system comprises the following categories:

- Inadequate information about the condition of the dentition.
- Inadequate information about treatment and/or consequences of treatment.
- Inadequate information about rates, rate changes or private contribution.
- Insufficient information on other issues such as alternatives, prevention, X-rays etc.
- Inadequate communication of information between dentist and colleagues who replace him temporarily, oral hygienist or dental colleague.
- Ignoring information, complaint or question from the side of the patient.
- Treat without consent.

The reliability and validity of this system have been established in earlier studies and have proved to be satisfactory (Lipschart-van der Linden, Eijkman & Spruijt, 1997).

3 Results

Table 1 gives a review of the total number of patient complaints per year, as well as the number of complaints specifically concerning informed consent. Of the total number of informed consent complaints 76 were handled by the Regional Boards of Assessment, 31 by the Board of Appeal and two by the Board of Assessment of Dental Specialist. During the years before the enforcement of the Medical Treatment Contract Act the number of patient complaints on information and consent was generally higher than afterwards. From 1997 till 2000 a slight increase was noticed but the high percentage of the early nineties was never reached again. Even after correction for possible double counts, meaning the same complaint being dealt with by both the Regional Board of Assessment and the Board of Appeal (this occurred in 26 cases), the percentage of informed consent complaints before the enforcement has remained higher than afterwards.

Before the enforcement of the Medical Treatment Contract Act 12.9% of the records included one or more informed consent complaints, after enforcement of the act this was only 10.6%, which implies a decrease of 2.3%. We have also looked for regional differences in the number of complaints. The number of registered complaints in the Rotterdam/The Hague region as well as in the Arnhem/Nijmegen region appeared to be higher than elsewhere.

Table 1: Total number of complaints and informed consent complaints

Year	Total number of complaints	Informed consent complaints	% of total number of complaints
1987	76	5	6.6
1988	51	3	5.9
1989	64	6	9.4
1990	68	11	16.2
1991	52	3	5.8
1992	66	14	21.2
1993	65	13	20.2
1994	55	10	18.2
1995	76	6	7.9
1996	74	7	9.5
1997	74	6	8.1
1998	62	7	11.3
1999	73	10	13.7
2000	60	8	13.3
Total	916	109	11.9

Table 2 shows the various categories of complaints, before and after the enforcement of the Medical Treatment Contract Act. The number of complaints on informed consent regarding treatment and outcome (category 2) has increased significantly after the introduction of the Medical Treatment Contract Act. On the other hand, the number of complaints about inadequate information on rates, rate changes or private contributions has dropped considerably. There is relatively little difference between the number of complaints in the other categories before and after the enforcement of the Medical Treatment Contract Act.

Finally, it appeared that 65 of the 109 complaints (60%) were (partly) substantiated. The remaining complaints were either not substantiated or not sustained. The sanctions imposed in the substantiated or partly substantiated cases showed some differences. In the majority of cases (36.9%) redressment of done injustice was imposed, in 18.5% in combination with an official warning. Relatively frequently no sanction was imposed at all (27.7%). Official reprimands, suspension, suspension of membership of the Dutch Dental Association or financial penalties hardly ever occurred (3.1%).

Table 2 Number of informed consent complaints of patients before and after the enforcement of the Medical Treatment Contract Act

	Before April 1995 (N*=65)	%**	After April 1995 (N*=44)	%**	Difference (%)
• Inadequate information about condition dentition	12	18.5	10	22.7	4.2
• Inadequate information about treatment outcome	25	38.5	22	50.0	11.5
• Inadequate information about rates	9	13.8	2	4.5	-9.3
• Inadequate information about other issues	14	21.5	8	18.2	-3.3
• Inadequate communication of information	2	3.1	0	0	-3.1
• Ignoring information/question/complaint	2	3.1	0	0	-3.1
• Treat without consent	1	1.5	2	4.5	3.0

* = total number of records

** = percentage of total number of complaints

4 Discussion and conclusion

Contrary to what was expected the number of informed consent complaints handled by the Dutch Dental Association has slightly dropped after the introduction of the Medical Treatment Contract Act. On the face of it these observations are not conform the results of mainly American studies, which demonstrate an increase in the number of complaints about dentists. The problem of many studies is, however, that no adequate distinction is being made between the various types of complaints. Therefore, it is difficult to establish the actual cause of the increase. Furthermore, the considerable differences between the American and the Dutch culture should be taken into account and any generalization based on the American point of view should therefore be avoided. Although the results of earlier Dutch studies have also shown that the number of patient information complaints was growing (ter Horst & Boon, 1989), more recent studies (Lipschart-van der Linden, Eijkman & Spruijt, 1997) indicate that

the percentage of records on information problems has decreased. The many different complaint agencies, the different periods of time under observation and the often vague procedures may give rise to problems when comparing and interpreting the results of such studies. This study, for instance, is only concerned with the internal disciplinary procedures of the Dutch Dental Association, which exclusively apply to members. Thus, all conclusions regarding patient complaints about dentists only concern dentists who are a member of the Dutch Dentist Association.

Because of the above stated problems it is difficult to make a reliable inventory of the actual number of complaints and conclusions should be carefully considered. A central registration agency where all officially handled complaints and arbitration efforts should be reported uniformly would greatly facilitate studies on complaints about dentists. Furthermore, the patient may also benefit from such a centralized agency because he will know where and how to lodge his complaint.

In view of the above, we may conclude with some caution that the number of informed consent complaints seems to have dropped after the introduction of the Medical Treatment Contract Act. The relatively low numbers of complaints on rates, which even dropped after the enforcement of the Medical Treatment Contract Act, were remarkable. After all, nowhere else in our health care are financial matters discussed to such an extent with the patient as in dentistry. Possibly the patient may not have serious problems with the rates as such which he may consider reasonable as long as there is general satisfaction regarding the quality of the dental care he receives. Studies have shown that the actual rates do not present any problems and that they are considered an indication of the quality of dental care (Newsome & Wright, 1999).

The general decrease in the number of complaints following the introduction of the Medical Treatment Contract Act may partly be attributed to the extensive coverage of the act by the media. This, and the emphasis on patient rights in (post-academic) dental training may have had a positive effect on the dentist's awareness of his duties regarding informed consent. Further research is needed to establish whether the number of complaints will continue to decrease.

Unfortunately, when studying each type of complaint separately it appears that the decrease is not consistent in every category. After enforcement of the Medical Treatment Contract Act, the number of complaints on inadequate information with regard to treatment and outcome in particular appear to have increased. This is conform the results of earlier studies (Lipschart-van der Linden, Eijkman & Spruijt, 1997) and is the more remarkable in view of the fact that the patient's right to such information has been legally laid down in the Medical Treatment Contract Act. Perhaps, patients may have become more

conscious of the importance of this specific right, and may therefore tend to lodge complaints about inadequate information about the treatment at an earlier stage than for instance complaints about inadequate information about alternatives. Results of a study by Schouten and Friele (2001: chapter 7) are indeed in agreement with these observations. Therefore, it continues to be essential that the dentist provides his patient with adequate information on the treatment he has in mind and sees to it that the patient has fully understood its implications.

Furthermore, the results of this study indicate that a considerable number of complaints about inadequate information are not or only partly substantiated. Nearly half of the complaints concerning informed consent (40%) are not substantiated in spite of the fact that in many cases the patient does indeed appear to be inadequately informed as is illustrated in the following two examples, coming from the verdicts of the Dutch Dental association.

A patient lodges a complaint about inadequate information concerning the treatment he has received. The dentist admits that he did not inform the patient, an emergency case, to the extent in which he would normally inform his own regular patients. The Disciplinary Board claims that it is not clear whether and to what extent the patient did ask the dentist for information before the treatment was performed and whether or not the patient had asked for any details. Taking into account the fact that this case did not concern one of the dentist's regular patients and therefore the dentist did not know to what extent the patient would normally have been informed by his own dentist, the Disciplinary Board was of the opinion that the dentist had not been at fault. The complaint was not substantiated (Disciplinary Board of the Section Rotterdam, 18-1-1994).

Although in this case it concerned a complaint that was dealt with before the Medical Treatment Contract Act became effective, the dentist's duty to inform his patient had already been laid down in the dental professional code, which does not distinguish between regular and non-regular patients. It is therefore rather peculiar that in dealing with this complaint the Board did take into account the fact that the patient was non-regular and that the patient did not ask for any information before the treatment was performed.

A patient lodges a complaint concerning neglect of his dentition and unnecessary treatment. The patient claims that the dentist has not adequately informed her about her periodontal condition and the fact that her upper front teeth are beyond saving. The Disciplinary Board finds it hard to believe that the dentist did not provide the patient with correct and comprehensible information on the situation of her upper front teeth, which could not be saved even temporarily with the help of splints. The dentist is not able to give an

acceptable explanation. The Disciplinary Board is of the opinion that the dentist did not act conform his information duty but not to such an extent that the complaint should be substantiated. (Disciplinary Board of the Section Rijnland, 8-6-1994).

In the opinion of the Board, the dentist did not provide the patient with adequate information about her dental condition. The professional dental code clearly stipulates that it is the dentist's duty to inform his patient about this aspect. In view of the above, the opinion of the Board could be considered questionable at the very least. Unfortunately, the Board did not make it clear in what situations the Board would have considered the dentist guilty of not doing his duty. However, this decision was revoked by the Board of Appeal (6-4-1995) and the complaint was substantiated at a later date. The Board of Appeal felt that the dentist had indeed failed to do his duty with regard to informing the patient. This, together with further, not mentioned unpleasant behavior of the dentist, was considered inconsistent with the care a dentist should give his patient concerning his patient's health and well-being.

These examples illustrate that many complaints, whether or not substantiated, are the result of communication problems between dentist and patient. Despite the decrease in complaints it continues to be essential to provide the patient with effective and comprehensible information. Needless to say that proper (post-academic) training in communicative skills is very important. Not only is it the dentist's duty to inform his patient, it is at least as important that he takes care that his patient has fully comprehended the information he has provided. Concrete, comprehensible information and deciding together with the patient what treatment would be best, form the basis of a good dentist-patient relationship (Eijkman, Duyx & Visser, 1998). It is absolutely necessary to continue to pay attention to these matters in order to achieve a substantial decrease in the number of complaints.

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