Dental Ethics: A Brief Review

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Faculty

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Dr. Frey retired from the United States Army Dental Corps in 1989 after 22 years of service. Throughout the course of his professional career, he has continuously practiced dentistry, the first 7 years as a general dentist and the past more than 40 as a periodontist. His military experience included the command of a networked Dental Activity consisting of five dental clinics. In his last assignment, he was in charge of a 38-chair facility. Colonel Frey was selected by the Army to serve on two separate occasions as the Chair of the Periodontal Department in Army General Dentistry Residency Training Programs.

Dr. Frey is the founder and president of Perio Plus, a practice management firm specializing in creating individually-designed hygiene and periodontal care programs for general dentists. He is also the creator of the Inspector Gum patient education series.

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Faculty Disclosure

Contributing faculty, William E. Frey, DDS, MS, FICD, has disclosed no relevant financial relationship with any product manufacturer or service provider mentioned.

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Course Objective

The purpose of this course is to provide dental professionals with a review of ethics and ethical theoretical systems that pertain to their profession. The content of this course is not intended as legal advice for patients or practitioners.

Learning Objectives

Upon completion of this course, you should be able to:

1. Describe the roles and responsibilities of dental professionals.
2. Review the definitions of ethics and law.
3. Compare and contrast ethical theoretical systems.
4. Define ethical terms and ethical decision making, as related to the dental professional.
5. Define dental malpractice, specifically as it relates to Medicare/Medicaid fraud.

INTRODUCTION

Every profession that deals with human rights and liberties develops a professional code of ethics to guide the responsible behavior of its members. In addition, most regulatory boards that oversee the practice of healthcare professionals require their members to be cognizant of the specific rules of conduct relating to their profession. In dentistry, the American Dental Association (ADA) has developed the ADA Principles of Ethics and Code of Professional Conduct to express the "obligations arising from the implied contract between the dental profession and society" [1]. Additionally, the American Dental Hygienists' Association (ADHA) has developed its own code of ethics [8].

With cases of dental insurance fraud and malpractice cases receiving national attention, it is imperative that dental professionals understand the role that ethics play in the legitimacy of the profession.

RESPONSIBILITIES AND COMPETENCE

According to the ADA, dentistry is defined as [2]:

> The evaluation, diagnosis, prevention, and/or treatment (nonsurgical, surgical, or related procedures) of diseases, disorders, and/or conditions of the oral cavity, maxillofacial area, and/or the adjacent and associated structures and their impact on the human body; provided by a dentist, within the scope of his/her education, training and experience, in accordance with the ethics of the profession and applicable law.

The dentist is responsible for all services provided to the "patient of record," which is a patient upon whom a dentist has taken a complete medical history, completed a clinical examination, recorded any pathologic conditions, and prepared a treatment plan.

Depending on state regulations, dental hygienists may be delegated the task of removing calculus deposits, accretions, and stains from exposed surfaces of the teeth and from the gingival sulcus. They may also perform root planing and curettage. In addition, dental hygienists may expose dental x-ray films, apply topical preventive or prophylactic agents, and perform all tasks delegable by the dentist. However, the dentist remains responsible for the care of the patient.

David T. Ozar, David J. Sokol, and Donald E. Patthoff, in *Dental Ethics at Chairside: Professional Obligations and Practical Applications*, suggest that while there is encouragement for ethical dental practice, there is little support available to dental professionals who are trying to practice ethically in a complex situation [3]. Ozar, Sokol, and Patthoff present representative ethical decisions dentists regularly face with the goal of increasing the dental professional's attention to and reflection on these problems. Whether it is a dentist finding the work of another dentist inferior, warning a patient about the dangers of smoking when the patient is unwilling to change, or manipulating data on an insurance form to secure better treatment for the patient, the dentist is faced with a myriad of ethical decisions [3].

ETHICS AND LAW

A discussion of professional ethics and law requires background knowledge of ethics and the definition of ethical principles. Ethics is a branch of philosophy that considers and examines the moral life. The word ethics comes from the Greek *ethos* and originally meant character or conduct; the word morals comes from the Latin *mores*, which means customs, values, or habits. These two terms are frequently used interchangeably; however, simply put, ethics are the standards of conduct an individual uses to make decisions and morality involves the judgment or evaluation of an ethical system, decision, or action based on social, cultural, or religious norms [14; 15]. They both incorporate notions of approval or disapproval and in some cases are also applied to the character or virtues of the individual.

Although law and ethics have similarities, law may be better defined as the total of rules and regulations by which a society is governed. Ethics, on the other hand, are informal or formal rules of behavior that guide individuals or groups of people. Legal rights are grounded in the law, and ethical rights are grounded in ethical principles and values. Where the law might say, for example, that it is illegal to commit suicide/murder under any circumstance, even when a terminally ill patient has no quality of life and intractable pain, ethics may guide a physician to administer a lethal dose of morphine. Ethics often shapes law; as of 2023, 10 states (e.g., Oregon, California, New Jersey) and the District of Columbia have adopted "death with dignity" acts, whereby an individual with a medically confirmed terminal disease may request medication to end their life [21].

ETHICAL THEORETICAL SYSTEMS

Six fundamental theories that directly concern dental professionals will be described in this course. They are the deontologic, teleologic, motivist, natural law, transcultural, and relative/multicultural ethical theoretical systems. These systems are each made up of principles, precepts, and rules that form a specific theoretical framework that provides the follower with general strategies for defining the ethical actions to be taken in any given situation.

DEONTOLOGIC ETHICAL THEORIES

Under the deontologic umbrella, an action is deemed right or wrong according to whether it follows pre-established criteria known as imperatives. An imperative in our language is viewed as a "must do," a rule, an absolute, a black and white issue. This is an ethic based upon duty linked to absolute truths set down by specific philosophical schools of thought. If the principles dictated by these imperatives are met with dutiful compliance, one is said to be acting ethically.

One of the most significant features of deontologic ethics is found in John Rawls' *Theory of Justice*, which states that every person of equal ability has a right to equal use and application of liberty. However, certain liberties may be at competition with one another. There are also some principles within the same ethical theoretical system that can conflict with one another. An example of this conflict might involve a decision over allocation of scarce resources. Under the principle of justice, all people should receive equal resources (benefits), but allocation can become an ethical dilemma when those resources are scarce.

The precepts in the deontologic system of ethical decision making stand on moral rules and unwavering principles. No matter what situation presents itself, the purest deontologic decision maker would stand fast by a hierarchy of maxims. They are as follows [18]:

- People should always be treated as ends and never as means.
- Human life has value.
- One is always to tell the truth.
- Above all in healthcare, do no harm.
- All people are of equal value.

Theologic Ethics

A well-known deontologic ethical theory is based upon religious beliefs and is known as the theologic ethical theory. The principles of this theory promote a *summum bonum*, or highest good, derived from divine inspiration. A familiar principle is to do unto others as you would have them do unto you. One would be viewed as ethically sound to follow this principle within this system of beliefs.

Categorical Imperative

Another deontologic ethical principle is Immanuel Kant's Categorical Imperative. Kant believed that rather than divine inspiration, individuals possessed a special sense that would reveal ethical truth to them. Ethical truth is thought to be inborn and causes humans to act in the proper manner. Some of the ethical principles to come from Kant will become more familiar as the principles associated with bioethics are discussed. These include individual rights, self-determination, keeping promises, privacy, personal responsibility, dignity, and sanctity of life.

TELEOLOGIC ETHICAL THEORIES

The teleologic ethical theories or consequential ethics are outcome-based theories. It is not the motive or intention that causes one to act ethically, but the consequences of the act [19]. If the action causes a good effect, it is said to be ethical. So here, the end justifies the means.

Utilitarianism

Utilitarianism is the most well-known teleologic ethical theory. This is the principle that follows the outcome-based belief of actions that provide the greatest good for the greatest number of people. Rather than speaking for the individual, this principle speaks for the group or society. Social laws in the United States are based upon this principle. The individual interests are secondary to the interest of the group. There are two types of utilitarianism: act utilitarianism and rule utilitarianism. In act utilitarianism, the person's situation determines whether an act is right or wrong. In rule utilitarianism, the person's past experiences influence one to the greatest good. There are no rules to the game, as each situation presents a different set of circumstances. This is also referred to as situational ethics. Situational ethics would say that if the act or decision results in happiness or goodness for the person or persons affected, it would be ethically right.

Individuals may choose the utilitarian system of ethics because they find it fulfills their own need for happiness, in which they have a personal interest. It avoids the wall of rules and regulations that may cause a person to feel a lack of control. In Western society, the rule of utility is whatever leads to an end of happiness fits the situation.

The downside of utilitarianism is its application to healthcare decision making. In making national healthcare policy based upon utilitarianism, several questions arise. Who decides what is good or best for the greatest number? Is it society, the government, or the individual? For the rest, are they to receive some of the benefits, or is it an all or nothing concept? How does the concept of "good" become quantified in health care in such concepts as good, harm, benefits, and greatest? Where does this leave the individual trying to make healthcare decisions?

Existentialism

One modern teleologic ethical theory is existentialism. In its pure form, no one is bound by external standards, codes of ethics, laws, or traditions. Individual free will, personal responsibility, and human experience are paramount. Existentialism lends itself to social work because one of the tenets is that every person should be allowed to experience all the world has to offer. A critique of the existential ethical theory is that because it is so intensely personal, it can be difficult for others to follow the reasoning of a healthcare worker, making proof of the ethical decision-making process a concern.

Pragmatism

Another modern teleologic ethical theory is pragmatism. To the pragmatist, whatever is practical and useful is considered best for both the people who are problem solving and those who are being assisted. This ethical model is mainly concerned with outcomes, and what is considered practical for one situation may not be for another. Pragmatists reject the idea that there can be a universal ethical theory; therefore, their decision-making process may seem inconsistent to those who follow traditional ethical models.

MOTIVIST ETHICAL THEORIES

The motivist would say that there are no theoretical principles that can stand alone as a basis for ethical living. Motivist belief systems are not driven by absolute values, but instead by intentions or motives. It is not the action, but the intent or motive of the individual that is of importance. An example of a motivist ethical theory is rationalism. Rationalism promotes reason or logic for ethical decision making. Outside directives or imperatives are not needed as each situation presents the logic within it that allows the user to act ethically.

NATURAL LAW ETHICAL THEORY

Natural law ethics, also known as the virtue system of ethics, is a system in which actions are considered morally or ethically correct if in accord with the end purpose of human nature and human goals. The fundamental maxim of natural law ethics is to do good and avoid evil. Although similar to the deontologic theoretical thought process, it differs in that natural law focuses on the end purpose concept. Further, natural law is an element in many religions while at its core it can be either theistic or non-theistic.

In theistic natural law, one believes God is the Creator, and the follower of this belief sees God as reflected in nature and creation. The nontheistic believer, on the other hand, develops understanding from within, through intuition and reason with no belief rooted in God. In either case, natural law is said to hold precedence over man-made law.

The total development of the person, physically, intellectually, morally, and spiritually, is the natural law approach. Therefore, ethical decision making should not be problematic, as judgment and action should come naturally and habitually to the individual follower of natural law.

Although appearing to be the perfect approach to all ethical situations requiring decision making, there are some significant drawbacks; for example, a person's maximum potential is relative or subjective. Additionally, what constitutes natural law? The precept to do good and avoid evil leaves a very large space for interpretation. Because it acts largely outside of individual wishes, often separating human life into a set of separate events, it is an impersonal approach, devaluing the focus upon dignity. To some, it is also a rather cold-hearted approach—not making decisions with an individual, but for the individual based upon what others believe to be good for that person. The principle of paternalism would fit within this context.

TRANSCULTURAL ETHICAL THEORY

The transcultural ethical theory is a modern ethical system of thought that centers on the diversity of cultures and beliefs among which we all live. Therefore, at its core, this ethic assumes that all discourse and interaction is transcultural due to the strengths and differences in values and beliefs of groups within society.

The advantage to the transcultural ethical system is that it folds parts of the other ethical systems together while recognizing the differences between people. A disadvantage might be that Western society largely follows the deontologic and teleologic principles that also make up the legal system. Therefore, there may be some difficulty in making decisions based upon other cultural beliefs and values. Our society largely operates on a basis of facts, conclusions, and predetermined, agreed-upon solutions based upon male Anglo-American ideals. Many healthcare professionals may find difficulty with the transcultural ethic's reliance on close interrelationships and mutual sharing of differences required in this framework.

ETHICAL RELATIVISM/ MULTICULTURALISM

The ethical theory of relativism/multiculturalism falls under the postmodernist philosophical perspective and may be referred to as moral relativism [16]. Multiculturalism promotes the idea that all cultural groups be treated with respect and equality [17]. According to ethical relativists, ethical principles are culturally bound and one must examine ethical principles within each culture or society [16]. The question then becomes how ethical principles that are primarily deontologic and rooted in Western values are applicable in other societies. The challenge of ethical relativism is how to determine which values take precedent [16].

APPLICATION OF ETHICAL THEORIES

It is important to remember that ethical theories are just theories. They do not provide the absolute solutions for every ethical dilemma. They do provide a framework for ethical decision making when adjoined to the critical information obtained from patients and families.

Most dental professionals combine the theoretical principles that fit best for the patient and situation. When the practitioner-patient relationship is established, a moral relationship exists. Though not an inherent gift, moral reasoning is required to reach ethically sound decisions. This is a skill, and moral reasoning must be practiced so it becomes part of any dental professional's life.

Although all ethical systems treat decisions about ethical problems and ethical dilemmas, the decision reached regarding a specific conflict will vary depending on the system used. For example, a dentist assigned to care for a patient with acquired immune deficiency syndrome (AIDS) might have strong fears about contracting the disease and transmitting it to his or her family. Is it ethical to refuse the assignment?

A dentist deciding purely on the basis of utilitarianism would weigh the good of his or her family members against the good of the patient. Based on the greatest good principle, it would be ethical to refuse to care for the patient. In addition, because utilitarianism holds that the ends justify the means, preventing the spread of human immunodeficiency virus (HIV) to the dentist's family would justify refusal of the patient.

Based upon deontology, duty and justice are the underlying and unchanging moral principles to follow in making the decision. A person who becomes a dentist accepts the obligations and duties of the role. Caring for patients with infectious diseases is one of those obligations; therefore, refusal, except in particular circumstances, would be a violation of this duty. In this system, another unchanging moral principle, justice, would require healthcare professionals to provide adequate care for all patients. Refusing to care for a patient with AIDS would violate this principle.

According to the natural law system, refusing to care for a patient with AIDS would be unethical. One of the primary goals of the natural law system is to help the person develop to maximum potential. Refusing to have contact with a patient with AIDS would diminish the patient's ability to develop fully. A good person, by natural law definition, would view the opportunity to care for a patient with AIDS as a chance to participate in the overall plan of creation and fulfill a set of ultimate goals.

Although such decisions are usually made on a practical level rather than a theoretical level, at times it is important to be able to relate a decision to its underlying system or principle. It is important to note that in its advisory opinion, the ADA states [1]:

> As is the case with all patients, when considering the treatment of patients with a physical, intellectual, or developmental disability or disabilities, including patients infected with human immunodeficiency virus, hepatitis B virus, hepatitis C virus, or another bloodborne pathogen, or are otherwise medically compromised, the individual dentist should determine if he or she has the need of another's skills, knowledge, equipment or expertise, and if so, consultation or referral...is indicated.

However, the ADA goes on to state that dentists shall not refuse to accept patients into their practice or deny service to patients because of the patient's race, creed, color, gender, sexual orientation, gender identity, national origin, or disability [1].

DEFINITIONS OF ETHICAL PRINCIPLES

The ADA recognizes five major ethical principles of significance to dental professionals: patient autonomy, veracity, beneficence, nonmaleficence, and justice [1].

PATIENT AUTONOMY

Autonomy refers to the right of the patient to determine what will be done with his or her own person (i.e., self-governance). It also involves the patient's right to have confidentiality of his or her own medical history and records, and for the medical personnel to safeguard that right. The dentist should involve the patient in treatment decisions in a meaningful way, with due consideration being given to the patient's needs and desires [1].

Ozar, Sokol, and Patthoff present four possible models of the patient-dentist relationship [3]:

- The guild model, in which the dentist is the sole active decision-maker
- The agent model, in which the important aspects of decision-making are solely the responsibility of the patient
- The commercial model, in which both the patient and the dentist are decision-makers, but the dentist is considered a producer selling her/his goods, with only the moral obligations of any other seller (e.g., not to cheat or defraud the buyer
- The interactive model, in which the dentist and patient are equal partners in important respects to decision-making

Of these, the interactive model represents the ideal dentist-patient relationship [3]. In this model, the dentist and patient each have standing and deserve each other's respect, and each has a set of values by which to live. In addition, each comes to the decision-making process about the patient's oral health with the understanding that information must be shared. This can only be achieved through communication and mutual cooperation. They summarize [3]:

> In the Interactive Model, the patient and dentist are equally respected contributors to the decisions to be made, though their contributions are different and, in important ways, asymmetrical. Their respective contributions cannot, furthermore, be put together without careful communication on both sides and effective dialogue between them.

Federal privacy standards to protect patients' medical records and other health information provided to health plans, doctors, hospitals and other healthcare providers took effect on April 14, 2003. Congress called on the U.S. Department of Health and Human Services (HHS) to issue patient privacy protections as part of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. HIPAA includes provisions designed to encourage electronic transactions and requires new safeguards to protect the security and confidentiality of health information [4].

These standards provide patients with access to their medical records and more control over how their personal health information is used and disclosed. They represent consistent federal privacy protections for consumers across the country [4]. The HHS has issued extensive guidance and technical materials to explain the privacy rule, including an extensive, searchable collection of frequently asked questions that address major aspects of the rule. HHS will continue to expand and update these materials to further assist covered entities in complying. These materials are available at https://www.hhs.gov/hipaa.

The efficiencies of electronic recordkeeping are obvious. There is, however, a downside that accompanies these efficiencies, including inappropriate and unknown-to-the-patient data transfer resulting from numerous linked locations, such as third-party financial entities and employers. As paper-based recordkeeping has transitioned to electronic, the risk of unintentional privacy violations related to new-user lack of expertise has increased. Precautions should also be in place to prevent intentional misuse of patient data. This presents an additional burden for dentists and other healthcare providers from both internal staff (on-site) and external service providers (off-site), not to mention deliberate electronic intruders.

VERACITY

Veracity involves truthfulness and keeping promises. Dental professionals are obligated to be truthful with patients and/or their families and to avoid withholding information or representing care in a false or misleading manner. Dentists should avoid making representations or suggestions to their patients for treatment that is not based on scientifically accepted principles or research. It is unethical for a dentist to recommend unnecessary dental procedures to their patients.

Advertising

One case regarding advertising disclaimers almost went as far as the U.S. Supreme Court. In the case *Borgner v Brooks*, a dentist obtained certification as an implant dentistry specialist from the American Academy of Implant Dentistry (AAID) [9]. However, neither the ADA nor state of Florida recognized this specialty. The dentist then sued both for the right to recognize his specialty (as a protected First Amendment right) and won. The Florida Board of Dentistry appealed, and a three-judge panel in the 11th U.S. Circuit Court of Appeals ruled in favor of the state [9]. The Supreme Court subsequently declined to hear the case, although Justices Thomas and Ginsburg believed that the case presented an opportunity to clarify recurring issues in the First Amendment treatment of commercial speech [9].

Many states prohibit paid advertising in which a dentist claims that his or her services or practice is better or exceeds the standards of another dental professional. However, advertising regarding having been voted the top dentist may be allowed.

HIV/AIDS Status

The ADA is against dentists seeking to attract patients by advertising their HIV/AIDS-free status. This position is based on the idea that such a statement would be misleading, as it only pertains to the dentist's status at the time of the test. However, a dentist could satisfy his or her obligation under this advisory opinion to convey additional information by clearly stating in the advertisement or other communication: "This negative HIV test cannot guarantee that I am currently free of HIV" [1].

Billing

The ADA, in their Advisory Opinions, speaks specifically to issues of fees and overbilling and calls upon dentists to follow high ethical standards with the benefit of the patient as the primary goal. Increasing fees because the patient has dental health plan coverage or nondisclosure of co-payment waiver to a third-party payer is unethical [1]. A dentist should carefully evaluate recommendations to patients that are influenced by the patient's participation in a capitation health plan. The minimal yet clinically acceptable therapy may not be sufficient or acceptable to the patient and presents a burden on the caregiver, as patients may not understand the limitations of their coverage until a procedure is necessary. It may be the dentist or his or her staff that must intercede with the insurer as an advocate for the patient's general health and quality of life [3].

BENEFICENCE

Beneficence refers to the ethical principle of doing or promoting good. Community service, in the form of offering free dental care to the needy, is one example of how a dentist can elevate the esteem of the profession. The Academy of General Dentistry requires that Lifelong Learning and Service Recognition Candidates complete at least 100 hours of approved dental-related community/volunteer service, such as community education panels and the provision of pro bono patient care, or service to organized dentistry [13].

In addition, when a dental professional has achieved, through research or investigation, results that promote or safeguard the health of the public, he or she has an obligation to share those results with the profession. This does not prevent a dentist from seeking copyright or patent protection.

Assessment for and identification of abuse is another example of practices to promote good. Orofacial trauma is common in cases of abuse, and in most states, dental professionals are obliged to report patients with symptoms consistent with domestic violence and child or elder abuse. The dentist is often the first healthcare provider to treat the victim and is therefore ideally positioned to provide intervention by reporting to the appropriate authorities and offering information on domestic violence shelters and other resources to patients.

NONMALEFICENCE

Nonmaleficence simply means that dental professionals must try to avoid doing harm to the patient. It is the duty of the dental professional to evaluate his or her own skills and recognize when further education is required or when referral to a specialist is in the best interest of the patient. A dentist must complete a patient's treatment once it has begun or make arrangements for appropriate care if for any reason the dentist cannot complete the care.

Dental professionals who continue to practice while using substances that impair their ability to practice or who suffer from mental or physical impairment are not acting ethically and are violating the law. Colleagues of an impaired dental professional (e.g., in the case of substance abuse) should report the individual to the professional assistance committee of their dental society.

Dentists who are consulted for a second opinion should not have a vested interest in the recommended treatment. According to the ADA's Principles of Ethics and Code of Professional Conduct, when delegating patient care, the dentist is required to protect the health of the patient using only qualified auxiliary personnel while prescribing and supervising the patient care. A dentist may delegate remediable tasks to dental hygienists and dental assistants so long as delegation of the task poses no increased risk to the patient and the task may be legally delegated. In general, tasks that may be delegated are those that do not create unalterable changes in the oral cavity or contiguous structures, are reversible, and do not expose a patient to increased risks. The use of a laser or laser device of any type is not a remediable task [1].

All dentists, regardless of their bloodborne pathogen status, have an ethical obligation to immediately inform any patient who may have been exposed to blood or other potentially infectious material in the dental office of the need for postexposure evaluation and follow-up [1]. They are obligated to immediately refer the patient to a qualified healthcare practitioner who may provide postexposure services. The dentist's ethical obligation in the event of an exposure incident extends to providing information concerning the dentist's own bloodborne pathogen status to the evaluating healthcare practitioner if the dentist is the source individual, and to submitting to testing that will assist in the evaluation of the patient. If a staff member or other third person is the source individual, the dentist should encourage that person to cooperate as needed for the patient's evaluation.

Dentists should avoid personal relationships with their patients, as the potential for exploitation cannot be overstated. The judgment of what may be in the patient's best interest may be impaired where there is a personal relationship. Dentists should be sensitive to the patient's perception of inappropriate behavior [1].

JUSTICE

Justice is broadly understood as fairness; however, it also pertains to what someone or a group is owed. It implies fairness in relationships and dealings with patients, colleagues, and society. It also relates to the distribution or allocation of a scarce resource or treatment without prejudice. Ozar, Sokol, and Patthoff write, "when a society's structures for distributing resources are ethically sound, a common adjective used to describe the society is just. When a society's structures are ethically deficient, one proper term is unjust" [3]. Distributive justice, coined by Aristotle to describe the effort to determine which kinds of distributive structures are ethical and which are not, could also be called social justice as it applies to dentists, dental patients, and society's distributive structures [3].

Dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient's race, creed, color, sex, gender identity, or national origin [1]. Dentists should also avoid discrimination when making referrals to other dental professionals and in their hiring practices. According to Ozar, Sokol, and Patthoff, the primary considerations when making referrals are the specialists' technical expertise, communication skills, manner, and philosophy of dental practice [3].

A dentist may, in the course of his or her career, be called upon to provide expert testimony in the disposition of a judicial or administrative action. When a dentist has a poor result or outcome with his or her own patient, this may be difficult. When a patient presents for treatment with a poor result from another dentist, it is even more difficult. Dentists must have the ability to work with colleagues to achieve results that improve or maintain the patient's oral and general health. When a second opinion is sought, the patient's second dentist must take care to provide criticism that is justifiable. Avoidance of disparaging remarks to the patient about the first dentist's work cannot be overstated. The second dentist must balance this with his or her obligation to the profession when determining "whether the bad work is symptomatic of a potentially harmful pattern on the part of the first dentist and what sort of response is then appropriate" [3].

DENTAL MALPRACTICE

Although this course addresses dental ethics and not dental law, dental professionals should be aware of what constitutes dental malpractice. In general, dental malpractice has occurred when a dental provider, through improper treatment and/or diagnosis, causes significant injury, loss, or death to the patient. When malpractice issues arise, the consumer may report his or her complaint to a dental society, attorney, or licensing board. Although licensing boards strive to maintain high standards in the dental profession, it is not possible to conduct regular reviews of each licensed professional. Therefore, most boards rely on written complaints received from the consumer. Upon receipt of a complaint, licensing boards are usually required to open an investigation, the scope of which depends on the allegations [5].

HEALTH INSURANCE

Legal cases in dental care do not always involve malpractice that results in the injury and/or death of a patient. There have been several cases of dental Medicare/Medicaid fraud in the news. Although most insurance errors are the result of simple mistakes, cases of deliberate fraud ultimately undermine the dental profession and cost consumers millions of dollars in higher healthcare costs and health insurance premiums.

There are several federal and state laws to deter and punish those who defraud (or seek to defraud) Medicare and Medicaid, including the False Claims Act, the Anti-Kickback Statute, and the Criminal Health Care Fraud Statute [11]. Those who commit healthcare fraud are subject to a penalty of 10 years imprisonment and a substantial fine. If serious bodily injury has occurred, the violator may be sentenced to 20 years, and if death has occurred, the sentence may be life imprisonment [11].

In 2010, a New York Attorney General indicted four individuals and three corporations on charges of stealing upwards of $5.7 million from the Medicaid system out of dental clinics in Brooklyn, Queens, and the Bronx [20]. The defendants owned the clinics (but were not dentists themselves, and therefore are prohibited from owning a dental clinic) and employed many dentists who were instructed to encourage patients, often homeless and lured by recruiters with McDonald's gift cards, CD players, and cash, to agree to high-value and quick-turnaround procedures (e.g., complete tooth extraction and denture fitting in the same office visit). The employed dentists were required to pay two-thirds of the Medicaid billings to the three corporations involved in the suit.

In 2013, a dentist practicing in Connecticut (who was previously barred from practicing in every other state in New England) was sentenced to eight years in prison and ordered to pay $10 million in fines and restitution for operating a number of assembly line-style clinics that performed unnecessary dental procedures targeting poor patients and collecting more than $20 million in fraudulent claims from Medicaid [7]. The clinics hired recruiters to canvas neighborhoods and paid bonuses to those who brought in patients. In some cases, transportation was arranged for patients to the clinics, which were located in low-income neighborhoods. Most of the unnecessary procedures involved drilling into perfectly healthy teeth but included other questionable treatments. The plaintiff had relocated to Connecticut following the announcement of a program to increase Medicaid payments in an effort to induce more dentists to treat low-income patients. The dentist hid his involvement in the Connecticut clinics by using false names and false corporations and by falsifying documents.

In 2019, a dentist based in Los Angeles, California, was sentenced to 40 months in prison for his role in a $3.8 million healthcare fraud scheme in which he billed numerous dental insurance carriers for crowns and fillings that were never provided to patients [10].

In the past decade, there has also been a focus on dental professionals who inappropriately prescribe and/or bill insurance carriers for unnecessary medications—particularly opioid analgesics [6]. In 2017, a dentist in Pennsylvania was charged with hundreds of counts of charges of distribution of hydrocodone and oxycodone (Schedule II and III controlled substances) outside the usual course of professional practice; using or maintaining a drug-involved premises; healthcare fraud; and omitting material information from required reports, records, and other documents [6].

CONCLUSION

When there are repeated failures by individuals to adhere to ethical standards in any profession, a code of ethics must be called upon to guide the responsible behavior of its members. It would be well beyond the scope of this continuing education activity to address all possible ethical dilemmas that could potentially present themselves to a dental professional, let alone provide all the definitive answers or solutions. It is, however, possible to provoke thought and provide a framework for reflection.

The American College of Dentists (ACD) has developed the ACD Test for Ethical Decisions, following the ACD acronym [12].

Assess
Is it true?
Is it accurate?
Is it fair?
Is it quality?
Is it legal?

Communicate
Have you listened?
Have you informed the patient?
Have you explained outcomes?
Have you presented alternatives?

Decide
Is now the best time?
Is it within your ability?
Is it in the best interest of the patient?
Is it what you would want for yourself?

This is a simplified but excellent reminder to assist dental professionals in making ethical practice decisions and to understand the role that ethics play in the legitimacy of the profession.

Works Cited

1. American Dental Association, Council on Ethics, Bylaws and Judicial Affairs. Principles of Ethics and Code of Professional Conduct. Available at https://www.ada.org/about/principles/code-of-ethics. Last accessed December 1, 2023.
2. American Dental Association. Glossary of Dental Administrative Terms. Available at https://www.ada.org/en/publications/cdt/glossary-of-dental-administrative-terms. Last accessed December 1, 2023.
3. Ozar DT, Sokol DJ, Patthoff DE. *Dental Ethics at Chairside: Professional Obligations and Practical Applications*. 3rd ed. Washington, DC: Georgetown University Press; 2018.
4. U.S. Department of Health and Human Services. Health Information Privacy. Available at https://www.hhs.gov/hipaa/index.html. Last accessed December 1, 2023.
5. Dental Board of California. Consumer Complaint Frequently Asked Questions. Available at https://www.dbc.ca.gov/consumers/consumer_faqs.shtml. Last accessed December 1, 2023.
6. U.S. Attorney's Office, Western District of Pennsylvania. Dentist Charged with Unlawful Distribution of Controlled Substances, Health Care Fraud, and Omitting Information on DEA Form. Available at https://www.justice.gov/usao-wdpa/pr/dentist-charged-unlawful-distribution-controlled-substances-health-care-fraud-and. Last accessed December 1, 2023.
7. The Hartford Courant. Dentist In Massive Medicaid Fraud Case Sentenced To 8 Years. Available at https://www.courant.com/2013/10/09/dentist-in-massive-medicaid-fraud-case-sentenced-to-8-years-2. Last accessed December 1, 2023.
8. American Dental Hygienists' Association. Bylaws and Code of Ethics. Available at https://www.adha.org/wp-content/uploads/2023/01/ADHA_Bylaws_Code_of_Ethics_FY22.pdf. Last accessed December 1, 2023.
9. The First Amendment Encyclopedia. Borgner v. Florida Board of Dentistry (2002). Available at https://www.mtsu.edu/first-amendment/article/196/borgner-v-florida-board-of-dentistry. Last accessed December 1, 2023.
10. U.S. Department of Justice. Los Angeles Dentist Sentenced to 40 Months in Prison for Role in $3.8 Million Health Care Fraud Scheme. Available at https://www.justice.gov/opa/pr/los-angeles-dentist-sentenced-40-months-prison-role-38-million-health-care-fraud-scheme. Last accessed December 1, 2023.
11. Centers for Medicare and Medicaid Services. Medicare Fraud and Abuse: Prevent, Detect, Report. Available at https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Fraud-Abuse-MLN4649244.pdf. Last accessed December 1, 2023.
12. American College of Dentists. Ethics Handbook for Dentists. Available at https://www.dentalethics.org/wp-content/uploads/2023/01/ethics_handbook_for_dentists_2016.pdf. Last accessed December 1, 2023.
13. Academy of General Dentistry. Lifelong Learning and Service Recognition Guidelines. Available at https://www.agd.org/education/awards-recognition/agd-llsr. Last accessed December 1, 2023.
14. Corey G, Corey MS, Corey C. *Issues and Ethics in the Helping Professions*. 11th ed. Pacific Grove, CA: Cengage Learning; 2023.
15. Gladding ST. *Counseling: A Comprehensive Profession*. 8th ed. Upper Saddle River, NJ: Pearson; 2017.
16. Harper MG. Ethical multiculturalism: an evolutionary concept analysis. *ANS Adv Nurs Sci*. 2006;29(2):110-124.
17. Macklin R. Ethical relativism in a multicultural society. *Kennedy Inst Ethics J*. 1998;8(1):1-22.
18. Catalano JT. Critical care nurses and ethical dilemmas. *Crit Care Nurse*. 1991;112(1):20-25.
19. Congress EP. *Social Work Values and Ethics: Identifying and Resolving Professional Dilemmas*. Chicago, IL: Nelson-Hall; 1999.
20. State of New York Office of the Attorney General. Attorney General Cuomo Announces Arrests in Multi-Million Dollar Medicaid Fraud Scheme Run Out of Three New York City Dental Clinics. Available at https://ag.ny.gov/press-release/2010/attorney-general-cuomo-announces-arrests-multi-million-dollar-medicaid-fraud. Last accessed December 1, 2023.
21. Britannica ProCon.org. States with Legal Medical Aid in Dying (MAID). Available at https://euthanasia.procon.org/states-with-legal-physician-assisted-suicide. Last accessed December 1, 2023.