The Ethics of Social Media in Dental Practice: Ethical Tools and Professional Responses

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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.

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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 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]

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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*

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> *.... 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. ■■■■

REFERENCES

1. Nation, K. (2012). *Dental Economics*. Social media for dental practices: no longer optional. 102(7), July.
2. Rule, J. & Veatch, R. (2004). *Ethical Questions in Dentistry*. (2nd ed). Hanover Park , IL: *Quintessence*.
3. Ozar DT, Sokol, D (2002). *Dental Ethics at Chairside: Professional Principles and Practical Applications*. (2nd ed). Washington, DC: Georgetown University Press; 282-287.
4. California Dental Association (2005, November). *Code of Ethics*.
5. Adamjee, A; Alfi, D; Agarwal, D; Braithwaite, Y; Chan, J; Chey, M; Cho, H; & Choi, C (2005). What does the fact of advertising convey to patients? *Issues in Dental Ethics*, Vol 72 (3), 22-23.
6. Honesty/Ethics in Professions. Accessed at gallup.com/poll/1654/honesty-ethics-professions.aspx.
7. Bebeau, MJ & Monson, VE (2012). Professional identity and the status of professions in contemporary society. In A. McKee & M. Eraut (Eds.), *Learning Trajectories, Innovation and Identity for Professional Development*, Innovation and Change in Professional Education 7, Springer Science+Business Media B.V.
8. Ozar, DT (2012). Professionalism: Challenges for dentistry in the future. *J Forensic Odontostomatol*. Vol 30, Nov. 9. Pronych,