

The Ethics Corner

Interview with NYSDA General Counsel Lance Plunkett— Part One of a Three Part Series

By Julie Connolly, DDS, Ethics Committee Chair



Ethics Committee Members Lawrence Bailey and Gail Schupak posed several questions regarding ethical challenges faced by dentists in New York to Lance Plunkett, Esq., General Counsel for the New York State Dental Association for the past 17 years.

Focus on Debt and Dentistry

Q: Dental students are graduating with an enormous amount of debt and can be swayed by the enticements of corporate dentistry with a guaranteed income. Unfortunately, the ethical principles of autonomy, non-maleficence, and beneficence are challenged when they are told to maximize insurance reimbursements, do procedures they might not have treatment planned, and not spend enough time per patient. How does this affect inexperienced dentists' clinical decisions?

A: It cannot and it must not affect clinical decisions. Period. Apart from general ethical considerations, a dentist owes a legal duty of care to a patient to meet the correct standard of dental care. Performing unnecessary procedures, performing procedures negligently or incompetently due to lack of skill, experience, or training, or exercising undue influence on the patient for financial gain of yourself or a third person are all legal problems that can lead to malpractice cases or loss of your dental license in a professional discipline case. However, these considerations are not unique to so-called corporate dental settings. They can arise equally in an unscrupulous private dental practice. And they may never arise in a scrupulous so-called corporate dental setting. I use the phrase “so-called” because New York does not allow the corporate practice of dentistry at all. That “corporate dentistry” terminology is ill-advised shorthand for dental practices that are owned by a dentist, as all dental practices in New York must be, but where that dentist farms out his or her business aspects—like real estate/office space rental, bookkeeping, marketing, supply purchase, human resources, and other business items to a corporate entity—much like a franchisee does. But, no matter the setting, no dentist—newly licensed or licensed for many years—can allow an employer to compel a departure from the proper standard of dental care for a patient. Sometimes, difficult as it may be, it may require leaving that employment. Better to lose that one job than to lose your dental license and any chance for another job.

Q: How can new dentists walk the line of needing to “produce” but avoid performing procedures that may be clinically unnecessary?

A: It is never reasonable to offer clinically unnecessary services. There really is no line to walk. You cannot offer services that the patient has no clinical need for. Section 1-J of the NYSDA Code of Ethics States: “Dentists shall not delib-

erately represent the care being rendered to their patients or the fees being charged in a false or misleading manner.” Advisory Opinion # 1(a) of the NYSDA Code of Ethics under that section states: “Deliberately representing treatment or fees in a false or misleading manner includes but is not limited to: performing unnecessary procedures“. Of course, there may be elective services like teeth whitening that you may seek to offer for purely cosmetic reasons. Cosmetic options are not necessarily clinically unnecessary. But offering teeth whitening to a patient who has teeth that need no whitening is clinically unnecessary—not because the cosmetic procedure is itself a problem, but because the particular patient has no need for the service. New dentists have to be mindful that not every treatment option is subject to being challenged as unnecessary, but where your instincts tell you that something is dubious to offer, follow up on that with questions to the employer and then use sound professional judgment. There is no substitute for using sound professional judgment, no matter what an employer may tell you. A good employer will be willing to discuss and explain treatment options from a sound clinical viewpoint to a new dentist—a bad employer will just insist you do what they want and tell you to stop asking questions.

Q: How does this affect the patient's autonomy? How about the patient's informed consent?

A: Section 1-K of the NYSDA Code of Ethics states: “In order that the patient may be involved in treatment decisions, the dentist shall inform the patient of the proposed treatment, reasonable alternatives, fees, and proximate risks.” The Advisory Opinion under that section states: “A dentist shall make certain that a patient understands the options, needs, and risks for treatment, including nontreatment. It is unethical to provide treatment when the dentist knows or has reason to know the patient does not understand the reasons or need for treatment.”

This is also a mixed issue of law and ethics. Informed patient consent is a legal requirement as well as an ethical requirement. Malpractice lawsuits can be based on lack of informed consent. The NYSDA Code of Ethics makes it clear that informed consent means the patient must be given accurate treatment and fee information and must be able to understand that information. Giving a patient information on unnecessary treatment options or skewing fee information only to push higher cost treatments is not consonant with the theme of informed consent and limits genuine patient autonomy. The patient isn't really making an informed or intelligent decision if the information provided is manipulated to highlight unnecessary or improper treatment options. Only reasonable treatment options may be offered and they should be described thoroughly and effectively to the patient. ■