

Justifiable Criticism



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One of the most difficult issues you will encounter in your daily practice is addressing a patient's complaint or criticism regarding dentistry performed by a colleague. For example, a patient may ask: "Do you think he/she did a poor job making this crown?"

Patients may ask this type of question when gathering facts to bring forth an allegation of negligence against the prior dentist or the file a complaint with the State dental board. Sadly, many of the allegations I review are triggered by the subjective and speculative comments of a colleague. When confronted by these questions, please keep in mind the following priorities and ethical obligations.

Your primary obligation to your patient is diagnosing their **current dental treatment needs**. Despite prodding from a patient regarding a colleague's work, evaluate their oral health, arrive at a differential diagnosis, recommend the appropriate treatment, inform them of the reasonable alternatives (and associated risks, benefits, and costs of each), and obtain their informed consent. There is no obligation to subjectively pass judgment on the alleged poor treatment provided by a colleague. Patients can be persistent and will not easily give up. So what are you to do?

Guidance is found in "The American Dental Association's Principles of Ethics and Code of Professional Conduct (The Code)."¹

4.C. Justifiable Criticism.

Dentists shall be obliged to report to the appropriate reviewing agency as determined by the local component or constituent society instances of gross or continual faulty treatment by other dentists. Patients should be informed of their present oral health status without disparaging comment about prior services. Dentists issuing a public statement with respect to the profession shall have a reasonable basis to believe that the comments made are true.

Advisory Opinion

4.C.1. Meaning of "Justifiable."

Patients are dependent on the expertise of dentists to know their oral health status. Therefore, when informing a patient of the status of his or her oral health, the dentist should exercise care that the comments made are truthful, informed and justifiable. This should, if possible, involve consultation with the previous treating dentist(s), in accordance with applicable law, to determine under what circumstances and conditions the treatment was performed. A difference of opinion as to preferred treatment should not be communicated to the patient in a manner which would unjustly imply mistreatment. There will necessarily be cases where it will be difficult to determine whether the comments made are justifiable. Therefore, this section is phrased to address the discretion of dentists and advises against unknowing or unjustifiable disparaging statements against another dentist. However, it should be noted that, where comments are made which are not supportable and therefore unjustified, such comments can be the basis for the institution of a disciplinary proceeding against the dentist making such statements.

Don't hypothesize (speculate) about the quality of the treatment in question. Without factual knowledge

about the circumstances of the treatment, you cannot provide a judicious response (Section 4 of *The Code*, “Fairness”). Even in the best of circumstances, we have all had poor outcomes.

If the patient’s question(s) persist, and you feel it appropriate to provide an answer, what is the best source of gathering the required information? The prime source is the provider who performed the treatment in question. Before answering the patient, personally reach out to the prior treating dentist to gather facts to better understand the circumstances surrounding the treatment in question. Don’t rely on the patient’s recollection. It may be that the treatment in question appears to be a breach of the standard of care, but was provided under an unusual set of circumstances.

Let’s suppose you are simply unable to get sufficient information to intelligently answer this type of question or the prior treating dentist thwarts your efforts. I would then advise, no matter how hard the patient pushes, that you restrict your answer to objective clinical findings and diagnosis. Remember, you are under no obligation to guess as to why the treatment of a colleague appears as it does.

The patient is essentially asking you to formulate an opinion on an alleged breach of the standard of care. The standard of care is generally defined as what the reasonably prudent practitioner similarly qualified would have done in this situation under the **same or similar circumstances**. They may have already been in contact with an attorney or a State board; they will be carefully listening to your answer. If you rush to judgment, hypothesize about the quality of another’s treatment, and disparage them, you have not acted in a reasonable, ethical, and prudent manner. Ask yourself, how would you want your treatment judged?

In any circumstance, judiciously advise your patient about his/her prior dental care and save yourself the embarrassment of unjustifiably denigrating your colleague. Your discretion can help keep you from violating your ethical duties as a dentist—and reduce your discomfort if you treat the patient and have a similar outcome.

Finally, what if, following a period of due diligence, you conclude the treatment in question represents a breach of the standard of care? Then provide an honest, objective opinion without superfluous and potentially inflammatory statements to the patient. The “best interest of the patient” should be your guiding light throughout.

1. American Dental Association, American Dental Association principles of ethics and code of professional conduct, with official advisory opinions revised to 2018.
<https://www.ada.org/~media/ADA/Member%20Center/Ethics/ADA%20Code%20Of%20Ethics%20Book%20With%20Revised%20Advisory%20Opinions%20to%20September%202018.pdf?la=en>, accessed October 1, 2018.

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