

How do I comment ethically on the work of colleagues?

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CASE SCENARIO

A new patient presented at my practice and on examination was found to have numerous recently-placed restorations of poor quality (under-filled, marginal leakage etc). The patient had been a regular dental attender but complained of increasing discomfort, sensitivity, pain and food impaction following each dental appointment, and after experiencing these problems for over a year, she had decided to find a new dentist. During the initial examination and while discussing my proposed treatment plan, the patient asked me whether the previous dentist had 'done a poor job and made a mess of her mouth'. How should do I respond to such a question?

COMMENTARY

Patients are dependent on the expertise of the dental professional to advise them about their oral health status. Dentists must therefore exercise care that the comments made are truthful, informed and justifiable and without disparaging comment about prior treatment. Veracity implies an obligation to be forthright and truthful about a patient's condition and treatment options,¹ whilst also respecting the professional ethical code. This is clearly enunciated by the Health Professions Council of South Africa as follows: "A practitioner shall not cast reflections on the probity, professional reputation or skill of another person registered under the Act or any other Health Act". When reviewing the work of another practitioner, it is prudent that the comments be supportable and justifiable. One needs to be able to make the distinction between bad outcomes of appropriate therapy and bad outcomes attributable to bad work – bad outcomes can occur despite the fact that proper methods were followed and can be caused by occasional lapses of judgement and skill.

Studies have shown that dentists are more likely to look more critically at restorations placed by others, than at those they have placed themselves. A clinician seeing a patient for the first time might observe old restorations with less-than-optimal margins, surface defects or discolouration and may take the decision to replace the restorations immediately.

Whether or not the patient sees this as an indication of a fault on the part of the previous dentist will depend heavily on the way in which the second dentist describes the situation. When a dentist makes a statement to a patient regarding the efficacy and quality of treatment rendered by a previous dentist, it is important to bear in mind that the patient has no obligation to treat those statements or opinion as confidential. The statement therefore deserves the same deference given to any public statement, as potentially it can be communicated or shared by the patient with others. Therefore, ethically it is essential to apply a strong burden of proof requirement to ensure that any statements made are fully informed, objective and factual. However, in some instances discharging that important ethical duty to protect the public may necessitate reporting such cases so that they can be investigated more fully.³

Differences of opinion

Differences of opinion are common in the health professions and in order to maintain appropriate ethical standards in their management, such differences should be handled using the accepted professional channels (eg. scientific literature and meetings). One should avoid harming the reputation of the profession and of individuals. The views of others and their right to hold and express sincerely-held opinions should be respected despite the fact that you may personally disagree with them.⁴ A difference of opinion should not be communicated to the patient in a manner which would unjustly imply mistreatment. An ethical and professional response is to seek to influence the views of colleagues through reasonable and mutually respectful debate instead of any attempt to discredit or ridicule them. Every effort should be made to manage any differences of professional opinion through appropriate channels and in an ethical and professional manner.

Raising concerns

A dentist's first duty is to the patient and this duty extends beyond a particular patient under his/her immediate care, to patients and potential patients in the wider community. If a dentist sees or hears something that leads them to believe that patients could be placed at risk or the quality of their care compromised by the actions or performance of a professional colleague, then there is an ethical duty to take reasonable and appropriate steps to (i) raise the concerns with the colleague directly, if this is appropriate to the situation; (ii) deal with the problem (if this is within their power) or (iii) seek advice as to how best to manage the situation.

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In the first instance it is usually more appropriate to discuss any concerns with other professional colleagues or the practice owner. Overt criticism of colleagues and of any treatment provided by them, expressed directly to a patient, has long been regarded as a practice to be deprecated. Not only does it reduce the confidence of patients in the profession as a whole, but it can also cause unnecessary harm to the colleague who is the subject of such criticism. In general, it is wiser to avoid being drawn into criticism of another dentist, no matter how much a patient may pressurise you.⁴ However, some clinicians feel that they have a duty to offer their views on treatment provided elsewhere, whenever a patient seeks their professional opinion and advice. Often the opinion is given with the best of intentions, but without knowing all the relevant facts (including what problems were faced by the previous practitioner at the time); such criticisms can only be regarded as un-informed and possibly even irresponsible. As a result such opinions will usually be judgmental rather than objective and factual and may result in the commenting practitioner being sued for defamation.

Defamation

Defamation may be defined as the publication of a false statement which lowers the reputation of a person in the eyes of right-thinking members of society. For such a statement to be actionable as being defamatory, it usually has to meet certain legal requirements: it has to be 'broadcast' (brought to the attention of others); have no lawful justification, and be made with the object of discrediting the person concerned, or exposing him to hatred, contempt or ridicule.⁵ In general, there are two forms of defamation: libel, when a statement is in a permanent form (in print) or slander, the spoken word or conveyed by gesture. However, South African law does not draw this distinction but rather refers to all reputation-damaging statements as defamation, whether they are "published" (that is, made public) by word of mouth or in writing. The law offers protection on certain occasions to persons who inadvertently make defamatory statements about another in that it must be relevant to the issues and must not be made in malice or improper motive. This is termed 'qualified privilege', on the basis that the person who makes the statement has a legal, social or moral interest or duty to make it, and the person to whom it is made has a corresponding duty to receive it.⁵

Complaints by patients to an appropriate authority, or to the owner of a practice about the conduct of a dentist working at the practice, or to a regulatory body (HPCSA) would fall within the category of qualified privilege so that the complainant in each case would have a defence if sued for libel or slander by the dentist concerned. Patients in these situations will often ask a second dentist to provide a report detailing their findings, which may involve commenting on work provided by a previous dentist. It would generally be considered unethical to refuse to provide such a report and dentists must therefore be prepared under these circumstances to provide information to patients (and to justify any statements that they make).

The privilege described above is qualified rather than absolute, meaning that it extends only to what is relevant and pertinent to the discharge of the duty or the protection of the interest which creates the privilege. Problems are more likely to arise when comments extend beyond objective

clinical opinions and become critically judgmental of a professional colleague. Consequently if a report prepared by another practitioner went beyond the facts relating to the complaint, by adding, for example, any gratuitous observation about the practitioner concerned, the latter statements would not be protected by privilege. A genuinely-held professional opinion would be protected, however misguided or misguided it might be.⁴ Furthermore, any practitioner who receives complaints from patients or disparaging, adverse and/or critical reports from professional colleagues, needs to appreciate the principle upon which privilege is based. The colleague in question should be asked to respond in the form of a written report which can be directly attributable to him or her. 'Justification' is one of the available defences to allegations of defamation however, if there is evidence to show that the standard of treatment provided is unacceptable, then it is unlikely that a critical report could properly be called defamatory.¹

SUMMARY

Patients are entitled to know about their dental and oral health, and practitioners have an ethical duty to inform them on an honest and factual basis. If this can be done without denigrating one's colleagues in any way, both patients and practitioners can benefit. As professionals, our first obligation is to place the well-being of our patients ahead of our own interests. First and foremost and for patient autonomy, we must give patients complete and truthful information regarding their current oral health status. When asked to comment on another dentist's treatment, it is not unethical or unprofessional to remember that the burden of proof regarding faulty or bad treatment is demanding and a prudent dentist must exercise great caution before making comments about other dentist's treatment. Uninformed and unjustifiable criticism is disparaging and can lead to unpleasant consequences for the unwary professional. Comprehensive and accurate records would be needed by both dentists to support their clinical judgement, if this case ever resulted in a complaint.

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