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Free Advice for Non-Patients: An Ethical/Legal Case Discussion

Just ask Andy

Andy is a general dentist who is on very good terms with his neighbours. He coaches the local hockey team, and several of the neighbours' children are on the team. He has a snow blower and on snowy days he helps his neighbours clear off the front of their driveways after the snowplow has gone by. None of the neighbours is Andy's patient, since Andy's practice is 30 kilometres away from his home — and yet, they seek his professional advice. One neighbour comes over with her six-year-old son, who has his permanent tooth growing in behind the primary one; she wants to know if this is normal. Another neighbour comes over seeking a prescription for antibiotics for an abscessed tooth; his own dentist is out of town. Another day, one of the hockey parents asks Andy if his 10-year-old needs braces. It seems the more Andy helps out his neighbours, the more people show up at his door for advice. Andy reassures himself that he's just being a good neighbour, and goes on with his day.

Like Andy, many of us find ourselves in awkward situations when non-patients discover that we are dentists and then seek out advice for their problems. The purpose of the above case is to allow you to reflect on some of the benefits and potential problems that can arise in these situations, and to be better prepared to manage similar experiences effectively.

As we know, dentists have a duty of care towards patients in their practice; however, non-patients who approach dentists seeking clinical advice and/or a diagnosis and treatment present a number of challenges to the dentist-patient relationship. Many dentists would assume that since this was a casual "dry finger" encounter, no dentist/patient relationship was ever established and therefore no problems could possibly ensue. But would that assumption be correct?

Legal concerns

Of chief concern to dentists is whether they may be liable should their advice be incorrect and/or injurious to a patient. In order for a negligence claim to proceed in courts, it must be established whether there has been a "duty of care" owed by the dentist toward the patient. Duty of care is generally established by virtue of demonstrating that a doctor(dentist)-patient relationship existed. Forming a diagnosis is a controlled act under the Regulated Health Professions Act, 1991. The first article identifies a controlled act as "communicating a diagnosis identifying a disease or a disorder as the cause of those symptoms of the individual, in circumstances in which

it is foreseeable that the individual will rely on the diagnosis" (1). The Dentistry Act, 1991, specifies an authorized act as "Communicating a diagnosis identifying a disease or disorder of the oral-facial complex as the cause of a person's symptoms" (2). Therefore, courts could conclude that when a dentist offers a diagnosis to a person, then that dentist has established a duty of care with that person.

There is legal precedent that providing an opinion establishes a doctor-patient relationship. In *Mead v. Adler*, in Oregon, a doctor who gave advice saying that no surgery was necessary, was sued when it became evident that this diagnosis was wrong and surgery was indeed required. The doctor claimed, in his statement of defence, that a doctor-patient relationship had not been established. The court held that "in the absence of an express agreement by the physician to treat the patient, a patient-physician relationship was still formed because the physician took an affirmative action in rendering an opinion on the course of the patient's care" (3).

In an Ontario case, *Stone v. Hipp*, the family plaintiffs sued various defendants, including the defendant psychiatrist, for ineffective and harmful psychotherapy provided to the wife at an unlicensed and experimental counselling centre, which the defendant psychiatrist recommended during a telephone call. The defendant psychiatrist did not provide any actual counselling, but commented on and approved of the counselling received at the counselling centre. On this basis, he was alleged to have entered into a doctor-patient relationship with

the wife. However, the defendant psychiatrist brought a motion to dismiss the claim on the basis that there was no doctor-patient relationship established (4).

In the above case, the Court determined that a greater evidentiary record was required to determine if the duty of care (i.e., doctor-patient relationship) should be extended to these circumstances. In reaching this finding, the Court commented on the “risks” inherent in providing telephone or “casual” advice:

Providing advice, making recommendations, giving referrals or diagnosing an illness on the phone is dangerous for a professional. Medical professionals, indeed all professionals, are held to a high standard and those who are untrained, especially the vulnerable, rely upon their advice (5).

The Court also commented that “just” telling the person that they are “not” a patient may not absolve the medical professional of responsibility:

A standard disclaimer to the person that they are not a patient may not absolve a medically trained professional when dispensing harmful advice (5).

Based on the above regulations and legal precedents, when providing advice and/or a prescription, a dentist-patient relationship may have been technically established, even if no fees are charged for those services.

Ethical concerns

There are a number of ethical principles at play in this case: Beneficence (doing good for other people); Non-maleficence (causing of harm to patients and others); Justice (upholding regulations); and Autonomy (ensuring complete informed consent and allowing patients the opportunity to make choices for their care).

Patient benefits (beneficence)

It is certainly convenient for patients to get advice instantly and not to have to take time off work to make a dental appointment. Taking kids out of school or parents having to leave work for a five-minute appointment may be perceived as a waste of time by some parents. Patients often think simple things are always simple, and sometimes they are. Altruism is an important professional trait for dentists to aspire to, and helping others, without any fees, is quite altruistic. We can therefore conclude that there are inherent benefits to the patient in such a case, as well as upholding an important professional value, such as altruism.

Potential for patient harms (non-maleficence)

In a normal office encounter, complete patient records, including a medical history, is secured so that any

potential harms can be mitigated or prevented. Treatment notes identify the patient’s condition, and diagnostic services such as radiographs, which are taken when required, help to strengthen clinical decision-making. Once a diagnosis has been established, proper informed consent is obtained so that a patient can make an autonomous choice when presented with all of the costs, risks, benefits and treatment options, as well as the risks of non-treatment (Autonomy). The ability to formulate a proper diagnosis is severely limited in a casual encounter, and the potential for patient harm is therefore raised. A misdiagnosis becomes ever more likely when necessary steps, such as a review of the medical history, allergies, radiographs and other diagnostic tests, are skipped.

Most people have a relationship with an existing dentist, which might become compromised when another dentist interferes in their care. Different treatment advice may be perceived by a patient as a negative comment on their existing dentist. This can affect the patient’s ongoing relationship and trust with their current dentist, which can have a negative impact on the patient’s continuity of care. Patient confidentiality may also be put at risk when dentists offer advice in front of other people, which often occurs in social settings such as a hockey arena.

Potential for dentist harms (justice)

The record-keeping guidelines from our professional regulator state that dentists must keep complete records for every patient, which would include “free” treatment and diagnoses to “non-patients.” Dentists who offer free advice are not immune to liability claims when things go awry. When cases are misdiagnosed or when outcomes do not meet patients’ expectations, not only is there concern about malpractice claims, but these disappointments can affect the personal relationships and make social situations awkward — not only for the dentists, but for the families as well.

In the example where the patient requests an antibiotic for an abscess, it is the patient who made the diagnosis. Prescribing or dispensing a drug is another controlled act under the Regulated Health Professions Act, 1991, and it is covered under professional misconduct regulations: “... prescribing, dispensing or selling a drug for an improper purpose or otherwise using improperly the authority to prescribe, dispense or sell drugs” (6). Failing to keep records when a prescription is provided by a dentist is another professional misconduct regulation (7). This presents with a host of potential problems to both the patient and the dentist as to the appropriateness of this treatment. The dentist could potentially face regulatory penalties for violations of professional misconduct regulations.

Maintaining objectivity

Maintaining objectivity certainly becomes more challenging when personal and professional relationships are combined. Dentists must be mindful of the potential for conflicts of interest when close personal relationships exist with patients. Treatment is not advisable when boundaries cannot be maintained, except in cases of an emergency (8). When personal friendships cloud decision-making, mistakes can happen more readily.

Conclusion: balancing harms and benefits

Proffering advice to neighbours and friends can, on the surface, appear as an innocuous event or even a neighbourly act. It upholds the ethical value of beneficence and an important professional value (altruism). However, when we weigh the beneficence in this case, with autonomy, justice and non-maleficence, the potential for patient harm and dentist harm and the potential harm to the relationships of families and friends, one should think carefully about before doling out free advice to non-patients. In our estimation, the potential consequences clearly outweigh the benefits of providing “free advice.”

Regarding the cases involving Andy, there is a risk that the “informal” advice he is giving out could be seen as evidence of a dentist-patient relationship in the event of problems, and litigation could ensue. However, if Andy wants to take the risk and still provide dental advice to his neighbours, there are ways he could reduce the chances of having his advice misconstrued as “treatment” and/or being seen as forming a dentist-patient relationship. For example, he can qualify what he tells these individuals by stating that they should not take what he is telling them as actual diagnosis/treatment and, also, he should instruct them to see their own dentist or suggest they book an appointment to see him at his office. 

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