

1 Hawaii Dental Ethics

Risk Management and AI

2026

2 Arthur W. Curley

Health Care Law

3 Health Care Law

- Malpractice Defense
- Licensure Issues
- Practice Disputes Sale/Purchase
- Incorporation
 - Entity Protection
- Employment Issues
 - Planning
 - Defending

4 HDA Presenter Disclosure

- Presenter's Name: Arthur Curley
- I have no current or past relationships with commercial entities
- Speaking Fees for current program:
 - I have received a speaker's fee from TDIC for this learning activity

5 Hawaii Ethics & Licensure and AI Update

The Required Course

6 Why Ethics Course

Hawaii

- *Ethics Issue, cause....*
- Death of 3-Year-Old – Anesthesia
- Issue of Skill Represented by DDS

7 Anesthesia Death

- Dr. S, DDS, MD, PhD, had his medical license revoked (2013) under an agreement reached with the Hawaii Medical Board, after a patient lapsed into a coma while getting her 3rd molars extracted. Subsequent loss of DDS License.
- Death in Dental Office = Nuclear Explosion – *News Worthy*.

8 Ethics Requirements

- HAR §16-79-141 Continuing education categories.
-
- (3) Ethics courses:
- (A) Ethics course of at least 2 hours per 2 years for dental hygienists; and
- (B) Ethics course of at least 3 hours per year for dentists;

9 Other States

- Indiana: 2 hrs. Every 2 yrs.

- Kansas: 2 hrs. Every 2 yrs.
- New York: 3 hrs. Every 3 yrs.
 - (+Law & Regs)
- North Dakota: 2 hrs. (No min hrs)
- Oklahoma: Every 3 yrs.
- None in California

10 **Overview**

- Mandatory Statutes
- Comparison of Law to Ethics
- Ethics in Practice
- Case Examples
- AI and Ethics

11 **The Codes, Laws, Principles and Standards of Care**

12 **Hawaii CE Requirements**

13 **Webinar = Live Lecture**

14 **Hawaii HRS 448-17**

15 **ETHICS AND THE LAW**

Ethics as a Licensure Requirement

16 **Hawaii Licensure**

- *Dental Practice Acts regulate the practice of dentistry with a primary purpose of protecting the public. The dental profession exercised the right to have these "Acts" introduced regionally within appropriate legal frameworks. With their adoption the profession has been granted the privilege to practice, and that privilege should be protected. With the granting of a license, a responsibility is placed on the holder to comply with the provisions of law.*

17

What is meant by "ethics"?

- *Ethics are the moral principles or virtues that govern the character and conduct of an individual or a group. Ethics, as a branch of both philosophy and theology, is the systematic study of what is right and good with respect to character and conduct. Ethics seeks to answer two fundamental questions:*
- 1. What should we do?
- 2. Why should we do it?

18 **Sources for Ethics**

- You have been learning personal ethics throughout your life in a variety of ways from the following sources:
 - Basic Instinct
 - Parents
 - Teachers
 - Religion
 - Observations of other people's behaviors

19 **Professional Code of Ethics**

- All the Major Professions (dental, medical, legal...) have written codes of ethics

- These are voluntary standards for behavior, not necessarily laws, and serve as a method of self-policing within a profession
- The codes of ethics of most professions have been revised to keep them consistent with the times, but there has never been a change in the moral intent or overall idealism

20 **Professional Code of Ethics**

- Reasons for a Code of Ethics
 - To demonstrate to the Public the Standard of Conduct that can be Expected from its Members
 - To Increase the Ethical Consequences and Ethical responsibility of its Members
 - To Guide its Members in Making Informed Ethical Decisions
 - To Establish a Standard for Professionals Judgement and Conduct

21 **Core Ethical Principles**

• Non-Maleficence	Integrity
• Autonomy	Justice
• Beneficence	Professionalism
• Compassion	Tolerance
• Competence	Veracity

22

Why are Ethics important?

- Ethics affect virtually every decision made in a dental office, encompassing activities of both judging and choosing. Ethics affect relationships with patients, the public, office staff, and other professionals. As a dentist, you have to make numerous decisions. When ethics are ignored, you risk making unethical or less ethical decisions. At a minimum, unethical conduct seriously compromises your service to patients and undermines your ability to function as a professional.

23 **Non-maleficence**

- Do No Harm
- Dentists have a Duty to Protect the Patient from Avoidable Harm

24 **Autonomy**

- Self-Governance
- Patients have the right to determine what should be done with their own bodies
- Respect for patient autonomy forms the foundation for informed consent and protecting confidentiality
- The patients right to self-determination is not absolute

25 **Beneficence**

- Do Good
- Dentists have a duty to promote the patient's welfare
- While balancing harms and benefits, the ethical dentist seeks to minimize harms and maximize benefits for the patient

26 **Compassion**

- Compassion requires caring and the ability to identify with a patient's overall well being.
- ** It's about the patient, not you.

27 **Competence**

- The competent dentist is able to diagnose and treat the patient's oral health needs, or to refer when it is in the patient's best interest.
- *** The Standard of Care

28 **Integrity**

- Integrity requires a dentist to behave with honor and decency

29 **Justice**

- Fairness
- Dentists have a duty to be fair in their dealings with patients, colleagues and society.
- *** No unfounded criticisms

30 **Professionalism**

- As a result of their education and training dentists hold a special position in society that has resulted in society affording the profession the privilege and obligation of self-government
- *** Know and Follow Law, Rules and Guidelines

31 **Tolerance**

- Dentists today practice in an increasingly complex cultural and diverse community
- *** Equal Treatment and Rights

32 **Veracity**

- Truthfulness
- Dentists have a duty to be honest and trustworthy in their dealings with people
- Veracity is the bedrock of a trusting doctor-patient relationship
- Honesty is dealing with the public, colleagues and self are equally important

33 **Examples of Unethical Behavior**

- Charging the Patient for a Full Set of x-rays when only 6 were Taken (Justice)
- Attacking another Health Care Provider by Expressing or Repeating Statements of Criticisms without Foundation (Do No Harm, Justice)

34 **Steps for Solving *Ethical* Dilemas**

- 1) Identify the Alternatives
- 2) Determine all Implications
- 3) Rank the Alternatives
- 4) Chose a Course of Action

35 **Fact Analysis**

- Identify Dilemma or Problem
 - Is there an Ethical Conflict?
- Evaluate
 - Whose Interest is at Stake?
- Apply Ethical Principles
 - Which Code(s) of Ethics?

36 **Applying *Ethical* Principles**

- Dentist Violates Ethical Standards
- Before Judgement, be Absolutely Certain of All the Information and Circumstances
- If Confirm Violations of Ethical Conduct, Triage Decisions:

- Silence
- Confront Employer
- Report Behavior to Authorities
- Leave Employment

37 **Case Study - Referral**

- Dr. John Wilkins is a periodontist who recently joined a large group practice including endodontists, prosthodontists, and other periodontists. The group practice has a strong referral base and enjoys an excellent reputation.

38 **Case Study - Referral**

- Dr. Ed Biggs, a general dentist with a large practice in the area referred a patient, Mr. Randy Crane, for an evaluation. Dr. Biggs sent a note *"evaluate perio and call me."* when Dr. Wilkins asked others in the practice about Dr. Biggs, they said he was a "great guy of his dentistry is the best." Dr. Biggs has referred patients to the group practice for several years.

39 **Case Study - Referral**

Mr. Crane had been in Dr. Biggs' practice for 10 years and was pleased with his overall care. Mr. Crane, at 40 years old, was in excellent health and had regular dental examinations, but was worried that he had an offensive mouth odor and that his gums were bleeding frequently, especially when he flossed. Recently food would get lodged causing soreness between the mandibular molars that were crowned 5 years ago.

40 **Case Study - Referral**

- Mr. Crane had porcelain crowns on his mandibular molars that were esthetic but had bulky margins that made it difficult to floss. The interproximal contacts were loose but not open between the molars. There was a generalized, chronic gingivitis with localized areas of mild periodontitis (3 – 5 mm pockets with bleeding) in the molar areas around the crowns.

41 **Case Study - Referral**

- As the examination continued, Mr. Crane asked "are these crowns causing a problem for my gums? I don't want to lose my teeth like my father."
- *Ethical* challenge – How should Dr. Wilkins respond?

42 **Case Study - Referral**

- Options?
- 1) Defer response and call Dr. Biggs regarding the crowns;
- 2) Advise the patient of the findings of mild periodontal disease and possible need for crown replacement;
- 3) Defer response, not contact Dr. Biggs, and merely provide periodontal treatment as per the referral?

43 **Case Study - Referral**

- Ethical Dilemma versus Politics:
- Advising patient of potentially substandard crowns that may cause the patient to seek a different general dentist, resulting in a loss of a referral.
- Not advising the patient of the findings regarding the crowns may delay treatment and increase the potential for harm, but preserve the referral.

44 **Case Study - Referral**

- *Ethical* and legal issues:

- The primary duty here is to protect the patient from harm. Dr. Wilkins has observed a pathology and must ethically advise the patient of the finding as well as treatment or care to reduce the harm that could come from the finding of bulky crowns.

45 **Ethics of Justifiable Criticism**

- Code 1F : *A dentist has the obligation to inform patient of their present oral health status.*
- Code 1F1 : *It is the duty of a dentist to report instances of gross and/or continual faulty treatment. Justification means finding out from the previous dentist the circumstances and conditions under which treatment was performed.*

46 **Ethics of Justifiable Criticism**

- 1F1: *A difference of opinion as to preferred treatment shall not be communicated to the patient in a disparaging manner which implies mistreatment.*
- i.e., "ready, shoot, aim" is unethical.

47 **Case Study - Referral**

- Recommended response:
- Advise the patient of the clinical findings and the potential need for treatment without speculating as to the origin of the bulky crowns (dentist or lab failure). Advise Dr. Biggs of the findings and request communication as to when and how the situation would be addressed. Fully document and follow-up with the patient.

48 **Ethics In Practice**

- In the Era POST COVID 19 & Now RSV, Bird Influenza, and Norovirus
- Advertising
- Patient Candidacy
- Treatment Recommendation and Planning
- Imaging
- Managing Complications
- *Quad-Demic*

49 **How to Ethically see patients POST pandemic?**

- During a pandemic, ethical principles may require different steps than dentists are used to taking and applying the ethical principles may result in different outcomes than dentists are used to experiencing. The premises of the Code of Ethics – to "do no harm" and "*put the welfare of the patient first*" remain exactly the same.
- Consider the ethical principles of autonomy, non-maleficence, beneficence, justice and veracity within the unprecedented context of the Covid-19 pandemic, the principles applied to the present circumstances are:

50 **Code of Ethics Section 1 - Autonomy**

- Under Section 1 (patient autonomy), there exists a "*duty to respect the patient's rights to self determination and confidentiality.*" *This ethical duty may be particularly challenging with the current pandemic, as you will need "act within the bounds of acceptable treatment.*" In the present pandemic setting, public health circumstances may mean that you need to deny certain treatments (especially elective treatments) until the current circumstances improve.

51 **1B Confidentiality**

- Under Section 1B of the Code of Ethics, dentists are "*obliged to safeguard the confidentiality of patient records.*" You may not be able to meet this obligation if contact tracing and/or reporting

becomes necessary to reduce the spread of an Infectious Disease. Patients and staff should be informed of the potential need to share identifiable information under the Public Health Exception to HIPAA or in compliance with any other local, state or federal mandates. Except for these mandates and the public health necessity to share identifiable information with the proper authorities, you and your staff should continue to maintain and respect patients' privacy and confidentiality.

52 **Result**

- Under Section 1.B.1 you are obligated to furnish patient records to the patient or a new dentist at no cost or at nominal cost to the patient. Given that in some communities, care may be limited to just a few providers, be ready, willing and able to share records if necessary to treat any and all patients who may have a need for emergency services with a provider other than you

53 **Code of Ethics Section 2 - Nonmaleficence**

- Under Section 2 (nonmaleficence) dentists have a "*duty to refrain from harming the patient.*" This section means not just a patient undergoing treatment, but all of your patients considering that patients may come in contact with one another in the waiting room and the operatory. Given this potential risk, you should consider:

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- Prior screening of patients by inquiring regarding symptoms, travel, exposure, fever, etc. (as per ADA and CDC guidelines) for all patients who will be in the office;
- To comply with social distancing requests, scheduling staggered appointments so that you limit the number of people in the office at any given time as directed by current local, state, and federal guidance;
- Ensuring that you and staff adhere to Universal Precautions at all times (and any additional health and safety requirements that might be recommended specific to *Infectious Disease*;

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- Adhere to all sanitation and sterilization requirements as per local, state and federal guidance.
- If you are uncertain about what to do or feel unqualified to do what is necessary, you are ethically obligated to "*seek consultation, if possible, whenever the welfare of patients will be safeguarded or advanced by utilizing those who have special skills knowledge or expertise.*" (Code of Ethics Section 2.B.)

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- Per the Code of Ethics Advisory Opinion 2.D.1., if a dentist is ill or thinks that exposure to the coronavirus is possible, the dentist has an ethical obligation to "*limit the activities of practice to those that do not endanger patients or dental staff.*"

57

- Pursuant to Code of Ethics Section 2.F., if you will need to close your practice due to *Disease* please be sure to provide patients with "*adequate notice.*" If possible, please allow patients the "*opportunity to obtain services of another dentist.*" This may be challenging at this time, but trying to work with other dentists in the community to develop a strategy for ensuring that patients with emergency dental needs are cared for is critical.

58 **Code of Ethics Section 3 - Beneficence**

- Under Code of Ethics Section 3 (beneficence) dentists have "*a duty to promote the patient's welfare.*" This duty obligates dentists to use their "*skills, knowledge and experience for the improvement of the dental health of the public . . .*" (see Code of Ethics Section 3.A).

59

- Dentists should also set examples for staff by maintaining a professional demeanor in the workplace. You have an *"obligation to provide a workplace environment that supports respectful and collaborative relationships for all those involved in oral health care."* (Code of Ethics Section 3.F.) This means if a practice's employees have their own or familial health concerns or in an at risk group, they should not feel unduly pressured or judged if they feel unable to perform their duties.

60 **Code of Ethics Section 4 - Justice**

- Under Section 4 of the Code of Ethics (Justice) dentists have a "duty to treat people fairly." While you do have discretion in selecting patients, you cannot refuse to accept a patient or deny a patients service *"because of the patient's race, creed . . . national origin."* (Code of Ethics Section 4.A.). Covid-19 (Disease) is not unique to any one race, creed or nationality and it is, as always, ethically inappropriate to base care decisions on any of those factors

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- When treating a patient with a blood borne pathogen (or other infection) or who is medically compromised, you should determine if you have the *"need of another's skills knowledge, equipment or expertise"* (Code of Ethics Advisory Opinion 4.A.1.). If that is the case, under the guidance of Section 2.B. of the Code of Ethics, you should seek a referral.

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- Section 4.B. of the Code of Ethics obligates dentists to make arrangements for emergency care for their patients. As you or your staff may become ill or may need to self-quarantine, you will need to have a plan in place to address patient emergencies that may arise during that time, recognizing that emergency departments in local hospitals will not be appropriate sites.
- (Section 2.F)

63 **Code of Ethics Section 5 - Veracity**

- Code of Ethics Section 5 (veracity) you have a *"duty to communicate truthfully."* This is very important given the uncertainty surrounding an infectious disease. Being truthful may mean telling patients you just may not have an answer and explaining why. Trust, especially in the time of a pandemic, cannot and should not be compromised.

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- This is also not a time to be looking for ways to expand business. It is never, and especially now, ethical to:
 - Waive copayments
 - Overbill
 - Provide unnecessary services

65 **Ethics and the Unvaccinated**

- Some Disease are transmitted by aerosols shed from the human airway – nose and mouth
- Dentistry as a profession produces more oral aerosols than any other health care practice.
- Yet, Dentists have an ethical and legal obligation to do no harm and to protect the health of their patients. But what happens when their patients put others at risk?

66

- COVID 19 vaccines are, and others maybe are widespread. But, some patients will refuse. If so.....

67 **Discrimination**

- The ADA Code of Ethics, Section 4 (Code of Professional Conduct) provides guidance on patient selection. It reads as follows:
- *"While dentists, in serving the public, may exercise reasonable discretion in selecting patients for their practices, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient's race, creed, color, gender, sexual orientation, gender identity, national origin or disability."*

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- *Unvaccinated* patients are not considered disabled, which is defined as a physical or mental impairment that substantially limits one or more major life activities

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- While there are no clear legal guidelines on accepting or refusing unvaccinated patients, there are ethical ones. Dental practitioners are obligated to protect their patients' health, but that obligation extends to those who may be exposed to a communicable disease — and unvaccinated patients are the most at risk.

70 **Elective and Non-Emergent Procedures for Public Health Emergency 3.A.1**

- Dentists have ethical obligations to provide care for patients and also serve the public at large. Typically, these obligations are interrelated. Dentists are able to provide oral health care for patients according to the patient's desires and wishes, so long as the treatment is within the scope of what is deemed acceptable care without causing the patient harm or impacting the public.

71 **Ethics and Public Health**

- During public health crises or emergencies, however, the dentist's ethical obligation to the public may supersede the dentist's ethical obligations to individual patients. This may occur, for example, when a communicable disease causes individual patients who undergo treatment and/or the public to be exposed to elevated health risks. During the time of a public health emergency, therefore, dentists should balance the competing ethical obligations to individual patients and the public.

72 **Elective or Non-Emergent**

- *If, for example, a patient requests an elective or non-emergent procedure during a public health crisis, the dentist should weigh the risk to the patient and the public from performing that procedure during the public health emergency, postponing such treatment if, in the dentist's judgment, the risk of harm to the patient and/or the public is elevated and cannot be suitably mitigated.*

73 **Contrast Urgent or Emergent**

- *If, however, the patient presents with an urgent or emergent condition necessitating treatment to prevent or eliminate infection or to preserve the structure and function of teeth or orofacial hard and soft tissues, the weighing of the dentist's competing ethical obligations may result in moving forward with the treatment of the patient.*

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- Dentists will be advised to screen patients for such diseases prior to providing treatment.

- There are ethical considerations for employees and employment as well as patients. What if Contracts or is Positive?

75 **Positive Test?**

- What are the quarantine requirements for a dentist or dental team member who has tested positive for COVID-19/Disease or has been exposed to COVID-19\Device either inside or outside of the dental office?
- CDC Says:

76 **Dental Employee May Return to Work if:**

- At least 24 hours have passed since a fever of 100.4 or higher has resolved without the use of fever-reducing medications, and
- Disease symptoms have improved, and
- At least 10 days have passed since the person began experiencing symptoms

77 **Other Guidelines**

- If a person tests positive for disease, but is asymptomatic, they may return to work after a minimum of 10 days has passed since their test was administered.
- If someone was exposed to disease, but did not test positive for the virus, [CDC guidance](#) says they may return to work after 10 days, but it is best to quarantine for 14 days from date of last contact. The person who had the close contact should monitor for symptoms for 14 days.

78 **Pre-Return Test**

- NOTE: Employers may not require an employee to provide a negative disease test result before returning to work.

79 **When safe to see patient who tested positive or been exposed to someone tested positive?**

- If a patient's symptoms were not severe, the patient can be safely seen for dental treatment when it has been more than 10 days since symptoms onset or their positive test was administered. If patient symptoms were severe (patient was admitted to the hospital and needed oxygen), wait an additional 10 days. If patient had close contact but has no symptoms or positive test, they may be seen after 10 days since date of last close contact.

80 **Close practice due to a exposures or outbreak?**

- The dental practice is experiencing a staff shortage due to illnesses or quarantine orders and cannot sufficiently operate at a reduced capacity
- The local health department orders a closure due to a workplace outbreak, which is classified as 3 or more employees receiving a positive COVID-19/Disease diagnosis within 14 days

81 **If Patient was Close to employee who Tested Positive**

- If a patient was in close contact with a COVID-19/Disease positive employee while at the dental office, the practice owner should inform the patient of the exposure and provide information about when the employee was tested and when the practice owners was informed of the diagnosis. Due to privacy concerns, the identity of the employee should not be shared, even if sharing other relevant details would allow the patient to determine the employee's identity.

82 **What Tell Patient**

- The practice owner may also report the PPE that was worn by the employee at the time of exposure, as well as the practice's infection control protocols.
- ** i.e., Must have Both in Place
- Employee health information is confidential and may be shared only as required by law, i.e.

Health Department

83 **Specialty Advertising - AAID v. PARKER**

In 2013, the AAID, American Society of Dental Anesthesiology, American Academy of Oral Medicine and the American Academy of Orofacial Pain formed the *American Board of Dental Specialties*. The catalyst for this, and a resulting lawsuit, was the 2012 ADA House of Delegates "no" vote on the ADA Council on Dental Education and Licensure's recommendation that ASDA be recognized as a dental specialty, having met CDEL's requirements. The ABDS sued the Texas State Dental Board for using the ADA rules.

84 **Challenged Law**

- *A licensed dentist may advertise as a specialist or use the terms specialty or specialist to describe professional services in recognized specialty areas that are (1) recognized by a board that certifies specialists in the area of specialty; and 2) accredited by CODA. The rule then lists the nine specialties recognized by the Texas state dental board, which track those specialty areas recognized by the ADA.*

85 **Ruling Law Unconstitutional**

- *Defendants have failed to explain why blind reliance on the ADA is not more stifling of commercial speech than is necessary. It does not account for the risk that a non-ADA recognized specialty board or credentialing organization could meet the standards of integrity set by the ADA but still not be recognized as a specialty for political or economic reasons. Wholesale deference to the ADA risks suppressing the truthful speech of dentists who have achieved high levels of training education or experience but have not successfully petitioned for specialty recognition.*

86 **Current ADA Code**

- *5H: The dental specialties recognized by the American Dental Association and the designation for ethical specialty announcement and limitation of practice are: dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics and prosthodontics.*

87 **Prohibitions**

- *Dentists who choose to announce specialization should use "specialist in" or "practice limited to" and shall limit their practice exclusively to the announced dental specialties, provided at the time of the announcement such dentists have met in each recognized specialty for which they announce the existing educational requirements and standards set forth by the American Dental Association. Dentists who use their eligibility to announce as specialists to make the public believe that specialty services rendered in the dental office are being rendered by qualified specialists when such is not the case are engaged in unethical conduct.*

88 **General Standards**

- The following are included within the standards of the American Dental Association for determining the education, experience and other appropriate requirements for announcing specialization and limitation of practice:

89 **ADA Tests for Specialty**

- 1. The special area(s) of dental practice and an appropriate certifying board must be approved by the American Dental Association.
- 2. Dentists who announce as specialists must have successfully completed an educational program accredited by the Commission on Dental Accreditation, two or more years in length, as specified by the Council on Dental Education and Licensure, or be diplomates of an American

Dental Association recognized certifying board. The scope of the individual specialist's practice shall be governed by the educational standards for the specialty in which the specialist is announcing.

- 3. The practice carried on by dentists who announce as specialists shall be limited exclusively to the special area(s) of dental practice announced by the dentist.

90 **5.H.2. SPECIALIST ANNOUNCEMENT OF CREDENTIALS IN NON-SPECIALTY INTEREST AREAS.**

- A dentist who is qualified to announce specialization under this section may not announce to the public that he or she is certified or a diplomate or otherwise similarly credentialed in an area of dentistry not recognized as a specialty area by the *American Dental Association* unless:

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- 1. The organization granting the credential grants certification or diplomate status based on the following: a) the dentist's successful completion of a formal, full-time advanced education program (graduate or postgraduate level) of at least 12 months' duration; and b) the dentist's training and experience; and c) successful completion of an oral and written examination based on psychometric principles;
- and

92 **Mandated Warning**

- 2. The announcement includes the following language: *[Name of announced area of dental practice]* is not recognized as a specialty area by the American Dental Association.

93 **5.I. GENERAL PRACTITIONER ANNOUNCEMENT OF SERVICES.**

- *General dentists who wish to announce the services available in their practices are permitted to announce the availability of those services so long as they avoid any communications that express or imply specialization. General dentists shall also state that the services are being provided by general dentists. No dentist shall announce available services in any way that would be false or misleading in any material respect.*

94 **Contrast Other State (CDA) Specialty Advertising**

- What's Not Prohibited:
 - Specialists are not required to use *"practice limited to,"* nor are they required to limit their practice exclusively to the amount specialty area(s) of dental practice.
 - *Non-specialist* are not prohibited from using *"practice limited to,"* nor are they prohibited from limiting their practice to an announced area(s) of dental practice

95 **Contrast Other State (CDA) Specialty Advertising**

- What's Not Prohibited:
 - Non—specialist are not required to state *"[Name of announcement area of dental practice]* is not recognized as a specialty area by the American Dental Association."
 - e.g., Dentists providing implants.

96 **False or Misleading Advertising**

- Code 5F2
- Material misrepresentation of fact
- Intentional omission of a necessary fact
- Creation of an unjustifiable expectation
- Unjustified representation of superiority

- Examples: "pain-free", "guaranteed result"

97 **ETHICS OF PAYMENT**

98 **5.B.1. WAIVER OF COPAYMENT**

- A dentist who accepts a third party payment under a copayment plan as payment in full without disclosing to the third party that the patient's payment portion will not be collected, is engaged in overbilling. The essence of this ethical impropriety is deception and misrepresentation; an overbilling dentist makes it appear to the third party that the charge to the patient for services rendered is higher than it
- actually is.

99 **Legal Issues**

- Patient turned into Plaintiff can use the waiver of co-payment as evidence of :
- 1) Fraud
- 2) Lack of Dentist Credibility
- **Even if patient received the benefits.

100 **Ethics and Treatment Descriptions**

- Code 5B5
- Is unethical to inaccurately describe a procedure in billing records in order to receive greater reimbursement.
- Examples: Up coding, Up staffing, and Unbundling.
- May also violate State and Federal billing laws, i.e., Medicare.

101 **Other Examples**

- Ortho: Make Parent a Patient too, Bill for Treatment, but never actually get around to do the work.
- Oral Surgery: Bill Full boney, Ext with forceps.
- Prophy: Bill Scaling, perform Coronal Polish.
- Adjust Bite: Bill Full Adjustment, Tx Partially.

102 **ETHICS & PATIENT CANDIDACY**

103 **5.B.6. UNNECESSARY SERVICES**

- A dentist who recommends and performs unnecessary dental services or procedures is engaged in unethical conduct. The dentist's ethical obligation in this matter applies regardless of the type of practice arrangement or contractual obligations in which he or she provides patient care.

104 **Legal Issues**

- Patient turned Plaintiff can use the unnecessary treatment as evidence of :
- 1) Fraud
- 2) Any Complication is Compensable
 - Even if Otherwise an Ordinary Risk
- 3) Lack of Dentist Credibility
- Recording Proof:

105 **Photos**

- Charting Without Notes
- Easy To Do

- Easy Storage
- Powerful Tool
- Your Side Of The Story
- Hard To Dispute

106 **Photos**

- Evidence of the Need for Treatment
- Detailed Charting w/o Support.
- However: Strict HIPAA Protocols Apply – No use in Marketing or Sharing without Written Consent.

107 **Photos as Records**

- Patient
- Models
- Preps
- Shade
- Approval

108 **Esthetics Case (real case)**

- 56-Year-Old Divorcing Patient
- Large Settlement – Gets House
- Wants Young Big Smile
- Treatment Plan
 - Phase one 12 Upper Crowns
 - Has “nervous disorder” = Scared of Dentists?
- Doctor Preps Entire Arch

109 **Post Op**

- Patient Develops Sensitivity
- Post Exam – Crowns Solid, Margins Good
- Patient Seeks Endo
- Imaging Negative for Pathology
- Patient To Endo – Patient Insists on RCT
- Endo Stops after 3 vital RCTs
- Patient goes to 2 other Endos
- All 12 Restorations Get RCTs

110 **Suit Filed**

- Plaintiff Goes to Prosthodontist
- Exam – Says all crowns over Prepped
- Estimates 4mm Average All Teeth
- Recommend 12 New Crowns
- Costs \$24,000 Crowns, \$12,000 RCTs
- Demand \$250,000 at Trial

111 **Trial**

- Cross exam of Plaintiff’s Expert
- Use of Photos Evidence to Impeach

112 **Medical Records Evidence**

- Patient Distressed with New Teeth
- Nervous Disorder was in Fact OCD *Excessive Compulsive Disorder*, Insomnia
- Treatment with Placidyl®
- Jury Sees Treatment Photos

113 **Result**

- 2 Week Trial
- Jury Deliberations 1.5 hours
- 12-0 Defense Verdict
 - Found Patient had Psychiatric, not Dental Problems
- Defense Awarded Costs
- Patient Paid \$50,000 – 2nd mortgage

114 **Choice Issues**

- RCT vs. Implants
- Periodontal Surgery vs. Implants
- Partial Dentures vs. All on 4
- Implant Bridges vs. Individual Implants
-
- Failure/Complication Becomes a Legal Issue
- Complication is Not a Risk if *Unnecessary*

115 **Ethics Violation Penalty**

- A member who is found guilty of unethical conduct proscribed by the ADA Code
- or code of ethics of the constituent or component society, may be placed under
- a sentence of censure or suspension or may be expelled from membership in the
- Association, ADA, HDA.

116 **The Law And Ethics And Standards Of Care**117 **Basic Law**

Negligence >
 Causing >
 Any Injury >
 Damages = \$\$\$

118 **Licensure Law**

Negligence >
 Causing = NO
 Any Injury = NO
 Damages = \$\$\$ NO
 Safety – Could Have Caused

119 **Professional Negligence**

The Standard of Care

What a Reasonable Health Care Provider Would Do Under The Same or Similar Circumstances,
Time, Location

Below S of C = Negligence = Malpractice
 Attorneys Can Not and Do Not Set S of C

120 **Essential Dental Law**

- Standard of Care
 - Reasonable and Prudent
- Any Injury From Substandard Care
- Liability for Negligence of Others

121 **Standards of Care: Testimony**

- Expert Witnesses
 - Some States Need Court Approved
 - Cross Examined
 - Bias, Character
 - Testimonial History
 - Literature Support
 - Jury Determines Veracity

122 **Ethics of Expert Testimony**

- It is unethical for a dentist to provide expert testimony where his or her fee is contingent upon the favorable outcome of the litigation, i.e. taking a lien to testify. ADA Code, Sec. 4D1

123 **Risk Management**

Needs Risk Recognition =
 It Happen to Anyone

124 **Dental Claim Trends**

Implants – Nerves, Infections
 Informed Refusal – Ideal Treatment
 Failure to Use Technology
 Billing Audits – Error or Fraud?

125 **Standards of Care: Informed Consent Legal and Ethical Mandate**

- Known Risk, Serious Injury
- Alternative Treatments
- Reasonable Person Standard
- Specialist vs. Generalists
 - Standards for the GP
- Ethical vs. Legal Duties
- Code 1A

126 **Patient Rights - Responsibilities**

- 1) Right to Choose DDS
- 2) Know Education of your DDS
- 3) Right to see DDS vs. others without DDS
- 4) Time for Questions
- 5) Right to Know this case, completely
- 6) Right to know Risks and Alternatives
- 7) Informed of Future Needs

- 8) Costs Before Treatment
- 9) Right to Decline Treatment

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- 10) Right to reasonable access to care.
- 11) Right to Respectful Treatment.
- 12) Right to Infection Control.

128 **Patient Responsibilities**

- 1) Make accurate History Report
- 2) Report Changes to Health
- 3) Ask Questions
- 4) Inquire about treatment, options.
- 5) Responsibility for Declining (Informed Refusal)
- 6) Keep Scheduled Appointment.
- 7) To be Available for Treatment
- 8) Adhere to Regular Home Health.
- 9) Keep (make) Financial payments.

129 **Exceptions**

- Patient has Right to not be Very Smart

130 **Digital Systems Risks**

- One Form does NOT fit all – Use Check Box
 - Customize Form
- Mandate and Verify Form Signed
- Avoid Letting System Dictate Content
 - Programmers vs. Patient Needs vs AI

131 **Remember – Every Patient is Unique**

- Job
- Hobbies
- Just who they are.....

132 **Individual Patient Consent Issues**

- Ethnicity
- Culture
- Religion
- Financial
- Gender

133 **Tip**

- Strict Informed Consent Protocols
- Document without Exception
- *Time Out Before*
- Digital Requirement, Check List
- Yet.... Still happening
 - Not Signed
 - Wrong Form

– Took Home, Didn't Bring Back

134 **Options and Refusals**

- Many Options Approaching Treatment
- Risk Can be Not Offering Ideal Care
- Risk Can be Patient Refusing Ideal Care
- Digital Options
 - Ext vs. RCT
 - Implants vs. Bridges
 - CBCT
 - Testing: CTX, Blood Sugar

135 **Informed Refusal – Ethical Trends**

- Traditional
 - Risks Of Having Treatment
- New
 - Risks Of Not Having Treatment
 - Risks Of Having Lesser Treatment
- Alternatives
 - Offered
 - Documented

136 **Example (Real Case)**

- Case
 - Ortho vs. Restoration
 - Time vs. Costs
 - Options
 - Result
 - Claim?
 - Suit?
 - Verdict?
 - \$80,000

137 **Documentation**

- [Patient] advised to:_____
- [Patient] Declines and Refuses
- Risk, Benefits & Alternatives Reviewed
- Including (Worst Risk)_____
- [Patient] declines/refuses
- _(date)_____(signature)_____

138 **Ethical and Legal Duty of Specialty Referral Code 2A**

- 1) Predict Complication Potential
- 2) Recognize and Diagnose Complication
- 3a) React and Treat Complication

Or
- 3b) Timely Referral

Or
 3c) Informed Refusal
 Failure = Below Standard of Care

139 **Specialist Obligations Code 2B1**

- 1) The specialists or consulting dentists upon completion of their care shall return the patient, unless the patient expressly reveals a different preference, to the referring dentist, or, if none, to the dentist of record for future care.
- 2) The specialists shall be obligated when there is no referring dentist and upon a completion of their treatment to inform patients when there is a need for further dental care

140 **Non-Referral (Real) Case**

- Gen DDS with Advanced Surgery Training
- Often Removes Erupted 3rd Molars
- Seldom Refers Such Cases
- Minimal *Sphere of Influence*

141 **Complication at Surgery**

- Upper #16 Slipped Into Sinus

142 **2nd Chance at Referral**

- Does Not refer Patient
- Instead Had patient Jump up and Down
- Still Can't Find Tooth
- Sooo...Removes the Lower

143 **Complication: Evidence of Risk or Substandard Care?**

- Risk is a Complication Despite Reasonable use of:
 - Skill;
 - Care; and/or
 - Technology

144 **Some Solutions**

- New Protocols
- Digital Office
- Informed Refusal
- Updated Health History Forms
- Documented Consults
- Documented Referral

145 **Ethics & Reporter Mandates**

- Mandatory Reporter Obligations Set Forth in the Child Abuse and Neglect Laws
- Ethical Obligation: ADA Code 3E
- Elder and Dependent Adult Abuse Protection Laws
- Assumes All DDS Know the Clinical Signs Suspect and Identifying Abuse
 - Neglect, Physical, Sexual, Mental (*Not Simple Dental Neglect*)
 - Knows or Reasonably Suspects
- Report Immediately or be Liable for Next Assault

146 **Code of Ethics**

- Section 3.E
- *Dentists shall be obligated to become familiar with the signs of abuse and neglect and to report suspected cases to the proper authorities, consistent with state laws.*
- Dentists must know if they are a mandated reporter under their State law.

147 **Abuse Reporting**

- *Suspicion of Child Abuse*
- *Suspicion of Abuse of The Disabled*
- *Suspicion of Elder Abuse*
- Reporting Methods –
 - OK 1st by phone, writing w/in hours.
 - CPS, PD, Adult Protective Service

148 **Mouth: What is Suspicion?**

- Non-accidental injuries most often include burns in the mouth caused by scalding liquids;
- Fractured or avulse teeth;
- Bruises to the palate and inner cheeks;
- Muscle under the tongue torn or the area under the lip damaged from food or utensils being shoved in the child's mouth.
- Sexual abuse, signs of certain sexually transmitted diseases in the mouth.

149 **Dental Neglect**

- Parental Failure is not Abuse
- Lack of Home Care
 - Being Dumb or Lazy are Defenses
- Failure to Seek Regular Care is not Abuse
- No Explore Sealants
 - Being Poor is a Defense
- Free Clinics are Not Evidence of Abuse
- Bad Diet is Not Abuse
 - Candy is Cheaper than Veggies.

150 **Impact of Defense**

- Increase in Cases of Multiple Areas of Disease 15-22 teeth
- Treatment only when Severe Pain
- No Option But Sedation
- **** Kailua Case: Now Every 6 months

151 **Reporting Protections**

- May OK X-rays w/o Consent if Suspects
- Immunities if Wrong So long as Good Faith Report
 - Must be Confidential Communications
- Defense: Photos, Photos, Photos

152 **Failure To Report Abuse**

- Unethical
- Unprofessional Conduct

- License Sanction
- Civil Suits = \$\$\$
- Criminal Penalties - Jail

153 **Pregnancy Issues**

- Mary Smith, a 15-year-old girl, came into a dental clinic for a recall appointment. She had been a patient of Dr. Virginia Jones for many years. While waiting in the clinic's radiology area, she saw a sign instructing females to inform their dentist if they were pregnant. Mary became upset and asked Dr. Jones why the sign was there. Eventually she confessed that she was pregnant and asked Dr. Jones not to tell her mother.

154

- Dr. Jones felt she had an obligation to inform the mother of Mary's condition. Mary was not legally independent, and parents had to give consent for any treatment that Dr. Jones would propose. Because Dr. Jones knew Mary's parents, Dr. Jones was convinced that it would be beneficial to Mary if her parents knew and could provide care and support during this difficult period for her life.

155 **Dr. Jones is now faced with an *ethical* dilemma.**

- Dr. Jones should try to convince Mary to discuss her pregnancy with her mother. Dr. Jones also should tell Mary that if she doesn't inform her mother, she will.
- Dr. Jones should contact Mary's mother and inform her that Mary is pregnant.
- Dr. Jones should try to convince Mary to discuss her pregnancy with her mother. Dr. Jones will not inform Mary's mother and will try to delay dental treatment.

156 **Issues**

- Risks of Treatment, Patient and/or Fetus
 - X-rays?
 - Anesthesia?
- Risks of Non-Treatment
 - Infection?
 - Loss of Tissue/Bone/Tooth
- Requirement of Parental Consent
- Duty of Informed Consent
- Balancing of *Ethics* and Standard of Care

157 **Options – Solution?**

- Mary Smith's case is a compelling ethical dilemma surrounding confidentiality and the conflicting moral issues of respecting the: autonomy of a minor while protecting others from harm. Assuming in this case that Mary requires no further dental treatment. Dr. Jones would be ethically justified in encouraging her to discuss her pregnancy with her mother, but should keep the pregnancy in confidence. However, if Mary required immediate dental treatment, the obligation to protect her confidence would have to be weighed against the risks of harm to others — risks that may justify breaking Mary's confidence.

158 **Ethics of Communication**

- Fax documentation (Old) - Confidentiality law
- Scanning of records
- Authentication laws –Records

- Taping of patients *Ethical*
 - Video
 - Audio
 - Wire tap law
 - Consent law

159 **Opinion 5.F.7. Social Media**

- Statements made by dentists or influencers that are "*false or misleading in a material respect*" are unethical.
 - e.g. *Dental Implants last a lifetime*
- Dentists and influencers must disclose any paid partnerships or compensation when endorsing products or services.
 - e.g. *Sponsorship by Implant Co.*

160 **4.E.1. Split Fees in Advertising**

- This opinion was updated to categorize paying influencers a percentage of professional fees collected from patients as unethical "*fee splitting*".

161 **Dental Radiography Safety (Updated February 2024)**

- Lead aprons and thyroid collars are no longer routinely recommended in dental practice, provided the facility uses modern, properly calibrated X-ray machines. Dentists are advised to use clinical judgment and adhere to the principle of "*as low as reasonably achievable*" (ALARA) for radiation safety.

162 **Teledentistry Policy Alignment (Amended November 2021)**

- A dentist who begins a course of treatment must provide adequate notice and opportunity for a patient to obtain services elsewhere before discontinuing care via teledentistry. *
- * Opposed by ADHA, No Impact on Boards

163 **The Tech Legal Exposures**

164 **Traditional Exposure Avenues**

- Malpractice Claims, Suits
- Licensure Investigation, Revocation
- General/Premises Liability
- Employment Disputes, Labor Boards

165 **Digital Records**

166 **Records**

- Statutory Requirements
- Defined; Hx, Cx, Dx, Tx
- Preservation
- Recommendation: At Least 10 Years
- Implants – Told to Patients will Last 20 Years?
 - Size of Tool to Remove – Hex
 - X-ray image Catalogue?
- Ethical Preservation

167 **Patient Privacy Issues**

Legal Mandates
 Federal HIPAA Laws
 State Laws
 Digital Risks
 **e-Mail Security
 Record Security
 Communication Security

168 **Confidentiality**

- Confidentiality is a very Important Issue in the Health Profession
- Healthcare Professionals have an Obligation to Respect the Patient's Privacy
- However, Conflicts Involving the Principle of Confidentiality, such as in Reporting Suspected Child or Elder Abuse, will Arise
- Sometime the Patient's Right to Confidentiality must be Balanced against the Rights of other Individuals

169 **Confidentiality in the Dental Office**

- Healthcare Professionals have an Obligation to Respect a Patient's Privacy in addition to Moral and Ethical Principles, HIPAA has very definite Legal Requirements for the Confidentiality of Patient Information
- Dentists are Included in HIPAA Laws
- Dentists *MUST* have Written Privacy Policies
- Staff *MUST* be Provided the Policies

170 **Ethical Confidentiality & HIPAA**

- Reception Protocols
- Conversations
- Records Placement
- Day Sheet Protection
- Computer Screens
- Fax Placement
- e-Mail Protection
- Self Audit – Ethical Mandate – Code 1B

171 **Copies of Records to Patient**

- Ethical Requirement: Code 1B1 must provide patient a copy of all records requested.
- Hawaii Law - HIPAA: Copy of it no later than 30 days after request.
- Can charge a reasonable Fee: Example, *Per Hawaii Revised Statute Section 622-57(g)* Cal = \$0.10
 – Tip, Don't.
- Right to request amendment to the records. However amendment not mandated.

172 **Copies To Patient**

- Don't Need Written Release for Patient
 - But Do Chart
 - Release Person Not the Patient or Parent
- Can't Limit Due To \$ Owed
- Minors Confidentiality from Parents
- Confidential Patient ETOH Abuse

- Electronic Records – Print History, Progress Notes, Consents,

173 **Electronic Records**

- Back-up, Off Site Storage (NOW CLOUD)
- No Alteration
- Electronic Signature
- High e-Security

174 **Ownership**

- Business Records
- Data to Patient
- Never Originals
- Exceptions
 - Law Enforcement
 - Dental Board
 - Your Attorney
 - Kailua Case

175 **Alteration of Records**

- Spoliation
- Evidence
- Sanctions
- Coverage Issues

176 **Practical Requirements**

- Standards of Care
- Style: S.O.A.P.
- Content
- Legibility
- Forms
- Educational Material
- Electronic Future

177 **Ethical Response PO Numbness**

Ethics: Minimize the Harm

178 **Post Op Imaging – When is too Late?**

179 **Online Discounts**

- *Ethical* dilemma
- Millennials Expect Social Media Discounts & Coupons
- Will Research to Find Deals
- Mindful of State Anti-Kick Back Laws

180 **Groupon Prohibitions**

- Oregon: OAR 818-012-0030(3) prohibits offering rebates, split fees, or commissions for services rendered to a patient to any person other than a partner, employee or employer.
- California: OK Now, new statute

181 **Cal Groupon OK 1/1/17**

- B&P 650(g)
- The payment or receipt of consideration for advertising, wherein a licensee offers or sells services through a third-party advertiser, shall not constitute a referral of patients when the third-party advertiser does not itself recommend, endorse, or otherwise select a licensee.

182 **Hawaii Ethical Issues**

- 2013 Hawaii Board of Dental Examiners reviewed with RICO that some *Groupon* agreements may constitute illegal and unethical fee splitting. Warning letters were issued to several dentists.
- Code 4E1: Prohibits the splitting and includes marketing of dental treatments or procedures via social coupons where the coupon issuing company collects the fee and retains a percentage.

183 **Case Study - Overtreatment**

- Dr. Perez is the director of a postgraduate periodontics program at a dental school located in a large city. One of his responsibilities is to screen patients for treatment by residents in his program. In order to be accepted as a patient for treatment by a resident the person must have therapeutic needs that will be challenging to the resident; advance periodontal disease, complex implant cases, aesthetic surgery needs, etc.

184 **Case Study - Overtreatment**

- Many of the potential patients that Dr. Perez screens comes from private periodontal practice with treatment plans that have outlined for mouth surgery and if not complied with will lead to coronary artery disease or stroke, and have been told that. Both the periodontist and his/her staff have mentioned this to them. These patients have been scheduled for full mouth surgery without any phase 1 therapy (root planning).

185 **Case Study - Overtreatment**

- Due to financial reasons, the patients are seeking a second opinion from the dental school's periodontal program. Upon examination Dr. Perez finds that these individuals have mostly 4 millimeter pockets. As a result, they are not the type of patients who would be good cases for assignment to a periodontal resident.
- Dr. Perez is now faced with an ethical dilemma.

186 **Ethical Decision Process**

- 1) Assign the patient to a resident for comprehensive treatment plan and conservative periodontal therapy without any further discussion.
- 2) Tell the patient that the periodontist's treatment plan is inappropriate and should be reported to the local dental society.
- 3) Call the periodontist to discuss his concerns and that he may be practicing in an unethical manner.

187 **Ethical Response Code 5B6**

- Primary code: Do no harm, including unnecessary treatment.
- Secondary code: Involve the patient in the treatment decision.
- Communication requirements: Contact the other dentist to advise of the findings and alternatives for treatment.

188 **Analogous Cases**

- Ethical dilemma vs Standard of care:
 - Periodontal surgery and maintenance vs. full mouth extraction and implant supported dentures. *ALL ON 4-6*.

- Extraction of tooth and placement of an implant vs root canal treatment and extensive restorative buildup
- Orthodontic Extraction versus non-extraction cases

189 **Botox and Dermal Fillers**

- 2013 Hawaii Dental Board determines that dentist applying Botox and Dermal Fillers may be within the scope of practice.
- Key determination: What are associated structures?
- *Ethical issue:* Do no harm.
- Practical consideration: Be trained and prepared for complications using standards for referrals and help.

190 **Hawaii OK Botox Opinion**

- The use of Botox is within the scope of practice of dentistry as defined in *Chapter 448, Hawaii Revised Statutes (HRS)*. Licensed dentist in Hawaii are allowed to utilize Botox specifically for the treatment of TMD/myofascial pain or other conditions affecting the oral cavity and associated structures as specified in 448.1, HRS.
- Dental Board 2013.

191 **Hawaii Botox Opinion**

- Dental practitioners are advised to receive appropriate training and acquire the necessary knowledge, skills, and expertise to provide to this service in a safe and efficacious manner. Additionally, they should confer with their dental insurance carrier to determine if malpractice coverage for this procedure exist.

192 **Hawaii OK Dermal Filler Opinion**

- The use and placement of dermal fillers by licensed dentist in Hawaii is also within the scope of practice of dentistry. Dermal fillers may be utilized to treat conditions affecting the oral cavity and associated structures. Licensed dentist should confirm with her insurance carrier to determine if malpractice coverage for this procedure exist.

193 **Hawaii Dental: No Staff Option**

- The use of Botox and placement or dermal fillers must be completed by the licensed dentist possessing the appropriate training, knowledge and skill set. It cannot be delegated to a dental hygienist or dental assistant.

194 **Impairment of Practitioner**

- Code 2D
- Mandate to seek treatment for substance abuse
- Directive to report evidence of impairment to professional assistance committee of a dental society
- Dentist with communicable disease must seek advice on limiting practice to prevent patient exposure

195 **Blood-borne Pathogens**

- Code 2E
- Mandate to advise patient of blood-borne incident resulting in potential exposure
- Must refer patient for evaluation and testing
- If dentist's source, must submit to testing
- If patient or staff is source must recommend testing and evaluation

196 **Patient Abandonment**

- Code 2F
- A dentist should not discontinue treatment without giving the patient adequate notice (usually 30 days) and the opportunity to obtain service of another dentist. Care should be taken not to jeopardize a patient's oral health.
- Emergency services should still be available during those 30 days.

197 **Personal Relationships with Patients**

- Code 2G
- Dentist must avoid interpersonal relationships that could impair professional judgment or risk exploitation of a patient.
- Compare: Psychiatrists vs. Attorneys
- Ethical Issue: Beneficence, Patient's best interest, not DDS/RDH

198 **Dental Amalgam**

- Code 5A1
- Is unethical for a dentist to recommend removal of amalgam from a non-allergic patient solely for the alleged purpose of removing toxic substances from the body.
- Contrast: But see FDA rules for recycling Mercury

199 **Unethical Conduct**

- X-Rays w/o License: Code 2C
 - Tip: Maintain staff file with current copies of all licenses, certificates or proof of completion
- Excessive Medication: Code 5B6
 - Tip: Chart Diagnosis and Reason for medication not just type and quantity
- Excessive Procedures: Code 5B6
 - Tip: Chart clinical findings, diagnosis and reason for treatment not just treatment

200 **What is AI**

Artificial intelligence (AI) is a term used in computing to describe a computer program's capacity to execute tasks associated with human intelligence, such as reasoning and learning. It also includes processes such as adaptation, sensory understanding, and interaction.

201 **Compare to Computing**

- Traditional computational algorithms, are software programs that follow a set of rules and consistently do the same task, such as an electronic calculator: *"if this is the input, then this is the output."*

202 **AI Defined**

- In contrast, an AI system learns the rules (function) through training data (input) exposure. AI has the potential to change healthcare by producing new and essential insights from the vast amount of digital data created during healthcare delivery.

203 **AI Functionality**

- An artificial neural network (ANN) is a conceptual framework for developing AI algorithms. Like a human brain model made up of an interconnected network of neurons connected by weighted communication channels. AI uses various algorithms to find complex non-linear correlations in massive datasets (*analytics*). Machines learn by correcting minor algorithmic errors (*training*), thereby boosting prediction model accuracy (*confidence*).

204 **AI**

Where will it be used 1st?

205 **Corporation Owned Practices**

- Current trends: Estimated over 25% of all dentists will be in group practices by the next decade.
Why?
- 1) Significant cost of dental school
- 2) Gender shift
- 3) Increasing control of pricing by insurance
- 4) Millennial's preference of social media

206 **Corporate Owned Practices**

- *Ethical* Challenges
 - Production goals influencing treatment planning
 - Quality of care versus speed of output
 - Ethical dilemma: Patient's needs must come first.
 - Trend to Start Class Action
 - Add DDS as Co-Conspirator(s)

207 **Corporate Owned Practices**

- *Ethical* analysis:
 - The dentist is a professional obligated to provide quality, competent and timely care.
 - Code of ethics require full explanation of diagnosis, treatment options and the risk of treatment or refusal of treatment in a manner that is easy to understand, accurate and allows the patient to be involved in the decision-making for their care.

208 **Corporate Owned Practices**

- Risk management tools:
 - Ethical and legal standards of care determine the appropriate level of record-keeping regardless of the prescribed corporate format or systems that are in place.
 - Complete record keeping must include a documented and often signed treatment plan, and signed informed consent or informed refusal.
 - It is not a defense that the rest of the practice uses the same inadequate record-keeping.

209 **Corporate Owned Practices**

- Risk management tools:
 - Dentist as corporate employee is still liable for ethical billing.
 - Tip: Description of treatment in billing must be identical to treatment in the patient's clinical chart.
 - Tip: Active waiver of insurance copayment is unethical and illegal and creates liability also for the dentist who authorizes the waiver.

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214 **What are the Legal and Ethical Issues**

215 **Examples**

- Covid DNA sequencing
- CRISPR Gene Editing Vaccine Development
 - Clustered Regularly Interspaced Short Palindromic Repeats
- U Maastricht MC Robot stitch 0.03mm vessel
- Operative CT early glaucoma detection
- Mayo AI EKG dx early left ventricular dsyfn
- Atomwise Bio redesign Ebola Rx in 24 hours

216 **AI Patient Questions**

- Who is responsible for Machine errors?
- Pre-existing Bias and Machine Learning
- Should Patients be informed of use of AI?
- Will Patients use AI vs MD – *ChatGPT*?
- Will AI run a practice?
- Will AI replace jobs ... Not if, When?
- Will AI Generate it's own Values?

217 **Future is Now**

- AI reading and diagnosing Imaging
- AI scanning and diagnosing pathology
- AI assisted Surgery
 - CT overlay and special Instruments
 - Anesthesia Monitoring and Alerts
- Instant Medical/Dental Research - Statistics
 - New Diagnosis
 - New Treatments
 - New Techniques

218 **Neuro Net and Cybersecurity**

- *Check Point Research*: ChatGPT can write phishing e-mail and malware.
- *CyberArk*: AI can create polymorphic malware evade security protocols: Result – easy access to

Neuro Net Works used by AI HIPAAA Violations.

219 **AI In Dentistry**

- Operative: Early Diagnosis of Imaging
- Periodontics: Early Diagnosis Imaging
- Orthodontics: Treatment Planning and Predictability Increasing.
- Pathology: Diagnosis in Seconds
- Radiology Diagnosis: 90% there NOW

220 **AI and Ethics Principles**

JADA 8-2024

221 **Patient Autonomy**

- : Dental care professionals should provide clear explanations of how AI arrives at specific diagnoses and treatment recommendations, empowering patients to understand and evaluate the basis of their treatment decisions. Data privacy is important, and dental providers should respect patients' decisions and perspectives on AI use and obtain consent when AI is used

222 **Nonmaleficence:**

- Dental care professionals should vet and validate AI systems to minimize the risk of errors, misdiagnosis, or inappropriate treatment. Although AI can enhance diagnostic accuracy and treatment efficiency, it should never compromise patient safety. Dental care professionals must continually evaluate the benefits of AI implementation against potential risks and exercise caution in relying solely on algorithm outputs. In cases involving AI errors or discrepancies, dentists must establish clear protocols for accountability. AI, as a digital tool, can assist dental care providers with diagnosis, but it should never replace the judgment and expertise of licensed dental care professionals

223 **Beneficence:**

- AI technologies should be leveraged to improve patient outcomes, enhance treatment efficacy, and optimize delivery of care. Dental care professionals should commit to continuing education and training, including ethics training, on AI technologies as well as promoting research and development.

224 **Justice:**

- Large language models can magnify algorithm bias, and dental care professionals must work to assess AI training model data sets to ensure transparency and a fair and equitable outcome for all patients. As AI algorithms are developed and implemented, their potential impact on underserved populations and marginalized communities must be considered. AI-driven interventions should improve equity and not worsen existing disparities.

225 **Veracity:**

- Dental care professionals have a duty to provide accurate information to their patients regarding the capabilities, limitations, and potential risks associated with AI technologies. Transparency in AI algorithms is critical to fostering trust and accountability with industry stakeholders, patients, and providers. Dental care professionals should provide clear explanations of how AI arrives at specific diagnoses and treatment recommendations, and how data are collected and used in AI systems.

226 **Reality**

- Many dental jobs will become obsolete. With AI taking over radiology and diagnosis, dentists and

dental assistants may find their roles significantly diminished, or even eliminated entirely. This could lead to a significant loss of income and career opportunities for dental professionals.

227 **Exposure**

- AI in dentistry raises questions about privacy and data security. AI algorithms require access to large amounts of patient data to function effectively. However, this data could be vulnerable to hacking and data breaches, potentially exposing sensitive patient information to cybercriminals.
- Jailbreak – end run around restrictions
- Eg: Lloyd Austin, King Charles
- As in all AI the programming is *Goal Oriented*. If the AI can't find the data or support a diagnosis, it may on occasion make up facts to support the goal.

228 **Risks**

- A risk of AI in dentistry is possibility of misdiagnosis or errors. While AI algorithms can be accurate, they are not infallible due to programming bias.
- AI is goal oriented does not care about truth, ethics, or fact verification.

229 **Risks**

- AI may be *unable* to provide accurate information about alternative therapies or treatments that are poorly understood.
- AI may be *unable* to provide accurate information about mental health conditions or treatments.
- AI may *not* be able to provide accurate information about emergency situations.
- e.g. Driverless cars.

230 **Radiology/Anesthesia**

- April 2023 study accurate 88% of the time.
- Issue: One case used out dated study
- Long Island University Study: Anesthesia study, AI data could not be verified and some were false – Goal priority over truth
- 2024 Cohen Childrens' Medical Center Study: Pediatric Diagnostic accuracy of only 17%

231 **Risks**

- AI programming has the potential for bias in the training data, which can result in biased or inaccurate responses. *Hallucination*
- AI may be lacking the human medical expertise and judgment of a healthcare professional. Even if it does score over 60% on a medical test, it may not correctly diagnose or treat medical conditions - Yet

232 **Risks**

- AI cannot provide hands-on learning experiences. Medical education requires practical training, and AI cannot replace the importance of hands-on training in medical education.
- AI may not be able to understand complex medical terminology or nuances that are important for accurate diagnosis and treatment. Programming Limits

233 **Risks**

- AI may not personalize care plans based on individual needs.
- AI may not be able to provide accurate information about rare diseases – Lack of Data
- AI may be unable to provide accurate information about medications or treatments that are poorly understood – No Data

234 **Discrimination**

- Widespread use of AI in dentistry could exacerbate existing disparities in healthcare. Patients from marginalized communities may not have equal access to the technology or may, not be able to afford it leading to a widening gap in the quality of dental and medical care provided.
- e.g. CAD have lower accuracy for African patients

235 **AI and Law Practice**

- Legal Research in Seconds
- Evidence and Data Analysis
- Locating Witnesses
- Visual Preparations – Digital Arts
- Drafting Legal Documents
- Drafting Arguments

236 **Emerging Law Risks in AI**

- Steven Schwartz, a personal-injury lawyer at the New York firm Levidow, Levidow & Oberman, who recently used ChatGPT* to help him prepare a court filing. He relied a bit too heavily on the artificial-intelligence (ai) chatbot.
- **Chat Generative Pre-Trained Transformer*
 - Less Harmful than InstructGPT

237 **Liability Example**

- AI drafted a motion, but when it could not find case on point, it made-up cases, rulings and quotes, which Mr Schwartz promptly filed after the bot assured him that the "*cases I provided are real and can be found in reputable legal databases*" (they were not). The attorney was sanctioned and lost the argument.

238 **Fake Pleadings**

- Mata v Aviana 5-2022 NY: Chat GPT created fictitious legal cases in airline suit, including fake quotes.
- Sanctions and potential licensure issues
- Case dismissed, Attorneys fined \$5,000
- Report to State Bar.

239 **AI Laws**

- Jan 2023 Mass State Senator Finegold propose bill written by AI would require companies to disclose use of AI to prevent plagiarism.

240 **Legal Analysis of AI**

- What are the potential claims/issues?
- Who may be liable?
- What is the nature of the exposure
 - Insurable?
 - Licensing Board Issues?
 - Potential Criminal Issues?

241 **Claims**

- No Diagnosis
 - Late Diagnosis

- Wrong Diagnosis
 - Imaging, pathology, etc.;
- Patient Privacy
 - Large Data Review - Nature of AI
 - AI goes everywhere in seconds – Easy Hack
- Copyright
 - Some Rx and Tx Already Copyrighted
- Trademark – Prohibit use of name?

242 **Claims**

- Criminal
 - In accurate/false billing
 - Fraud
 - Cal B&P 17200
- Discrimination
 - Disease by Race/Gender/Religion
 - AI knows all
 - Treatment by Location
 - Treatment with \$\$\$

243 **Who May be Liable**

- Dentistry and Medicine require a License
- The "buck" stops at the License
- Collateral Liability
 - Labs, Tech Systems, Instruments
 - Licensee has the liability, for now. New Law?
- Cross claims/Co-Defendants?,,,
 - Programmers
 - Manufacturers
 - Distributors, Representatives

244 **Response and Preparation**

- Standard of Care is still King
- Current standards are evolving
 - Is Davinci guided Surgery the Standard?
 - Is CT the Standard for Dental Implants
- Broad and Frequent training is a Must
- Staff becomes more important
 - Case where Staff not report late email
 - Nurse does not report changes in patient
 - Same for AI Failure?

245 **Risk Management**

- Like a *time out*: Pause before Engagement
- Check List: all the boxes reviewed as to Issues
- Employ well established Specific Risk Management
- More and Regular Education of Staff

- Review Insurance Coverage for Exceptions
 - e.g. is ADA Discrimination covered?
 - e.g. is Age, Race, Religious discrimination covered?
- Also: AI will let you and staff go much faster.....
- Risks?

246 **Summary**

- Ethics in All Aspects of Dentistry
- Ethics are enforced by ADA, State Soc, License BD
- Risk Recognition is a Must
- More Informed Refusal
- New Record Keeping Obligations – Digital Elevation
- Work for Success but Plan for Complication, Failure
- Communicate and Document Discussions with Patient
- If using AI, *Validate, Validate, Validate*