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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Dr. Margaret Benson has been in solo general practice for 20 years in a suburb nearby a metropolis. She has enjoyed years of good experiences with many of the local residents. Erma Laskins was one of her favorite patients and for the 10 years she was in the practice, Dr. Benson and the staff looked forward to her visits, her quick wit, and gregarious personality. Erma's daughter Sandra also joined the practice along with her family. Serious illnesses changed Erma's life from one of independence to a move to a local nursing home 6 years ago.

Sandra keeps Dr. Benson apprised of her mother's health changes during her recall visits. The head nurse at the nursing home informed Sandra 3 years ago that her 85-year-old mother has senile dementia and while she has experienced a few fair days this last year, overall she is deteriorating and occasionally combative. Sandra graciously asks if Dr. Benson would please stop by and see if her mother has a dental problem as she seems to hold her jaw during her visits.

Dr. Benson decides to visit Erma and finds her in bed, holding her right jaw while moaning softly. She does not recognize Dr. Benson. Erma is very cooperative and when asked to, quickly opens her mouth. Even in the poor room lighting Dr. Benson observes food packed in the fractured distal of #28 along with gingival and occlusal caries on #29 and #30. She has had no apparent preventive care as she has generalized acute gingivitis. Dr. Benson is concerned that she may have a possible acute or chronic apical periodontitis and leaves the room to talk to the head nurse.

Dr. Benson finds Sandra at the nurse's station and informs her that her mother needs a dental examination soon as she has several cavities and is holding her jaw as if she is in pain. The head nurse tells both of them that Erma has been holding her jaw now, off and on, for 2 months and, "there has been no swelling and the staff is monitoring her daily." The nurse tells Sandra in the presence of Dr. Benson, "We will continue to monitor Erma and call you if there is swelling." Sandra agrees and says, "We don't want any unnecessary treatment for Mom at this time — with her dementia she can't even feel pain."

Dr. Benson is now faced with an ethical dilemma. Check the following course(s) of action she should take in this case and mail, fax this page, email, or send a note indicating your recommendations. What would you do if you were Dr. Benson? Some options (check on or write your own) include:

1. Dr. Benson should stay out of this discussion — she is not Erma's dentist now;
2. Dr. Benson should again instruct Sandra and the nurse about the potential complications from the decay and oral infection including pain and the need for a dental examination;
3. Dr. Benson was Erma's dentist for 10 years and should provide the care if possible;
4. Dr. Benson should contact the nursing home administrator and inform her of Erma's possible pain and infection that may have persisted for 2 months;
5. Dr. Benson should encourage Sandra to contact a dentist that has the equipment to treat patients in a nursing home;
6. Other alternative (please describe):

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Texas Dental Journal ★ April 2004 ★ 332
Ethical Dilemma #48
“Who Cares for the Incompetent Patient”

Dr. Margaret Benson has been in solo general practice for 20 years in a suburb nearby a metropole. She has enjoyed years of good experiences with many of the local residents. Erma Laskins was one of her favorite patients and for the 10 years she was in the practice, Dr. Benson and the staff have looked forward to her visits, her quick wit and gregarious personality. Erma’s daughter Sandra also joined the practice along with her family. Serious illnesses changed Erma’s life from one of independence to a move to a local nursing home 6 years ago.

Sandra keeps Dr. Benson apprised of her mother’s health changes during her recall visits. The head nurse at the nursing home informed Sandra 3 years ago that her 85-year-old mother had senile dementia and while she had experienced a few fair days this last year, overall she was deteriorating and occasionally combative. Sandra graciously asks if Dr. Benson would please stop by and see if her mother has a dental problem since she seems to hold her jaw during her visits.

Dr. Benson decides to visit Erma and finds her in bed, holding her right jaw while moaning softly. She does not recognize Dr. Benson. Erma is very cooperative and when asked to, quickly opens her mouth. Even in the poor room lighting Dr. Benson observes food packed in the fractured distal of #28 along with gingival and occlusal caries on #29 and #30. She has had no apparent preventive care as she has generalized acute gingivitis. Dr. Benson is concerned that she may have a possible acute or chronic apical periodontitis and leaves the room to talk to the head nurse.

Dr. Benson finds Sandra at the nurse’s station and informs her that her mother needs a dental examination soon because she has several cavities and is holding her jaw as if she is in pain. The head nurse tells both of them that Erma has been holding her jaw now, off and on, for 2 months and, “there has been no swelling and the staff is monitoring her daily.” The nurse tells Sandra in the presence of Dr. Benson, “We will continue to monitor Erma and call you if there is swelling.” Sandra agrees and says, “We don’t want any unnecessary treatment for mom at this time — with her dementia she can’t even feel pain.”

* * *

Dentists who responded to this dilemma chose two of the alternatives: 1) Dr. Benson should contact the nursing home administrator and inform her of Erma’s possible pain and infection that may have persisted for 2 months; and 2) Dr. Benson should encourage Sandra to contact a dentist who has the equipment to treat patients in a nursing home. None of the dentists chose the remaining options: 1) Dr. Benson should stay out of this discussion — she is not Erma’s dentist now; 2) Dr. Benson should again instruct Sandra and the nurse about the potential complications from the decay and oral infection, including
pain and the need for a dental examination; or 3) Dr. Benson was Erma’s dentist for 10 years and should provide the care if possible.

Is Sandra making the best decisions for her mother? What obligations does Dr. Benson have for Erma since she is no longer her patient? These questions and others lead us to reflect on the ethics of: 1) dental needs for the geriatric population; 2) surrogate consent for the incompetent patient; and 3) strategies for managing nursing home issues.

**Dental Needs for the Geriatric Population**

The geriatric population and their needs have begun to substantially impact dentistry, and issues associated with this population are only going to increase. The following sampling of statistics on the geriatric population is impressive and sketches the challenge for the health professions.

“Between 1960 and 1990, while the general population of the United States grew by 39 percent, the number of persons 65 years and older grew by 89 percent, and those 85 years and older (the old old) grew by a whopping 232 percent (US Bureau of the Census, 1993). This trend will accelerate in the 21st century.... Projecting to the future based on current disability rates ... it is estimated that the number of older persons who will live in nursing home facilities will go from 1.5 million in 1990 to 5.3 million by 2030 (1).” Nursing home facilities are a part of the entire network of support for patients with long-term care needs.

Long-term care refers to the provision of support services like dressing, bathing and using the restroom, for persons with disability or chronic illness. People may require long-term care regardless of age. According to Medicare figures, by 2020, 12 million older Americans will need long-term care, with 70 percent being provided by family and friends (2).

The 1995 US National Nursing Home Survey provided some insights into the level of dental services available in nursing homes. Of the estimated 16,700 nursing homes in the contiguous US identified in the 1995 survey, approximately 60 percent of the nursing homes either were without the services of a dentist, or they were only available on call or on-site (3).

Thus the need for oral health care provided at long-term care facilities will only increase, and a concern is whether dentistry will have the qualified providers to meet these needs. There may not be enough clinicians who have the skills to treat the geriatric population in settings that may require the use of portable/mobile dental equipment (4). These skills also include dealing with the administrative and regulatory requirements for facilities like nursing homes. In our case Dr. Benson could not treat Erma in the nursing home, just because she is a dentist. A proponent of portable/mobile dental care writes, “It is a specialized area requiring awareness. An unaware provider contracting with an uninformed administration interested in only emergency response and paper compliance can be a prescription for frustration (4).”

The majority of general dentists’ patients are competent and ambulatory. Who makes oral health care decisions for the incompetent patient?

**Standards for Surrogate Consent for the Incompetent Patient**

One of the benefits of dentistry is watching our patients and the care we provide age gracefully over time. Of course, aging also can and eventually will create challenges for clinicians. Most general dentists have a favorite patient like Erma, who after years in a practice has a stroke or an accident. Erma was once a competent person, able to decide for herself what was in her best interest. Now she is incompetent and unable to speak for herself. Who should speak on behalf of Erma and by what standard should that person make decisions about Erma’s care?

This case brings into focus two relevant standards for surrogate decision making: “substituted judgment” and “best interest (5, 6).”

Under the substituted judgment standard, a surrogate decision-maker makes decisions that respect and are consistent with the patient’s previous autonomous judgments. Essentially, Sandra would make decisions in accordance with what she believes Erma would have chosen for herself (5, 6).

Under the best interest standard, the decisions made for the patient reflect what other reasonable people would do under similar circumstances. Thus the values are not those of the patients but of others facing the same situation (5).

But the fact that society and the courts assume that a surrogate is acting in the best interest of a patient doesn’t mean the state will accept anything the surrogate chooses. While we assume that parents will act in the best interests of their children, we also know that parents may place their children at harm, knowingly or unknowingly, so that the courts feel compelled to intervene to protect the best interest of the child. The same is true for patients: if a surrogate demonstrates neglect or very poor decisions, medical professionals of the courts may step in and take control.

Not all surrogate decision-making processes are created equal. Medical professionals and the courts tend to put more weight on some over others. For example, it is best if the authorities know what the patient, if competent, would have chosen. Thus, an autonomously executed
advanced directive says to caregivers, “This is what I want; please follow my wishes.” Absent such a declaration, substituted judgment is the best approach, especially if a patient has relayed to the surrogate what he or she would want to do if the time should arise. Third is best interests. Under this scenario, those who know the patient best, assuming there was no specific directive or designated surrogate, make a judgment call consistent with what they think the patient would have wanted. But the farther away decision-makers get from specific guidance, the less force the decision has (6).

For this case there was no indication of an advanced directive. The next standard is substituted judgment, and this is where we would expect Sandra, as the surrogate, to make decisions according to Erma’s values and goals. It is possible however, that Sandra may have misconceptions about her mother’s goals and values and may not understand the importance of her medical and dental needs. She may believe that poor oral health and chronic dental disease are concomitants of aging about which nothing can be done (7).

While Dr. Benson is not recognized as a surrogate, she does have a 10-year history of providing oral health care for Erma and may understand Erma’s goals and values as well as anyone. Dr. Benson is at the nursing home at the request of Sandra and she is concerned about Erma’s oral health needs but receives no support from the nursing staff or Sandra. What can Dr. Benson do to address Erma’s needs?

Strategies for Managing Nursing Home Issues

From the alternatives of the case and comments and issues in the discussion, here are a few strategies for managing these issues:

1. Immediate — stay involved. The clinician can keep in contact with the staff and the surrogate and remain appraised of the patient’s condition;

2. Immediate — advocate for the patient. Contact the nursing home administrator and express your concerns, one of the alternatives selected in the case. Make contacts with interest groups and advocacy groups as noted below.

3. Immediate — educate the staff and surrogate. Help them make the medical and dental connection. Medical authorities say “oral diseases and disorders in and of themselves affect health and well being (8),” as do dental authorities, “the separation between oral health and general health is artificial because the mouth is an integral part of the human body (9).”

4. Immediate — consolidate resources. Contact the physician and dentist, if any, for the nursing home and review your concerns. One of the principles for geriatric medical and dental care systems is that “overall health care for the older adult is best provided when a dental provider is an integral part of a health-care team (10).”

5. Immediate — contact providers in the area who are trained in geriatric patient care and have portable/mobile dental equipment. These patients have special needs and may require special equipment to be treated effectively. Conventional equipment may not be sufficient (11).

6. Long term — if there are no providers in the area, consider additional training.

Listed on page 619 are some suggestions for educational programs and places to gather more information about geriatric care and portable/mobile dentistry.

Conclusion

While Dr. Benson has not had the opportunity to see Erma on a regular basis for a few years, she is ethically justified in monitoring her condition, advocating for palliative treatment from the nursing home administration, encouraging support from the physician for the nursing home, educating the staff, and even choosing to become competent in treating the nursing home patient through special courses and training.

References


4. Murphy JE. A system concept for delivery of mobile
Continuing Education Opportunities for Geriatric Dentistry; Portable/Mobile Dentistry

1. Dental Education in Care of the Disabled School of Dentistry, SC-63 University of Washington Seattle, Washington 98195
2. The University of Texas Health Science Center at San Antonio Continuing Dental Education – 7930
7703 Floyd Curl Drive San Antonio, Texas 78229-3900
3. Continuing Dental Education School of Dentistry University of Minnesota 6-406 Moos Health Sciences Tower 515 Delaware Street SE Minneapolis, MN 55455

Contacts/Advocacy Groups

1. Dental
   a. American Dental Association
   b. Special Care Dentistry
   c. American Society for Geriatric Dentistry
d. Oral Health America

2. Information on federal initiatives on oral health, visit the following Web sites:
   a. Academy of general Dentistry: www.agd.org
   b. Healthy People 2010: www.health.gov/healthypeople
   c. Centers for Disease Control and Prevention Oral Health Program: www.cdc.gov/oralhealth
   d. Health Resources and Services Administration: www.hrsa.gov
e. National Institute of Dental and Craniofacial Research: www.nidcr.nih.gov

3. Information on Government Funding
   a. CMS (Centers for Medicare and Medicaid): www.cms.hhs.gov/manuals/101_general
   b. Medicaid: Texas — www.dhs.state.tx.us

Erratum: In the April, 2004, Ethical Dilemma column, an error was made in listing the authors. The correct listing should be: Thomas K. Hasegawa, Jr. D.D.S., M.A., Merrill Matthews, Jr. Ph.D., Bruce Peltier, Ph.D., M.B.A., Professor, Clinical Psychologist and Director of Ethics Education, University of Pacific School of Dentistry.

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) 828-8958, or E-mail to thasegawa@tambcd.edu.

NOTE: Readers are invited to submit topics to be considered in the Ethical Dilemma column. Contact the editor with suggestions or for further information. Recommendations in these cases are not intended to be legal advice. If you need legal advice, seek consultation from an attorney.