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ETHICAL ADVERTISING IN DENTISTRY

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ABSTRACT

Advertising in dentistry has steadily increased since the 1970s to become a leading choice of many dentists to promote their practices. The manner in which advertising progresses within the profession affects all dentists and how patients perceive dentistry as a profession. This paper presents ethical concepts that should be followed when dentists are pursuing practice promotion through advertising. It also raises questions that, hopefully, will increase attention and discussion on dental advertising. The paper concludes that ethical advertising is easily achieved by promoting patient education while not placing the dentist's self-interests ahead of the patient's. With this approach, dentistry may continue to be one of the most trusted professions.

Organized dentistry, for most of its existence, has frowned upon advertising by dentists. However, from the time of Dr. Edgar "Painless" Parker in the early 1900s—and even earlier—until the late 1970s, professionals have nonetheless advertised. It was then that the Federal Trade Commission (FTC) interpreted the professional organizations' bans on advertising as unfairly restricting competition. In May 1999 the Supreme Court, in *California Dental Association v. Federal Trade Commission* upheld FTC's jurisdiction over non-profit organizations and defined certain limits of advertising for dentists. Specifically, the Supreme Court

found that price advertising is allowable, provided that it is exact, accurate, and easily verifiable (California Dental Association, 1999).

Does advertising pay? "Painless" Parker, even in his day, ended his career with approximately 30 west coast dental offices, employing 70 dentists, and grossing \$3 million per year (Giangreggo, 2005). But the question for this paper is whether advertising is ethical or even professional.

Two events in the relatively recent past should be mentioned in the context of this article. In the late 1980s, the California Dental Association (CDA) ran an advertising campaign with the slogan, "We're the Dentists Who Set the Standards." At that time there was a "busyness" problem among member dentists with the economy in a bad recession. The CDA attempted to increase both patient awareness and the number of patient visits to member dentists by advertising the image of CDA member dentists as those who set the standard of dental practice. This campaign was cut very short when the Dental Board of California threatened a lawsuit based on claims of superiority.



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More recently, the American Dental Association joined with Intelligent Dental Marketing to develop advertisements that state, for example, “Trust experience,” “Elite Cosmetic Dentistry,” “Guaranteed deep whitening,” and “Lifetime porcelain guarantee.” (See the ADA’s Intelligent Dental Marketing Web site at www.adaidm.com/general/pasamples.)

In spite of the ADA’s current joining with this firm to promote advertising by its individual dentist members, there are many who still hold that advertising by a professional is unethical.

The next section will show that although advertising by professionals may take a variety of forms, not all types of advertising fall within the concept of ethical advertising.

Types of Advertising

For the purposes of this article, discussion will be directed to three types of advertising that apply to and have been used in dentistry: Comparable, Competitive, and Informational advertising.

Comparable advertising is the use of comparisons between the advertiser and others in the same market. In dentistry, these are usually seen as statements of quality or superiority. These types of ads are generally inconsistent with many state codes of ethics and the ADA’s Principles of Ethics and Code of Professional Conduct. They can easily be misinterpreted by the public and are therefore generally considered false or misleading. An example of the “comparable” type is an ad that states that Dr. X

is the “only dentist recognized as a Master.” These ads include statements of superiority, or actually compare one dentist to others. They are uncommon in dental advertising due to their being very blatant. It should be noted that some claim that advertising one’s achievements (fellowships and memberships in various associations, societies, and groups) is informational and not a statement of superiority. As will be addressed later, such advertisements must not mislead the patient; and therefore should be used with caution. Advertisements regarding superiority are comparative and not informational, since they promote the impression that the dentist is superior to or better than other dentists.

Competitive advertising typically involves the use of a discounted price or coupon, the offering of more services for the same price, or the offering of the same product or service for less cost than others in the same market. In dentistry, this type of advertising is usually seen in the offering of discount coupons, heavily discounted fees, or free services such as a “\$1 dental cleaning” or “free bleaching for new patients only.” These types of ads are generally not viewed as a credit to dentistry and are not acceptable as professionally ethical ads. Competitive advertising may also include offering “spa” services in the dental office at no extra charge. Competitive ads are generally allowed but only after

If the information is “false or misleading,” the patient’s autonomy has been infringed by the professional who has placed his or her interests first and possibly taken advantage of the patient’s vulnerability.

How much should a dentist influence a patient in making a treatment choice that requires more treatment than the patient previously was interested in or felt any need of?

receiving great scrutiny and guidelines by each state, so be sure to check with your state.

Informational advertising is the most common type used in dentistry. It is the use of information that only pertains to the advertiser and does not refer to any other service provider. Normally, this type of advertisement either informs the selected market of who the advertiser is, the advertiser's location, and the services available from the advertiser, or it communicates general information regarding the services to educate the target audience. These types of ads generally comply with the various state codes and the ADA Code of Professional Conduct.

There is also the issue of ads that are in bad taste, which may be found in all types of advertising. One must not confuse bad taste or bad art design with an ad being ethical or not. Many dental advertisements can be seen that are not a credit to the profession due to poor ad design. Some of these ads may well be within the guidelines of state dental practice acts but convey a non-professional merchant quality to dental services. Such ads are questionably ethical because they damage the professionalism of dentistry and insult the social contract that dentistry enjoys by being a profession.

PROFESSIONALISM AND OUR SOCIAL CONTRACT

Even with organized dentistry condoning advertising to a limited degree, does advertising push dentistry to a less professional status? A profession has been defined as "a collective of expert service providers who have jointly and publicly committed to always give priority to the existential needs and interests of the

public they serve above their own and who in turn are trusted by the public to do so" (Welie, 2004a). Many call this trust with the public a "social contract."

Being professional should not therefore allow a practitioner to capitalize on a patient's vulnerability in an attempt to maximize his or her own interests. Welie cautions, "When professionals publicly compete with one another, each advertising himself or herself as a better service provider than his or her peers, patients may infer that not all professionals are trustworthy or at least that not all of them are equally trustworthy" (Welie, 2004b). This is a slippery slope that advertising in dentistry may take if dentists, individually, do not act professionally and ethically to maintain the high road by developing advertisements that give credit to the profession and keep the patient's well-being in the forefront.

Patients place trust in their dentists with the understanding that their welfare is of utmost importance to the dentists as dentists provide opinions that guide patients to an informed decision regarding their treatment. If dentists advertise that they can provide services better than their peers, patients will question which dentist is better or more competent, when all dentists should have an acceptable level of competence through licensure. Of course, some dentists are more gifted or talented than others. However, the suggestion of superiority by any given dentist challenges the trust that the public has placed in the professions. A weakened public trust may damage the profession's social contract, and with it comes the concern that dentists may have their own self-interests as their priority rather than the public's needs and interests. In other words, the patient may see it as, "You can't trust them all," and "Who is better than whom."

THE ADA CODE

The ADA's Principles of Ethics and Code of Professional Conduct clearly makes reference to advertising by its members. Section 5F on advertising 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." It also gives an advisory opinion that provides examples of "false or misleading" advertising. Section 5F.2 states: "Statements shall be avoided which would: (a) contain a material misrepresentation of fact, (b) omit a fact necessary to make the statement considered as a whole not materially misleading, (c) be intended or be likely to create an unjustified expectation about results the dentist can achieve, and (d) contain material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dentists, if that representation is not subject to reasonable substantiation."

There are three ethical principles that apply to self-promoting or advertising: patient autonomy, beneficence, and veracity. Patient autonomy refers to the patient's right to self-determination and confidentiality. Patients have the sole right to make decisions regarding their health care. The information given in an advertisement affects that decision-making process. If the information is "false or misleading," the patient's autonomy has been infringed by the professional who has placed his or her interests first and possibly taken advantage of the patient's vulnerability. It must be pointed out that dentists, having specialized knowledge, may easily misguide a patient with limited oral health literacy or capacity to fully understand a proposed treatment that is being

promoted or advertised. The dentist is then taking advantage of a trusting but unknowing public. This undermines the social contract that contributes to the professionalism of dentistry. This can be seen in the advertisements and office pamphlets that state, for example, "Only dentist recognized as a master," "Graduate of (Best Smile Institute), the world leader in smile makeovers," "Elite cosmetic dentistry," or "World Class Care" (Gandolf & Hirsch, 2007). These are often promoted and disguised as benefit-driven statements, but are actually statements of superiority. Such statements raise the question of benefit to whom? How much should a dentist influence a patient in making a treatment choice that requires more treatment than the patient previously was interested in or felt any need of? Should we actually be selling dental procedures or appliances, or should we be educating the patient regarding his or her dental health and well-being? This is definitely a very gray area in which the dentist making or promoting the benefit driven statements must keep the patient's well-being above all. The patient must not be viewed only as a potential cosmetic oral reconstruction customer.

Beneficence is the duty to promote the patient's well-being. Advertising may be promoting the dentist's self-interest rather than the well-being of the patient, depending on the type of advertisement. Does the advertisement intend to increase the patient's dental awareness and promote the patient's well-being and dental health, or is the intent only to increase the dentist's income? An ethical, professional dentist will promote the patient's dental health and well-being rather than sell procedures that merely inflate the income. Of course, dentists who place advertisements with a clear view to enhancing their income will argue that such advertisements are also benefiting patients. While true, there always is a point where the balance tips

toward misrepresentation. Regulatory agencies tend to determine such questions of balance in conflicting content by applying the standard of "what would a reasonable reader conclude" rather than what did the dentist placing the advertisement have in mind.

Advertisements that contain both self-promoting and patient benefit messages can be seen where a dentist suggests that he or she is better or more educated than the competition. This approach is also evident in advertisements for smile makeovers with unnecessary expensive veneers, "esthetic upgrades," or removal of sound amalgam restorations for systemic health reasons that have not been based on evidence. The ethical principle of nonmaleficence (do no harm) may also be applied to such a situation. Gordon Christensen has brought attention to this problem, stating that overtreatment of esthetic dentistry without a total (honest) informed consent, when the sole purpose is the dentist's financial gain is clearly unethical (Christensen, 2003).

Veracity is the principle that one must be truthful when communicating with the patient. This can be applied to all types of advertising. Statements referring to the dentist as the "best" or the "only master" or that identify the dentist as a "fellow" imply to the patient that the dentist is a specialist or has professional qualifications that are superior to other dentists who do not have such credentials and they are thus misleading (ADA, 2005). The same may be said about those who promote themselves as specialists in "cosmetic

dentistry,” “TMJ,” or “implants,” when such “specialties” are not recognized by organized dentistry.

Some states do allow such statements of fellowships or achievements in various dental organizations provided that full disclosure or disclaimers are given. However, although such statements may be legal (check with your individual state dental practice act), are they ethical? Just because something is legal does not make it ethical. Is the public not entitled to information about the dentist’s area of expertise that may affect the selection of a dentist? Any announcement that may be the least bit misleading should state all its qualifying aspects so that it is most clearly stated and avoids creating any false impression or misperception among the public. Again, to mislead the public in dental advertising creates a crack in the social contract or public trust that is conferred upon dentistry to allow it to function as a professional entity, with certain rights and privileges that are not available to the general public.

COMPETITION AND FUTURE Pitfalls

There are also pitfalls that occur when a group of individuals offering the same professional services begin to advertise in a community. Typically, as more professionals locate in the same community, advertising becomes more intense and competitive. With competitiveness, advertisements tend to approach puffery; i.e., “the exaggeration by the salesperson concerning quality of goods or service, when claims of superiority are based on opinions rather than facts” (Black, 1979). A clear example is the “Lifetime Porcelain Guarantee,” which has no basis in scientific evidence. Any such guarantees by a healthcare provider are highly suspect.

Dentists increasingly interact with a highly educated public that has easy access to information via the Internet. This raises the question, “How much information about a dentist’s abilities are patients of the twenty-first century entitled to so as to facilitate their autonomous decision making processes without misleading them?” This question certainly has no clear-cut answers, though some dentists have tried to answer it by reiterating the ADA Principles of Ethics and Code of Professional Conduct, which is a very fine place to start. However, to maintain dentistry as one of the more trusted professions year after year, dentists individually and collectively must be careful not to succumb to the influences of the marketplace. In order to maintain our social contract with the public, we, as trusted healthcare providers, must not become sellers of dental appliances or morph into “Veneers R Us,” “Image Care,” “Teeth in a Day,” “Crowns in an Hour” dentists. All the tremendous advances in dentistry are truly a blessing to those in need of such services. However, in their promotion to the public through advertising, dentists should not focus on the selling of dental appliances or restorations and forgo the actual healthcare needs of the patient.

PATIENT PERSPECTIVE

Another important consideration is the fact that people perceive and react differently to advertising (Ozar & Sokol, 2002). For the purposes of this article, I am condensing the many types of consumers into three basic types: (a) Skeptical Patients—those individuals who are wary of all advertising and do not trust any of it as totally true; (b) Thoughtful Patients—those who question the advertisement’s information or claims to see if it is reliable and give thought to its source, design, and content; and (c) Gullible Patients—those who trust almost all advertising and totally

believe that all that is advertised is true, especially if the source and design are believed to be credible. Of course there are many other types and possible combination of types that exist.

Skeptical Patients are not heavily influenced by any advertising, and as such, are not affected by advertisements that may be misleading or not fully ethical. There is little worry about this group being misled.

On the other hand, Thoughtful Patients tend to be reflective and need protection from unethical advertising because the sophistication of today’s marketing strategies is highly advanced. Most promotional advertising to this group will be looked upon with some interest, with a “show me” or “prove it” attitude.

Patients in the gullible group are of high concern because they rely heavily on the information in the advertisement and assume it is true. This group, therefore, would be highly affected by advertisements that may be misleading or not fully ethical. It is this third group that obviously needs more protection from unethical advertisements; and by doing so, the profession of dentistry and its contract with the public are also protected.

It must also be kept in mind that all types of patients, some more than others, often tend to look at dental advertising as truthful because the advertisement is being promoted by a healthcare professional who has had a trust-based relationship with society. It is hard for the general public to determine when advertising turns into puffery and puffery turns into untruths. Since it is unknown which one of the above types of dental consumer will receive the advertisement, ethical dental advertisements must be ethically constructed so as to not mislead the gullible patient,

because it is this group that is most easily affected and misled by sophisticated, unethical dental advertisements. We must remain on the side of proper, ethical advertising at all times to protect our social contract with society which allows us to function in the public interest as a profession.

As more and more dental professionals develop Web sites that are largely not reviewed for their veracity, there is a tendency to stretch the truth in the individual dentist's Web site. Therefore, when advertising, dentists must police themselves and raise themselves above the tendency of puffery and be respectful of the profession's social contract with the public. The dentist who creates a Web site must not only be aware of his or her patient audience, but also of the effect of such marketing on the dental profession's image in the context of its social contract with the public. This responsibility to fulfill dentistry's public trust, which is the basis for our professional status, must be ingrained in our dentists so they will maintain a high level of professionalism in their practices.

THE CHALLENGE

Dentistry's challenge with advertising is to balance the risks of harm to our professional status against the benefits to the patient of information that facilitates the patient's autonomy in decision making. Using advertising to sell dentistry is not an undertaking for an ethical professional who works to keep the patient's needs in the forefront. As such, ethical advertising remains an individual undertaking. Each dentist must take responsibility for properly informing patients about their treatment options and for providing realistic expectations of outcomes for each type of therapy that could be implemented (Graskemper, 2005). In addition, dentists must properly inform their patients about their own credentials. All of this could be enhanced during the years of

dental education through the reinforcement of appropriate ethical advertising and marketing for dental practices. In doing so, examples of actual marketing and advertising techniques should be presented for the students' discussion and future reference. It is noted that dental practice marketing is not a high concern among dental schools in that they must prepare the students for the technical aspects of dentistry in a limited time. However, courses that will enhance the students' approach to advertising ethically (almost all will advertise in some manner) will not only be a benefit to their future success but also improve the image of dentists and strengthen their social contract as a profession. This approach will help keep dentistry as the highly respectable and trusted profession the public has come to know. ■

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