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:

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What Would You Do?

Ethical Dilemma #35

It's Friday and the end of a particularly satisfying week at the office. Patients were on time and all treatment was completed as planned. This was not the case last week, and Dr. Mark is still wondering how to handle Ms. Janice Frank's case.

Dr. Mark, in general practice now for 4 years, has acquired a reputation for providing exceptional porcelain esthetics. One reason for this success is the convenience of having a talented ceramist employed in the same office complex. Janice learned about Dr. Mark's reputation from friends who raved about his beautiful work and convinced her to have her "gaps" filled with porcelain bridgework.

Janice explained to Dr. Mark during her examination that she was aware of the need for bridgework but was unable financially, until now, to make this commitment. With no dental insurance, she has had to save over several years. With her children in college, she had decided to take care of these "gaps."

Dr. Mark noted that at 42 years old, she is in excellent general health and that she had yearly physicals and dental examinations. With her children in college, she has decided to take care of these "gaps" prior to moving to the Metroplex 2 years ago. Her periodontal health is excellent and has an ideal Class I occlusion. All first molars and her mandibular left second bicuspids were extracted due to caries over 15 years ago. Dr. Mark finished the build-ups in two appointments and was ready to start the 18x21 porcelain, fixed partial denture last week. The office made arrangements to have her pay one-half of the total cost at the preparation appointment, but she "forgot" her checkbook. Dr. Mark decided to proceed, completed the preparations, impressions, records and cemented a provisional restoration. Janice called the next day and explained to the accounts manager that she may lose her job, but will not know for "months" and she will not be able to make payments or financial arrangements until her job situation is settled. She was honest with the manager and told her that she may not be able to pay at all if she loses her job.

Dr. Mark is now faced with an ethical dilemma. Check the following course(s) of action he should take in this case and mail, fax this page, E-mail your recommendation, or send a noted as instructed below:

____ dismiss Janice from the practice and inform her that she is wearing a provisional restoration;

____ complete the fixed partial denture and write it off;

____ complete the fixed partial denture and send the account to a collection agency; or

____ other alternative (please describe):

SEND YOUR RESPONSE BY February 1, 2001 ATTENTION: Dr. Thomas K. Hasegawa, Jr., Associate Dean for Clinical Services Baylor College of Dentistry, P.O. Box 660677 Dallas, TX 75266-0677, Fax to (214) 828 8958, or E-mail to: thasegawa@tambcd.edu.
The Patient’s Errant Checkbook

Response to Ethical Dilemma #35

It’s Friday and the end of a particularly satisfying week at the office. Patients were on time and all treatment was completed as planned. This was not the case last week, and Dr. Marks is still wondering how to handle Ms. Janice Frank’s case.

Dr. Mark, in general practice now for 4 years, has acquired a reputation for providing exceptional porcelain esthetics. One reason for this success is the convenience of having a talented ceramist employed in the same office complex. Janice learned about Dr. Mark’s reputation from friends who raved about his beautiful work and convinced her to have her “gaps” filled with porcelain bridgework.

Janice explained to Dr. Mark during her examination that she was aware of the need for bridgework but was unable financially, until now, to make this commitment. With no dental insurance, she has had to save over several years. With her children in college, she had decided to take care of these “gaps.”

Dr. Mark noted that at 42 years old, she is in excellent general health and that she had yearly physicals and dental examinations. Her periodontal health is excellent and she has an ideal Class I occlusion. All first molars and her mandibular left second bicuspid were extracted due to caries over 15 years ago.

Dr. Mark finished the build-ups in two appointments and was ready to start the 18x21 porcelain, fixed partial denture last week. The office made arrangements to have her pay one-half of the total cost at the preparation appointment, but she “forgot” her checkbook. Dr. Mark decided to proceed, completed the preparations, impressions, records and cemented a provisional restoration. Janice called the next day and explained to the accounts manager that she may lose her job, but will not know for “months” and she will not be able to make payments or financial arrangements until her job situation is settled. She was honest with the manager and told her that she may not be able to pay at all if she loses her job.

Dentists who responded to the case chose to maintain the provisional (one dentist chose to cement it permanently) and either have the patient call back when she had the fees or charge the patient the cost of the provisional and if she did not pay, turn her over for collections. One dentist in practice for 32 years said, “been there” and “beware of the overly complimentary patient” and that it is probable that she never intended to pay for the bridge in the first place. Another wrote that “we would will keep her comfortable in provisionals until her financial situation stabilizes,” including checking the restoration every 3 months. None of the dentists chose to complete the fixed partial denture and turn her over to collections or write off the charges.
What are the obligations for a doctor when treatment is interrupted? Are there justifiable reasons for discontinuing care? And what liabilities might arise when a health care professional discontinues care that has already been started? The ethical concerns in this case include: 1) obligations to treat patients; 2) obligations of patients to their doctors; 3) provisional restorations and risks; and 4) patient abandonment.

Obligations to Treat Patients

A core element of health care ethics is the notion that there are certain obligations or duties that dentists have to their patients. When Dr. Mark decided to prepare the fixed partial denture for Janice, he did so with the understanding that she would fulfill her obligation and pay for the care. Now the question is what obligation does Dr. Mark have to complete care when the patient failed to pay?

When a dentist and a patient decide to proceed with a treatment plan, there is an implied (and sometimes written) contract. Both parties make promises to the other. Dr. Mark acted reasonably and responsibly by requiring Janice to pay for half of the care, but when the time came for her to fulfill her obligation (i.e., paying half of the bill before the preparation appointment) she claimed that she "forgot" her checkbook. At that point Dr. Mark could have discontinued the appointment and waited until she was able to pay, or initiate treatment and hope that she would fulfill her half of the contract. Dr. Mark chose the latter.

When Janice called to say that she couldn't pay, either for the care she had already received or the completion of the treatment, she destroyed the contract. While Dr. Mark had a right to demand payment for the work already done, or turn to a collection agency if Janice refused, what a health care professional can do and what he or she should do are sometimes two different things.

Obligations of Patients to their Doctors

Patients interrupt treatment for a number of reasons: insufficient funds; health complications; changes in insurance companies and providers; job transfers and moving; deferral of treatment; disagreement with the treatment; cancellations and no shows are a few examples. Just because a patient acts unethically — and some will — doesn't mean that a dentist is free to act unethically because the health care professional is called to a higher standard. How a dentist should respond will often depend on the circumstances (see below). Even though the patient has defaulted on the contract, that doesn't relieve the dentist of all obligations. As health care professionals, dentists still have obligations to ensure at least the stability of the patient's health, and perhaps even more.

If Janice had called to cancel her preparation appointment because of insufficient funds or that she was just not ready to begin treatment, Dr. Mark would not have had to make any decision about continuing or discontinuing care. And if Janice had paid for one-half of the total cost as per the arrangement — which is not uncommon in dental practice particularly if the patient is paying cash — Dr. Mark would probably have the laboratory and materials fees covered and could choose to complete the case and then either turn the balance over to collections or absorb the loss. However, since Dr. Mark initiated irreversible treatment understanding that the patient made no payment before starting, he must now decide what are his obligations to stabilize Janice's oral health.

Provisional Restorations and Risks

Will Janice's health be compromised by leaving her in a provisional restoration, perhaps for an extensive period of time? What if the time extends to 6 months, or maybe a year or more? And moreover, is time the only factor or are there other conditions that may increase the risk for the patient?

Provisional restorations are intended to serve the patient for a few weeks until the final case returns from the laboratory (hence the commonly understood term, "temporary"), or months during periodontal or reconstructive care. Properly fabricated provisional restorations should provide pulp protection, periodontal health, occlusal compatibility and tooth position, prevent enamel fracture, provide esthetics, withstand occlusal function and displacement, and allow for removal for reuse (1, 2). There are a myriad of provisional materials and techniques, both direct and indirect.

While it is not explicit in the case, one could assume that Dr. Mark used a resin material as he was anticipating a routine course of treatment after the preparation appointment. Resin materials have a number of limitations due to their physical properties including: lack of inherent strength, poor marginal adaptation, color instability, poor wear properties, detectable odor emission, inadequate bond characteristics, poor tissue response to irritation, arduous cement removal, time expenditure for fabrication, and plaque adherence (3, 4). These limitations may cause concerns for recurrent caries, periodontal complications, loss of vertical dimension, and TMD complications if the provisional is not carefully fabricated and assessed. The limitations of these materials are accentuated in complicated cases like Janice's where not one tooth, but an entire posterior quadrant is in a provisional. The level of risk is relevant here. In medicine for example, a plastic surgeon is under little or no obligation to treat if a patient can't pay, but
a doctor who has a cancer patient is.

Temporary materials have been materi-
al issues in lawsuits. For example, in an unusual case there was extensive testimony regarding the manner of fitting and applying a temporary upper acrylic splint (5). The splint was used as a temporary replacement for the patient's six front teeth. All testifying dentists agreed that the splint was unstable due to a lack of support from the underlying tooth structure. The patient was in this temporary for 3 months. During this time the patient had trouble speaking because she could not keep the splint in; she was unable to chew and eat; and, “she curtailed her social and civic activities because she was not presentable with teeth falling out of her mouth and cement showing between the teeth (6).” The patient's expert testified that leaving a patient in the condition the patient was in for such an extended period of time “indicated an entire want of care or regard for the health of the patient (7).” The case was unusual because this testimony supported a finding of “gross negligence,” which supports exemplary damages, also known as “punitive” damages. Dentists who responded to the case said they would maintain the provisional, even cementing it permanently in one case. They would finish the case upon payment or charge the patient for the provisional only. If the patient will not pay for the provisional the dentist, in one response, would turn her over to collections. Is Dr. Mark abandoning Janice if he leaves her in a provisional for an extended amount of time?

Patient Abandonment

The ADA Code is clear about the matter of abandonment: “Once a dentist has undertaken a course of treatment, the dentist should not discontinue that treatment without giving the patient adequate notice and the opportunity to obtain the services of another dentist. Care should be taken that the patient's oral health is not jeopardized in the process (8).” Recently, the Texas State Board of Dental Examiners adopted a new Rule 108.5, “Termination of Relationship,” replacing 109.121, “Abandonment of Patient,” which was repealed. The new Rule was published in the February 16, 2001, Texas Register. In this new Rule the Board of Dental Examiners also makes it clear that “A dentist shall not abandon a dental patient he/she has undertaken to treat.” This new Rule has specific steps for dentists to take if they choose to terminate the doctor-patient relationship (9). Why is the matter of patient abandonment such a serious matter for dentists and all health professionals?

One of the most recognized principles in health care ethics is “above all, or first, do no harm.” This principle of nonmaleficence is stated in the ADA Code as “the dentist has a duty to refrain from harming the patient.” Simply put, while I may not be able to help my patient, I should at least refrain from harming him or her. The obligation to refer patients who have needs that exceed the dentist's skill to specialists is a prime example of nonmaleficence. However, patient abandonment is more about the breach of responsibility for continuity of care whether intentional or unintentional. Abandonment may occur through explicit withdrawal from a patient's care, or through failure to attend the patient with due diligence. For example, perhaps the receptionist unintentionally forgets to reschedule a patient for follow-up care and the patient calls in anger six months later wanting to know why her treatment has been interrupted. Or on a more egregious note, perhaps the dentist simply does not want to see the patient and intentionally asks the receptionist not to reschedule. Patient abandonment increases the patient's vulnerability and decreases her opportunity to avoid harm by seeking help from another dentist. The AMA Code in 10.01, “Fundamental Elements of the Patient-Physician Relationship,” describes patient abandonment as follows:

5. The patient has the right to continuity of health care. The physician has an obligation to cooperate in the coordination of medically indicated care with other health care providers treating the patient. The physician may not discontinue treatment of a patient as long as further treatment is medically indicated, without giving the patient reasonable assistance and sufficient opportunity to make alternative arrangements for care (10).

What if Dr. Mark decided to terminate the doctor-patient relationship and leave Janice in a provisional? He could take certain steps to address issues of abandonment including writing her a letter describing her current circumstances and the risks of wearing a resin provisional as described above with the recommendation that she seek the care of another dentist as soon as possible. Dr. Mark could emphasize that he would see her for emergency care for a reasonable amount of time (i.e., 30 days) until she found another dentist. He could send this letter by certified mail with return receipt requested to assure that she received the letter of termination.

However the question remains, if the patient cannot find another dentist to accept her as a patient for some extended period of time because of her inability to pay, could Dr. Mark still be held liable for abandonment if the requisite letter was entirely appropriate and sufficient when mailed? Is this patient abandonment? That question will need to be left to the lawyers, judge or a jury in a court of law, or to the State Board of Dental
Examiners if the patient files a complaint with the Board, or both. The patient can sue and file a complaint with the Board as she is not limited to mutually exclusive remedies.

There are ways that Dr. Mark could provide reasonable assistance to Janice and avoid termination. For example, his office could attempt to work out financial arrangements and he could see her on a regular basis to assure she is in a stable condition. He could even remove, reline and/or remake the provisional as needed. But is this enough to assure that Janice has a stable oral health?

Conclusion

Dentists and all health care providers have obligations to their patients to help and not harm them: professional obligations that are inherent in the doctor-patient relationship. Patients can choose to be unethical but society and the profession demands a higher standard from the health care provider. Situations will arise where the continuity of care for a patient may be disrupted. While it is unfortunate that Dr. Mark diverted from his standard practice and started care for Janice without payment, the concern remains that he has initiated irreversible care. It is ethically justifiable for Dr. Mark to pursue some arrangement for payment by Janice for her fixed partial denture. Also that he consider courses of action that support ethical practice, including regular, perhaps quarterly, assessments of the stability of the provisional, including removal, relining and/or replacement as needed. Dr. Mark would be ethically justified, and wise, to proceed with the fixed partial denture when he determined that maintaining the provisional is not in the best interests of Janice's oral health, regardless of her ability to pay.

References

5. __v. Storm, 682 S.W.2nd599 (Tex. App. 1 Dist. 1984)
6. __v. Storm, 682 S.W.2nd @ 603
7. __v. Storm, 682 S.W.2nd @ 603
9. The new adopted Rule states: 108.5 Termination of Relationship. A dentist shall not abandon a dental patient he/she has undertaken to treat. (1) to terminate a dentist-patient relationship, a dentist shall give a minimum of 30 days written notice of his/her intent to discontinue treatment. This notice shall be either hand-delivered to the patient or sent via certified mail, return receipt requested to the patient's last known address. A dentist shall retain a copy of the notice letter in the patient's file.

EDITOR'S COMMENT: Responses to the ethical dilemmas are views of the contributors and consultants and not Baylor College of Dentistry, the Institute for Policy Innovation, or the Texas Dental Association. This is not to be taken as legal advice. If you have legal questions, seek competent legal counsel. Address your comments to Dr. Thomas K. Hasegawa, Jr., Office of Clinical Services, Baylor College of Dentistry, P.O. Box 660677, Dallas, TX 75266-0677, Fax to 214 828 8952, or E-mail to thasegawa@tambcd.edu.