

# ISSUES IN DENTAL ETHICS

Professional Ethics in  
Dentistry Network

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## CONFLICTS OF INTEREST

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### ABSTRACT

Conflicts of interest are unavoidable in dentistry. A set of five questions is offered to help sort through such conflicts. The potential harm and the likelihood of such harm caused by secondary interests (the potentially conflicting ones) must be considered against the potential harm and the likelihood of damage caused by withholding services in which secondary interests are present. The use of these questions is illustrated with an example of a researcher who has a commercial interest in the product under study and of dentists who have secondary interests in services provided to patients.

Conflict of interest is a topic that anyone concerned with professional ethics must attend to. But dealing with conflicts of interest properly requires more careful ethical judgment than can be summarized in general do-this/don't-do-that standards. It requires some careful comparative weighing of possible harms in the context of an ethically appropriate relationship between the professional and the person the professional is serving. This essay will examine some of the ethical subtleties of several types of conflict of interest that can arise in ordinary dental practice.

### UNDERSTANDING CONFLICT OF INTEREST

Philosopher Michael Davis provides a useful definition of conflict of interest: "P (whether an individual or a corporate body) has a conflict of interest if and only if: 1) P is in a relationship with another person requiring P to make

judgment in the other's behalf; and 2) P has a[n]...interest tending to interfere with the proper exercise of judgment in that relationship" (Davis, 1998).

Obviously, dentists are in relationships with each person they serve professionally and are required to make judgments on that person's behalf. The question then is whether situations can arise in which the professional has any interests that could interfere with proper exercise of such judgment in that relationship. The general answer is that there are many aspects of the dentist-patient relationship in which the interests of the patient and the interests of the dentist could conflict in the relevant sense. That is, there are many situations in which the dentist's interests could interfere with the proper exercise of judgment on the patient's behalf.

But it would be a mistake to take the view that such conflicting interests are themselves a sign of unprofessional conduct. Conflicting interests are an unavoidable part of life and are themselves neither ethical nor unethical. Indeed, as Dennis Thompson points out, professionals often have "necessary and desirable" interests that are not directed to the person being served. Thompson calls these interests "secondary interests". He calls the interests of the person

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served that are also of specific concern to the professional the professional's "primary interests" in the situation (Thompson, 1993). To manage secondary interests, what is important is to weigh carefully the conflicting interests and their potential to interfere with professional judgment both in terms of the possible harm that the conflict might produce and also the lost benefits that might follow if the conflict were eliminated by ending the relationship or refraining from the decision at hand in some way. More about this subject later.

For this reason, professional codes that include a standard to the effect that conflicts of interest are to be avoided are of little help. The Code of Ethics of the Society of Professional Journalists, for example, includes this directive: "Avoid conflicts of interest, real or perceived." Such a directive is unrealistic and unhelpful for two reasons. First, situations in which peoples' interests conflict occur hundreds of times a day, and there is nothing about relationships between professionals and those whom the professionals serve to make these relationships systematically different, so many conflicts of interest are simply not avoidable. Secondly, as already indicated, the professional's interests that might interfere with the proper exercise of judgment on behalf of the person served, i.e., the professional's "secondary interests," are often themselves necessary and desirable rather than ethically questionable.

In this regard, the authors of the American Dental Association's Principles of Ethics and Code of Professional Conduct and of the American College of Dentists Core Values & Aspirational Code of Ethics have chosen the wiser course. Although both sets of standards indicate in a number of ways that the interests of the patient are ordinarily to be placed ahead of the self-interest of the dentist, neither document includes a general

standard that conflicts of interest are to be avoided. Again, the challenge is for the ethical professional to weigh each kind of situation in which interests conflict on its own merits to determine what is the professional ethical path to follow.

### FIVE KEY QUESTIONS

This does not mean that no guidelines can be offered to assist dentists in dealing properly with conflicts of interest. The thought process that the ethical dentist follows when evaluating a conflict of interest should include consideration of these five questions:

1. Is there any harm that might result from the dentist's secondary interests, and if so, how serious is that harm?
2. How likely to occur is the harm identified in Question 1?
3. If the dentist chose not to act because of the conflict of interest, what benefits would be lost and what harms would occur and to whom?
4. How likely to occur are the harms and benefits identified in Question 3?
5. Which course of action available to the dentist is most likely (taking into account the answers to Questions 2 and 4) to yield the least harm or the greatest benefit (taking into account the answers to Questions 1 and 3), given the professional nature of the dentist-patient relationship?

Before considering examples of the kinds of harms and benefits that might need to be weighed, it is important to stress the role of the final clause in Question 5. The conflicts of interests being examined here are specifically conflicts of interest that occur within the professional context of a dentist-patient relationship. That means that there are other ethical standards that apply to the relationship besides the comparison of benefits and harms outlined in the five questions. The various codes of ethics of professional dental organizations articulate some of these standards, and a much more detailed discussion of them

will be found in Ozar and Sokol's *Dental Ethics at Chairside*, especially in Chapters 4, 5, and 6. These chapters examine the characteristics of the ideal relationship between dentist and patient, the central values to be actualized in dental practice, and the extent to which the patients' interests are to be given priority in the dentist-patient relationship (Ozar and Sokol, 2002). The dentist's careful weighing of potential harms and benefits, which is the path to dealing professionally with conflicts of interest, must be done in the context of these standards to be fully and properly ethical.

### AN EXAMPLE FROM DENTAL RESEARCH

Before examining some specific situations from clinical practice, it will be useful to offer an analogy by examining the ethical judgments involved, both for readers and for authors and editors, in the use of disclosure in the publication of dental research.

What is the potential harm that might come from a professional researcher having a secondary interest, for example a financial interest or an opportunity for

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career advancement, in relation to a piece of published research? Clearly, if the secondary interest were great enough, we could imagine it influencing the researcher's professional judgment. We can imagine a researcher overly favoring the positive results of a research program or failing to report negative results if his or her funding for future research or some other fiscal or career benefit were at stake. As a professional, the researcher is committed to telling the world the truth about the outcomes of the research program as impartially as possible. But as a person with secondary financial and career interests, he or she may be swayed to say or to emphasize what the payer or some other powerful entity wants to hear or to omit what the payer does not want to hear. So the direct harm that is potential in such a situation is the incomplete information about the research program that might be produced by such a researcher, and the indirect potential harm is whatever might happen adversely to future patients when dentists depend on such incomplete research reports. Indirect harm can also result to the scientific community if the public perceives that the practices of researchers are self-serving.

How likely are these potential harms? This depends on many factors. It depends clearly on the strength of the secondary interest. How great is the financial or career reward for the researcher, and how closely dependent is it on communicating positive results from the research program? How will the results of the research be communicated? In the case of clinical research, will they appear in a scholarly journal as the results of impartial professional research, or in the advertising of a for-profit corporation whose self-interest in publishing results selectively may be

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evident to any dentist? And how important might the results be to patients' oral health when the results are reported, whether completely or incompletely? Some research will touch few if any patients directly, regardless of how properly reported; other research might impact hundreds or thousands of patients very quickly because of the nature of the research program.

When a dentist reads a research report, as a trained professional he or she must evaluate the dependability of the report before employing its results in daily practice.

The dentist can certainly evaluate the likely impact of the report on patient care and the dentist will typically know the standing of the journal or newsletter as a source of solid scholarly research versus commercial marketing of product lines. But if the dentist does not know the answer to questions about the researcher's secondary interests, the dentist cannot dependably answer important questions about the likelihood that they have interfered with the proper professional judgment of the researcher.

Some of these secondary interests are obvious, of course. No professional researcher acts without concern for reputation, career advancement, and making a living. But these motivators, powerful though they are, are precisely the motivators that are typically placed in proper perspective by professional commitment, so we do not ordinarily expect them to interfere with ordinary professional judgment. But our ethical

concerns are raised, even when we are talking about committed professionals, when the secondary interests pass a certain threshold of magnitude; and this is what the dentist reading a research report will not ordinarily know unless it is specifically disclosed.

Of course, we can imagine a world in which there are no dental researchers who have interests that might conflict with others' interests. However, my guess is that in that hypothetical world of no secondary interests, life as a dental researcher (or any kind of researcher) would be so unappealing that it would be impossible to attract people to the field. The consequence, as suggested by the answers to Questions 3 and 4, is highly unlikely to produce significant development of new oral therapeutics and few new understandings of oral disease and would ultimately result in the harmful decline of the oral health status of the public at large. This would be the "cost" of elimination of the secondary interests altogether, and it would clearly involve so great a loss of benefit to patients that other ways of dealing with the secondary interests are worth pursuing.

Therefore, rather than doing without a relationship that has a risk of potentially harmful conflicts of interest, we design structures to lessen the likelihood that the potential harms will occur. One such structure, in the case of published research, is disclosure of researchers' special secondary interests. These are required to be disclosed first to the editors of scholarly research journals and then to the dentists who use the journals to guide their care of patients.

This is the reason for published disclosure statements in the most respected research journals. The researchers indicate the extent of their secondary interests if these are matters that go beyond the ordinary need for

success, career, and making a living. They are required to do so precisely in order to lessen the likelihood of the potential harm that such special secondary interests might otherwise have. Notice that such disclosures minimize this harm in two ways. First, by informing the readers of the research of the existence of (or the absence of) special secondary interests, such disclosures enable the readers to judge the likelihood that researchers' professional judgment has been interfered with. This lessens the likelihood that incomplete, inaccurate, or biased reports of research will get transferred into dentists' clinical practices and adversely affect patients. But even more importantly, because researchers do not want to develop a reputation for having secondary interests that would interfere with their professional judgment, such disclosures may also function as a significant preventive to researchers having such secondary interests to begin with.

To close this lengthy example, notice that the five questions identified above are asked by three different groups in this story. First, they are used by dentists to evaluate the dependability of the research they read. Dentists know that the answers to the first two questions point to significant and probable potential harm unless researchers' special secondary interests are disclosed. They know how much harm could very well come to pass for their patients if they were to employ research reports in practice uncritically. Therefore, they weigh these facts in order to use research only when it passes critical muster, and in general that depends on their having access to the information that disclosure statements provide.

Second, the five questions are also used by journal editors, whose professional commitments to the oral health community require them to make evaluations very similar to those of the practicing dentist, except that far more patients are potentially involved. They recognize that the oral health community is dependent on the publication of ongoing research in order to provide the best care to patients, so simply not publishing research that involves any conflicts of interest would produce a great deal of lost benefit to patients. They also know that the daily management of disclosure policies and the bare fact of printing the disclosure statements all have costs associated with them that need to be covered. But when they weigh all the factors (Question 5), they recognize that requiring published disclosures of researchers provides the best balance of benefits and harms in the context of the oral health community's primary commitment to patients and also in the context of the research community's commitment to those who care for patients.

Finally, there are the researchers themselves. They, too, ought to be able to recognize the ways in which special secondary interests might interfere with their professional judgment on behalf of patients and the dentists who care for them. But like all of us, they may be overconfident of their own ability to remain impartial; and they will recognize that disclosure involves a loss of privacy regarding their personal business arrangements. But if they are realistic about the possibility of such overconfidence, they will affirm that disclosure for the sake of patients and the dentists who care for them is something of greater value than the value of their own privacy.

ask these five questions carefully in order to deal with a conflict of interest?

One kind of situation is so common, but also so commonly managed ethically, that one might at first think that it may not deserve comment here. This common situation arises from the fact that dentists, like most other professionals in American society, earn their living by their professional service. And the more service they perform, the more money they earn. Perhaps we can imagine a world in which healthcare services are not linked in any way to the livelihood, security, and quality of life of health professionals and their families. But in our society, that linkage clearly is present. This means that we can certainly imagine a dentist being tempted to recommend treatments to a patient not because they are needed, but because they are lucrative for the dentist. This possibility means that, for any thinking person, the answer to Question 1 about possible serious harm to patients is in the affirmative. But the commitment of dentists to practice according to professional standards means that the likelihood that such considerations will interfere with a dentist's professional judgment on behalf of his or her patient is typically very low (Question 2); and patients, therefore, typically entrust their oral health to the care of dentists without great fear of such interference.

This commitment by dentists to place their patients' well-being (their primary interest) ahead of their desire to improve income, lifestyle, and other (secondary) interests is based on recognizing that the risk of secondary interests for patients is both real and significant (Question 1). The only alternative currently available would be to have no one practicing dentistry at all;

#### AN EXAMPLE FROM CLINICAL PRACTICE

What sorts of situations might arise in which a practicing dentist would need to

and the harms and lost benefits of that course of action would be very significant and all but certain (Questions 3 and 4). The potential harms and lost benefits would also be far greater than that inherent in our current system and the occasional harms caused when dentists, for whatever reasons, fail to put secondary interests in perspective on the basis of the requirements of the professional relationship (Question 5).

But there are other circumstances that arise in the practice of dentistry for which the continuing commitment of dentists to practice according to the accepted standard of professional dental practice is not sufficient to lessen the risk of harm from a conflict of interest. An important example of this is the sale of products or services over and above typical dental care.

Dental care typically involves diagnostic procedures, the presentation of a diagnosis leading to a treatment recommendation, and the performance of the mutually agreed treatment. But many dentists also sell dental care goods. Examples of these are oral health compounds like dentifrices, fluoride products, sonic or mechanical toothbrushes, or other oral healthcare devices. These are products that the patient can purchase outside of a dental office and without a prescription. That is, the patient's access to such products is not dependent on the dentist's expert professional judgment in the same way as oral diagnosis and treatment. Furthermore, the patient's decisions in such instances typically involve much more of the patient's own independent judgment. Therefore, the ethical character of this particular relationship becomes ambiguous. It may

be merely a commercial transaction, conforming only to the less stringent ethical standards of the marketplace, rather than a relationship shaped by the standards of ethics professional practice. Should the patient assume that the dentist is as committed to his or her health in this relationship in the same way as in a matter of professional diagnosis and treatment? Without further information, the patient really cannot tell.

That is, with regard to this particular relationship between dentist and patient, because of its explicitly commercial character, harm to the patient is possible (Question 1) and the probability of this harm needs to be considered (Question 2). The patient needs more information in order to make a dependable judgment of the role of the dentist's secondary interests in the transaction. Absent such information, many patients would rather opt out of this particular transaction. That is, they would prefer to buy the products, on the dentist's professional recommendation, at an ordinary commercial establishment where they know the rules of the game, where "let the buyer beware" does not interfere in an otherwise professional relationship. Patients who would make this choice are in effect saying that the advantages of separating the commercial and professional relationships are less risky than combining them (Question 5). In the language used earlier, they are saying it is likely that there is more benefit in forgoing this particular relationship than in dealing with its potential harms. Many dentists who sell such products are themselves aware of the ethical ambiguity of these commercial transactions. They may work to ease the ambiguity by explaining to patients that they sell such products simply as a convenience to their patients, to save them a trip or to assure them that the product they are purchasing is exactly the right one. But such explanations, however reasonable, miss the ethical ambiguity of the situation.

What would be needed to address this issue carefully would be the equivalent of the disclosure statement of the researcher. That is, to lessen the patient's uncertainty about likelihood that the dentist's special secondary interests might be interfering with his or her professional judgment on behalf of the patient, the dentist would need to provide details about those secondary interests. The dentist needs to say, and of course to say honestly, that he or she is not profiting at all from the sale of this product and is providing it at cost (though "at cost" can legitimately include some charge for handling, storage, billing, etc.). Or if there is a markup on the cost of the product, then the dentist needs to say that, like the drug store on the corner, his office adds a 30% markup above cost, or whatever it is. Of course, some dentists who are making a few dollars by charging the usual markup might be embarrassed to disclose that so frankly to their patients. But if so, it would be valuable for them to ask themselves why they would be embarrassed. In any case, the weighing of benefits and harms according to the five questions must be done in the context of the requirements of the professional relationship between dentist and patient. One thing that this implies is that the dentist's privacy is not valuable enough to outweigh the value of the patient making well informed judgments about commercial products that the dentist recommends and, because of ethical ambiguities just discussed, the patient's judgment can hardly be well-informed without such disclosure.

For the dentist's part, of course, the answer to Question 5 might be that, rather than having to make such disclosures to patients, the best way to avoid such ethical ambiguities is to refrain from selling products at markup.

Exactly this same reasoning applies to situations in which dentists are selling healthcare services not directly involving dental care. These might include behavioral health services like smoking cessation programs, weight loss programs, holistic medicine regimes, or any number of other services. The dentist needs to be asking the five questions carefully and needs to be thinking carefully about the data that his or her patients need in order to ask the same questions. It is difficult to imagine that a patient could deal with the ethical ambiguities of such commercial transactions without honest disclosure by the dentist of his or her financial and other special interests in the transaction.

It is worth noting that the published codes of ethical dental practice do not prohibit such commercial activities. This implies that, in the judgment of the authors of such codes, it is possible to engage in such commercial relations with patients, in addition to the provision of strictly professional dental care, without violating one's ethical obligations. But the absence of such a prohibition does not mean that "anything goes." The dental professionals' commitment to regularly place their patients' interests ahead of their own means that the careful judgments about harm and benefit and likelihood called for in the five questions must be part of the dentist's thinking in choosing to engage in these sorts of narrowly commercial transactions with their patients.

By contrast, note that the *ADA Principles of Ethics and Code of Professional Conduct* does identify several kinds of relationships involving conflicts of interest that are so likely to be harmful and are productive of harm of sufficient magnitude within the professional-patient relationship that the only dependable way to limit the harm is eliminate the relationship (by not entering into it in the first place). For

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example, Section 2B1 on second opinions states: "In the interest of the patient being afforded quality care, the dentist rendering the second opinion should not have a vested interest in the ensuing recommendation." Similarly and with even clearer prohibitions, Section 4D1 on contingent fees states: "It is unethical for a dentist to agree to a fee contingent upon the favorable outcome of the litigation in exchange for testifying as a dental expert" and Section 4E on rebates and split fees states: "Dentists shall not accept or tender 'rebates' or 'split fees.'" Thus, the document's authors judge that in such relationships there is so much that is so likely to be lost to patients and arguably to the professional credibility of dentistry that it outweighs any benefits or prevented harms that might come from carrying out such relationships. In other words, the risk of harm from special secondary interests to the professional judgment of the dentist is too great and too certain to be allowed.

### Conclusion

People's interests conflict all the time. The most common and the most effective protection of the interests of those whom the dental profession serves is the established commitment of dentists to practice within accepted professional standards. But situations arise in which this protection of patients' interests is

not enough because of the special secondary interests of a professional in a particular situation. These are the situations that we most commonly identify as involving a "conflict of interest," and these are the situations that require the most careful weighing of benefits and harms of the particular relationship before proceeding. In some such situations, there is too much harm at stake and/or it is too likely to occur. In those situations, the ethical thing to do is to not go forward. But in many such situations, the harm itself or its likelihood can be significantly lessened through thorough and honest disclosure. The five questions provided in this essay can serve as a guideline for the thoughtful clinician trying to determine how to handle a conflict of interest situation ethically. ■

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