



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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TEXAS DENTAL Journal

TEXAS LEGISLATION FOR 1997

What Would You Do?

Ethical Dilemma #32

Dr. Arthur Malcomb practices in a suburb of a metroplex and is considering some changes in the way he is doing business. His general practice has done very well over the last twelve years and he predicts another good year. Over the last five years, three new dental offices opened in the area. Even with the rate of growth, however, he is not immediately concerned with the new competition because of his established location and reputation. His patients are loyal and consist mostly of young families in their late twenties and thirties. Dr. Malcomb is a contributor to community activities and volunteers his services freely and often. Activities include many school functions, since three of his children are still in public school.

Dr. Malcomb has decided to sell a line of products in his dental office. The product line includes an array of high-potency vitamin supplements that he has been using for over five years. While the products are available through specialty stores, he is enthusiastic about the potential to market these products in the office. He has asked many patients about their supplemental vitamin use, and they seem genuinely interested when he discusses the product that he recommends. After all, he believes he is in the health business, and marketing a good product in the office that will help his patients is all part of his responsibility as a dentist. As a result, he has also made preliminary arrangements to purchase large quantities of the vitamins at a reduced cost, part of which he can pass on to his patients. He has planned to remodel a small area of the reception room to display the product. If this venture is successful, he plans to try other types of health products, such as food supplements.

Over lunch, Arthur shares his plans with you and the projected profits for the next six months. He asks for your advice. "Do you think this is a good idea?" he asks, and, "How about trying this in your office?"

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

1. _____ join Arthur in marketing these vitamins;
2. _____ advise Arthur to drop this new marketing program. Explain your reasons;
3. _____ have Arthur consult an attorney before he proceeds with his plan;
4. _____ ask Arthur to consult the local dental society before he proceeds with his plan;
5. _____ advise Arthur to consult the Texas State Board before proceeding; or
6. _____ other alternative (please describe): _____

SEND YOUR RESPONSE BY July 5, 1996 ATTENTION:

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"Retailing Vitamins in the Dental Office"

Response to Ethical Dilemma #32

Dr. Arthur Malcomb practices in a suburb of a metroplex and is considering some changes in the way he is doing business. His general practice has done very well over the last twelve years and he predicts another good year. Over the last five years, three new dental offices opened in the area. Even with that rate of growth, however, he is not immediately concerned with the new competition because of his established location and reputation. His patients are loyal and consist mostly of young families in their late twenties and thirties. Dr. Malcomb is a contributor to community activities and volunteers his services freely and often. Activities include many school functions, since three of his children are still in public school.

Dr. Malcomb has decided to sell a line of products in his dental office. The product line includes an array of high-potency vitamin supplements that he has been using for more than five years. While the products are available through specialty stores, he is enthusiastic about the potential to market these products in the office. He has asked many patients about their supplemental vitamins usage, and they seem genuinely interested when he discusses the product that he recommends. After all, he believes he is in the health business, and marketing a good product in the office that will help his patients is all part of his responsibility as a dentist. As a result, he has also made preliminary arrangements to purchase large quantities of the vitamins at a reduced cost, part of which he can pass on to his patients. He has planned to remodel a small area of the reception room to display the prod-

TDA Council on Ethics and Judicial Affairs

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uct. If this venture is successful, he plans to try other types of health products, such as food supplements.

Over lunch, Arthur shares his plans with you and the projected profits for the next six months. He asks for your advice. "Do you think this is a good idea?" he asks, and, "How about trying this in your office?"

None of the dentists who responded to the case chose to join Arthur in marketing the vitamins and none advised him to drop this new marketing program. Dentists chose almost equally to have Arthur consult an attorney, the local dental society or the State Dental Board before proceeding. Several commented about the ethics of this marketing program and questioned the legality of selling products in the office.

Should dentists sell vitamins and health food supplements in their prac-

tices? What is the implication of this practice to the dental profession and to the patients who are served? The ethical issues in this case are: 1) retailing in the dental office; 2) dental profession or profit center?; and 3) what's *really* for sale?

Retailing in the Dental Office

The practice of selling products in the dental office is referred to as "retailing" in the dental literature. Retailing, for purposes of this case discussion, refers to the selling for profit, rather than dispensing, any product within the dental office. A generic list of retail products could include floss threaders, periodontal aids, alcohol-free mouthwashes, specialty brands of toothpaste, oral irrigators, electric toothbrushes, fluorides, desensitizing pastes, tooth bleaching gels, prescription drugs, vitamin supplements, oxygenating agents and denture adhesives (1).

There is a wide range of opinion about the ethics of selling retail products in the dental office. While it appears that most dentists avoid retailing, they may also recommend or dispense products such as toothbrushes and floss free of charge to patients. Other dentists may only sell items targeted for direct sales in the dental office, such as bleaching agents or electric toothbrushes. There are also those who offer an array of for-profit retail products, such as the dentist who offers "one-stop shopping" for exotic and specialty toothbrushes, imported toothpastes, non-sugar teething sticks for babies, and tooth fairy pillows at his dental "boutique" (2).

One important legal prohibition in retailing involves selling prescription drugs in the dental office. The Texas Pharmacy Act prohibits dentists from

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selling prescription drugs as would a retail pharmacy (3). Unless the dentist is a pharmacist and conforms to all rules and regulations, he or she is violating the law if the patient is charged a fee for these drugs.

Retail sales of vitamins provides an additional twist in this case. Most of the products listed above are oral hygiene aids that are continually evaluated and compared for efficacy. Dentists are expected to know the results of this research in order to prescribe the appropriate products to meet patient needs. Can the dentist assess through nutritional counseling if there is a vitamin deficiency and what the scientific evidence is for recommending a regimen of vitamin supplements? While there are specific oral conditions that manifest vitamin deficiency, is it ethical to recommend vitamins to all patients? The issues require more attention than available in this response. While selling vitamins in the dental office is not illegal in Texas, there are ethical issues here that are fundamental to the health professions.

Dental Profession or Profit Center?

One of the most complex, yet most important decisions that dentists make is how they will conduct their practices. How Dr. Malcomb values his responsibilities to his patients and also the desire to have a successful practice are core issues that faces each dentist. The philosopher David Ozar describes two distinctly different models: the commercial and the normative models of dental practice (4).

In the commercial model, dentistry is characterized as a business where the dentist is the producer and the patient is the consumer of dental services and where

products and services are bought and sold in the marketplace. Practitioners and patients are both self-interested bargainers: the practitioners seek to maximize profits, and the patients seek to minimize costs while maximizing the return on the product. The dentist and patient, according to Ozar, are competitors as they seek to maximize their self-interests, while minimizing what must be given up in the exchange. The dentist seeks to provide the services that the patient will pay for based on those that provide the greatest return for the least cost to the dentist in terms of effort, satisfaction, time, cost, etc. Not only does the dentist compete with this patient, but also other patients and dentists. The dentist in this model does not have any obligations other than those that would cause the dentist to refrain from coercing, cheating or defrauding the patient. Consequently, the dentist is expected to be a salesman while informing patients about their need for professional services. Selling vitamins is consistent with Ozar's characterization of this commercial model, with retailing providing another profit center for the dental practice. There is no fundamental obligation to observe the codes of ethics or to observe any authority such as the American Dental Association. The ADA is not a professional organization in this model but rather a trade association that has no obligation to society (4).

The normative model begins with the premise that dentistry is a profession, that its members provide a valued service to the community and that the profession has made commitments to the benefit of that community. Ozar proposes that the complex knowledge required for effective practice is outside of the patient's understanding and therefore it is the

profession's responsibility to govern itself. This self-governance is warranted precisely because the community trusts that the experts in the profession will place the well-being of the people it serves ahead of their own personal well-being (4). The sociologist Eliot Friedson describes this fiduciary relationship as, "Professionals are expected to honor the trust that clients have no alternative but to place in them (5)."

The dental codes are affirmations of these commitments. The ADA Code places the "benefit of the patient" as the primary goal of the dental profession (6). The TDA Code states: "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 and has provided the warrant for self-governance given the dental profession by society (7)." Being trustworthy is also affirmed by the fact that every dentist is certified to practice (8). Professional certification is another way that the community trusts that the members of the profession will abide by its norms.

What's really for sale?

The real question in this case is, what are the implications of retailing products in the dental office? Comments by the respondents provided several insights to how we can understand this case.

Most respondents were opposed to Dr. Malcolm retailing vitamins. The reasoning for this view mirrored those of Ozar's normative model. They said "Arthur should stick to his dental practice," that "it's bad business," and "I personally would feel uncomfortable do-

ing it." Also, "he should open a health food store to sell vitamins so his patients don't become suspicious he's trying to "sell" them something to make him more money." Comments by dentists in the dental literature as to why they would not engage in retail sales cited reasons such as, "when we do this, we feel like sales people rather than like prescribers of health," that, "I'm not a drug store and I'm not into merchandising," and that "the welfare of my patient is my primary concern (2)."

What is at stake here is the potential for exploiting the dentist-patient relationship. When the dentist undertakes the responsibility to care for the patient, the patient trusts that the dentist will relieve pain and suffering and restore their oral health. The patient is vulnerable to the recommendations of the dentist because of the disproportionate power in this relationship. How is the patient to know which technique or material will provide the best treatment outcome? If the dentist recommends a product, the patient may feel compelled to purchase it, particularly if the dentist believes in it enough to sell it in the office. Most patients want to cooperate with their dentists, and this may compound the pressure to buy the product at the dental office rather than a pharmacy or health food store. When the dentist exploits the vulnerability of the patient by recommending and/or selling unnecessary or ineffective products or treatments designed to maximize profits, that dentist is acting unethically. The more the dentist exploits the patient's vulnerability for profit, the more unethical the dentist. In this regard, the TDA Code states that the "dental profession's privilege and responsibility of self-governance demands ethical standards more stringent than those of the marketplace (7)."

Conclusion

Each dentist makes choices that affect the character of his or her practice. Ozar's commercial and normative models provide important perspectives in how we interpret our professional roles, responsibilities and obligations. If Dr. Malcomb decides to market vitamins and possibly health food supplements in his office, he should be aware that his actions may affect the profession itself and the trust of the community. What may be for sale is the very element that separates doctors from other vocations like retailers. It is not the profit or even the service that is the bottom line but the welfare of the patient that is at stake. While selling vitamins is legal in the dental office, Dr. Malcomb will be acting unethically if he is knowingly exploiting the patient's vulnerability in order to maximize profits.

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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. Mr. Jeffry R. Hill is General Counsel to the State Board of Dental Examiners. 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, fax to (214) 828-8952, or E-mail to: tk.hasegawa@baylorDallas.edu