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What Does It Mean to Be Ethical?

Ethics of Social Media in Dental Practice

Care Versus Commerce: A Challenge to Professional Integrity?

Dental Ethics:

PROFESSIONAL CHALLENGES IN A CHANGING WORLD

The Ethics of Social Media in Dental Practice: Challenges

BRUCE PELTIER, PHD, MBA, AND ARTHUR CURLEY, JD

ABSTRACT This is the first of two essays written to consider several important trends in dental practice that result from innovations in digital and social media. This essay reviews ethical and legal implications of the use of websites, Facebook, review sites, email and other digital innovations in dental practice. The second essay provides ethical tools for analysis, illuminates areas of ethical concern in today's practice environment and offers recommendations for future practice.

AUTHORS

Bruce Peltier, PHD, MBA, is professor of Psychology and Ethics at the University of the Pacific, Arthur A. Dugoni School of Dentistry in San Francisco. *Conflict of Interest Disclosure: None reported.*

Arthur Curley, JD, is senior trial counsel for dental malpractice defense firm of Bradley, Curley, Asiano, Barrabee, Abel & Kowalski and assistant professor of Dental Jurisprudence at the University of the Pacific, Arthur A. Dugoni School of Dentistry in San Francisco. *Conflict of Interest Disclosure: None reported.*

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Dentists, like so many practice owners and marketers from every industry, are standing at the crossroads of old and new marketing media and trying to decide which path to take.[1]
— American Academy of Cosmetic Dentistry website

There is a paradigm shift underway in dentistry, and the very nature and culture of the profession may be at stake.

The virtual explosion of technology, digital communication and social media has not bypassed dental practice. At first glance, the impact seems huge and wonderful — or threatening and horrible — depending on how you look at it and how much gray is in your hair. Dentists are confronted with Facebook, Twitter, Groupon, LivingSocial, FourSquare, Instagram, LinkedIn, Angie's List, Pinterest, Google+, Yelp, the need for a practice website and a Facebook page, email, blogs and YouTube, with more channels and gadgets emerging every day. The influence of the Internet on dental marketing has been called *"word-of-mouth on steroids."* There is plenty of advice on the Internet about how to use the new media, and scores of eager digital marketers to help you get started.

The question is what should dentists do about the new digital and social media and what are the ethical and practical implications? What's good and bad; what's right and wrong?

This essay explores the impact of digital technology on the practice of dentistry from an ethical perspective. It includes a review of relevant legal issues (not legal advice), and its main purpose is to provide a roadmap to help the reader decide what's the profession to do about the current and future uses of digital communication. Simple discomfort with a new technology is not a moral argument. An accompanying essay provides ethical tools and recommendations for practitioners and dental educators.

The Situation

There is great potential for doctors and patients to benefit from fast, inexpensive, powerful networks of communication and documentation, and many patients expect to find their dentist on the Internet. There is also potential for significant harm to the doctor-patient relationship, loss of confidentiality and a degradation of the professional culture of dentistry. One dental website consultant offers the following advice: *"Don't let privacy be a deterrent. It is only a speed bump."* A long-standing threat — the influence of marketers who are not dentists — suddenly seems more dangerous to the profession. One marketing expert notes on the Internet that:

This is the future of the Web, like it or not. Years ago, just having a website was a major accomplishment, now it is a necessity. Soon a Facebook or YouTube account will turn from a novelty to a necessity.
— Social Media for Dentists
Jason Lipscomb, Sidekickmag.com

While it is possible that much of the current conflict in professional circles is generational, differences are probably more complicated than the usual grousing about how the younger generation of dentists is ruining the profession, or conversely, how the old folks don't get it. Those squabbles have been around longer than any reader of this essay has and are unlikely to dissipate soon. Younger generations of dentists have always transformed their professions over the years, and that's certain to happen again. Younger people do seem more comfortable with the latest gadgets, and reports of infants who develop touchscreen skills before they can walk are now commonplace. But there are plenty of savvy tech types with gray hair, too, and older practitioners often possess the economic wherewithal to hire geeks to bring their practice up to speed, even if they don't really understand how the bits work themselves.

Challenges

The influence of marketers. While this has always been an issue in American health care, the explosion of digital outlets makes it likely that the influence of marketing consultants will grow. Marketers and health care professionals are driven by a different mentality and different set of ethics. Their goals are significantly different, as are acceptable methods of communication. The marketer's principle goal is to increase profitable business using a wide variety of techniques. This influence is already ubiquitous, and there is real danger that a marketing culture could overwhelm the profession. One online marketer suggests that "YouTube is a great way for you to appear in your dental patients' living rooms." Digital mechanisms exist that will remind people of your services whenever they go online. This tactic skates perilously close to the *soliciting* that is illegal in dental practice, and presumes that patients would actually welcome their uninvited dentist into their homes or computers. All one has to do is spend a few minutes on the Internet to get a feel for the power of this marketing. It is harder and harder to differentiate content from advertisement. Often a single message is both at once. It could be very easy for a doctor who does not use the latest sophisticated digital methods to feel left behind by the trend. Younger dentists — the future of the profession — may be especially vulnerable to questionable trends, given their lifelong comfort with technology and the financial challenges they face in the current economy. This situation mandates that dental schools provide powerful educational, ethical and technical experiences so that students enter the real world with tools adequate for the task. If young dentists enter their profession naïvely assuming that dentistry is "just another business," the profession is in peril.

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Dental plans are "third-party payers," whose influence on the dentist-patient relationship is complex, but digital media bring a "fourth party" into the mix. A host of others — many of whom are "outsiders" to the dental profession — are in the process of influencing dental care, perhaps unwittingly. These include web designers, coupon brokers and social networks such as Facebook. These players are not obligated to adhere to the CDA Code of Ethics. They don't even know or care about such a thing. Are they selling names, clicks, usage patterns or contact information? Their marketing behavior is not especially transparent to patients or doctors, and most people have no idea what is going on behind the scenes and screens.

Online reviews. Sites such as Yelp, Angie's List, YP and ZocDoc (there are many more) are a seriously mixed bag and unlikely to go away. They create a mechanism for customers and patients to level the playing field of "caveat emptor," offering people an anonymous channel for feedback to doctors who rarely get or even welcome direct feedback from patients. Such feedback can hurt, and most people hate getting it, but it can help shape a practice for the better. That

said, there are serious problems with review and rating sites, especially in the health care arena. Distressed and angry people are much more likely to post a review than happy ones, so the feedback tends to have a negative bias. Sometimes reviews are negative because patients and dentists do not share the same value structure. A practice could receive a hostile review because a cleaning felt uncomfortable or took a long time, even though it was difficult, thorough and well done. On the other hand, some of the most positive reviews are phony, written by shills or ghosts paid to make the proprietor look good. One never really knows if an online review is "real." Here's a notice recently spotted on the door of a San Francisco restaurant:

"Stop the Bully. Boycott Yelp"

Our customers repeatedly tell us that they have submitted very good reviews on our food and service. Yet, they never show on our reviews. We asked Yelp, we were told, "Perhaps if you paid to do Yelp ads we could help you with this."

Online critiques are especially interesting when viewed from a legal perspective. Social media has caused a sea change in the law, as well. In contrast to the one-directional quality of television — where a small number of elite people communicate to a captive audience — the law tends to view social media as if it were the public forum envisioned by our founding fathers, where ideas and opinions are exchanged and therefore subject to constraints such as free speech, defamation and rights of privacy. The law in California protects free speech in social media as *opinion* unless it is an unquestionably false statement of fact that defames or threatens grave bodily harm. Commonly called a SLAPP (Strategic Litigation Against Public Participation) motion, California Code of Civil Procedure (Sections 425.16-18) provides that:

A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

This means that when a person is sued for defamation for publishing a statement in a social medium such as Yelp, the person who made the statement can file to dismiss the complaint. If granted, the defamation suit is dismissed and the person who sued may then collect attorney's fees. This law was designed to provide protection against meritless lawsuits and has spawned numerous law firms that specialize in these motions (casp.net/california-anti-slapp-first-amendment-law-resources/statutes/).[2] As an example, if a patient were to report on Yelp that they were unhappy with a dentist and felt that the treatment was rough and the fees were too high, the law would see such comments as mere opinions, not defamatory statements of fact. Any suit against such statements is risky, as it would be subject to a SLAPP motion and possible attorneys' fees, typically in the thousands of dollars.

STAFF AND CONSULTANTS must be instructed that names of patients and information about treatment of patients should not be discussed in any social media.

The law continues to hold health care providers to a high level of confidentiality when it comes to patient data and protected information. HIPAA and the California Confidentiality of Medical Information Act (CMIA in Cal. Civ. Code §§ 56-56.37) regulate the privacy of medical information. A dentist can be responsible for failing to employ reasonable efforts to maintain patient privacy, unless and until it is waived by the patient. This applies to postings by doctors on Yelp. Staff and consultants must be instructed that names of patients and information about treatment of patients should not be discussed in any social media. That limitation includes references to unnamed patients if the identity of the patient could be established by the information posted. Because a dentist is responsible for all employees, such discussions by staff, even after hours, could result in liability for the dentist who did not have or enforce reasonable efforts at confidentiality.

So, online review sites are not an even playing field for doctors. Patients can express their "opinion" of the treatment they received, but doctors are constrained in their capacity to respond. Aside from the illegality, it seems generally unethical to respond to a negative patient review in public, given the important role that confidentiality plays in trusting the doctor-patient relationship. Would you truthfully reveal details of your medical history if you thought that your doctor might post information about you online? As mentioned, some negative reviews result from misunderstandings that are, to an extent, out of the doctor's control, yet dentists must still be extremely careful when responding. They run the serious

risk of breaking the law, appearing hostile, defensive or obsequious, and information posted on the Internet tends to last forever. A response to a negative review can trigger subsequent retaliation by the original rater. Bear in mind that thoughtful responses, if posted at all, take serious time and effort.

Finally, as the sheer volume of reviews increase, the overall or average validity of ratings is liable to improve, but dentists' offices typically have a small number of reviews, and those can be dominated by the most outrageous of the lot.

That said, reputation management firms are readily available to write responses to negative reviews on behalf of doctors whose reputations are wounded on Yelp. These companies may or may not be aware of confidentiality constraints in the health care arena, and they may use methods that are shady or even dishonest.[3] They may promise to remove negative reviews when this is not possible, and they might attempt to bury a bad review with glowing ones written by paid reviewers. Some try to help by "emailing, calling or faxing their sales pitch to people within minutes of a complaint being posted about them online."[3]. Some will use legitimate methods such as alerting you when your practice has received a negative review, or publish proactive positive information about your practice. Some will coach you to encourage satisfied patients to post reviews. Such coaching seems quite undoctor-like, but remember: marketers do not possess the same professional views as doctors.

Websites. It is hard to imagine a dental practice in the future without a website, and websites are of obvious value to dentists and patients as well. They can be used to provide information about oral health and about the practice, they can help establish and maintain a relationship, they can be used for scheduling and routine administrative communication, they can carry out transactions and they function 24/7. There are, however, ethical pitfalls to be avoided.

The website name itself can be problematic, so it should be chosen carefully.[4] Names such as "bestdds.com" or "superiororthdontics.com" or even "cheapestdentistry.com" are examples of names to be avoided. These obviously run afoul of injunctions against claims of superiority or lowest prices. They may also fail the test of tackiness, diminishing the esteem of the profession.

WHEN CREATING OR modifying a website, dentists are obligated to be sure that all photos are not subject to copyright.

Website developers must be closely supervised, even though they may chafe at the constraint. It is the dentist, not the designer, who is responsible for all that the website communicates, and good web design includes the use of persuasive messaging, including effective use of search engine optimization (SEO). Designers ensure that keywords make their way onto websites to drive their site up the hierarchy of links on search pages. A higher spot translates into more hits and more business and more money. Such keywords might include terms that are unethical in dental communication, such as "best, cheapest, painless or guarantee."[5] SEO technology is evolving and it is difficult, if not impossible, for dentists to keep track of the changes.

Information and photos should be placed with great care. One must be sure to have proper permissions in both cases. When creating or modifying a website, dentists are obligated to be sure that all photos are not subject to copyright. This can be a problem when the dentist retains a web designer who has technical skills (sometimes a family member) but no understanding of legal issues involved in the use of photos they discovered on the Internet. Posting a copyrighted photo on a Web page without a release is held to strict liability under the law, and ignorance of the copyright is not a defense. The careful practitioner will ensure that the Web page content is either original imaging or ones for which a release (sometimes requiring a small fee) has been obtained. The typical claim for unauthorized use of a copyrighted photo is several thousand dollars. The use of patient photos is especially problematic, as it is a tempting and powerful way to influence other patients, but HIPAA requires a specific written release to use patient photos in any form of medical marketing. Facebook sites routinely show the faces of dental patients, probably with the tacit (but not explicit) permission of the patient. The matter is complicated because some patients may be reluctant to allow their facial photo to be posted, but intimidated by the doctor and disinclined to say "no" even though they are uncomfortable. Other patients may feel great about posting their photo immediately after treatment but might change their mind later. Care must also be taken when posting personal information about patients or using them for testimonials. Some patients may think that they (more or less) *have to* post their own face on the website at some point, in response to group or peer pressure. The posting of patient photos is complicated

because they tend to show results that are especially good, triggering the need for a legal disclaimer such as *"Results atypical."* Before-and-after photos should be taken in comparable poses, angles and lighting conditions so that they are not misleading. According to the Dental Practice Act,[6] photos of models who are not patients must be accompanied by a message revealing that fact. Dentists would be wise to consult an expert other than the webmaster before posting photos on a Facebook page or website.

Special offers on websites can be problematic. They can attract patients, understandably, who seek only the treatment in the offer and nothing else. This treatment may not be something that they actually need, or they may truly need other treatments that are not part of the offer. According to ethics codes,[7] dentists are obligated to inform patients of their current oral health status. An exam and radiographs may well be clinically indicated by the standard of care, but might feel like "upselling" to the patient when their newfound dentist recommends them. It's as if the special offer was a loss leader used to physically bring the patient into the office for other, more costly treatments. Disclaimers are necessary and doable. Here's an example from bestnaturalsmileblog.com/2012/01/promotion:

Note for New Patients: To keep you safe, new patients are required to have a thorough exam and any necessary dental X-rays, which are not a part of this offer. Dental hygiene health is determined at your first visit and any additional recommended therapy would be advised at that time.

Patients who arrive for a discounted "whitening" may be disappointed to discover that they are not "good candidates" for that treatment. These scenarios have a way of altering the doctor-patient relationship forever. One might also wonder how regular, long-standing patients of the practice might feel about these special offers and the new patients who get them.[5] Such offers may cause patients to move around from practice to practice, depending on who's offering the best special this month. That can't be good for dental patients or practices in the long run.

Special offers can result in unequal treatment of patients, a justice issue to be sure. It is likely to be difficult, if not impossible, to treat "bargain" patients or discount patients in the same careful way as "full-fare" or long-standing patients in the practice. In the worst-case scenario, patients who are taking advantage of an especially good deal may even experience conscious or unconscious hostility on the part of practitioners and their staffs.

ACCORDING TO THE Dental Practice Act, photos of models who are not patients must be accompanied by a message revealing that fact.

The phrase "be careful what you wish for" applies here. Special offers, along with social couponing, may also attract patients who are not a good fit for one's practice. The marketing literature refers to this phenomenon as "adverse selection."[8]

In many businesses, the customers most likely to sign on are precisely the worst customers you could possibly find.[9]

Finally, dentists must ensure that their website "maintains or elevates the esteem of the profession.[6] Offers of gas cards or iPads seem inconsistent with health care ethics or etiquette, at least in the traditional sense. Readers are urged to take a look at current offerings on the Web to see how common commercial or distasteful dental websites really are. The senior author conducted such a search while writing this paragraph and the first site to pop up showed a photo of a happy young patient shaking the rubber-gloved hand of a smiling dentist (hopefully a model and not a "real" dentist). The second site offered a "$99 New Patient Special" and "Implants Starting at Just $1,499." Phrases about fees that are vague or invite a bait-and-switch (e.g., *"as low as"*) are actually prohibited by law in California (B & P Codes; B, 3c).

Facebook. Launched in 2004, this powerful and popular social network now claims more than a billion users. It has exploded into a marketing goldmine, is becoming ubiquitous and has morphed from a relationship-builder to a transaction medium. The use of Facebook (if you do it yourself) is free of cost. One marketer wonders, *"How can dentists overlook a way to market to 50 percent of the population?"* Users click quickly and seamlessly between actual, real-life friends and commercial ones. The American College of Dentists' Position Paper on Digital Communication[10] makes this observation:

Those who are struck by the banality of Facebook postings have missed the point. The message is subordinate to the relationship.

A Facebook page is actually easier to update than a practice website and may serve all the same purposes, albeit accompanied by advertisements that the practice did not choose (such as ads for War Commander video games, entries about "dental implant horror stories," or "drill bit found in woman's lung"). One must wonder whether dentists have any responsibility for the content of the advertisements that appear on their

Facebook pages or websites. Do patients assume that the doctor endorses these dental products? The ADA Code of Ethics (5.D.2)[11] says:

> *In the case of a health-related product, it is not enough for the dentist to rely on the manufacturer's or distributor's representations about the product's safety and efficacy. The dentist has an independent obligation to inquire into the truth and accuracy of such claims and verify that they are founded on accepted scientific knowledge or research.*

Facebook is now a portal to a vast array of integrated marketing tools for dentists, including blogs, videos, Twitter accounts and a Facebook page for the practice. The options are dizzying. The opportunities for patient education are very significant, but the distinction between content and promotion is blurred. Any measure of doctor-patient confidentiality seems gone. Marketers are at the ready to help you create and enhance your Facebook presence.

Facebook pages are currently used by dentists to show before-and-after photos, advertise new techniques that are offered, inform patients of recent training taken by the dentist, promote new products, offer tips for patients (including ways to "make the most of dental insurance"), ask for patient endorsements, promote contests, conduct patient surveys about the practice, banter with patients about their weekend activities and show that the practice is a fun, happy place to be. The possibilities for good and bad on Facebook are vast enough to cause vertigo. It's overwhelming.

*Coupon brokers.** There are several large coupon brokerages, such as Groupon and LivingSocial, available online. Dental services (alongside offers for miniature golf, eyebrow waxes, Botox treatments, Brazilian waxing, couples massages and firearms classes) are offered at a discounted rate at local practices. Here's a real-life couponing example: A dentist typically charges $5,000 for Invisalign treatment. The coupon broker posts an online offer to provide that treatment for a discounted price of $3,400. The coupon company collects that fee from the patient, takes a share (say 35 percent of the fee, or $1,200), and sends the remaining $2,200 to the dentist who provides the treatment. The dentist then pays $1,600 to Invisalign for their retainers and services. This leaves a gross profit of only $600 to the dentist, before deducting normal overhead costs. In this example, the dentist provides services for about 20 percent of his or her normal fee. The dentist can make up some of the difference by doing a high volume of these treatments and thereby securing a reduced fee from the lab. This situation is not abstract, extreme or fantastic, as Internet coupon arrangements have the capacity to produce breathtakingly large numbers of new referrals in short periods. Obviously, the dentist hopes to retain some of these patients, but that's an iffy proposition under the circumstances, especially when you consider this passage from the CDA Code of Ethics (Section 9.1-2):

> *A dentist has the obligation to make a reasonable inquiry to determine whether a prospective patient is currently under the care of another dentist. In the interest of preserving the continuity of care, a specialist or consulting dentist has the obligation to inform the patient of the need to continue care with the referring dentist, unless the patient expressly reveals a different preference.*

THE POWER OF social couponing to produce large numbers of new patient referrals can be a double-edged sword.

Obviously, patients themselves get to decide where to seek dental care, but the use of coupons seems likely to encourage "patient poaching."

The power of social couponing to produce large numbers of new patient referrals can be a double-edged sword. When you sign on with a coupon company to make a special offer to the public you may, in fact, be obligated to accept that discounted fee for hundreds (or even thousands) of patients who contact you to use the coupon. Prior to the offer's expiration date, it's unlikely that you can just draw a line when you've had enough. This puts a dentist in a horrible position leading to some very unattractive choices, such as telling new patients that you are no longer willing to honor the coupon that they purchased in good faith — or worse: devising deceptive responses that delay or put such patients off indefinitely.

It turns out that Groupon users tend to review businesses more negatively and provide lower ratings than other customers, and further, that their reviews carry more weight with readers. This is called the "Groupon Effect" and it has been examined extensively in the marketing

*Editor's note: This article discusses the ethics involved with using online coupon brokers to offer dental services. The Legal Division of the California State Department of Consumer Affairs (DCA) has recently released a legal opinion concluding that a contractual arrangement between a health care professional and an Internet marketing service offering online discounts for medical services violates state law.

literature.[12] Explanations include the possibility that businesses using social couponing tend to be weaker or "bad" businesses that are already in trouble, that Groupon users are experimenting when they use a coupon or that businesses are sometimes caught off guard or swamped by large numbers of referrals and unprepared to provide adequate service.

While Internet coupon arrangements appear to constitute fee splitting (discussed below), one might also wonder about the winners and losers. Who benefits from such an arrangement, and what are the trade-offs? These sites create most of the same negative consequences that website offers do, including patient drifting, doctor shopping and suboptimal treatment selection by patients (where patients request treatments that doctors don't think they need while rejecting clinically necessary ones). There are also potential billing problems associated with the integration of dental plans with coupons. What is the "real" fee for the treatment? If you bill a patient's dental plan, are you representing your fees accurately? How do you include payment of a deductible? There is real danger of fraud, even unintentional fraud carried out by a well-meaning practitioner. A recent item in the ADA News[13] notes that:

Dentists who utilize Groupon-like services should ensure that they are not violating their contracts with third-party payers. These contracts sometimes contain provisions requiring that fees submitted to the insurer reflect any rebates or reductions in the fees (or co-pays).

Brokers such as Groupon and LivingSocial are especially tricky for dental practices because they are so large and legitimate.[14] The things they do in the commercial marketplace are quite legal and appropriate in that business context. But those same behaviors and opportunities may well be illegal and inappropriate in the health care arena. The fact that a large, well-accepted commercial entity does something online does not make it OK for dental practices, but the size of the business lends a certain mob credibility ("everybody's doing it"). Doctors are still responsible for upholding the legal and ethical standards of their profession. The ACD's White Paper[10] puts it succinctly:

The overarching theme of this position paper is that dentists should live their professional values uncompromised, regardless of their involvement in digital communication.

PERSONAL INFORMATION about patients must be kept confidential, and digital messaging represents a clear threat to this requirement.

Email (or texts) with patients. This is another technology with great potential value and corresponding dangers. The convenience of electronic messaging is extremely attractive, and its use in dental practice is important. Routine administrative tasks and transactions can be made convenient, and records and radiographs can be transmitted quickly and inexpensively. That same convenience can be risky as well, as email and text messages are anything but confidential. One must assume that everything sent over email could someday be public. That potential always exists, and nearly everyone on the planet has experienced the embarrassment associated with an email message gone rogue. Emails have a nasty habit of ending up in the worst inbox imaginable. Personal information about patients must be kept confidential, and digital messaging represents a clear threat to this requirement. Email is also a notoriously "cold" medium, and a poor way to communicate negative or emotionally laden messages. Short text messages can be downright perplexing. Plus, email messages linger longer than the half-life of plutonium.

It may sometimes be tempting to provide medical or dental advice over email, which could be a good or bad idea, depending on how things work out. Email responses to patients' questions are convenient and quite efficient. Consider, from a patient's point of view, the difference between getting a question answered via email versus trying to get an answer from the dentist over the phone or by going to the practice in person. But clinical advice given through email may be ill-advised without a physical examination. Long boilerplate disclaimers at the end of emails aren't likely to indemnify a practice that makes a serious clinical error in a digital message, either.

State dental boards will be inadequate. The scope of influence of the Internet and social media will swamp the power of government agencies to control or manage the situation. This trend is actually not much different from that of the past. The Dental Board of California, like all components of the Department of Consumer Affairs, is required by law to be self-sufficient and has limited resources. Its operations are funded exclusively by license fees.[15] Dental boards have never really been able to contend with the volume of ads found in phone books, on buildings, signage or on billboards in a state with 37 million people. But, the increase in ad presence is now exponential. While some might prefer it this way, neither the profession

nor the public can expect state boards to protect patients from dishonest practices or predatory commercialism. Will professional organizations such as the CDA and ADA be willing and able to ensure that professional standards are maintained and sustained? Professional dental organizations have little authority over nonmembers.

Recent developments in electronic and social media offer exciting possibilities for the enhancement of dental practice, both for patients and practitioners. But there are very real challenges involved, and they pose credible threats to the profession. Private practice dentists necessarily have one foot in each of the two worlds of health care and commerce,[16] and it is their professional responsibility to manage the inevitable conflicts. Dentists cannot simply employ commercial or marketing ethics to guide their practices. Furthermore, it would be a serious mistake to hope that governmental agencies will effectively manage the evolution from older forms of publicity and marketing, and it is in the best interest of the dental profession to proactively take charge of these changes. The second essay in this series offers biomedical ethical tools for this purpose. ■■■■

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THE CORRESPONDING AUTHOR, Bruce Peltier, MBA, PhD, can be reached at bpeltier@pacific.edu.

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BRUCE PELTIER, PHD, MBA, AND ARTHUR CURLEY, JD

ABSTRACT This article considers several important trends in dental practice that result from innovations in digital and social media. It provides ethical tools for analysis, illuminates areas of ethical concern in the current practice environment and offers recommendations for future practice. A summary in the form of a checklist is posted at the end of this essay for dentists considering the use of social media in their practice.

AUTHORS

Bruce Peltier, PHD, MBA, is professor of Psychology and Ethics at the University of the Pacific, Arthur A. Dugoni School of Dentistry in San Francisco.
Conflict of Interest Disclosure: None reported.

Arthur Curley, JD, is senior trial counsel for dental malpractice defense firm of Bradley, Curley, Asiano, Barrabee, Abel & Kowalski and assistant professor of Dental Jurisprudence at the University of the Pacific, Arthur A. Dugoni School of Dentistry in San Francisco.
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Social media is a billion dollar business. Facebook alone has a user base that would rank third in population if it were a country. Twitter sees 340 million tweets posted every day. — Kristie Nation, Dental Economics, 2012[1]

Important sea-change developments in technology and social media have begun to make serious inroads into the practice of dentistry. As health care professions evolve, ethics codes, decision methods and key ideas are available to help in an examination of the inevitable issues that arise.

Standard Bioethical Tools

Normative principles. The most common tool for ethical decision-making in dentistry is a set of principles and a deontological method.[2] The relevant principles include veracity, beneficence, nonmaleficence and often justice. Confidentiality is certainly at stake. The method requires that these principles be honored and never violated. It is a relatively simple method that breaks down in cases where the principles themselves conflict with each other.

Utilitarian, value-maximizing approach. This decision method weighs interests — patient interests, dentist interests, the interests of dental plans or third party payers and perhaps the profession as a whole. This ethical vehicle is essential to the present discussion, as the Internet offers potential for great good as well as significant harm. The trick is to do more good than harm and to limit damage to patients and the profession. It's a balancing act, to be sure.

The central values of dental practice. Ozar and Sokol created a useful method for ethical decision-making in their 1994/2002

text.[3] It established a set of "central values" for the profession and ranked them in a hierarchy. Higher values trump lower ones in the decision-making process. The central values, in rank order are:

1. The patient's life and general health.
2. The patient's oral health.
3. The patient's autonomy.
4. The dentist's preferred patterns of practice.
5. Esthetic values.
6. Efficiency in use of resources.

This view implies that a dentist can choose his or her "preferred pattern of practice (No. 4)," including the use of Internet technology and social media as long as such practices do not violate the values ranked higher on the list, such as the patient's life and general health (No. 1), patient oral health (No. 2), or patient autonomy (No. 3). The same can be said about the efficiencies offered by Internet technology, although "efficiency in use of resources" sits at the bottom of the list of values. It's still on the list, though, and it is an important value.

Professional identity and the fiduciary nature of dental practice. Perhaps the most compelling concept is that of *professionalism*. Professionals, by definition, perform an important service for people who are in a vulnerable position and unable to evaluate that service for themselves. Patients must be able to trust dentists, what they say and what they do. Because the public cannot effectively evaluate dental treatments, it is best if dentists manage their own collective behavior — as a profession. That way, patients can trust what dentists say and do for them, and government agencies need not intervene. The CDA Code of Ethics is clear: *"Service to the public is the primary obligation of the dentist as a professional person."*[4] Dentists, therefore, have an obligation to be trustworthy. It is this exchange, and the autonomous obligation to trustworthiness, that defines a profession.

Professionals also have a perceptual obligation to *seem* trustworthy. The CDA's Code of Ethics codifies this obligation by saying, *"While serving the public, a dentist has the obligation to act in a manner that maintains or elevates the esteem of the profession."* A group of dental students from Columbia University[5] recently made the point that "... aside from the conventional complaints that

BECAUSE THE PUBLIC cannot effectively evaluate dental treatments, it is best if dentists manage their own collective behavior — as a profession.

advertisements can be misleading or even deceptive, the very act of marketing in dentistry does influence the public's attitude toward dentists." The culture of the profession and its reputation are of extreme value to both patients and dentists. Despite decades of nervous hand wringing, dentists still rank number five in Gallup's November 2012 poll of public perception of honesty and ethics.[6]

Professional considerations must be differentiated from etiquette (good manners), and a gray area clearly exists. Dentists must discriminate between the two when evaluating the use of digital technology in promoting their practices. It might seem questionable to post photos of a dental team wearing green leprechaun outfits on St. Patrick's Day. Such a posting will seem unprofessional to some, but is more likely a matter of sensibility and style. Publicizing that image may not be such a great idea, but that doesn't necessarily make it unprofessional. If, however, green outfits do actually undermine patient trust, then professionalism is at risk, and that's a different story.

Perception and appearance of professionalism are simply not enough. Bebeau and Monson stress the central importance of identity:

Clearly, the outward manifestations of professionalism may help to maintain public trust, just as a customer service orientation may serve as an antidote to crass commercialism. However, such outward manifestations may not sustain the profession or the professional unless they are linked to a moral identity that not only keeps self-interest in check but also guides and promotes a doctor-patient relationship based upon trust.[7]

The question of identity becomes important when an individual dentist is faced with the decision to participate in emerging methods of promotion or marketing. He or she could make a decision that would promote his or her own short- or long-term interests at the expense of the profession. A "profession" is an abstract thing, and if a dentist's identity does not include a sense of group membership, he or she is unlikely to consider the impact of his or her individual decision on the "profession" as a whole. They ask themselves the obvious rational question, *"Why* shouldn't *I participate in a marketing program that will bring 20 new patients into my practice next month?"* Research by Bebeau and colleagues implies a problem deeper than simple choices about use of technology:

(There is a) substantial body of evidence suggesting that many students entering professional education have not achieved key

transitions in identity formation that prepare them for the other-centered role that society and the profession expect of them.[7]

Furthermore, Ozar notes that "it is not only the dentists who advertise who risk being viewed as merely sellers in the market; rather all dentists suffer to the extent that dental advertising is indistinguishable from marketplace marketing."[8]

Business Versus Commerce

"I liked being a dentist and a salesman at the same time."
— Dr. Painless Parker, ca. 1892[9]

Jerrold and Karkhenehchi's 2000 review of the history of dental advertising observes that the learned profession's consistent attempts (more than 150 years) to constrain commercialism have been "acutely unsuccessful."[10] Ozar, who is a key figure in the evolution of dental ethics, argues that "the single most important challenge" facing the profession is the task of providing proper patient care while "trying to maintain a successful business operation."[8]

Dentistry is a business, but it is not an ordinary business, and it is not only a business. There are clear and irreconcilable conflicts between the competitive dynamics of the commercial marketplace and the cooperative ethics of the health care practice. Patients do not understand what dentists do in their mouths and they cannot compete as a buyer does in the commercial marketplace. Customers understand caveat emptor and the competitive relationship with sellers when they buy clothes or cars. They are capable of researching and evaluating the product or service in question. They can more or less see what they are buying. Such a competitive relationship is incompatible with the uneven playing field of the doctor-patient relationship where patients must rely on the explanations and advice of their doctor. Dentists could easily exploit patients. The entire health care enterprise depends upon those who can be trusted, for if patients decide that they cannot trust their doctor they will be forced to compete in the marketplace for care, and must employ the self-protective behaviors of a consumer.

Commercial sellers routinely strive to create "needs" in the minds of consumers. You *need* the latest iGismo or basketball shoe, and you may end up sleeping in line overnight on a sidewalk to get it. When dentists seem commercial, patients make marketplace judgments and the things that dentists recommend are perceived as attempts to make a sale rather than expert clinical advice. The recommendations of the dentist are then viewed as more of the same commercial noise that inundates American life on a daily basis. Such "messages" are distrusted and discounted if they are not simply ignored. Maybe you tune the dentist out just like you tune out the "TV" ads when you fill your car with gas. When patients are treated like customers, they act like customers, shopping around and making decisions based on price, distrusting what they are told, perhaps even behaving dishonestly toward sellers.

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The American College of Dentists' *White Paper*[11] points out that dental care cannot be converted into a commodity without compromise and loss of trust. The challenge, of course, is to provide patient-centric care within the framework and constraints of a business. Patients must be treated with care and integrity while the practice takes in more money than it pays out in overhead. A more complete discussion of the conflict between commercial and health care ethics can be found in Peltier and Giusti.[12]

Advertising in the professions. Public advertising has been legal since the Bates decision by the United States Supreme Court.[13] The Federal Trade Commission subsequently barred the California Dental Association from prohibiting members from advertising shortly thereafter.[14] It is, however, illegal to assert professional superiority in public announcements, and to offer guarantees or painless dentistry.[15] Law and ethics codes converge on the phrase "false or misleading." Dentists should not communicate anything to the public that is false or misleading in any material respect. The CDA Code goes on to say:

> *A dentist who compensates or gives anything of value to a representative of the press, radio, television or other communication medium in anticipation of, or in return for, professional publicity must make known the fact of such compensation in such publicity.*[4]

California law also requires advertisements about fees to be accurate and complete, including mention of fees for all necessary procedures and services included in the treatment.[16] If discounts are advertised, special groups who qualify for the discount must be described. As an example, when do you inform people that they might not be a good candidate for whitening or an implant? Before or after they arrive for treatment?

Basis for referral to another dentist or specialist. The fundamental reason to refer a patient to a particular dentist is the best interest of the patient. It is unethical to refer to a specific doctor or health care entity for reasons other than the best interest of that patient. Appropriate reasons include variables such as patient and doctor personality, gender, ethnic group, language capacity, physical location of the practice, finances, dental plans and, of course, the skills and experience of the doctor or specialist in question. The fact that the referring dentist receives a benefit is not an acceptable reason.

The law imposes a reasonable duty to refer standard. If a reasonably careful dentist in the same situation would have referred to a specialist, then the patient should be referred. However, if the patient was treated with as much skill and care as a reasonable specialist would have, there was no negligence.[17]

Split fees and rebates. The CDA's Ethics Code specifically prohibits split fees and rebates. While there are many varieties of rebates, it is clear that a dentist cannot "kick back" part of his or her fee for dental services to the person who referred a patient. The Code states in Section 11 that:

> *It is unethical for a dentist to accept or tender "rebates" or "split fees." Other fee arrangements between dentists or other persons or entities of the healing arts, which are not disclosed to the patient, are unethical. A third party is any party to a dental prepayment contract that may collect premiums, assume financial risks, pay claims and/or provide administrative services.*

The reasoning behind such a provision goes like this: A split fee might cause a dentist to recommend a service or refer to a particular specialist in order to get a rebate instead of referring their patient to a specialist who would be the best match for that patient's needs and situation. Such a referral clearly puts the dentist's interests ahead of the patient's, a situation made worse when the patient is unaware that the rebate took place.

In November 2012 the CDA's House of Delegates clarified its Ethics Code with the following opinion:[18]

> *The prohibition against a dentist's accepting or tendering rebates or split fees applies to business dealings between dentists and any third party, not just other dentists*

IT IS UNETHICAL TO refer to a specific doctor or health care entity for reasons other than the best interest of that patient.

> *.... The prohibition against fee splitting is also applicable to the marketing of dental treatments or procedures via "social coupons" (in cases where the coupon company collects a fee from the patient and remits a portion to the dentist).*

Split fees and rebates are against the law, as well. It is illegal and a violation of the California Dental Practice Act to engage in the practice of accepting or receiving any commission or the rebating in any form or manner of fees for professional services, radiograms, prescriptions or other services or articles supplied to patients.[19]

The ADA's Code is explicit regarding marketing services. Advisory Opinion 4.E.1, "Split Fees in Advertising and Marketing Services," addresses this type of payment arrangement:[20]

> *The prohibition against a dentist's accepting or tendering rebates or split fees applies to business dealings between dentists and any third party, not just other dentists. Thus, a dentist who pays for advertising or marketing services by sharing a specified portion of the professional fees collected from prospective or actual patients with the vendor providing the advertising or marketing services is engaged in fee splitting. The prohibition against fee splitting is also applicable to the marketing of dental treatments or procedures via "social coupons" if the business arrangement between the dentist and the concern providing the marketing services for that treatment or those procedures allows the issuing company to collect the fee from the prospective patient, retain a defined percentage or portion of the revenue collected as payment for the coupon marketing service provided to the dentist and remit to the dentist the remainder of the amount collected.*

Furthermore, according to the ADA, there are federal laws that address the use of coupons with older or indigent patients:[21]

> *(A) federal anti-kickback statute generally prohibits dentists from offering or paying money to encourage a person to refer a patient that may be eligible for services under a federal health care program, including Medicare or Medicaid ...*

Recommendations

Engagement. The profession cannot stick its collective head in the sand and pretend that nothing is changing and that everything will be OK if things evolve naturally. All dentists are impacted by the digital revolution whether they personally participate or not. We are experiencing a paradigm shift in the way that professions engage

with the public, and the evolution presents opportunity along with danger. As an example of the cultural importance of new gadgets and media, the Chairman of the FCC recently sent a letter to the administrator of the Federal Aviation Administration urging them to allow airline passengers to use electronic devices during take-off and landings. The letter wrote:

This ... comes at a time of tremendous innovation, as mobile devices are increasingly interwoven in our daily lives. They empower people to stay informed and connected with friends and family, and they enable both large and small businesses to be more productive and efficient, helping drive economic growth and boost U.S. competitiveness.[22]

It seems fruitless and backward for the dental profession to tell its members that they should refrain from joining the digital evolution. The trick, of course, is how to engage, how to join in a way that maintains a professionalism that is beneficial to both patients and doctors.

The California Dental Association has begun this process in earnest. The House of Delegates passed a resolution at its November meeting encouraging the Dental Board of California to clarify the legal status of social couponing.[18]

Young dentists must be invited to participate in the decision process. It won't be long before a dental student will complete the entire experience of dental school without handling a single piece of paper, so it makes no sense to tell them to take out a listing in the Yellow Pages (paper edition), join the Rotary Club and build a practice using only word-of-mouth. Young patients expect dentists to have an online presence. Even so, it would be an unfortunate mistake for young dentists to abandon community service and presence to rely solely on the Internet for referrals. Personal relationships and word-of-mouth still matter and probably always will. But personal relationships and word-of-mouth referrals do not evolve quickly.

Dental associations should become involved in the development of recommendations that express the profession's view of professionalism and digital communications along with specific recommendations for practices that they view as good and bad. The American College of Dentists has made a first step in that direction with its preparation of a comprehensive white paper.[11] Much more needs to be done — and soon. Clear guidelines, such as the checklist at the end of this article (**FIGURE 1**) and group pressure will help, but they tend to influence those who are members of organized dentistry. What about the others?

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Fee splitting. State boards and professional organizations need to continue to deliberate and make decisions about Internet coupon sites. Do they feel that participation in these services constitutes illegal, unethical rebates or not? Perhaps they represent a net benefit to the public, with positives that outweigh the negatives, much like the Supreme Court decided in the Bates case (that the public would benefit when the professions advertised). Furthermore, it is probably possible for coupon brokers to find a way to compensate dentists in a way that meets legal criteria. The profession needs to decide what to think and do about this, and the dental profession will have to impose these limits, as it is unlikely that commercial marketers will.

Dental schools. As always, dental schools must evolve to respond to changing practice patterns. They have a responsibility to prepare young graduates for the modern practice environment awaiting them. They need to know what to expect and how to respond to a culture and practice environment that seems to endorse a commercial view of dental care. Ethics programs and their efforts to develop the professional identity of students need to be expanded to explicitly address digital and social media. Such discussions must be part of the formal curriculum, and older mentors cannot be the exclusive source of wisdom in this arena.

Continuing education. Continuing education mandated by state boards, such as the "California Dental Practice Act" course, should be expanded to provide legal and ethical guidelines about use of social media.[23]

Conclusions

Digital and social media are exploding and cannot be ignored. There can be no reasonable debate about whether or not the Internet will impact dental practice and the culture of the profession. That horse is seriously out of the barn. The question of whether the horse is too wild is an open one. Here's how one younger dentist puts it on his website:

Ethics Checklist for Engagement With Social or Digital Media in Dental Practice

Does the Activity/Is the Activity?

Yes	No		
❑	❑	1.	Basically honest (not false or misleading in any material respect)?
❑	❑	2.	Diminish the esteem of the profession? (Is it too commercial? Tacky? Tasteless? Undignified? Diminish other practitioners?)
❑	❑	3.	Violate the law?
❑	❑	4.	Involve split fees or rebates for referrals?
❑	❑	5.	Use prohibited language such as "painless, as-low-as, lowest prices, and-up, guarantee?"
❑	❑	6.	Use mechanisms that could constitute a "bait-and-switch" tactic? (or be perceived as such?)
❑	❑	7.	Tend to make exaggerated claims or use "puffery?"
❑	❑	8	Intrusive? Does it solicit patients or treatments?
❑	❑	9.	Jeopardize patient confidentiality in any way?
❑	❑	10.	Use patient photos or personal information? Have patients given explicit permission?
❑	❑	11.	Use before-and-after photos that are accurate and comparable?
❑	❑	12.	Pressure patients for testimonials?
❑	❑	13.	Violate agreements with dental plans or other third-party payers?
❑	❑	14.	Do special offers include information about good or bad candidates?
❑	❑	15.	Do special offers include information about full exams and essential X-rays?
❑	❑	16.	Do you check with patients about their current dentist when they respond to your special offer?
❑	❑	17.	Are you prepared to treat all patients in basically the same way, including patients who are paying more or paying less?
❑	❑	18.	If you make special offers, do you have a plan for "regular patients?" (How to discuss the special arrangements, what to do when they request the same treatment.)
❑	❑	19.	Does your entire team understand the ethical implications of social media and the ways your practice intends to use these digital methods?
❑	❑	20.	Are you careful with email traffic with patients?
❑	❑	21.	Does the dentist supervise all aspects of the practice, including marketing and the website?
❑	❑	22.	Does someone monitor social media as they relate to the practice?
❑	❑	23.	Do more good for patients than harm?
❑	❑	24.	Do more good for the profession than harm?

FIGURE 1. Ethics checklist for engagement with social or digital media in dental practice.

Odds are Google Maps has a picture of your house already, so don't lose any sleep over Facebook.
— Jason Lipscomb, DDS, DigitalPlanet.com

Digital and social media offer huge opportunities for dentists and patients. They can be used to educate patients, to develop and enhance certain kinds of relationships and serve as a vehicle for inexpensive, streamlined communication and transactions. While their use in health care is fraught with challenges — even dangers — their increased influence is inevitable. It is important for dental professionals to ensure that their presence does more good than harm. Core values of health care still apply, but may require sophisticated understandings and approaches. All members of the profession have an interest in the outcome. Some are willing and able to see the dangers while others are not. The future of the profession may be at stake. ■■■■

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THE CORRESPONDING AUTHOR, Bruce Peltier, MBA, PhD, can be reached at bpeltier@pacific.edu.

TIMOTHY G. GIROUX
DDS/BROKER

ASK THE BROKER

How does 'goodwill' affect the value of the practice?

The dictionary says goodwill is:

"An intangible, salable asset arising from the reputation of a business and its relations with its customers, distinct from the value of its stock and other tangible assets."

From an accounting standpoint, goodwill in a dental practice is the difference between the value of the hard assets and the price of the practice. Practice transitions generally allocate goodwill around 70-80% of the practice price. The reality is the goodwill may actually be in the 90% range depending on the size of the practice and the equipment. What does this mean to a seller or buyer of a practice?

Tangible goodwill boils down to what puts the patients in the chairs. Putting 'patients in the chairs' may be related to a great web page, marketing efforts, a great location due to foot traffic or terrific demographics. Repeat business from active patients is normally the primary factor that puts patients in the chairs, but it maybe just one component of a developed practice. Many dentists equate goodwill with the length of time the practice has been in business, but I could argue that in some cases after a transition, an older practice based on long-term relationships might suffer more than a newer practice that relies on participation in PPO plans.

The seller has signed a "covenant not to compete" with language that states he will assist with the transfer of the patient base in the practice. Studies have shown that 90-95% of the patients will come back to the office at least one time to try out the new dentist. (they do not want new x-rays!) Keeping the patients in the chairs, or retention of the "goodwill" or patient base then rests on staff relationships and the new doctor establishing trust with the patient.

By definition, many aspects of goodwill are totally intangible. The intangible aspects of how each and every one of us doctors treatment plan and gain patient trust places the burden of determination in the hands of the buyer to assess the intangible aspects of any practice in relation to their own attributes. It is up to each buyer to determine the specific real value of the goodwill on a practice transition to determine if the price of a practice makes sense.

Timothy G. Giroux, DDS is currently the Owner & Broker at **Western Practice Sales (westernpracticesales.com)** and a member of the nationally recognized dental organization, ADS Transitions. You may contact ***Dr Giroux at*: wps@succeed.net or 800.641.4179**

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