

Ethical Dilemma ***Case Study***

The Ethics of Obtaining Informed Consent

“You’re the Doc, I trust you ...just do it!”

What Would You Do?

M Mr. John Kim is a new patient in Dr. Martin’s practice. John’s sister Anne is also a patient of Dr. Martin and she made the recommendation to her brother. Dr. Martin’s general practice has been at the same location for 10 years. John works for a large electronics firm and lives less than 15 minutes from the practice. As a sales agent, he travels about half of the month. At the age of 32, he has made excellent progress in his company and, other than the “pressure cooker” environment of sales, he enjoys his current career.

John’s medical history reveals a five-year history of borderline hypertension monitored episodically by his physician. Other than the blood pressure concern, his general health is good. His oral health, however, reveals the ravages of neglect, with most of his posterior teeth requiring buildups and crowns.

He disliked his dentist as a child and is fearful of dentists in general. He saw the dentist primarily for emergency care. Both mandibular first molars were extracted 10 years ago and he now requests implants to replace these teeth. After a thorough evaluation, gathering of diagnostic information and careful treatment planning, Dr. Martin asked John to meet with him to review

his recommendations. Three-unit bridges are a reasonable alternative to implants as all of the abutment teeth require crowns. Also, the bone loss in the area makes the placement of implants more complicated. Dr. Martin would like John to know

about these concerns and recommendations.

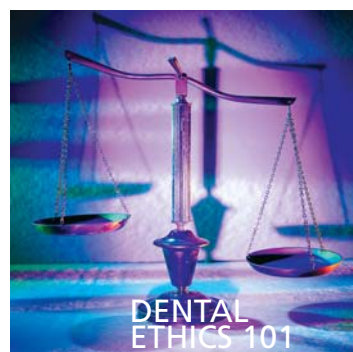
As Dr. Martin begins to discuss the complexity of the case, and particularly the risks of implants, John raised his hand and says, “Hey, you’re the Doc! You just tell me when to come and I will be here. I don’t need to know what you are planning. Just show me where to sign the consent form. I trust you, and I’ll pay what my dental insurance doesn’t...just do it! I really hate to hear the gory details, and I don’t understand them anyway.”

Dr. Martin is facing an ethical dilemma. What would you do?

- **Have John sign the consent form and proceed with the plan including the implants.**
- **Insist that John listen to the treatment alternatives and risks before any treatment is started.**
- **Initiate minor care, but not proceed with complex care, including fixed bridges or implants, without further consultation with John.**
- **Dismiss this non-compliant patient from your practice.**

Now turn to page 48 to find the case study discussion of this ethical dilemma.

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Case Study Discussion **What Should You Do?**

The Dental Ethics 101 Ethical Dilemma Case Study appears on page 33.

The Ethics of Obtaining Informed Consent

**“You’re the Doc,
I trust you
...just do it!”**

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What should a dentist do when a patient waives his or her right to informed consent? Should the dentist choose what is in the patient’s best interest? Should the dentist force the patient to hear the consent information? Is it legal or ethical to proceed when the patient waives his or her right to consent? These are the ethical dilemmas facing Dr. Martin.

The three ethical issues surrounding the waiver of consent include:

1. the patient waiver and (un)informed consent
2. mutual trust
3. overriding the waiver

1. Waiver and (Un)Informed Consent

John waived his right to consent when he interrupted Dr. Martin and deferred to the doctor’s expertise. The courts have recognized that there may be valid justification for overriding the legal doctrine of informed consent. Those cases include a patient waiver, emergency treatment, a public health emergency, an incompetent patient, and therapeutic privilege.

The patient waiver is unique because it is a voluntary act of a competent patient not to receive information or to participate in decision-making. Courts have defined a waiver as a voluntary and intentional relinquishment of a known right.

Compare this to situations where consent may be difficult to obtain, as in emergency situations, or when the patient is incompetent.

Therapeutic privilege is also dissimilar because it is the doctor who makes assumptions about the patient’s competence and deliberately chooses to withhold information to protect the patient’s best interest. Therapeutic privilege disallows the patient’s participation in decision-making and is often viewed as unjustified paternalism.

Most dental regulators and associations advise that, as part of the informed consent process, dentists should inform the patient of the diagnosis and proposed treatment, any reasonable alternatives, and the material risks and benefits of all treatment options.

In this case, John has waived his right to consent in two ways. First, he waived his right to information when he interrupted Dr. Martin and said, “I really hate the gory details, and I don’t understand them anyway.” He also waived his right to decision-making and delegated this right to Dr. Martin, when he said, “You’re the Doc! I trust you...just do it!” So John had both requested to be uninformed and chose to delegate this decision-making authority to the doctor, thereby freeing the doctor from the disclosure duty.

In essence, John is willing to trust the dentist’s professional judgment. But how important is the trust between the dentist and patient?

2. Mutual Trust

John interrupted Dr. Martin to tell him, “I trust you. Just show me where to sign the consent form,” and waived his right to information and decision-making. What is the basis for his trust in Dr. Martin? Should Dr. Martin proceed with treatment, and if so, what treatment? Should John agree to treatment without knowing that there are differences in the risks involved in each treatment and those specific to his situation?

Dr. Martin has not provided any care except the initial examination for John. So why would John “trust” his dentist? Dr. Martin may have expected that trust from Anne, John’s sister and source of his referral. Perhaps John has read the public opinion polls that rate dentistry

consistently as a highly trusted profession. However, it is unclear if John’s decision is based on trust, fear of dental procedures, economics, or just convenience.

3. Overriding the Waiver

When a patient chooses not to become involved in treatment decisions, has the dentist fulfilled all ethical and legal obligations?

The literature is clear that, while the courts recognize the existence of a patient waiver, there are important problems of definition and application. Some would argue that a patient’s waiver of the physician’s (dentist’s) obligation to disclose and obtain the patient’s consent should be accepted only after a committed effort has been made to explore the underlying reasons for the patient’s abdication of decision-making responsibility.

There are clear differences in the risks and benefits between implants and the three-unit fixed bridges generically, and the level of risk for implants for John specifically. While it may be legally an option to honour a patient’s waiver, Dr. Martin would be ethically remiss by not discussing the differences of these risks with John.

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IN CONCLUSION

While John Kim has waived his right to informed consent, Dr. Martin must still decide how to proceed. Patients who choose to waive their right to informed consent do not release the dentist from his or her ethical obligation to discuss the patients’ right to information and to participate in the decision-making process.

When a patient says, “You’re the Doc...just do it!”, the dentist is ethically justified in overriding the waiver because of the differences in the level of risks involved in each procedure, and those due to specific patient variation.

For these reasons, prudent practitioners should not deviate from the full informed consent process, which includes:

- Informing patients of the nature of their oral health problems.
- Recommending a preferred treatment plan and the risks and benefits of this treatment.
- Discussing all other treatment alternatives and their associated risks and benefits.
- Informing the patient about the consequences of not proceeding with treatment.
- Giving the patient an opportunity to ask questions and think about the issues previously discussed.
- Providing cost estimates for the various treatment options.
- Documenting the fact that all of the patient’s questions were answered and that his or her consent was obtained.