Important Notice

This is one of a series of ethical dilemmas published in the Texas Dental Journal between 1993 and 2005. The lead author of these dilemmas, Dr. Thomas K. Hasegawa, died tragically in 2005. The dilemmas remain an important legacy for dentistry.

Format

Each ethical dilemma was originally introduced in one issue of the Texas Dental Journal with the question, “What would you do?” The more expansive analysis of the dilemma was presented in a subsequent issue. The second page of this file depicts the cover of the issue containing the analysis of the dilemma, not the issue containing the briefer introduction to the dilemma. The ethical dilemmas were compiled for digital use by the American College of Dentists in 2008.

Purpose

This ethical dilemma and the other dilemmas in the series are only meant to further your knowledge and understanding of dental ethics by presenting, discussing, and analyzing hypothetical ethical dilemmas that may occur in dental settings. The dilemmas are not intended to: a) provide legal advice; b) provide advice or assistance in the diagnosis or treatment of dental diseases or conditions; or c) provide advice or assistance in the management of dental patients, practices, or personnel.

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Support

For more information about this series of digital ethical dilemmas, contact:

American College of Dentists
839J Quince Orchard Boulevard
Gaithersburg, MD 20878-1614

301-977-3223
fax 301-977-3330
office@acd.org

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TEXAS DENTAL Journal

Dentists Speak Out on Managed Care
Ethical Dilemma

questions: 1) what should we do?; 2) why should we do it?; (2) and, 3) what should we be? (3) While we may feel a certain way about Mr. Norman’s case, we must rely on reason and justification to further our discernment of moral problems. We must use reason and justification in deciding what treatment to recommend, just as we must use reason and justification to conclude if a patient is competent to consent, how much information we need to convey, whether the patient can understand the information, if others need to be involved in treatment decisions, and whether consent needs to be in writing.

The “legal” obligations we have as health professionals attorney William O. Morris has described:
“A dental practitioner owes to the patient the duty to bring to the patient the skill and training of a dentist, and in addition, to exercise that skill and training required by the laws of the jurisdiction in which the dentist practices the dental profession.” (4)
Dental malpractice has been defined as “a professional’s improper or immoral conduct in the performance of duties, done either intentionally or through carelessness or ignorance.” (5) Morris continues: “For a plaintiff to recover damages in dental malpractice litigation, the plaintiff must prove by competent evidence the legal duties owed by the dentist to the patient and that the dentist in fact breached the legal duty which resulted in damages to the plaintiff. (6) Legal liability is based on legal fault, not bad results or patient dissatisfaction. The burden of proof rests with the plaintiff, not with the defendant.” (4) Mr. Norman’s claim does not implicate the “skill” of the dentist, but rather the unanticipated

What Would You Do?
Ethical Dilemma #20

Mr. Giles Pender is a new patient in your general dental practice who is the husband of Carole, a good friend of yours whom you met in a service organization five years ago.

Giles is 35 years old and is in excellent general health, has stable vital signs, and had dental needs that included periodontal therapy for his chronic, Type III-moderate periodontitis and the replacement of four defective amalgam restorations. Your treatment plan included the initial therapy of home care and thorough root planing and scaling, followed by a reevaluation for further therapy. The replacement of the defective amalgams was not required in the initial phase of treatment.

The office personnel have been complaining about Giles since his first appointment. He is extremely gregarious and is always telling stories, but the receptionist complains that his stories are “dirty jokes,” and “sexually suggestive,” and he is always trying to hug or touch her.” The dental hygienist has also complained about his jokes and his sexual remarks and it bothers her that she has to treat him since that puts her in his “touching distance.” She said: “I warned him that his remarks were inappropriate and that he should stop them immediately, but it only helped for awhile. He even told people in the office that we were lovers.” Although you haven’t directly observed this behavior, all of the office team, including your dental technician, have noted his overtly sexual remarks. Giles has three more appointments with the dental hygienist which she is dreading.

You are now faced with an ethical dilemma. Check the course(s) of action that you would follow and mail or fax this page, or a note indicating your recommendation, as instructed below.

1. Don’t be overly concerned about this situation.
2. At the next appointment, make sure you are near the operatory to listen to Giles and decide if he is sexually harassing the dental hygienist.
3. Refer him to a periodontist for further treatment.
4. Call Giles and describe your concerns to him before the next appointment, and if he doesn’t deny these allegations, dismiss him immediately.
5. Call Giles and describe your concerns to him before the next appointment, and if he denies these allegations, dismiss him anyway.
6. Call Carole and explain your concern about his behavior based on the common concerns of your dental team, and that you are dismissing Giles from your practice.
7. Other alternative (please explain)

SEND YOUR RESPONSE BY MAY 9, 1995 ATTENTION:
Dr. Thomas K. Hasegawa, Jr., Department of General Dentistry, Baylor College of Dentistry
P.O. Box 660677, Dallas, TX 75266-0677 or FAX to (214) 828-8952.

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The patient who sexually harasses the dental staff
Response to Ethical Dilemma #20

Mr. Giles Pender is a new patient in your general dental practice who is the husband of Carole, a good friend of yours whom you met in a service organization five years ago.

Giles is 35 years old and is in excellent general health, has stable vital signs, and had dental needs that included periodontal therapy for his chronic, Type III — moderate periodontitis and the replacement of four defective amalgam restorations. Your treatment plan included the initial therapy of home care and thorough root planing and scaling, followed by a reevaluation for further therapy. The replacement of the defective amalgams was not required in the initial phase of treatment.

The office personnel have been complaining about Giles since his first appointment. He is extremely gregarious and is always telling stories, but the receptionist complains that his stories are “dirty jokes,” “sexually suggestive,” and he is always trying to hug or touch her. The dental hygienist has also complained about his jokes and his sexual remarks and it bothers her that she has to treat him, since that puts her in his “touching distance.” She said, “I warned him that his remarks were inappropriate and that he should stop them immediately, but it only helped for a while. He even told people in the office that we were lovers.” Although you haven’t directly observed this behavior, all of the office team, including your dental technician, have noted his overtly sexual remarks. Giles has three more appointments with the dental hygienist which she is dreading.

Dentists who responded to the case chose one option listed: call Giles and describe your concerns to him before the next appointment, and if he doesn’t deny these allegations, dismiss him immediately. None of the dentists chose the options: 1) don’t be overly concerned about this situation; 2) at the next appointment, make sure you are near the operatory to listen to Giles and decide if he is sexually harassing the dental hygienist; 3) refer him to a periodontist for further treatment; 4) call Giles and describe your concerns to him before the next appointment, and if he denies these allegations, dismiss him anyway; or 5) call Carole and explain your concerns about his behavior based on the common concerns of your dental team, and that you are dismissing him from your practice. Dentists offered several alteratives to the options listed.

What obligation does the dentist have when a patient makes repeated inappropriate and sexually suggestive comments, or tries to hug or touch an employee? The variety of comments by dentists to this case was helpful in revealing the complexity of sexual harassment. Addressing the subtleties of the topic requires more space than available in this response. We will address four aspects of sexual harassment including: 1) current definitions; 2) occurrences in practice and during training; 3) trust within the dental practice; and 4) preventive ethics and sexual harassment.

Defining Sexual Harassment

The potential for sexual harassment in the dental office is high as dentists and dental hygienists provide care in close physical proximity to patients. The practitioner and patient are usually face-to-face and treatment often requires multiple appointments. When does behavior by patients like Giles Pender become sexual harassment?

The Equal Employment Opportunity Commission’s (EEOC) “Guidelines on Discrimination Because of Sex,” defines sexual harassment as follows:

“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment” (1).

The term, “unwelcome” and the
phrase “hostile working environment” relate directly to the case. A clearer explanation of the term “unwelcome” targets behavior that is “one-sided, unsolicited, unwelcome, repetitive, and clearly not under the control of the victim (2).” Apparently, Giles’s behavior is unwelcome by both the dental hygienist and the receptionist. The dental hygienist has already warned Giles that his remarks were inappropriate, but his behavior persists. His behavior, mostly verbal, may be contributing to a hostile work environment for the staff. According to a Supreme Court decision in 1993, offensive language alone may constitute sexual harassment. Justice Sandra Day O’Connor wrote the opinion stating that Title VII of the Civil Rights Act of 1964 prohibiting sexual harassment “comes into play before the harassing conduct leads to a nervous breakdown (3).” (93 Daily Journal DAR 14212, 14213).

While most of the EEOC Guidelines address employers and employees within a business, employers “may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action (1).” For example, non-employees could be customers who sexually harass a server at a restaurant, or patients who harass nurses or dental hygienists.

The federal EEOC Guidelines apply to businesses where there are at least 15 employees, which is higher than the typical dental practice. The published codes of ethics of the American Dental Association, Texas Dental Association, and the American Dental Hygienists’ Association do not address sexual harassment in dental or dental hygiene practice.

Occurrences in Practice and Training

Dentists and dental hygienists often report verbal and physical sexual harassment by patients during training and in practice. In a survey of Oregon dentists and dental hygienists, for example, 44 percent of the dental hygienists who responded experienced verbal harassment at approximately one incident per year over five years, while 23 percent reported physical harassment at a rate of three incidences over five years. Dental hygiene respondents to the survey reported twice as many total incidences as the dentists (4).

A survey of female dentists affiliated with the TDA and female junior and senior dental students at the three Texas dental schools addressed sexual harassment experiences, the reason for tolerating the behavior, and the manner in which the offensive behavior was handled. The dentists who responded reported that 46 percent are “sometimes” sexually harassed by a patient and one percent “often” harassed (5). The dental students that responded reported that 48 percent are “sometimes” harassed by a patient and nine percent “often” harassed. The study identified seven types of harassment. The “persistent request for social interaction outside the health care environment” was the most frequent harassment reported by female dentists (47 percent) and dental students (67 percent). Being coerced to listen to sexual remarks or jokes was second highest reported by the dentists (41 percent) and dental students (57 percent). Being touched without consent was the third highest reported by dentists (37 percent) and dental students (30 percent).

What are the ethical obligations concerning protecting the dentist’s staff from sexual harassment?

Trust in the Dental Office

Trust between the dentist and patient is a mutual expectation in the doctor-patient relationship (6). Patients also place their trust in dental assistants and dental hygienists, and dentists promote this trust as part of the obligation to benefit the patient (7,8). What role does trust play within the dental office?

One female dentist with over 15 years of general practice experience explained, “This has happened a couple of times to me already. I believe my office staff 100%. Never doubt them about this, or you will lose their loyalty.” Two values that promote loyalty and trust within the dental office are justice and mutual respect for autonomy (7).

The ethical principle of justice has been closely linked to the concept of desert or “giving to each his right or due (9).” For example, a dentist acts justly when providing fair employment compensation to the office staff (7). A dentist also acts justly by confronting Giles regarding his inappropriate behavior, if the incident is verifiable and carefully documented. As one dentist said, “I must provide a safe environment for my employees to work,” and this safety extends beyond hazardous working conditions to include patients who sexually harass. Mutual respect for autonomy between the dentist and dental hygienist acknowledges that each person brings expertise for the benefit for the patient. The philosopher David Ozar has characterized this relationship as a general commitment to collaboration for the greater benefit of the patient (10).

There was no consensus on how the dentist should manage the case. None of the dentists chose to simply ignore the situation or to contact the patient’s wife explaining his dismissal from the practice. A male dentist said that he would complete the three-root planing and scaling appointments for Giles along with the replacement of the amalgams. He explained, “This would allow me to observe any inappropriate behaviors and finish his dentistry at the same time while avoiding embarrassing and awkward confrontations with the hygienist.” This may temporarily solve the problem for the dental hygienist, but it does not help the receptionist.
Ethical Dilemma

The dentist can observe the patient, but Giles may be cautious and avoid this behavior unless in the presence of the hygienist or receptionist alone. As one dentist noted, “some sexual harassers are sneaky — they don’t act up if you are present.”

To provide the safe environment for her employees, one dentist noted that she would give Giles two choices: 1) see another dentist immediately, [following proper legal guidelines to avoid patient abandonment]; or 2) clean up his act — verbal and physical. At this point, if he became agitated or abusive, the dentist would escort him politely to the door. She would take a loss on any monies owed to the office, and would write a dismissal letter following proper legal guidelines.

Preventive Ethics

Preventive ethics promotes the view that rather than reacting to ethical problems in practice, the preventive approach is, “less expensive, more effective, and less traumatic emotionally than litigation, bureaucratic regulation, or misunderstandings between physicians, patients, and families (11).”

Prevention is promoted in the EEOC Guidelines as the best tool for the elimination of sexual harassment. Each employer should take all steps necessary, including, “affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned (1).” The author Gerald Nelson promotes prevention in the orthodontic practice by recommending a written office policy. The written policy lists prohibited behavior and defines harassment of non-employees, monitoring strategies, and disciplinary procedures. It also describes a complaint procedure that includes the designation and training of a sexual harassment counselor for the office.

(12). For students in dental and dental hygiene programs, the author Gary Chioldo offers a 3-step intervention model for the curriculum. The model provides an opportunity for students to view and discuss various scenarios in a seminar format during their training. The author reports, because of the seminars, “Those providers who are prepared for the possibility of patient advances seem better able to arrest the problem while maintaining a useful provider-patient relationship. Unprepared providers are more likely to react in a manner that will perpetuate the problem or to overreact in an attempt to punish the patient (4).”

Conclusion

Dentists may use reasonable discretion in selecting patients for their practices (8). Patients who sexually harass employees verbally or physically undermine the trust within the practice. Preventing sexual harassment is a worthy goal in dental practice. If sexual harassment occurs, the dentist is obligated to verify carefully and routinely document each incident and is justified in discontinuing patient care (following proper legal guidelines).

References


EDITOR'S COMMENT: Questions regarding sexual harassment may be addressed to Mr. Bob Robinson, LCDC, CAS, NCACII, Director, Texas Dental Peer Assistance Program (512) 451-9040. Responses to the ethical dilemmas are views of the contributors and consultants and not Baylor College of Dentistry, the National Center for Policy Analysis or the Texas Dental Association. Address your comments to Dr. Thomas K. Hasegawa, Jr., Department of General Dentistry, Baylor College of Dentistry, P.O. Box 660677, Dallas, TX 75266-0677, or FAX to (214) 828-8952.