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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EDITOR'S COMMENT: 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. Dr. Tidwell is an Assistant Professor in the Department of Restorative Sciences and course and clinical director for undergraduate endodontics at Baylor. 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.

What Would You Do?

Mr. John Kim is a new patient in Dr. Martin's practice. Ann, John's sister, is also a patient of Dr. Martin and made the recommendation to her brother. Dr. Martin's general practice has been at the same location for ten years. John works for a large electronics firm and lives less than fifteen minutes from the practice. As a sales agent, he travels about fifteen days a month. At the age of 32, he has made excellent progress in his company and, other than the "pressure cooker" environment of sales, he enjoys his current career.

John's medical history reveals a five-year history of borderline hypertension monitored episodically by his physician. Other than the blood pressure concern, his general health is good. His oral health, however, reveals the ravages of neglect, with most of the posterior teeth requiring buildups and crowns. He disliked his dentist as a child and is fearful of dentists in general. He saw the dentist for emergency care. Both mandibular first molars were extracted ten years ago and he now requests implants to replace these teeth. After thorough evaluation, gathering of diagnostic information and careful planning, Dr. Martin asked John to meet with him to review his recommendations. Three-unit fixed partial dentures are a reasonable alternative to implants as all of the abutment teeth require crowns. Also, the bone loss in the area makes the placement of the implants more complicated. Dr. Martin would like John to know about these concerns and recommendations.

As Dr. Martin begins to discuss the complexity of the case, and particularly the risks of implants, John raises his hand and says, "Hey, you're the Doc! You just tell me when to come and I will be here. I don't need to know what you are planning. Just show me where to sign the consent form. I trust you, and I'll pay what my dental insurance doesn't... just do it! I really hate to hear all the gory details, and I don't understand them anyway."

Dr. Martin is facing an ethical dilemma. Check the course(s) of action that you would recommend for Dr. Martin and mail or FAX this page, or a note suggesting your recommendation, as instructed below:

1. ___ have John sign the consent form and proceed with the plan including the implants;
2. ___ Dr. Martin should insist that John listen to the treatment alternatives and risks before any treatment is started;
3. ___ Dr. Martin should initiate minor care, but not proceed with complex care, including fixed partial dentures or implants, without further consultation with John;
4. ___ Dr. Martin should dismiss this non-compliant patient from his practice; or
5. ___ other alternative (please describe)

SEND YOUR RESPONSE BY MARCH 8, 1996, 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.
"You're the Doc, I trust you... just do it!"

Response to Ethical Dilemma #28

Mr. John Kim is a new patient in Dr. Martin’s practice. Ann, John’s sister, is also a patient of Dr. Martin and made the recommendation to her brother. Dr. Martin’s general practice has been at the same location for ten years. John works for a large electronics firm and lives less than fifteen minutes from the practice. As a sales agent, he travels about fifteen days a month. At the age of 32, he has made excellent progress in his company and, other than the “pressure cooker” environment of sales, he enjoys his current career.

John’s medical history reveals a five-year history of borderline hypertension monitored episodically by his physician. Other than the blood pressure concern, his general health is good. His oral health, however, reveals the ravages of neglect, with most of the posterior teeth requiring buildups and crowns. He disliked his dentist as a child and is fearful of dentists in general. He saw the dentist for emergency care. Both mandibular first molars were extracted ten years ago and he now requests implants to replace these teeth. After thorough evaluation, gathering of diagnostic information and careful planning, Dr. Martin asked John to meet with him to review his recommendations. Three-unit fixed partial dentures are a reasonable alternative to implants, as all of the abutment teeth require crowns. Also, the bone loss in the area makes the placement of the implants more complicated. Dr. Martin would like John to know about these concerns and recommendations.

As Dr. Martin begins to discuss the complexity of the case, and particularly the risks of implants, John raises his hand and says: “Hey, you’re the Doc! You just tell me when to come and I will be here. I don’t need to know what you are planning. Just show me where to sign the consent form. I trust you, and I’ll pay what my dental insurance doesn’t...just do it! I really hate to hear all the gory details, and I don’t understand them anyway.”

Four options were offered in this case including: 1) have John sign the consent form and proceed with the plan including the implants; 2) Dr. Martin should insist that John listen to the treatment alternatives and risks before any treatment is started; 3) Dr. Martin should initiate minor care, but not proceed with complex care, including fixed partial dentures or implants, without further consultation with John; and 4) Dr. Martin should dismiss this noncompliant patient from his practice.

What should the dentist do when a patient waives his or her right to informed consent? Should the dentist choose what is in that patient’s best interest? Should the dentist force the patient to hear the consent information? Is it legal or ethical to proceed when the patient waives his or her right to consent? We will examine three ethical issues surrounding the waiver of consent including: 1) the patient waiver and (un)informed consent; 2) mutual trust; and 3) overriding the waiver.

Waiver and (Un)informed Consent

John waived his right to consent when he interrupted Dr. Martin and deferred to the doctor’s expertise. In some ways, this sounds like an ideal practice scenario and, as one dentist remarked:

"Dentists would take a whole practice of these dilemmas! What better arrangement than the patient who trusts the dentist and agrees to pay whatever is needed to restore his teeth...a handshake deal!"

The courts have recognized that there may be valid justification for overriding the legal doctrine of informed consent. Those cases include a patient waiver, emergency treatment, a public health emergency, incompetent patient, and therapeutic privilege (1).

The patient waiver is unique because it is a voluntary act of a competent patient not to receive information or to participate in decision-making. The Supreme Court has defined a waiver as a voluntary and intentional relinquishment of a known right (2). Compare this to situations where consent may be difficult to obtain, as in emergency situations or when the patient is incompetent. Therapeutic privilege is also dissimilar because it is the doctor who makes assumptions about the patient’s competence and deliberately chooses to withhold information to protect the patient’s best interest. Therapeutic privilege disallows the patient’s participation in decision-making and is often viewed as unjustified paternalism.

Informed consent then is not an absolute standard. Even the ADA Code states, “The dentist should inform the patient of the proposed treatment, and any reasonable alternatives, in a matter that allows the patient to become involved in treatment decisions.” (italics added) (3) John has waived his right to consent in two ways. First, he waived his right to information when he interrupted Dr. Martin and said, “I really hate the gory details, and I don’t understand them anyway.” He also waived his right to decision-making and delegated this right to Dr. Martin, when he said, “You’re the Doc! I trust you...just do it!” So John had both requested to be uninformed and chose to delegate this decision-making authority to the doctor, thereby freeing the doctor from the disclosure duty (1). Waivers are not a rare occurrence, as one oral surgeon observed: “This is a common scenario..."
in the oral surgery office. Often patients do not want to hear the risks, benefits and complications of treatment."

In essence, the patient is willing to trust the dentist’s professional judgment. But how important is the trust between the dentist and patient?

Mutual Trust

John interrupted Dr. Martin to tell him that “I trust you—Just show me where to sign the consent form” and waived his right to information and decision-making. What is the basis for his trust in Dr. Martin? Should Dr. Martin proceed with treatment, and if so, what treatment? Should John agree to treatment without knowing that there are differences in the risks involved in each treatment and those specific to his situation?

The physician Jay Katz is critical of the Hippocratic tradition’s history of silence regarding the doctor-patient relationship (4). The “good” patient follows the doctor’s orders without question because the doctor acts as a father taking care of his children. This model of trust mirrors the relationship at the first stage of the parent-child interaction. John, by waiving consent, is in essence doing what every “good” patient should do—trust the doctor to make decisions. Katz identified three tensions that contribute to this parent-child model of trust. First is the tension that arises from the question of whether the authority should reside with the doctor, or should the doctor and patient share authority? The second tension arises from the question of whether decision-making should be by two autonomous adults, or deferred to the doctor because the patient who is ill is like a child and cannot make competent decisions? The third tension asks how doctors or patients can make informed decisions when there is so much uncertainty in medical practice because of the “vast ignorance about the etiology and treatment of diseases (4).” Katz’s premise is that the proper model of trust in the physician-patient relationship is based on the physician assisting patients to make their own decisions—“decisions that in the light of their medical needs and personal history they deem to be in their best interests (4).”

Dr. Martin has not provided any care except the initial examination for John. So why would John “trust” his dentist? Dr. Martin may have expected that trust from Ann, John’s sister and source of his referral. Perhaps John has read the public opinion polls that rate dentistry consistently as a highly trusted profession. In a 1994 Gallup Poll, dentists received high marks for honesty and ethical standards and were ranked third as a profession, ahead of physicians and lawyers (5). However, it is unclear if John’s decision is based on trust, fear of dental procedures, economics, or just convenience.

Overriding the Waiver

When the patient chooses not to become involved in treatment decisions, has the dentist fulfilled all ethical and legal obligations?

The dentists who responded to the case chose to override the waiver. One dentist said that he would “give the patient a written outline of the needs, approximate cost, amount of time and an agreed payment program.” An oral surgeon wrote that if the patient refused to hear the items discussed, “treatment should not be provided.” He said, “Most patients will listen when you explain that the discussion is in their best interest (and that you will not treat them unless they review the options and risks).”

The literature is clear that while the courts recognize the existence of the waiver, there are important problems of definition and application (2). Katz believes that a patient’s waiver of the physician’s obligation to disclose and obtain the patient’s consent “should be accepted only after a committed effort has been made to explore the underlying reasons for the patient’s abdication of decision-making responsibility (4).”

There are clear differences in the risks and benefits between implants and the three-unit fixed partial denture generically, and the level of risk for implants for John specifically. While it may be legally an option to honor a patient’s waiver, Dr. Martin would be ethically remiss by not discussing the differences of these risks with John.

Conclusion

While John Kim has waived his right to informed consent, Dr. Martin must still decide how to proceed. Patients who choose to waive their right to informed consent do not release the dentist from his or her ethical obligation to discuss the patient’s right to information and to participate in the decision-making process. When the patient says, “You’re the Doc…just do it!”, the dentist is ethically justified in overriding the waiver because of the differences in the level of risks involved in each procedure, and those due to specific patient variation. *

References


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