

A PRACTICAL PERSPECTIVE ON REMEDIAL ETHICS: MINNESOTA BOARD OF DENTISTRY

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ABSTRACT

The President and Executive Director of the Minnesota Board of Dentistry describe how the Bebeau course in ethics, for dentists referred because of ethical lapses, is used as part of the disciplinary process in the state. It is understood that breaches of ethical standards are a complex phenomenon, often engaged in by practitioners who know that they are doing wrong but nevertheless choose to do so. Typical patterns of transgression that result in referral to Dr. Bebeau's course include inappropriate billing practices, improper relations with staff or patients, questionable advertising, substandard care, "rough behavior," and gaps in infection control.

State dental boards have the responsibility of protecting the public through the regulation, licensure, and discipline of dental professionals. The disciplinary process—investigating and resolving complaints—is managed differently by various boards. What is similar across boards, however, is that when a licensee is found to have issues that require remediation, dental boards seek to find a resolution that can directly and effectively address the identified problems. Oftentimes, those problems are ethical in nature. When the Minnesota Dental Board's complaint review committees determine that allegations include a faulty decision-making component, the committees must consider specialized assessment and remediation options. The committees select from several choices for remediation through lecture, hands-on, Web-based, and other educational programs. When the problem appears to include a licensee's inability to make correct choices when confronted with a specific set of circumstances, the board has been fortunate to have the option of referring the licensee to Dr. Mickey Bebeau's individualized ethics course through the University of Minnesota School of Dentistry.

Before this course was available to complaint review committees, there was no educationally verifiable way to assess or to teach the complexities of sound decision making for practicing dentists. Clearly, dental school education teaches standards of clinical practice. The

University of Minnesota School of Dentistry and all other U.S. dental schools also provide formal ethics courses for their students within the dental school curriculum. Nevertheless, practitioners may not recognize their own issues, may have no inclination to pursue additional education in the ethical dilemmas of dentistry, or may be uncomfortable confronting their own basis for decision making. They may not have or may not be willing to effectively develop the ability to choose between "right and wrong," between "better and best," or between "what I want versus what my patients need." When business pressures, the patient's right to informed consent through a complex discussion of treatment options—relating prognosis, benefits, risks, and alternatives—and other life stresses are added to the mix, a licensee may lose his or her ethical bearings.

Complaint review committees use the Bebeau ethics course to guide a licensee into understanding the process of sound decision making. Based upon the board's experience with the course and the evidence that referred licensees profit meaningfully from it, the hope of the committees is that learning about

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ethics and learning about one's own decision making inclinations will produce better practitioners. And when the board recognizes that a licensee lacks the skill set needed to practice in an ethical manner, then perhaps this skill set must be taught. Thus, the ethics course is a good place to begin remediation.

Several examples can be given of unethical or unprofessional conduct that would result in a referral from the Board of Dentistry to Dr. Bebeau's course. One example is a licensee who engages in inappropriate billing. Complaint review committees investigate and interview the licensee to determine if the billing problems are numerous, demonstrate a pattern, and occur over a period of time. The committees also determine whether the billing issues are inadvertent or unintentional due to poor business practices, or if they are premeditated and fraudulent. In the former case, the licensee may be referred to educational programs that help with instructing in proper billing procedures. In the latter case, the committees may refer the licensee to the ethics course (among other remedies).

A second example, seen occasionally in disciplinary cases, is the inappropriate use or treatment of employees and allied staff, and occasionally patients. The behaviors here range from verbal abuse to inappropriate sexual comments to unwanted physical contact to allowing staff to perform duties beyond the scope of practice. The committees make a referral for the ethics course in the hope

that the licensee will learn to identify the inappropriate behaviors, the causes and triggers for these behaviors, and their remedies. The only acceptable outcome is to protect the public, including employees, from unwanted, intrusive or predatory behaviors.

Another example where the Bebeau course has been useful involves the use of sedation in dental procedures without the proper monitoring of the patient's vital signs or without proper record-keeping of the monitoring process as required by the state's statutes and rules. Because committees know that these actions put the patient at great risk, the committees refer the licensee to the ethics course in the hope of determining the underlying reasons for engaging in these unnecessary and dangerous practices. This remedial ethics process should help a licensee modify behaviors from unethical, illegal, and unsafe practices to practices that ensure the safety of sedation patients and comply with existing statutes and rules.

A fourth example of potentially unethical practice relates to advertising. Some licensees claim ambiguities and inconsistencies in the laws. Some licensees find creative language in order to circumvent the law. Others claim to misunderstand the rules. Still others disagree with the rules in principle and intentionally violate the law. Yet others

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presume that if someone else is doing it and getting away with it, it must be acceptable. Most practitioners, irrespective of their personal opinions, follow the relevant statutes and rules because it is the legal and ethical thing to do. Those who violate the law may hope to gain some economic advantage over competitors. Those who do not violate the law accept that whatever economic advantage may be gained is not as important as compliance with the law. The committees hope to help the licensee find out why he or she feels entitled to break the law. The ethics course may help some licensees see their way through this conundrum.

Providing care below the standard is another ethical concern that committees must address. One example is providing substandard periodontal diagnosis and treatment. Most licensees understand that provision of care at a certain minimum level is an essential part of complete dental care for all patients. But there are some who feel that they can neglect this care, or can provide care below the acceptable level provided by all other dentists. Flawed decision making puts the patient at risk and simultaneously puts the licensee at risk. Yet the board continues to observe this risky behavior. What cognitive processes occur within the mind of licensees that permit them to engage in substandard practice? The committees again hope, expect, and trust that licensees will discover their problems with the help of the ethics course and then proceed to improve their clinical practices and provide safe patient care.

Delivery of painful care, poor administration of local anesthesia, and gruff bedside manner are manifestations of

ethical problems for some licensees. Although this category of unethical, unprofessional care may be more subjective— and thus more difficult to define— the complaint review committees are concerned about licensees who amass several complaints of this type over time. Thus, a pattern of behavior demonstrating a lack of empathy results in a complaint committee's referral to Dr. Bebeau for ethical intervention.

A final example where ethical choices are paramount in dental practice is in regard to infection control. Most of the infection control procedures necessary to prevent the spread of infectious agents occur in the dental practice's sterilization area, out of the visual scrutiny of patients. The dentist and staff have the important role of self-regulation when it comes to proper and safe infection control procedures. If the dentist is negligent and sloppy with infection control procedures, then the staff may be as well. When compliance committees receive complaints alleging improper or substandard infection control procedures, the committees generally discover some dentists who know what should be done, but who, for some reason, do not follow through. The obvious question is why a dentist would put patients, staff members, and themselves at risk by not enthusiastically complying with OSHA and CDC rules. Again, the solution may be found in unraveling the ethical viewpoint of the dentist whose reasoning, attitude, and conduct are flawed. For answers and expected changes in behavior, the board also refers licensees with infection control infractions to Dr. Bebeau. Along with the ethics course, additional reeducation may also include infection control coursework followed by on-site office inspections. The board recognizes the multidimensional aspects involved in providing quality health services.

Throughout this discussion the phrase "the committees hope" has appeared several times. The committees "hope" to assist the licensee with ethical decision making. But the committees are also aware that a licensee's behaviors may be like other compulsions and addictions, in which there may be some initial measurable success, but in which long-term success is much less certain. Will the unethical behaviors slowly resurface, placing the public again in harm's way? Recidivism is the long-term challenge for the committees and the ethics course. Additionally, the board is concerned with the practical application of the ethics course. Does the licensee now have improved ethical and moral reasoning and judgment? Will these improvements protect the public? This is indeed what we hope for, and why we greatly value the work of Dr. Bebeau and her success with the dentists who are referred to her program. As demonstrated by her data and confirmed anecdotally by the board, remediated licensees have achieved the hopes of the board.

A broader question is whether or not all licensees would benefit from this course, through a core competency requirement in continuing education and professional development.

The Minnesota Board of Dentistry is pleased to see that the elements of this successful program are being shared so that its use may be continued. Dr. Bebeau's assessment instruments and evaluation of licensees provide an important baseline by which to judge changes in how a person thinks. Fortunately, there has been little recidivism with the individuals referred for this assessment and individually directed training. Boards hope for both immediate and long-term impact of remediation. Is there the possibility of a second course to re-energize or refresh the licensees' initial commitments to improved ethical

decision making, a course designed for follow-up evaluation and testing? Is there the possibility of (or need for) long term group therapy for those who have similar challenges, or for long term therapy for those who have ongoing issues? In the event that additional complaints occur against the same dentist, and the complaints allege similar ethical questions, is there the possibility of additional remediation focused primarily toward repeat offenders?

While most interventions are successful, some will not be, and a board needs to be prepared to place limitations on a licensee that will assure that the public is protected, and is receiving dental care only from appropriately qualified practitioners. Ultimately, a board must determine if remediation is realistic. There are other options for boards, including the loss of a dentist's license to practice dentistry. There are many decisions that compliance committees must make in evaluating unethical practice. This ethics course is an essential, invaluable component.

When the committees receive final reports from Dr. Bebeau, she provides detailed information about conversations, debates, and outcomes. Dr. Bebeau described a particular licensee's progress toward improved decision making through her ethics course. For example: "The most substantial growth is evident in (the dentist's) sensitivity to ethical issues and an enhanced ability to interact effectively to reduce tension when patients react with fear, anxiety or simply the host of problems they bring with them to the care setting. [The dentist] also demonstrates real strength in better

understanding [his] role and responsibility as a healthcare provider."

Following the ethics course in a written report to the board, a licensee stated: "I [now] incorporate the concepts of autonomy, non-maleficence, beneficence, and justice in the treatment of my patients. I have learned to use certain techniques in negotiating to arrive at a better solution for all. I have changed communication habits and incorporated certain concepts that empower the patient. I treat patients with more respect and try to show a better caring attitude, where they feel I have placed their interests above myself. I have incorporated many new ideas that apply to the practice of dentistry to my everyday life and encounters. This course has been a tremendous help and has given me a better understanding of our responsibility as individuals to our community, family, society, and profession."

The issues that confront the profession in ethics and morality are increasingly complex. This course has made an impact on public safety by changing the lives and practices of Minnesota dentists. There is no doubt that the complaint resolution process, the profession, and the public have been enhanced by the availability of this course. ■