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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.

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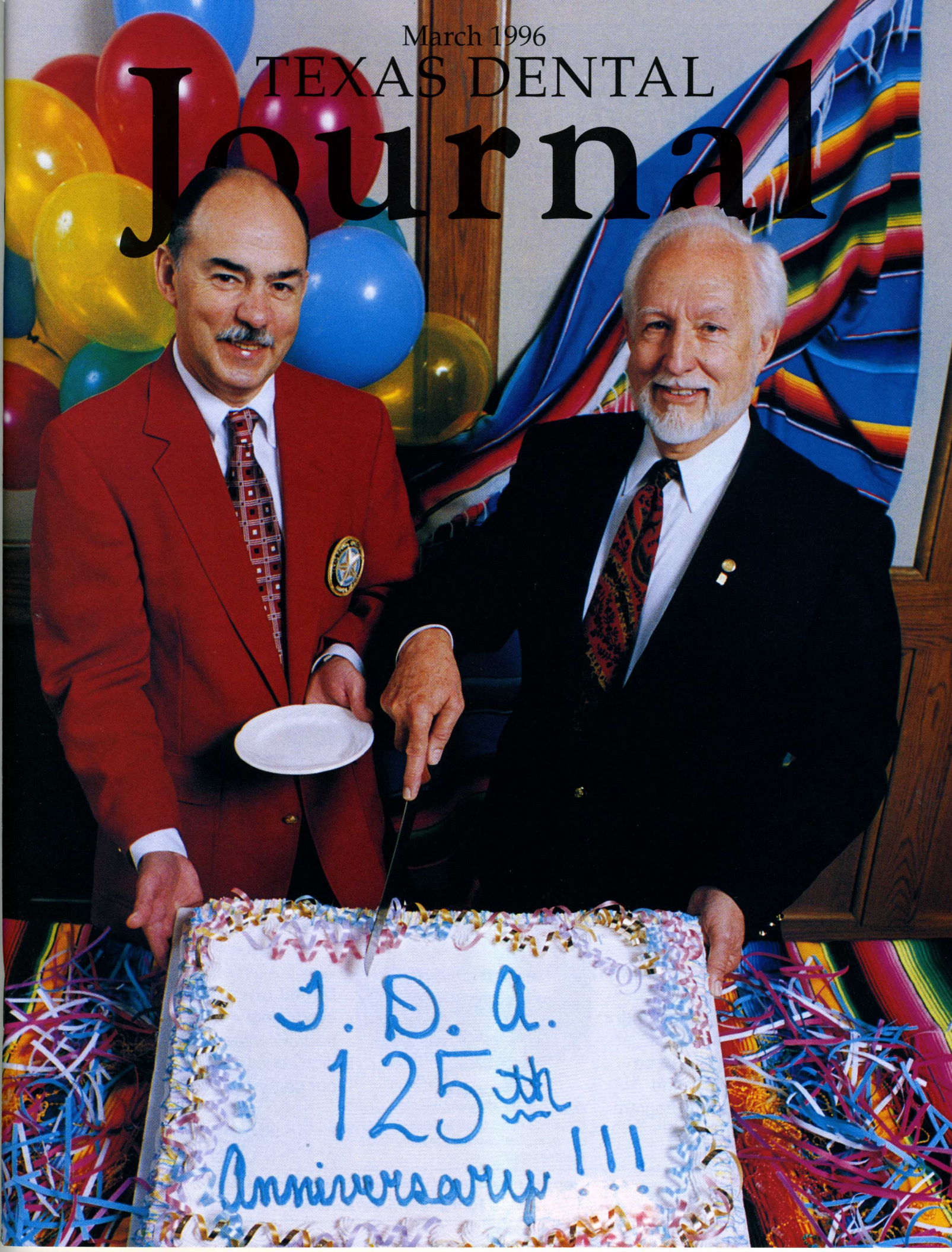
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# Journal





## Ethical Dilemma

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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. 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, for fax to (214) 828-8952.

## What Would You Do? Ethical Dilemma #27

Dr. Jack Lange has been practicing general dentistry with an emphasis on cosmetics as an associate of Dr. Cheryl Sims for four years. Initially, both practices have prospered and there are plans for a partnership with an emphasis on practicing cosmetic dentistry. However, over the last six months, both practices have seen little growth. As a result, Dr. Sims decided to launch an advertising campaign, since she was concerned about this downturn.

Although both dentists have had small advertisements in the past, Dr. Sims is considering a quarter-page ad for the new telephone book. At the end of the day, Dr. Sims hands a rough sketch of the ad to her partner and says, "Look at this and let's finish the ad."

**Cheryl Sims, D.D.S. and Jack Lange D.D.S.**

*"We specialize in making your smile beautiful."\**

\*All treatment is guaranteed for three years.

Upset about the implications of the ad, Dr. Lange declares, "This ad is unethical and I'll have no part of it!" Dr. Sims responds that the ad will help them prepare for their partnership. "Look," explains Dr. Sims, "there are several reasons why it is not unethical! First, we are talking about cosmetic, not reconstructive dentistry. Many cosmetic-related businesses such as eyewear companies guarantee their products, so why should dentists be any different? Besides, we already replace most failed treatment anyway within three years. I believe that dentists should guarantee their work just like other services!" The arguments sounded convincing, and Dr. Lange finds himself doubting his original view.

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

1. \_\_\_\_\_ send the advertisement as is;
2. \_\_\_\_\_ remove Dr. Lange's name and send the advertisement;
3. \_\_\_\_\_ Dr. Lange should have the advertisement delayed and sent to the State Board of Dental Examiners for comment;
4. \_\_\_\_\_ have the ad delayed and contact a lawyer about the legality of the advertisement; or
5. \_\_\_\_\_ other alternative. (please describe) \_\_\_\_\_

**SEND YOUR RESPONSE BY JANUARY 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.

## "Trade or Profession: The Ethics of Dental Advertising"

Response to Ethical Dilemma #27

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Although both dentists have had small advertisements in the past, Dr. Sims is considering a quarter-page ad for the new telephone book. At the end of the day, Dr. Sims hands a rough sketch of the ad to her partner and says, "Look at this and let's finish the ad."

### Cheryl Sims, D.D.S. and Jack Lange D.D.S.

*"We specialize in making your smile beautiful. \*"*

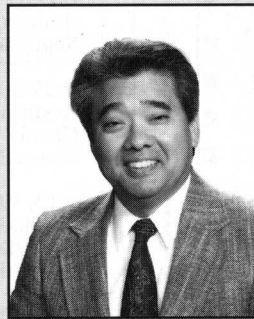
*\*All treatment is guaranteed for three years.*

Upset about the implications of the ad, Dr. Lange declares, "This ad is unethical and I'll have no part of it!" Dr. Sims responds that the ad will help them prepare for their partnership. "Look," explains Dr. Sims, "there are several reasons why it is not unethical! First, we are talking about cosmetic, not reconstructive dentistry. Many cosmetic-related businesses such as eyewear companies guarantee their products, so why should dentists be any different? Besides, we already replace most failed treatment anyway within three years. I believe that dentists should guarantee their work just like other services!" The arguments sounded convincing, and Dr. Lange finds himself doubting his original view.

Four alternatives were offered in the case: 1) send the advertisement as is; 2) remove Dr. Lange's name and send the advertisement; 3) Dr. Lange should have the advertisement delayed and sent to the State Board of Dental Examiners for comment; and 4) have the ad delayed and contact a lawyer about the legality of the advertisement.

## TDA Council on Ethics and Judicial Affairs

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



Hasegawa

Is Dr. Sims' proposed advertisement unethical? Should dentists guarantee their work, cosmetic or otherwise? Is any advertisement by a dentist unethical? Advertising by dentists has been an ethical concern since the first days of the profession, and we will examine the ethical issues of: 1) dentistry: trade or profession; 2) truth in advertising: respect for patient autonomy; and 3) false and misleading advertising.

### Trade or Profession

The dialogue between Drs. Lange and Sims presents disparate views of the ethics of advertising and the practice of dentistry. Is dentistry a profession where the members act as fiduciaries for their patients, placing the patient's best interests even before the dentist's own self-interest? Or, is dentistry really a trade where the dental providers and consumers are primarily competitors, in the commercial sense and, therefore, subject only to the ethics of the marketplace (1,2)? Both views have been criticized for either being too ideal (professional) or too cynical (trade). These questions have endured for over a century for dentistry and since the ancient Greeks for medicine.

Dr. Lange views the proposed advertisement as "unethical" and declares, "I'll have no part of it!" His view holds dentistry as a profession, not a trade. One

distinguishing feature of a profession is a formal code of ethics. The desire to raise and maintain the status of dentists as members of a learned profession led to the first ADA Code in 1866 (3). This Code dedicated a substantial segment to the question of advertising, a growing concern for the profession:

**Article II., Sect. 3.** *"It is unprofessional to resort to public advertisements, cards, handbills, posters, or signs calling attention to peculiar styles of work, lowness of prices, special modes of operating, or to claim superiority over neighboring practitioners, to publish reports of cases, or certificates in the public prints, to go from house to house to solicit or perform operations, to circulate or recommend nostrums, or to perform any other similar acts (4)."*

Dr. Sims views the care of patients as we might view any commercial concern, in essence a trade. Eyewear companies, Sims argues, guarantee their products, so why should dentists be any different? A consumer may view dentists as providing products, such as dentures or "plates," fixed partial dentures or "caps," amalgam or resin restorations or "fillings," and services like prophylaxis or "cleanings," or bleaching discolored teeth or "whitening." Consumers today expect guarantees for products such as toasters and watches, and services such as pest control and lawn care. A three-year guarantee for dental products or services is consistent with Dr. Sims' view of dentistry.

The FTC challenged medicine and dentistry on this very question of profession or trade. The FTC brought legal action against these professions for restricting its members from advertising and soliciting patients, and for interfering with contractual relations with other entities, such as paid group plans, HMOs and nonprofessional groups. In March, 1979, the out-of-court settlement by the ADA and the FTC included these provisions: 1) The ADA agrees not to restrict truthful advertising; 2) the ADA may prohibit "false and misleading advertising;" and 3) there is no admission by the ADA that any law has been violated (5). The physi-

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cian David Schiedermayer observes that these FTC rulings signaled that medicine and dentistry are now regarded primarily as a trade and that the subsequent codes of ethics must abandon any pretense of a professional ethic for a business ethic (1). The current ADA Code states:

*"Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect (6)."*

The *TDA Code of Ethics* addresses the question of trade or profession in the following manner:

*"The dental profession's privilege and responsibility of self-governance demands ethical standards more stringent than those of the marketplace. These standards include exercising honesty and restraint when making statements or representations about care and skill, both in private discussions with patients and in public announcements (7)."*

The *TDA Code* emphasizes that the profession's ethical standards must be more stringent than those of the marketplace. What role do honesty and truthfulness play in the relationship of doctors and patients?

## Truth in Advertising/Respect for Patient Autonomy

Patients rely on their doctors to be truthful with them. Only in the rare situation when the patient is a doctor, with similar training and experience, would the patient not have to be fully informed about treatment recommendations and alternatives and their associated risks and benefits. While health care professionals recognize that patients cannot understand, comprehend or appreciate all of the nuances of existing conditions and treatment recommendations, their respect for patient autonomy compels them to treat the patient as a competent, moral being.

The hazard, then, of dental advertising is that dentists could exploit the fears, hopes, pain, and desires of the consumer in order to attract patients. Claims of superior service, unique therapies, promises, or special costs could deceive the patient and cause false expectations. Not all patients are equipped to be reasonable

and discerning about advertisements. The philosopher David Ozar described three potential audiences for advertising: the hardened, the wholly receptive, and the reflective consumer (8). The hardened consumer doubts the validity of any advertising claims while the wholly receptive consumer accepts these claims as the truth. Somewhere in between is the reflective consumer, who carefully weighs the merits of the advertisements and makes comparisons and reasoned choices. What the ethical dentist must consider, according to Ozar, is what is communicated in an advertisement to the least discerning audience — the wholly receptive consumer.

Advertising claims that are false or misleading violate the respect for patient autonomy and are unethical. Are the claims made in Dr. Sims' advertisement unethical?

## False and Misleading Advertisements

Dr. Sims' advertisement, "We specialize in making your smile beautiful" contains two messages that are morally suspect.

First, the wholly receptive consumer may interpret the term "specialize" to imply that the doctors have specialty training and certification. Since esthetic dentistry is not a recognized specialty, this statement may convey a false message of superiority over other clinicians with similar training. Secondly, the phrase, "making your smile beautiful" may mislead or deceive because there is no single description, interpretation, or universal standard for a beautiful smile. The subjective nature of esthetics may cause ordinary patients to have an unrealistic expectation from this exaggerated claim. Is it possible to make all smiles "beautiful," and, if so, by what standard?

The second message, "All treatment is guaranteed for three years" is even more morally troublesome. Does "all treatment" involve care associated with only the "beautiful smile" or all of the care provided by the general dentists? Key information is missing in this phrase. Also, what is included in the guarantee? Will the guarantee include absolute satisfaction, 90 percent, or 51 percent? Does the guarantee imply absolutely painless care?

Simply replacing a defective toaster may cause an inconvenience for the purchaser. For the patient however, care that fails to cure or to improve the patient's symptoms affects the life of the patient. Dentists are advised not to guarantee their treatment for the same reasons surrounding the trade-versus-profession issue, and because it promises that which seldom can be kept (9).

Is this advertisement false or misleading in a material respect? A piece of misleading information in an advertisement is material if it makes a difference in the mind of the perceiver. Therefore, a false or misleading statement in advertising is material if it causes the consumer, called the "reasonable" consumer, to purchase this product over its competitors, or buy a product that the consumer would not ordinarily purchase (10). Dr. Sims' proposed advertisement is unethical because it may mislead the consumer into believing that the dentists are specialists who can make all smiles beautiful along with the guarantee of successful treatment outcomes.

Each advertisement needs to be analyzed on what it implies along with what it says and measured against state statutes governing dental practice (11, 12). Dr. Sims would be advised to consult with an attorney about this and future advertisements.

## Conclusion

The moral dimension of health care requires us to consider the unique nature of each of our patients. Uncertainty is inseparable from the provision of care; there are no absolute or simple predictions about the outcome of care. Advertisements that guarantee successful treatment outcomes are foolish and unethical, warp the fiduciary nature of the doctor-patient relationship, and threaten the integrity of the profession. Trade or profession? You decide.

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**EDITOR'S COMMENT:** E-mail has been added to the ways that the members can respond to the cases. All correspondence is strictly confidential including responses and cases that a member may want to submit for publication. 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 Col-

lege of Dentistry, P.O. Box 660677, Dallas, TX 75266-0677, FAX to (214) 828-8952, or E-mail to: tk.hasegawa@baylorltdallas.edu.

## What Would You Do?

### Ethical Dilemma #29

Mr. Jack Haney is a 46-year-old emergency patient referred to you by his sister, who has been in your general practice for four years. Mr. Haney is in good health except for mild hypertension that he is managing with diet and exercise.

His maxillary right second bicuspid has "bothered" him on occasion over three years. As a salesperson for sportswear, he has been traveling and receives episodic dental care. The tooth has been draining through a gingival sinus tract on the buccal mucosa at the level of the root apex. Radiographs reveal a 6-mm diameter radiolucent lesion at the apex. The tooth exhibits no percussion sensitivity and only occlusal caries. The clinical signs and symptoms are consistent with the diagnosis of a necrotic pulp. Due to the curvature in the apical one-third of the root you decide to refer Mr. Haney to the new endodontist in the community, Dr. Doug Evans.

Dr. Evans completed the root canal treatment in three appointments. The access opening was closed with IRM and Mr. Haney received instructions about being careful when he eats. He was returned to you to start the fixed partial denture.

Last night as Mr. Haney was eating, he felt a "crunch" and discovered a fragment of tooth in his food. There was no pain so he decided not to call and to keep his appointment with you today. Your examination reveals that the bicuspid has fractured well beyond the gingival attachment level and that the tooth cannot

be restored. You describe the reason that the tooth needs to be extracted and that a three-unit porcelain fixed partial denture is recommended after the site has healed. Mr. Haney states, "Say, I didn't bargain on this happening and I would like to have what I already paid to Dr. Evans applied to the cost of three-unit porcelain bridge!" As you explain that these problems rarely happen, he replies: "Look, this must have been a poor job—I would not have paid for the root canal if I knew this would happen. I don't care who made the mistake, but I am only paying for the cost of the bridge minus whatever I paid Dr. Evans."

You are now faced with an ethical dilemma. Check the following course(s) of action you would take in this case and mail, FAX this page, E-mail your recommendation, or send a note as instructed below:

1. \_\_\_\_\_ subtract the root canal payment from the standard cost for a three-unit fixed partial denture and have the patient pay the reduced cost;
2. \_\_\_\_\_ insist that Mr. Haney pay the full amount for the fixed partial denture;
3. \_\_\_\_\_ call Dr. Evans and have him reimburse the patient for the full cost of the root canal;
4. \_\_\_\_\_ dismiss Mr. Haney from your practice; or
5. \_\_\_\_\_ other alternative (please describe) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**SEND YOUR RESPONSE BY APRIL 8, 1996, ATTENTION:** Dr. Thomas K. Hasegawa, Jr., Department of General Dentistry, Baylor College of Dentistry, P.O. Box 660677, Dallas, TX 75266-0677, FAX to (214) 828-8952 or E-mail to: tk.hasegawa@baylorltdallas.edu. ■