



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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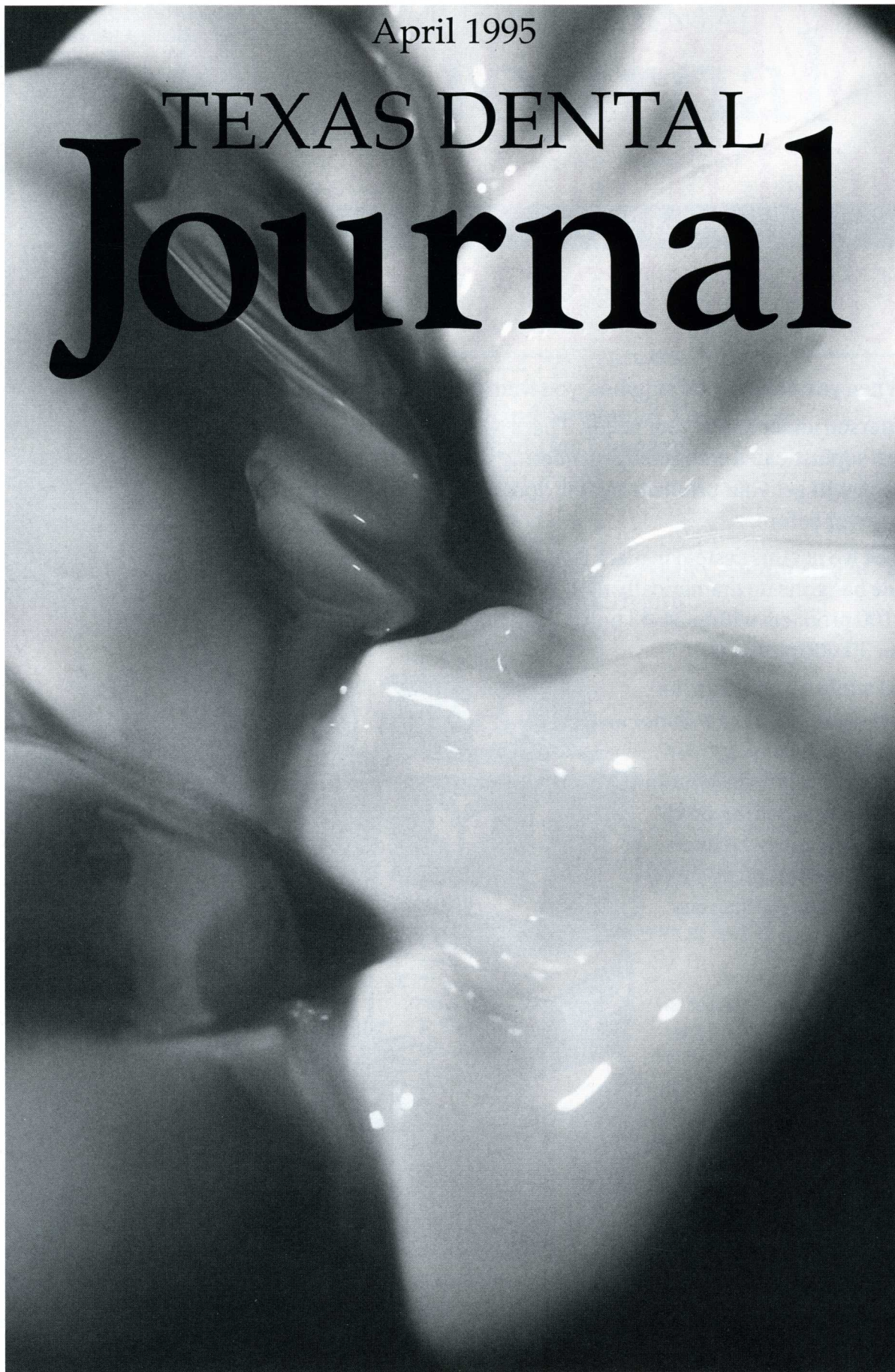
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TEXAS DENTAL Journal



Ethical Dilemma

tooth, amount of sclerotic or "secondary," and reparative, or "tertiary," dentin, (4) the remaining dentin thickness (RDT), caries, and lack of enamel at the gingival margin (5). Regarding the pulpal status, an endodontist wrote, "preparing a Class V will, in all likelihood, irritate an already *hyperemic* pulp."

There are a number of technical considerations that could affect the management of Carole's canine. First, the extent of the preparation could range from: 1) conventional Class V preparation typically used for

cariously involved teeth that includes retention grooves in dentin; 2) convention Class V cavity preparation with cementum involvement where the gingival margin is a butt joint with a dentinal retention groove with no bevel gingivally, to 3) a modified Class V preparation for abraded teeth that includes roughening the internal cavity walls, beveling all enamel margins, and a retention groove in the non-enamel margin(s) (5,6). If the RDT is less than 0.5-mm, a calcium hydroxide liner should be used, although it is recommended

that the use of liners and bases should be limited to allow the bonding systems to attach to more dentin (3). Total etching of enamel and dentin with phosphoric acid has been recommended; however, there is a concern for over-etching dentin either by too high a concentration of the etchant or too long a period of exposure (7). Dentin etching or conditioning removes or modifies the smear layer on the dentin surface while also demineralizing the outer layers of dentin between the tubules (3), and requires a weaker acid, such

What Would You Do?

Ethical Dilemma #18

Otto Norman is a 40 year-old private businessman who has had sporadic dental care in the past but has come to your general practice because he wants to keep his teeth "for a lifetime."

He is in good health, all vital signs are excellent, he exercises regularly and is careful about his diet. His periodontal health is good, he has a Class 1 occlusion, and he needs replacement of three anterior composite resins and four amalgams, and five fixed prosthodontic units on the mandibular arch to replace large, faulty restorations. He also has a partially erupted, mesioangular, Class 1, crown-to-crown impacted mandibular third molar, that is in contact with a second molar that has a full gold crown, endodontics, and a core build-up that appears sound clinically and radiographically. Mr. Norman refused the extraction of the third molar initially because of his fear of oral surgery so you initiated the amalgam and composite replacement and have completed three of the mandibular fixed units. During the last two weeks, however, he developed a pericoronitis and agreed to the surgery. Prior to the extraction, you reviewed and he signed your standard oral surgery consent form that indicated the type of surgery and the benefits as well as the risks of treatment including the risk of dislodging the adjacent gold crown. During the procedure, a surgical sectioning of the tooth was necessary and during the elevation the second molar crown and core dislodged revealing gross intracoronal caries that penetrated the furcation. You informed Mr. Norman of this discovery and the need to extract the non-restorable molar, and although he was upset that the tooth had to be extracted, he appeared to understand the circumstances. After the surgery, you even showed Mr. Norman the decay in the second molar.

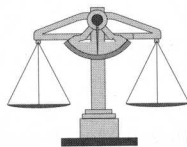
He had no complications during the following two weeks after the surgery. This afternoon he calls you and during your conversation reveals that he has decided to sue you to cover the cost of prosthetic replacement of the second molar with an implant or removable partial denture. He informs you it's "nothing personal," that he really "appreciates" your treatment thus far, and that he even wants to proceed with the final two crowns scheduled in three weeks. You inform Mr. Norman that in ten years of practice you have never been sued but he responds, "I just don't want to pay for the treatment to replace the molar. I'll drop the suit if you do it at no cost to me."

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. _____ continue to treat Mr. Norman for his two remaining fixed prosthodontic units,
2. _____ attempt to persuade Mr. Norman to drop the case as he won't win,
3. _____ perform the prosthetic replacement of the second molar at no fee,
4. _____ review the case with your lawyer and refrain from further treatment of Mr. Norman, or
5. _____ other alternative (please explain) _____

SEND YOUR RESPONSE BY **MARCH 7, 1995** ATTENTION:

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Ethical Dilemma

The Friendly, Litigious Patient

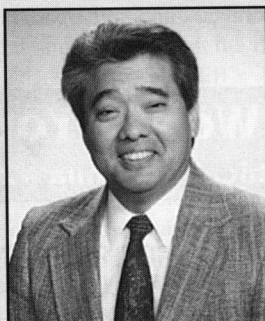
Response to Ethical Dilemma #18

Otto Norman is a 40-year-old, private businessman (complete case in February *TDA Journal*) who has had sporadic dental care in the past but has come to your general practice because he wants to keep his teeth "for a lifetime."

He is in good health, all vital signs are excellent, he exercises regularly and is careful about his diet. His periodontal health is good, he has a Class I occlusion, and he needs replacement of three anterior composite resins and four amalgams, and five fixed-prosthetic units on the mandibular arch to replace large, faulty restorations. He also has a partially erupted, mesioangular, Class I, crown-to-crown impacted mandibular third molar that is in contact with a second molar that has a full gold crown, endodontics, and a core build-up that appears sound clinically and radiographically. Mr. Norman refused the extraction of the third molar initially because of his fear of oral surgery, so you initiated the amalgam and composite replacement and have completed three of the mandibular fixed units. During the last two weeks, however, he developed a pericoronitis and agreed to the surgery. Prior to the extraction, you reviewed and he signed your standard oral surgery consent form that indicated the type of surgery and the benefits as well as the risks of treatment including the risk of dislodging the adjacent gold crown. During the procedure, surgical sectioning of the tooth was necessary and during the elevation the second molar crown and core dislodged revealing gross intracoronary caries that penetrated the furcation. You informed Mr. Norman

TDA Council on Ethics and Judicial Affairs

By Thomas K. Hasegawa, Jr., D.D.S.
Consultant Merrill Matthews, Jr., Ph.D.
Consultant Mark J. Hanna, J.D.



Hasegawa

of this discovery and the need to extract the non-restorable molar and, although he was upset that the tooth had to be extracted, he appeared to understand the circumstances. After the surgery, you even showed Mr. Norman the decay in the second molar.

He had no complications during the following two weeks after the surgery. This afternoon he calls you and during your conversation reveals that he has decided to sue you to cover the cost of prosthetic replacement of the second molar with an implant or removable partial denture. He informs you it's "nothing personal", that he really "appreciates" your treatment thus far, and that he even wants to proceed with the final two crowns scheduled in three weeks. You inform Mr. Norman that in ten years of practice, you have never been sued but he responds, "I just don't want to pay

for the treatment to replace the molar. I'll drop the suit if you do it at no cost to me."

Mr. Norman's request is disconcerting because it appears that the patient views the unanticipated extraction as an opportunity for free dental care. The patient is not claiming that the dentist did poor work but rather, "I just don't want to pay to replace the molar." Dentists selected three of the four options in the case and offered other alternatives: 1) continue to treat Mr. Norman for his two remaining fixed prosthetic units [option #1]; 2) perform the prosthetic replacement of the second molar at no fee [option #3]; and 3) review the case with your lawyer and refrain from further treatment of Mr. Norman. [option #4]. None of the respondents chose to attempt to persuade Mr. Norman to drop the case, as he won't win [option #2].

Should the dentist accede to Mr. Norman's request? We will examine three issues in this case: 1) the relationship of ethics and law; 2) the dentist's competence and standard of care; and 3) the importance of mutual trust in the doctor-patient relationship.

Ethics/Law

The term "ethics" has a number of definitions, but for the purpose of Mr. Norman's case and the Ethical Dilemma series, we cite the philosopher William Frankena's description:

"Ethics is a branch of philosophy; it is moral philosophy or philosophical thinking about morality, moral problems, and moral judgments." (1)

The phrase, "philosophical thinking" refers to the systematic study of what is right and good with respect to conduct and character (2). Ethics seeks to answer three fundamental

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 impute 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:

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Ethical Dilemma

outcome of the extraction.

Informed consent is a practical example of how ethics and the law converge and how the competent practitioner must be knowledgeable in both areas.

The philosopher David Ozar depicts the relationship this way:

"In fact, ethics is more fundamental than law. That is, laws can be either ethical or unethical, but the converse is not true. Thus, the clear-thinking person will ask the ethical question first and the legal question only later; and one of the first questions that a thoughtful person will ask about a law that applies to his or her situation is whether it is an ethical law or not, both in what it requires in general and in how it applies to the particular case. If it is possible, if the matter is important enough, even to conscientiously violate that law or to engage in civil disobedience to change it. These facts about law and ethics do not mean that law is unimportant, but only that ethical questions are different from and are more important than legal questions." (7)

One of the disturbing questions in this case is that Mr. Norman does not seem to question the unanticipated outcome of the surgery, or the dentist's competence.

Dentists' Competence/Standard of Care

The dentist's competence is a cornerstone of our codes of ethics and the legal requirement of standard of care.

According to TDA Principles: "professional competence is the just expectation of each patient. It is the duty of each dentist to strive continually to improve knowledge and skill and to make available to all patients and colleagues the benefits of their professional attainments." (8) The long-awaited Institute of Medicine (IOM) Report has recommended that

the American Association of Dental Examiners, American Dental Association, American Association of Dental Schools, and specialty organizations, "work closely and intensively to strengthen and extend efforts by state boards and specialty organizations to maintain and periodically evaluate the competency of dentists and dental hygienists through recertification and other methods" (9).

In medical and dental malpractice cases, "the burden is on the plaintiff to prove the proper standard of skill and care to which the medical practitioner will be held, the practitioner's failure to meet this standard and that the failure was the cause of the plaintiff's injuries" (10,11). A recent study of ten professional organizations in dentistry found that seven of the responding organizations are developing, or are in the process of developing, practice guidelines or parameters of care within their associations (12). Practice guidelines are "systematically developed statements to assist practitioner and patient decisions about appropriate health care for specific clinical circumstances" (13), and "parameters of care" is the term used by several of the dental provider organizations to refer to descriptive (as opposed to prescriptive) recommendations (14). The IOM Report also recommends that dental educators work with public and private organizations to "develop and implement a systematic research agenda to evaluate the outcomes of alternative methods of preventing, diagnosing, and treating oral health problems; and make use of scientific evidence, outcomes research, and formal consensus processes in devising practice guidelines" (9).

As the dental profession moves towards a more definitive standard of care articulated in part by practice guidelines and parameters of care, the assessment of the practitioner's competence may also be more uniform. However, Mr. Norman seems less concerned for competence than for the opportunity to force the dentist to provide free dental care. How does Mr.

Norman's threat of litigation alter the trust between the doctor and patient?

Trust: Dentist AND Patient

Trust is a mutual expectation in the doctor-patient relationship (3).

Mr. Norman trusts that dentists will have their patients' "benefit as their primary goal," and that, "the overriding obligation of the dentist will always remain the duty to provide quality care in a competent and timely manner" (14). As noted in previous "Ethical Dilemmas," unlike other relationships where trust must be earned, trust is expected of the doctor. The TDA Principles state: "Trust by the public that serving only their true dental needs with appropriate quality care is the heart of the patient-dentist relationship. This concept of trust, imbued with dedicated service, is the hallmark of professionalism..." (8). As one dentist said, "The patient has to be willing to trust that the dentist will do what is best and make the best decisions for the patient as treatment proceeds."

The competent dentist would inform Mr. Norman that there is a potential that the adjacent crown could be dislodged and this is a recognizable risk that the patient weighs against the risks of his current condition, pericoronitis, before consenting to surgery. The dentist informed Mr. Norman of the risk that the second molar gold crown could be dislodged during the surgery and even showed the patient the gross decay in the second molar after the extraction. It was noted in the case that the dentist evaluated the second molar prior to the surgery and found the full gold crown, root canal and the core build-up to be sound clinically and radiographically. In this regard, the philosopher/physician Edmund Pellegrino observed, "(W)e emphasize the need for trust because, no matter how tightly a contract may be written or a covenant explicated, medical care depends upon a continuous series of judgment calls and competent acts that cannot be predicted precisely in advance" (3).

Dentists trust that patients will be

fair to them by taking responsibility for their own health, being honest in discussing their medical history, taking medications as prescribed, being truthful about their symptoms, keeping their appointments, and paying for dental treatment. Dentists are owed some allowance of justice that patients will not threaten to file capricious or unwarranted suits in order to receive free dental care (3).

We recognize that our society is becoming increasingly litigious (15) and that the threat of litigation may cause defensive medicine that increases the cost of medical care. The costs of defensive medicine is one factor in the current focus on tort reform. In a recent survey of general dentists, 23% of the 3,048 respondents reported at least one patient complaint to their insurance agent, broker or carrier between 1988 and 1992. (16) The survey results also showed an increase in the proportions of claims resulting in payment and in the average size of the awards during the years of the study.

The threat of litigation by Mr. Norman was a source of stress to dentists and, as one dentist related, I would "explain to the patient that the desire to sue undermines the doctor/patient trust." Another respondent declared that he would perform the replacement of the second molar at no fee, "but have an attorney draft a letter stating that it was not my actions that resulted in his loss of the 2nd molar and that once I have replaced the 2nd molar through my charity, I am held harmless as to the loss of that tooth." Another dentist wrote: "As far as the dentist doing additional treatment on this patient, he would have to be one heck of a risk-taker," and, "The dentist may also want to give a cursory thought as to whether this patient might institute more law suits if there were any more 'surprises' that might occur while completing the rest of his dental treatment." The dentist listed 'sur-

prises' that might include: "teeth sensitive to cold or chewing after being restored, restorations that don't feel right, a bite that doesn't feel right, a color match that doesn't meet his expectations, or a pulpitis develops...unexpected root canal needed."

When there is the perception that this mutual trust is broken by either the dentist or patient, the foundation for a beneficial relationship no longer exists.

Conclusion

A key element for a beneficial relationship between the doctor and patient is mutual trust. When the patient attempts to pressure the doctor to provide free dental care by the threat of litigation, that trust is broken. Providing that the events are accurate in this case and the surgery performed within the standard of care, and upon further discussion the dentist finds that Mr. Norman intends to sue, the dentist is ethically justified in taking appropriate measures for terminating the doctor-patient relationship.

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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. Mark J. Hanna, J.D. is the Legal Counsel for 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. ■