AN INTRODUCTION TO DENTAL ETHICS AND LAW

WHY BOTHER WITH ETHICS AND LAW?

CONFIDENTIALITY IN PRACTICE; KNOWING WHEN TO KEEP A SECRET

CONSENT IN PRACTICE; A QUESTION OF CONSENT

PROFESSIONALISM IN PRACTICE; THE CHALLENGE OF ETHICAL TEAMWORK

Confidentiality in practice; knowing when to keep a secret

This article is the second instalment in a four-part ethics series by **Mark G. Brennan***.

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Introduction to confidentiality

Nearly every dentist and dental care professional (DCP) will have signed an employment contract that includes a confidentiality clause, committing them to keep a secret - or treat on a 'need to know' basis - information which they might come across in the course of their work. But the duty of confidentiality goes beyond a patient expectation or a contractual responsibility; it is also an ethical, legal and professional duty for all registered dentists and DCPs.

What is confidentiality?

At its most basic, confidentiality means respecting and protecting someone else's secrets and right to privacy. When patients attend a dental practice or clinic, they expect that their secrets or what they regard as private information will be handled with care by those who might get to know some (or all) of the secret. This means all clinical staff who are registered with the GDC (dentists, dental nurses, hygienists, therapists and dental technicians) - but also encompasses anyone else who works within the practice or clinic (eg practice managers, reception staff, cleaners etc).

What sort of secrets or private information?

If you think about the type of information

CONFIDENTIALITY

- You must always act to protect personal and sensitive information.
- Confidentiality means respecting and protecting someone else's secrets and rights to privacy.
- Every dental professional needs not only to be fully aware of the General Dental Council's current ethical and professional guidance but also to ensure that this is applied to their everyday practice.
- The duty of confidentiality is not absolute. There are circumstances where you may legitimately need to pass on the secret to others with a need to know.

that patients might not want others to know outside of the dental or health care 'family' (staff of the practice or clinic and other health professionals), this could actually be a very wide range - some of which might not immediately strike you as important. For example, some patients who wear dentures might have kept this a closely guarded secret,

even from their spouse of 40 years, and could be seriously upset if this were to become more widely known. In theory, even to confirm to a telephone caller that a patient is attending the surgery at present might constitute a breach of confidentiality. Airlines in the UK have now adopted a blanket policy of refusal to confirm or deny any requests for information about a passenger - with good reason. Some people use an actual or fictional dental appointment as an excuse or alibi for not being where they should be or with the right person at the right time; it is inevitable that others will want to check on whether or not the person has actually attended a dental practice or clinic.

For example, think of a school secretary phoning a dental practice to check whether a 14-year-old pupil has been attending for orthodontic treatment as he or she has been claiming when, in fact, the student has been 'bunking off' school on a regular basis. How would you respond to this telephone request?

Technically, it would be a breach of confidentiality for a dentist or dental nurse to state to the school secretary that the school student did have three appointments but did not attend for any of them. A better route would be for the school to contact the student's parents or legal guardians to whom it would normally be acceptable for the dental nurse to convey the same information. In relation to the principle of confidentiality, the GDC states that:

'This principle sets out the need to treat information about patients as confidential, using it only for the purposes for which it was given. Dental professionals should also take steps to prevent accidental disclosure or unauthorised access to confidential information by keeping information secure at all times.'

In some limited circumstances, disclosure of confidential patient information without consent may be justified in the public interest (for example to assist in the prevention or detection of a serious crime) or may be required by law or by Court order. Dentists and DCPs should seek appropriate advice before disclosing information on this basis.

Confidentiality cases

Of the four *Principles of biomedical ethics* discussed earlier in this *Vital* series, all four are relevant when discussing confidentiality. So how does all of this apply to dentists and DCPs? Here are a set of cases which illustrate how confidentiality might clearly be breached in dental practice. You will probably think of many more situations where a dentist or DCP might breach confidentiality without necessarily meaning to do so by carelessness or lack of attention.

Case 1: In the pub

Over a few drinks in the local pub, a general dental practitioner tells a couple of friends about the patients he saw in his surgery that afternoon. He makes some 'humorous' (but derogatory) comments about one of the patients, and names her. He is overheard by a cousin of the patient who informs her of what the GDP had said about her. She makes a formal complaint to her dentist then sues the practice for breach of confidentiality.

Case 2: The pregnant neighbour

A dental nurse working on reception in a general dental practice sees that her 16-year-old neighbour has had an appointment with one of the dentists in the practice yesterday. She reads through the notes and discovers the girl is pregnant. She then goes to the neighbour's house to congratulate her (in front of her parents) on the fact she will soon become a mother. The girl was actually planning to visit her general practitioner the next day to request a termination, and her parents previously knew nothing of the pregnancy.

- What do you think should happen in both cases?
- What would you do if you had become aware of these breaches of confidentiality?
- Who would you tell if you believed a colleague, who might also be a good friend, had breached a patient's confidentiality and their right to have secrets respected?

Suggested advice

In Case 1, the dentist is clearly at fault. He could be sued by the patient (though it is more likely it would be the practice that was sued), the patient could certainly complain about his behaviour to the practice, the primary care or hospital trust, or the GDC, and the practice owner could dismiss him for misconduct. As a practitioner registered with the GDC, he could find himself facing a professional conduct committee (or, if this is part of a continuing pattern of misconduct, a professional performance committee) comprising a panel of dentists, dental care professionals and lay people. This panel has the power to reprimand him, suspend him or erase him from the GDC register.

In Case 2, the dental nurse is equally or even more at fault; by seeking out and acting upon confidential information she had no need to know, she too could be dismissed and could also face a GDC performance committee. The potential consequences in both cases are that the patients and their relatives and friends who also attend the practices concerned might lose trust in the dental professions, and might fail

to seek dental treatment in future. It is also possible that the local or national media might learn of the stories and ensure that all members of the practice staff would be presented as guilty by association, even if completely innocent of such behaviour themselves. Here is another one for you to consider:

Case 3: The teenage patient

You are a general dental practitioner. When your dental nurse briefly leaves the surgery to collect supplies, a 14-year-old (whom you have known as a patient for the past six years) asks if he can tell you something but requests that before he does so, you promise to tell no-one else.

- What should you do or say in this case?
- If you do say something to others, who would you tell?

'The duty of confidentiality goes beyond a patient expectation or a contractual responsibility; it is also an ethical, legal and professional duty.'

Suggested advice

The duty of confidentiality is not absolute. There are circumstances where you may legitimately need to pass on the secret to others with a need to know. You should therefore not agree to keep something completely secret until you know what the secret is. You might choose to say something like: 'Until I know what it is you want to tell me, I can't promise to keep it completely secret. I may need to talk to others to offer help or advice. Whatever you tell me, I will do my best to protect the secret from those who have no need to know.' Remember that you have a duty to protect children and young people, and need to ensure you comply with the national and local protocols on child protection and the reporting of any allegations or observations of assault or inappropriate behaviour towards your patient in such cases.

Your local primary care or acute hospital trust will have a lead nurse or doctor who can provide you with further information and guidance.

Case 4: Suspected abuse

You are a senior dental nurse working in the Exam and Emergency department of a dental hospital. Deborah, a 34-year-old solicitor and mother of three young children, presents as an emergency patient appointment. You observe facial swelling and bruising; Deborah complains of soreness and pain from an avulsed tooth. This is not the first time she has attended the dental hospital for treatment in similar circumstances. On questioning, she confides in the duty dentist that she is being abused by her husband at home; he tends to hit her when drunk, and then becomes tearfully apologetic when sober; he even drives her to the dentist, doctor or hospital for emergency treatment. She asks you and the dentist not to tell anyone else; she does not want to attend her local dental practice as her general dental practitioner (GDP) is a family friend with children at the same school.

Should you and the hospital dentist:

- Keep the secret from anyone else at the patient's request
- Talk directly to the husband, without the patient's knowledge
- Contact your dental defence organisation for advice on how to proceed
- Contact the domestic violence unit at the police station without Deborah's consent for you to do so

Answer

Of these options A and C are both appropriate courses of action. You may wish to encourage Deborah to seek support from the police, social services or friends and relatives, and for her to suggest to her husband that he seek counselling and help. You might also offer to provide a witness statement to the police if she wishes you to do so. You would probably be advised by your dental defence organisation that you have a legal, ethical and professional duty to assist the patient if she wishes to make a complaint to the police; however, you are not required to breach her confidentiality. You might want to seek advice first from your defence organisation, and/or the senior dentist in a dental hospital or community dental service clinic. In all cases, it would be advisable for you to make a note in the patient's records of your clinical observations. B and D are unacceptable and unadvisable ethically and may both lead to further repercussions for you, your patient or both of you.

‘Confidentiality is not an optional extra in dental practice, but essential to good patient care and treatment.’

Other more extreme examples which allow for disclosure to others in the public interest might include where the patient admits to committing a crime or a terrorist act; again, clearly, you would want to refer to the GDC guidance and seek advice from your dental defence organisation about what to do with this information.

Conclusion

Confidentiality is not an optional extra in dental practice, but essential to good patient care and treatment. The GDC ethical guidance as well as that from the BDA and your defence organisations can help you keep up-to-date in

terms of your duty of confidentiality as well as helping you to know the limited number of cases where you are required and permitted to breach this duty, in the best interests of the patient or their friends and relatives, colleagues, or society. In all such cases, you may wish to seek further advice and guidance to ensure your own peace of mind as well as the security of patient information and your relationship with your patient.

Confidentiality checklist

- Who wants to know?
- Why do they want to know?
- Are they entitled to know?
- Has the patient given their consent?

Further reading

- Beauchamp T, Childress J. *Principles of biomedical ethics*. p 12. Open University Press, 2009.
- Brennan M G, Oliver R G, Harvey B D, Jones G. *Ethics and law for the dental team*. p 41. PasTest, 2006.
- General Dental Council. Standards Guidance comprising *Standards for dental professionals*; *Principles of patient consent*; *Principles of patient confidentiality*; *Principles of dental team working**; *Principles of complaints handling**; *Principles of raising concerns**, *Scope of practice+*. GDC, 2005, *2006 and +2009.

You can include reading this article in your general (non-verifiable) CPD.

TEST SCENARIO

See what you think of the following question.

Question

You are a dental hygienist. Sali, a 26-year-old patient, confides in you that she has Hepatitis C but demands that you must not record this in the dental records nor tell any other dentist, dental nurse, hygienist or therapist who might treat her in the future.

Would you:

- Respect the patient's wishes and keep such information to yourself
- Agree to the patient's request, but make a cautionary note in her records after she leaves
- Explain to the patient the clinical and ethical reasons for passing on this information (eg via the patient's records) to those with a need to know

Answer

C is the only acceptable option. To choose A would be poor clinical practice as it might put your colleagues at risk (and might adversely affect the patient - eg if prescribed medication which is contra-indicated for her condition) and B would be dishonest. In reality, many patients with a condition such as HIV or Hepatitis C are responsible people who realise that dental professionals need to be made aware of their condition in order to provide them with effective and appropriate care, but there are exceptions - people who may be much less responsible. In such cases, you would obviously want to consider your own responsibility to your fellow professionals.