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The legal and ethical pitfalls in the provision of cosmetic dentistry: are there any lessons for South African dental professionals?

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Title: **The legal and ethical pitfalls in the provision of cosmetic dentistry. Are there any lessons for South African dental professionals?**

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A research report submitted to the Faculty of Health Sciences, University of the Witwatersrand, Johannesburg, in partial fulfilment of the requirements for the degree of Master of Science in Medicine in Bioethics and Health Law.

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Declaration

I, Raymond Moteka Matloa, declare that this Research Report is my own work. It is being submitted in partial fulfilment of the requirements for the degree of MSc (Med) Bioethics and Health Law at the University of the Witwatersrand, Johannesburg. It has not been previously submitted for any degree or examination at this or any other university.

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Raymond Moteka Matloa

2020

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Ke a leboga.

Abstract

The purpose of this research report was to determine circumstances in which the provision of dental cosmetic procedures would be ethically unjustifiable, and also if these procedures could be considered to be an overtreatment.

In support of my arguments as to why some cosmetic dental procedures should be considered ethically questionable, I employed the principles of non-maleficence and justice as the point of departure. In applying the principle of non-maleficence to the central arguments, I considered how cosmetic dental procedures in some circumstances can lead to harmful treatment, and therefore in violation of the principle of primum non nocere. I also employed the principle of justice, when arguing on considering enhancement procedures as an overtreatment, and therefore in violation of the concept of treating the patient fairly. Counter-arguments to the before-mentioned arguments were put forward using the principle of autonomy, and the right of the patient to choose what happens to their body. Based on the arguments above, I put forward arguments as to why in certain circumstances the provision of cosmetic dentistry can be considered an overtreatment. I conclude the report by presenting the legal consequences related to the provision of cosmetic dentistry.

In conclusion, I argued that there are circumstances when cosmetic dental procedures are ethically unjustifiable, and may in certain circumstances result in overtreatment. It is therefore imperative to provide ethical guidance for practitioners, on how to resolve moral conflicts regarding when cosmetic dentistry is ethically unjustified.

In addition, I make a case for the provision of ethical guidelines from which dental practitioners can make ethically sound treatment decisions

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Chapter 1

1.1 Introduction/Background Literature Analysis

Cosmetic surgery in general, and cosmetic dentistry, which has no specific health benefit, has grown in proliferation, promotion and use, over the last few decades. Therefore, this phenomenon deserves some detailed ethical consideration. Although the provision of cosmetic dental procedures might raise some ethical concerns, it does necessarily imply that the provision of the procedures is unethical. With this in mind, I proceed to analyze the circumstances under which the provision of these procedures might be considered to be ethically problematic.

Cosmetic dentistry is generally defined as, “procedures that are provided primarily to improve the appearance of the teeth, mouth and face, without any health benefits” (Alani et al, 2015, pp543-48). Oral health is defined by the World Health Organization (WHO) as, ‘being essential to general health and quality of life. It is a state of being free from mouth and facial pain, oral and throat cancer, oral infection and sores, periodontal diseases, tooth decay, tooth loss, and other diseases and disorders that limit an individual’s capacity in biting, chewing, smiling, speaking, and psychological wellbeing’ (WHO, 2012). Furthermore, The World Dental Federation (FDI), define oral health as: ‘multi-faceted and includes the ability to speak, smile, smell, taste, touch, chew, swallow, and convey a range of emotions through facial expressions with confidence and without pain, discomfort and disease of the craniofacial complex’ (FDI, 2016).

The cosmetic dental procedures, have as a primary aim the intention of giving outcomes that are outside the norms of those that nature intended (Faith, 2010).

Contrary to therapeutic dentistry, whose sole purpose is for healing diseased tooth structures, the provision of cosmetic dental procedures, seeks to replace normal, healthy tissue with some artificial material to enhance the looks of patients (Faith, 2010). It is the unnecessary destruction of sound tooth tissue that is one of the main targets in my arguments about ethics and ‘cosmetic’ dentistry. It must be noted that in my report I will refer to cosmetic procedures that are primarily non-therapeutic in nature, as compared to therapeutic procedures which have an aesthetic component, as they raise different ethical concerns.

Although there might some short-term gratification from the results obtained, for example, an enhanced smile and supposed psychological well-being, the long-term risks associated with the procedures are contentious (Faith, 2010).

In this report, in presenting my arguments, I make reference to the triptych of absence that determines the nature of a procedure to be cosmetic: firstly, the absence of a patient, instead a consumer seeks and initiates treatment; secondly, the absence of pathology, and thirdly, the absence of a therapeutic purpose. On the basis of this understanding of cosmetic dentistry, I will argue that the provision of ‘cosmetic dentistry’ is fraught with ethical and legal controversies and guidance for South African practitioners is limited.

In this report, I will be considering the ethical issues, emanating from the definitions alluded to in the preceding paragraphs, that are raised as a result of the provision of cosmetic dental procedures, by doing a critical analysis of the issues, employing the ethical framework of principlism, to present my arguments. Additionally, I will make an

attempt to identify the ethical boundaries, as well as possible limits on healthcare professionals. I will also consider the possible legal issues raised.

In conclusion, I argue for the provision of practical ethical guidelines from which dental practitioners can make sound ethical decisions, when faced with the dilemma of providing cosmetic dental enhancement procedures.

Ethical issues in cosmetic dentistry

Jenson, argues that the restoration of diseased teeth to health (form and function), is the primary function of dentistry (Jenson, 2005, pp48-53). On the other hand, cosmetic dental procedures are only concerned with 'beautifying' healthy teeth tissues, without much consideration to form and function (Ahmed, 2010, pp207-214). Questions arise therefore as to whether the provision of cosmetic dental procedures are ethically justifiable.

Restorative or therapeutic dentistry refers to dental procedures carried out to restore form and function, and at the same time improving the appearance of teeth (Gold, 2002, pp563-4). An example is when a decayed tooth is restored with a naturally-looking porcelain crown. This serves to firstly heal a diseased tooth, and restore form and function, and secondly to improve the appearance of the tooth.

By contrast, cosmetic dentistry refers to those treatments that are only carried out to enhance the appearance of teeth, in the absence of biological disease (Gold, 2002, pp563-4). An example is the provision of porcelain veneers to enhance the appearance of the teeth, and to provide a whiter than normal smile. Porcelain veneers are defined as wafer-thin, custom-made shells of tooth-colored materials that cover the front part of teeth. They are normally done purely for purposes of looks, and are to a large extend not

considered to be medically indicated. Compounding this further is the fact that the cosmetic procedures that are provided are invasive procedures that carry with them risks and outcomes that are not certain (Gold, 2002, pp563-4). The Nuffield report into cosmetic procedures presents arguments that these procedures create new 'ideals' of appearance which then create pressure on society to conform to these appearances (Nuffield, 2017, pp6-12). This in addition raises further questions as to the responsibilities that treating practitioners have towards their patients. In the absence of biological disease and only for cosmetic reasons, significant ethical questions arise**.**

The questions this report addresses are: **When do dental procedures carried out to enhance appearance, go beyond the ethically acceptable practice? And, does the provision of these types of treatments, in certain circumstances, amount to unethical overtreatment?** (Gold, 2002, pp563-4). Overtreatment is defined as, 'unnecessary destruction of healthy tooth structure, in order to achieve cosmetic results' (Kelleher, 2012 pp313-26). The treatment is not medically indicated, and not necessary to restore health, form and function. In this research report, the arguments are based on the assumption that the cosmetic procedures are carried out on patients with the capacity to give consents. Therefore the issue of capacity is not discussed here.

Arguments against provision of cosmetic dentistry

Kelleher argues against the destruction of sound teeth in order to match and enhance the appearance of diseased teeth, at a biologic cost to the teeth (Kelleher, 2012, pp313-26). Similarly, Jenson argues that there is a fundamental difference in the ethical grounding between restorative treatments as opposed to cosmetic (enhancement) procedures

(Jenson, 2005, pp48-53). The cosmetic procedures are for benefit rather than therapy and are mostly on demand from patients.

According to Ozar and Sokol, the benefit to a patient's health cannot be outweighed by the patient's right to make treatment choices (Ozar and Sokol, 2002). On this basis, the argument can be put forward that it is not necessarily unethical to provide cosmetic procedures (Faith, 2010).

Kelleher, states that there is an overemphasis on 'destructive' and 'overprescribed' cosmetic procedures in dental journals (Kelleher, 2012, pp313-26). He further argues that succumbing to patients' demand by some professionals to 'mutilative' dentistry, has the potential to legitimize an apparently 'destructive' practice (Kelleher, 2012, pp313-26).

Arguments for provision of cosmetic dentistry

In support of the provision of cosmetic dental procedures, proponents argue that, in comparison to medicine, the 'stakes', in terms of the harms caused are not as high, in terms of the destruction caused. And if dentistry can provide a 'little pleasure, why should it not be considered' (Glick, 2000). A further argument present is the patients' autonomy over their bodies, and their right to exercise the choices they have. The views of patients on cosmetic dentistry would have helped enhance the arguments for provision of the procedures (Glick, 2000). However, literature on the topic is scant.

Legal consequences from literature

According to a report by Alani et al, a survey that was carried out with dentists, indicated a significant concern (33%), of overtreatment being a threat to aesthetic dentistry (Alani et al, 2015, pp543-48).Literature on data pertaining to cosmetic dentistry is scant, and most of the information is based on surveys and personal opinions.

A survey carried out by the American Academy of Cosmetic Dentistry (AACD), reported that 86% of patients seeking cosmetic procedures, gave their reason for seeking procedures as wanting to improve self-esteem, which is not therapeutic (AACD, 2015). It is also reported in the same survey that 51% of patients reported failure of previous cosmetic procedures as the reason for seeking attention.

Unsatisfactory outcomes and perceived collateral damage inflicted to achieve this were found to be major sources of litigation (Alain et al, 2015, pp543-48). Litigation, is defined as the process of taking a case to a court of law, so that a judgement can be made. All in all, litigation as a result of cosmetic dentistry has been shown to be on the increase (Tiernan, 2010, p3).

In the South African context, there is anecdotal evidence that indicate an increase in the number of malpractice lawsuits, related to the provision of cosmetic dentistry. Malpractice is defined as the improper or negligent professional behavior, or unreasonable lack of skill by holder of a professional license (McQuoid-Mason, 2011). The malpractice usually results in injury or damage to the patient, or the patient's property. Information to support the anecdotal evidence, is limited by the lack of scientific research in the field (Postma et al, 2011, pp420-5). This is further compounded by the fact that the types of offences are not specified individually, and it is therefore not possible to quantify those that are related specifically to cosmetic dentistry. However, lessons learnt from the international arena will be presented in the chapters to follow.

South African guidelines

Healthcare professionals in South Africa are regulated by the Health Professionals Council of South Africa (HPCSA). The HPCSA was established under the Health

Professions Act 56 of 1974. The HPCSA serves to regulate the health professionals registered with it, by defining the scope within which each profession can operate.

The regulation of healthcare professionals is necessary, to ensure that they are fit to practice, and thereby limiting harm to the patients.

The Medical and Dental Board (MDB), of the HPCSA registers professionals under the medical, dental and medical science fields. It is under this board that dental practitioners, are regulated.

It is imperative to understand that cosmetic dentistry, does not fall under any field of specialization, and can be carried out even by general dentists, who believe they have the skills necessary to perform the procedures.

According to the HPCSA guidelines, health care professionals shall not, “provide a service or perform or direct certain procedures to be performed on a patient that are neither indicated nor scientific, or have been shown to be ineffective, harmful or inappropriate through evidence-based review” (HPCSA, 2016, Booklet 11). In this report, I will present arguments, on how the provision of cosmetic dentistry might be in violation of the HPCSA regulations.

The ethical guidelines for cosmetic medicine, are not specific to dentistry. The guidelines also do not specify the standards that need to be attained, they merely state who is allowed to carry out the procedures. There is also a gap in the current regulations for ‘cosmetic dentists’, and it is mainly based on self- regulation.

In concluding this report, I argue for guidelines for provision of cosmetic dentistry, and for South African dental practitioners to be aware of the legal consequences related. The purpose of these guidelines will be to provide an ethical basis from which dental

practitioners can make sound decisions regarding provision of cosmetic dental procedures.

1.2 Rationale for the study

According to Jenson, the examination of ethical issues related to cosmetic procedures, has not kept pace with the demand therefor (Jenson, 2005, pp48-53). Additionally, there is a lack of consensus amongst dental practitioners and ethicists as to ethical justification of providing enhancement procedures (Jenson, 2005, pp48-53). It is against this backdrop that the increase in the provision of cosmetic dentistry deserves more detailed ethical and legal consideration than has already been done. It is even more imperative in the South African context, since ethical guidelines in this field are sparse.

Carlisle also argues that cosmetic dentistry provides more ethical, moral and philosophical challenges, than any other area of dentistry and can result in severe harms (Carlisle, 2005). This means that an examination is required of the circumstances in which the provision of cosmetic dental procedures is ethically unjustifiable, and when they should be considered overtreatment.

Tiernan, argued that due to the increase of practitioners providing ‘cosmetic dentistry’, as well as increased patient expectations and demands, there is a likelihood of an increase in complaints, negligence claims and litigation cases (Tiernan, 2010, p3). The risk of litigation in medical care generally is on the increase in South Africa, and in dental care, evidence form indemnity society, has also indicated to an increase in litigation cases, with a growth of more than 50% in the number as well as severity of claims in the last few years (Tiernan, 2010, p3).

Against this background, I argue that there is a need for dental practitioners in South Africa to be aware of the legal and ethical challenges related to provision of cosmetic dentistry, and that clear guidance is required.

In the South African context the guidelines from the regulators, HPCSA, there are gaps in current guidelines, with regards to the provision of cosmetic dental procedures. There is therefore a need for development of standards and guidelines on ethical framework for guiding the profession, when faced with the ethical dilemma of providing cosmetic dentistry.

1.3 Thesis Statement

I will argue that it is ethically unjustifiable to provide cosmetic dental procedures, in certain circumstances, and therefore dental practitioners ought to refuse provision of such treatments on request.

1.4 Research Aim and Objectives

Aim: The aim of this report is to determine the circumstances in which the provision of cosmetic dental procedures would be ethically unjustifiable, and to attempt to provide ethical guidance from which dental practitioners can make ethically sound treatment decisions

Objectives:

In order to address the aim of the study, the following objectives will be achieved:

- To analyze the arguments both for and against the provision of cosmetic dental procedures
- To determine if provision of cosmetic dental procedures can result in overtreatment and in conflict with any moral, legal, or professional obligations

- To provide guidance and recommendations on how conflicts can be resolved regarding when cosmetic surgery is unjustified
- To provide ethical guidelines from which dental practitioners can make ethically sound treatment decisions.

1.5 Research design

This study will be an ethico-legal analysis (non-empirical) study. The study will be based on desktop and library based research, and will include interpretative literature review. No new data will be collected or analyzed. The research will not involve any study participants.

This being a normative study, the report will start by clarifying some terms that will be used as well as key concepts. A thesis statement will be provided, and the differing arguments on the topic will be analyzed. In conclusion, a case will be made to defend the thesis statement. I will carry out an analytical critique of research reports written on the subject, and then identify any relevant shortcomings in the reports. Empirical reports on data on provision of dental cosmetic dentistry are limited, and none in the South African literature. Reports on the ethical perspectives of the dental profession on the provision of dental cosmetic treatments are rare.

For the purposes of this research report, literature will be sourced from online database such as PubMed, Google Scholar, Scopus, Sabinet and others available on the Wits Online Library, as well as textbook resources in the Wits Health Sciences Library. I will assess the literature sourced, to identify the points at issue, of relevance to my report. I will scrutinize the definitions, and consider the arguments presented, as well as the

counterarguments. From these, I will consider my own thoughts, and then finalize on my standpoint, to support my thesis statement.

1.6 Research Methods

1.6.1 Argumentative Strategy

In this report I will employ principlism as the framework for argument and will present an argument on why the provision of some cosmetic dental procedures is ethically questionable, in some circumstances. I will also make an argument as to when some of the treatments provided may be considered as overtreatment.

Principlism is a principle-based framework for addressing ethical questions in the practice of healthcare, as developed by Beauchamp and Childress (Beauchamp & Childress, 2017). In the framework, there are four principles, namely: autonomy, beneficence, non-maleficence and justice that are used for analyzing complex cases in biomedicine (Ebbersen et al, 2012). The principles are prima facie binding, and each principle is valid, only if it is not in conflict with another principle. These four principles should be applied differentially as is demanded by the situation under consideration (Ebbesen et al, 2012). Although Beauchamp and Childress did not put forward a hierarchical ranking in terms of the principles, with modern healthcare, autonomy has taken a more central role. I however will consider all the principles in relation to cosmetic surgery, and weigh them against each other. Ethical evaluation in day-to-day provision of dental treatments is weighed on the basis of benefits/harm to the patient. However, in the provision of cosmetic dentistry, the issue is not as straight-forward due to the ‘benefits’ being considered arbitrary. It is against this background that the ethical issues that arise from provision of cosmetic dentistry are dealt with differently.

In this report I will commence the arguments in chapter 2 by addressing the ethical questions that are raised as a result of the provision of cosmetic dental procedures. I will begin by presenting arguments *for* dental enhancement procedures, using the principles of autonomy and beneficence, before considering arguments against provision of cosmetic dentistry on the basis of non-maleficence.

Arguments for provision of cosmetic dentistry

According to Glick, patients have autonomy, and therefore the ability to make their own choices (Glick, 2000, pp88-9). There are also arguments from other quarters that the provision of cosmetic dental procedures is harmless, and in some instances can even enhance the mental well-being of some patients, as defined in the WHO definition of the state of health.

Arguments against cosmetic dentistry

In the section 2.3, I present arguments against the provision of dental cosmetic procedures using the principle of non-maleficence, and present how the procedures in certain circumstances result in harm, and therefore the violation of the principle of primum non nocere.

In support of the arguments against provision of cosmetic dental procedures, I argue that the cosmetic procedures can have adverse outcomes, where irreversible damage is done to healthy teeth structure, which is in violation of the principle of non-maleficence. Therefore, based on this argument I will make a claim that patients' autonomy is not absolute, and that the dental practitioner is morally obligated to refuse provision of cosmetic dental procedures in certain circumstances.

Overtreatment

In chapter 3 of this report, I will argue that in certain circumstances the provision of cosmetic dental procedures constitutes overtreatment, due to the destructive nature of some of the procedures, which are invasive and carried out on otherwise healthy teeth, with no obvious health benefits.

Based on the above arguments, I will conclude that when procedures are considered destructive on balance of risk/benefit, using the principle of non-maleficence as the central argument, then the dental practitioners should not perform the procedures, and have a moral obligation to always act in the best interest of the patient.

Legal consequences

In chapter 3 of this report I will also present arguments on the legal consequences of the provision of cosmetic dental procedures, and how these can have a negative effect on dental practitioners. I will commence the arguments by considering the unique relationship between bioethics and law, and how this interplay comes into play in the provision of dental enhancement procedures.

I will consider the South African legislation on provision of cosmetic dental procedures, and analyze how provision of these procedures is possibly in violation of these regulations.

I will further consider the international landscape with regards to the legal consequences related to the provision of cosmetic dental procedures, and what lessons there might be for South African dental practitioners.

Recommendations and conclusion

In chapter four, I will make recommendations based on the conclusions of the arguments provided before. In the main I will make a case for the provision of practical ethical guidelines form which South African dental practitioners can make sound ethical decisions with regards to the provision of cosmetic dental procedures.

I will also provide the conclusions of the arguments provided in support of, and against the provision of cosmetic dental procedures, in certain circumstances. I will also be discussing the circumstances under which the provision of cosmetic dentistry might be considered to be ethically unjustifiable, and when these procedures might be considered an overtreatment, and what this might possibly mean for South African dental practitioners.

Chapter 2

2.1 Ethical considerations in cosmetic dentistry

In this chapter, I consider some of the ethical issues that have been raised, due to the controversies around the provision of cosmetic dental procedures, using principlism as the framework for presenting arguments for, and against the provision of the procedures. I then on the balance of risk/benefit, argue that there are circumstances when the provision of cosmetic dental procedures can be considered to be ethically unjustifiable.

The framework of principlism as explained before in section 1.6.1, is employed to present the arguments, and each principle is explored, and the ethical issues that arise considered further. In order to achieve this objective, I firstly employ the principle of autonomy, in section 2.2, to present arguments *for* the provision of cosmetic dental procedures. In section 2.3 of this chapter, the principles of beneficence and non-maleficence will be employed to argue *against* the provision of cosmetic dental procedures, by making a case as why some of the cosmetic dental procedures might be considered to be ethically unjustifiable.

2.2 Patient's autonomy and cosmetic dentistry

In the following paragraphs, I begin by considering the principle of autonomy, and how it influences the provision of cosmetic dental procedures.

Autonomy, cosmetic dentistry and supporting arguments

An aspect of the principle of autonomy refers to the patient's right to self-determination. In other words, the patient has a right to determine what happens to their bodies. The purpose of patient's autonomy is two-fold. In the first instance, it is to ensure that the patient's right to self-determination, and the freedom to have choices are respected.

Secondly, it is to ensure that the process of rational decision-making, based on weighing of advantages and disadvantages of a particular matter, is followed.

Modern healthcare to a large extent, is based on the principle of patients' autonomy. According to this principle, patients have the maximum liberty to decide on their own lives and values. An autonomous patient is defined as someone who is sovereign in their entire decision-making process, and has complete and unhindered control over what happens to their body. The principle of autonomy was first espoused by Kant, when he described human beings as having an 'intrinsic value' and dignity, and therefore 'valued', above everything else (Rachels and Rachels, 2015, p137). Kant further argued that, due to this 'intrinsic' value, people need to be treated as an end, and not a means, with respect (Rachels and Rachels, 2015, p139)

According to Beauchamp and Childress, at the minimum, 'personal autonomy encompasses self-rule, that is free from both controlling interferences by others and limitations that prevent meaningful choice' (Beauchamp and Childress, 2007). Beauchamp and Childress argue that autonomy is not a mere ideal in health care, but it is a professional obligation, to which health care professionals are to be held accountable (Beauchamp and Childress, 2007). The autonomous individual acts freely in accordance with a chosen path. The question of autonomy therefore becomes an important value to many users of healthcare services. It is arguable that in instances where patients have expressed a free desire for a certain procedure, then there would not be a violation of any of the ethical principles, by the treating practitioner.

In the context of healthcare, a patient's autonomy is observed by means of the principle of informed consent. Beauchamp and Childress argued that sometimes consent grants

permission for others in ways that would normally be considered unjustifiable, for example, the provision of cosmetic surgery (Beauchamp and Childress, 2007).

One of the central tenets of autonomy, in the form of informed consent is that it is voluntary and without constraint. It is on this basis that the argument *for* provision of cosmetic dental procedures is based, and that patients should have the free choice to undergo the procedures. In other words, the patients' free choice is respected.

Autonomy, cosmetic dentistry and counter-arguments

The presence of informed consent does not necessarily mean certain actions are justifiable. Naidoo argued that where there is an expression of free-will by the patient to undergo certain procedure, then there would not be any violation of any of the ethical principles (Naidoo, 2012, pp230-1). However, there is proviso that the treatments undertaken are of acceptable standards, and the treating practitioners are working within their scope (Naidoo, 2012, pp230-1).

On the basis of the preceding arguments, in critically evaluating the decision to provide enhancement procedures, I highlight the fact that the procedures themselves can be claimed to improve the quality of life. Although it is claimed the treatments can bring about the 'feel-good' factor, I argue that they can also bring about damage or suffering to the patient, when for example, the results are not desirable, and there resulting harms caused.

In further arguing against cosmetic dentistry, I argue that the patient does not have absolute right to treatment.

I argue that even when the patient has provided informed consent for cosmetic procedures that does not necessarily establish objectively that the procedure is in their

best interest. Even though the patient decides what is of value to them, the question is not who is right, but what is right and why. In other words, although the argument can be the patient has a right to choose, the question arises whether the choice is right for them.

I further argue that patients might not be completely aware of the magnitude of the consequences of, for example provision of porcelain veneers on healthy teeth, even though these might have been explained to them. I put forward the claim that where an autonomous choice is not in the best interest of the patient, the dental practitioner has the duty to 'protect' the patient. Patients' autonomy not only entails the negative right to refuse treatment, but it also does not entail the right to receive all treatment demanded. In other words, the dental practitioners should be in a position to exercise the principle of professional autonomy. Where the patient is according to the judgement of the dentist competent to give consent, but the request for treatment is ethically questionable, the dentist will be justified in refusing the request. The point I make here is that although autonomy, and by extension informed consent, is important and contributes positively to patients' choices, there are limits to it.

From the preceding paragraphs I explored the role and responsibilities of healthcare professionals, and particularly dental professional in the provision of dental enhancement procedures, with particular attention paid to the meaning and practicality of informed consent in the provision of cosmetic dentistry.

Conclusion

In conclusion, although patients' autonomy can be considered central to the provision of healthcare, where the decisions to seek treatment, in this case, cosmetic dental

procedures, which might pose risks of harm to the patients, the presence of informed consent might not be enough justification to carry out the procedures. I argue that decisions to provide the treatments might lead to some ethical questions. Having the freedom to self-govern does not necessarily mean that the patient will always have the capacity and the opportunity to exercise the right of self-rule. The refusal by the dentist to provide ethically questionable cosmetic dental procedures cannot be interpreted as undue influence, but good and ethical clinical practice.

I will in the following paragraphs consider the influence of the principles of non-maleficence and beneficence in the provision of cosmetic dental procedures

2.3 Arguments from non-maleficence and beneficence

The current controversies around the provision of cosmetic dental procedures, is whether they provide any benefit to the patients, and if not, whether they are ethically undesirable. Furthermore in the Nuffield report on cosmetic procedures, the authors put forward an argument that the provision of cosmetic dental procedures has been put forward as a solution to a perceived problem, without necessarily addressing the risks and outcomes related to the procedures themselves (Nuffield, 2017). In order to address the issues raised, I ask the question: is it ethically justifiable for a dental practitioner to put a patient at risk, by providing dental cosmetic procedures, where the benefits might be questionable?

In the following paragraphs I will make a claim that acting ethically means always putting your patients' best interests first.

In presenting arguments *for* and *against* the provision of dental cosmetic procedures, I draw on the principles of beneficence and non-maleficence, and how these influence the respective arguments

Non-maleficence

Non-maleficence, as an ethical principle requires justification for actions that can be considered harmful, in other words those that can cause harm, by the healthcare practitioners (Beauchamp and Childress, 2007). The principle of nonmaleficence holds that there is an obligation not to inflict harm on others. It is closely associated with the maxim primum non nocere (first do no harm). One of the rules supported by this principle is: do not cause pain or suffering. The principle of non-maleficence would imply that the harm should not be disproportionate to the benefit of the treatment that is proposed.

It is imperative to begin by making the point that, by their nature, procedures in healthcare provision have inherent risks associated with them. However, the risks associated with any procedure carried out by healthcare professionals should be outweighed by the benefits. Therefore, the central question in exploring the principle of non-maleficence is to ask what the potential harm of a particular proposed course of action. I explore this further, in the following paragraphs.

Harm defined

In exploring the concept of harm in this essay, I will only consider the non-normative meaning of the word, which means that someone (a patient), has had a resulting adverse effect on their interest, by someone else (healthcare practitioner) (Beauchamp and Childress, 2017). In other words, harm does not necessarily result in the violation of someone's rights but can be due to undesired outcomes as a result of someone else's

actions. In practice this means someone can be harmed without necessarily being wronged. Beauchamp and Childress also argued that obligations of non-maleficence carry in them the obligation to not only do no harm, but also obligations to not impose risk of harm (Beauchamp and Childress, 2017).

Non-maleficence, cosmetic dentistry and supporting arguments

In the preceding paragraphs I presented arguments against the provision of cosmetic dental procedures. In order to provide a balanced picture, I now present some of the arguments in support of provision of cosmetic dental procedures. Proponents of cosmetic dentistry argue that the provision of dental cosmetic procedures, can enhance the mental well-being of patients (Clausen, 2009). This is apparently in aligning to the definition of oral health as put forward by WHO, which is defined in section 1.1 paragraph 2. It could also be argued that it coheres with the biopsychosocial model of medicine, which has been considered inadequate.

Further support to the above arguments could be that the patient has consented to the treatment, and therefore is aware of the possible adverse outcomes, and that the harm is to self and does not cause adverse outcomes to anybody else. As Mill himself puts it, 'the only part of the conduct of anyone, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is of right, absolute' (Clausen, 2009).

Non-maleficence, cosmetic dentistry and counter-arguments

Against the considerations in support of provision of cosmetic dentistry, it is necessary to consider the arguments against the procedures. Firstly, it has been noted that some of the patients remain dissatisfied with the cosmetic results, despite repeated requests for

treatment. This puts in question whether the dental enhancement procedure enhance the social and mental well-being of the patients, or if they only serve to perpetuate 'ideal stereotypes' and therefore contributing to harm at an individual level, as well as at a societal level. This has at a societal level, created some new 'norms', which then becomes the standards to which society needs to subscribe. The harm at society level is caused by the creation of dissatisfaction with present appearance, and low self-esteem levels, as well as anxieties about appearances in the light of the new 'ideals' that are presented as something to aspire to. This has the potential to create 'vanities' that will then need some alleviation, which in this case are addressed by invasive cosmetic procedures.

Sarin et al argued in their article that some of the motivations for patients are less obvious, and these may include persons' self-perception and social pressure (Sarin et al, 2014). This further enhances the argument I put forward that these new 'ideals' have become entrenched in societies, thereby becoming new norms to aspire to, a further display of societal harm.

The use of invasive surgical procedures to meet these new appearance ideals create a vicious cycle, where dissatisfaction or insecurities with appearance can only by met by more invasive, surgical procedures. These 'ideals' result in social harms caused by the advent of cosmetic dentistry, in violation of the principle of non-maleficence.

In discussing ethics and cosmetic dentistry, it is prudent to draw attention to the lack of permanence of porcelain veneers, which are the treatment of choice in a considerable number of cases of cosmetic dentistry. Porcelain veneers are wafer-thin, custom made shells of tooth-colored material that are designed to cover the front of the teeth to improve appearance. In the provision of cosmetic dentistry, healthy tooth structure needs to be

removed in order to fit the veneers, which is a permanent and irreversible process. These however have potential long-term harms, such as pulpal death and tooth loss.

A study in the United Kingdom has indicated that only 53% of porcelain veneers were present without re-intervention after 10 years (Kelleher, 2012, pp365-7). The irreversible, and non-benign nature of these procedures, especially on non-diseased teeth, means the principle of non-maleficence is violated (Alani et al, 2015, pp543-48). According to the principle of non-maleficence the outcomes of any medical interventions must justify the risks that are imposed in achieving those goals. It is a general acceptance in the context of healthcare practice, the patients will always be exposed to some inherent risk, and this include dental enhancement procedures. This factor becomes important in circumstances where cosmetic procedures are provided at a young age. As displayed before, due to the unpredictable nature of the treatments, the cycle of harm is started early, with resulting increased chances of harmful outcomes.

The resultant harms can be due to poor skills of the practitioners, or as a result of the inherent risk associated with the procedures themselves. While some complications might be minor and temporary, some are more substantial and have long-term effects (Kelleher, 2012). In the case of provision of porcelain veneers to enhance smile, the treatment can be considered to be extraordinary, given the likelihood of them achieving the physical and psychological aims, and the fact that there are irreversible and permanent harms associated with the procedures as discussed in the preceding paragraphs (Alani et al, 2015). Measuring the harm related to provision of cosmetic dental procedures is difficult. In the provision of porcelain veneers for purposes of creating the perfect smile, we have to consider not only the initial ‘mutilation’ of healthy teeth involved, but also the long-term

harmful effects, as indicated in the preceding paragraph. It is arguable whether adults should have the freedom to choose to undergo harmful and unnecessary cosmetic surgery, like cosmetic dentistry.

Conclusion

In conclusion, I argue that in the absence of any direct medical benefits, and with the reduced permanency of the treatment provided, as well as the potential harms caused, as discussed in the preceding paragraph, it is apparent that the said treatments might violate the principle of non-maleficence. It is important to consider the long-term effects of the social harms and pay special attention to the social context in which the individuals will take decisions to undergo invasive cosmetic procedures, with the aim of minimizing these harms. I propose based on the balance of harm/benefit, that dental practitioners should caution against providing cosmetic dental procedures, where there is the likelihood of permanent damage, irreversible damage, to otherwise healthy teeth

Beneficence

The principle of beneficence refers to a statement of moral obligations to act for the benefit of others (Beauchamp and Childress, 2017, p202). The principle entails taking actions that promote the well-being of others, as well as acting in their interest (Dhai and McQuoid-Mason, 2011). Healthcare practitioners are required to always act in the interest of the patients, and to promote their welfare.

Healthcare professionals, by the demand of their profession, have the responsibility to weigh patient needs and risk, and proceed with a plan that will assure maximum benefit to the patient. There is an implicit assumption of beneficence in the care provided by healthcare professions. Medical interventions are primarily aimed at the diagnosis,

preventive treatment, and/or therapy that are aimed at maximizing therapeutic benefits (Beauchamp and Childress, 2017, p203).

Beneficence, cosmetic dentistry and supporting arguments

In everyday healthcare practice, the risks of medical interventions are justified by the intervention's potential benefit to an individual patient, as weighed using the benefit/risk analysis as well as costs to justify carrying out any interventions. In the case of cosmetic dentistry, I consider the potential benefits of the provision of cosmetic dental procedures. According to the definition of oral health by the World Dental Federation (FDI), the ability of the patient to smile is one of the desirable outcomes and providing 'beautiful' smiles can be regarded as part of oral healthcare. In the article by Maruyama proponents of cosmetic dentistry, the argument, is that dental procedures do provide mental well-being of the patients. Maruyama also argued that twenty-first medicine should go beyond just healing and prevention of disease, and by creating happiness, be able to result in total well-being of patients (Maruyama, 1988). Therefore, it can be argued that provision of cosmetic dental procedures, falls under the ambit of creating happiness, and in certain circumstance can be ethically justifiable.

Beneficence, cosmetic dentistry and counter arguments

In the preceding paragraphs, I presented arguments for the provision of cosmetic dental procedures. I now present in the following paragraphs, the arguments put forward against the provision of dental cosmetic procedures.

In exploring the controversies surrounding the provision of cosmetic dental procedures, I consider whether action taken is in the patient's best interest. Trying to apply the principle of beneficence in cosmetic dentistry can be challenging, as the question that can

potentially arise, is whether the provision of dental enhancement procedures is necessary or even desirable, given the fact that the cosmetic procedures have got liability issues (Christenssen, 2006, pp1721-3). Compounding the problem is the fact that some procedures can be used for both therapeutic and cosmetic purposes.

In the provision of dental enhancement procedures, for purely cosmetic reasons, the distinction needs to be made on the motivation for carrying out the procedures and not the procedures themselves (Christenssen, 2006, pp1721-3). The arguments presented by the advocates of cosmetic procedures seem to confuse benefit with therapy. As I have presented before, the primary aim of healthcare is the restoration of health to people.

Maruyama argued that the creation of happiness can lead to overall well-being of patients. I however argue against this assertion on the following basis. Happiness is a secondary intent in the provision of medical intervention, the primary intent being ‘healing’. Secondly, happiness is a subjective outcome, with no direct and measurable benefits. For these reasons, I argue that happiness can arguably not be presented as a justification for cosmetic dentistry. I argue therefore that the fact that there is benefit to the patients, does not place provision of cosmetic dental procedures within the proper domain of dentistry. This is due to the fact that, in the main, with the provision of dental enhancement procedures, the patients are subjected to risks, complications and possible side-effects, in circumstances where the benefits are arguably non-medical. The risks involved are the destruction of healthy teeth structures in order to achieve a ‘perfect’ smile, for example to improve the teeth from a ‘non-white’ shade to ‘paper white’ teeth. The benefits in this instance are contentious and potentially harmful. The side-effects and complications

suffered by the patients, will include the resulting morbidities of previously healthy teeth. A further argument put forward by Alani et al, states that,

> While there is an argument to be made that cosmetic dentistry can result in some benefits to patients, which are not functional, it is prudent to state that some of the treatment modalities applied to achieve the cosmetic results are too aggressive and can result in significant morbidities in previously healthy teeth.

Although cosmetic dentistry can align a patient's natural appearance with their desired looks, sometimes where the outcomes are undesirable, it might need further invasive treatment to correct the 'mistakes'. This is because these procedures carry risks of adverse outcomes, even in the hands of skilled clinicians. Beneficence becomes questionable in these circumstances.

Conclusion

In conclusion, from the above paragraphs, I argue that the provision of cosmetic dental procedures raises considerable ethical problems. Trying to strike a balance between the risks and benefits, of the procedures, with no functional benefits, seems implausible.

I propose based on the arguments in the paragraphs above, that in certain circumstances, where the risk of harm outweighs the possible benefits, then the provision of cosmetic dental procedures is ethically questionable, and the principle of beneficence is not sufficient justification.

In the following paragraphs, I consider the ethical issues that arise, based on the principle of justice.

2.4 Arguments from justice

The principle of justice in healthcare often refers to the level of equality and equal distribution of available resources. The principle of justice states that there should be an element of fairness in all medical decisions, and that medical practitioners uphold applicable laws and legislation when making choices, in providing treatments for their patients.

In health care ethics, justice can be subdivided into three categories: fair distribution of scarce resources (distributive justice), respect for people's rights (rights based justice) and respect for morally acceptable laws (legal justice) (Gillon, 1994)

In this section I will however, be referring to justice as meaning fairness in the treatment of patients, that is rights based justice, and legal justice. The principle of justice is concerned with providing individuals or groups with what is owed, due, or deserved. The central question I attempt to address is, whether there are circumstances when provision of cosmetic dentistry, can be considered a violation of the principle of justice. Although the provision of cosmetic dental procedures is not strictly in violation of ethical norms in dentistry, it can be ethically problematic in certain situations.

I argue that in circumstances where provision of cosmetic dentistry results in avoidable harm to the patient, this results in unjust treatment of the patient, and there in direct contradiction of the principle of justice, as expected of healthcare practitioners. The arguments in support of this claim are presented in the following paragraphs.

The application of the principle of justice in arguing against cosmetic dentistry

In the provision of healthcare, in order to ensure that justice is practiced in treating patients, we should not only be concerned with the patient's immediate satisfaction with

the outcomes, but also need to consider long-term stability and effect of the treatment provided. The principle of justice requires that there is just application of healthcare, and the treatments provided are aimed at promoting the best interests of the patient.

Where the objective of healthcare services is for therapeutic purposes, with measurable health benefits, it can be argued that the treatment is fair and just. However, with the provision of dental enhancement, the arguments around the fairness of the procedures, become more complex. I present in the following paragraphs arguments showing why cosmetic dental procedures result in arguably 'unfair' treatment.

The stewardship of healthcare profession requires that patients are not placed at the risk of unnecessary and avoidable harm. Although proponents of cosmetic dentistry would like us to believe that choices are made out of freewill, arguments based on 'choice' alone are unlikely to be sufficient in enabling us to understand the ethical questions at stake. I present arguments in the following paragraphs in support of this claim.

In the provision of cosmetic dental procedures, the damage inflicted, when providing invasive cosmetic procedures on healthy teeth, and the resultant long-term consequences are arguably in violation of the principle of justice, due to the undesirable outcomes. The question asked is whether the teeth need 'treatment' at all in the first place. Compounding the situation, is the fact that the restorations do not last a lifetime. Therefore, in creating short-term 'smiles', at the expense of long-term health, the ethical justification of the cosmetic approach is questionable. In the provision of cosmetic dentistry, to satisfy the patient's needs for aesthetic improvements, with minimal loss of tissue structure is challenging. This is seen in cases where multiple veneers are provided on otherwise healthy teeth, in order to satisfy some subjective aesthetic outcome.

The provision of cosmetic procedures falls under what could be termed as ‘wish-fulfilling’ medicine, rather than therapeutic medicine. In justifying cosmetic surgery, including cosmetic dentistry, proponents of enhancement treatments, will try to disguise the necessity of the treatments by pointing to patients’ putative psychological needs, as a justification for providing the procedures. I however argue against these claims in the following paragraphs.

The ethical problem with ‘wish-fulfilling’ medicine is that only two parameters are considered: firstly, the desire of the patient for the procedures, and secondly the ability of the patient to pay for the required treatments. The ability of the patients to pay is not the problem per se. It becomes problematic when the new acceptable ‘societal ideals’ are created, and the only people who can attain these are those who can afford. These potentially have the potential to create an unjust society, with the help of the healthcare profession, by the creation of these ‘ideals’, and therefore the perceptions that any deviation from these ‘ideals’ are therefore a ‘disease’. Cosmetic procedures tend to reinforce existing inequalities with respect to appearance standards and ideals. I argue therefore that the dental profession is potentially in violation of their obligation to uphold the principle of justice, which is one of the pillars of professionalism, and therefore an abandonment of its mission of being a place of redemption, for those suffering with ill-health. In the preceding sections, I presented arguments that displayed the harms, and lack of benefit in certain circumstances, when cosmetic dental procedures are provided. The breaking of continuity, i.e. by ‘cutting-down’ healthy enamel, is accompanied by untold risks, no matter how skillfully done. In ensuring justifiable treatment of patients, it

becomes a primary canon of practitioners, to avoid unnecessary exposure of patients to hazards associated with cosmetic dentistry.

Although it is arguable that ‘darker’ looking teeth may unfairly disadvantage some people, it still remains unjustifiable to ‘mutilate’ what are essentially non-diseased teeth, and permanently remove enamel, in order to attain an ‘idealized’ smile. The justification here would seem to be only associated with the practitioners’ self-interest and remains dubious from an ethical or moral standpoint.

In concluding this section, I argue that on balance where long-term adverse consequences are caused, it is arguably against the principle of fair treatment of patients (justice), to carry out destructive procedures in the form of cosmetic dentistry.

Conclusion

In this chapter I explored the ethical concerns related to the provision of cosmetic dental procedures, and how these affect the users on an individual as well as at societal level. Although patient autonomy is the cornerstone of modern healthcare, I have presented arguments that it is not overriding, as beneficence has not been proven to be sufficient, and non-maleficence requires that no harm is done to the patient. I have argued that due to the nature of cosmetic procedures in certain circumstances resulting in avoidable harms, the treatments are arguably not justified, and in violation of the principle of justice. I argue based on the preceding paragraph that the provision of cosmetic dental procedures is under certain circumstances ethically questionable.

I now proceed to explore the legal issues that are raised as a result of the provision of cosmetic dental procedures, as well as discuss circumstances when the procedures can be considered an overtreatment in the next chapter.

Chapter 3

3.1 Legal arguments

In this chapter I will be analyzing the current guidelines regarding provision of cosmetic dentistry, and then consider circumstances when these procedures may be in violation of these guidelines. I then proceed to discuss circumstances under which cosmetic dentistry can be considered an overtreatment.

I begin by addressing the relationship between bioethics and law, and then proceed to present the legal consequences related to the provision of cosmetic dental procedures. Bioethics refers to the ethical reflection on many issues of moral concern involving all forms of life, and how this is affected by the application of biomedical sciences, to human affairs, and the whole biosphere (Dhai and McQuoid-Mason, 2011). On the other hand, law refers to the system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties

In presenting the legal consequences related to cosmetic dentistry, I make reference to international cases, and then draw conclusions on what lesson dental practitioners in South Africa can learn from them.

Unique relationship between law and ethics

It is a matter of well-known fact that what is ethical is not necessarily legal, and vice versa. Nonetheless, law and bioethics have had an influence on each other. An example of how law and ethics have influenced each other, is in the form of the bioethical principle of autonomy and its legal expression in the form of the doctrine of informed consent. The ethical guidelines that are formulated for healthcare professionals, by regulators, for

example, the Health Professionals Council of South Africa(HPCSA), will always be aligned with the law, as the ethical guidelines cannot contradict the law (Miola, 2006). Being registered as a health care professional with the HPCSA, means the practitioners have moral or ethical duties to the society, at large. These duties are generally in keeping with the principles of the South African Constitution (Act No. 108 of 1996) and the obligations imposed on health care practitioners, by law.

In South Africa, health law is informed by the Constitution, and affected by both statute law and common law (McQuoid-Mason, 2011).

I consider the guidelines provided by the HPCSA, on the provision of cosmetic procedures, and how these are potentially violated in the provision of cosmetic dentistry.

HPCSA Guidelines on the provision of cosmetic procedures

Core to the guidelines for healthcare professionals, is for the practitioners to always, "respect patients as persons, and acknowledge their intrinsic worth, dignity, and sense of value" (HPCSA Booklet 1, 2016). Additionally, practitioners are always expected to act in the best interest of the patients, as stipulated in Ethical Rule 27A (a) (HPCSA Booklet 2, 2016). The unique position with guidelines for healthcare professionals, is that they have both a legal and ethical standing.

I also refer to Section 21 of the Ethical Rules of Conduct, "a practitioner shall perform, except in an emergency, only a professional act - a) for which he or she is adequately educated, trained and sufficiently experienced"

How does provision of cosmetic dental practice violate the HPCSA regulations?

I begin the arguments by stating that although the HPCSA provides guidelines on who can provide cosmetic surgical procedures, these do not go far enough (HPCSA, 2009). The guidelines comprise of a patchwork of requirements, relating to the roles and responsibilities of individual practitioners. There is a lack of proper and comprehensive regulations, that regulate the practice of cosmetic surgery in general, and cosmetic dentistry in particular.

The guidelines do not state what cosmetic procedures are acceptable, and the specific standards that need to be attained, as well as conditions under which these procedures may be provided. Additionally, there are no statutory controls as to who can access the cosmetic procedures. Regulations play an important role in healthcare. In the absence of specific guidelines in relation to provision of cosmetic dental procedures, there is potential for abuse, with resulting increase in litigation.

As outlined in the HPCSA regulations (booklet 1), practitioners have a fiduciary duty towards the patients, which in practice means the patient has a right to a claim against the practitioners. Fiduciary duty, or relationship, is a legal concept, that describes the doctor-patient relationship (Dhai and McQuoid-Mason, 2011).

This duty is established by law to protect the patients against unreasonable risk of harm. When this duty is breached, whether overt or implied, the result will be claims of negligence against the practitioners.

It is in light of the above that I consider when the provision of cosmetic dental procedures might be in violation of the regulations. As argued in the preceding chapters, the provision of some of the procedures leads to irreversible, permanent damage to healthy teeth, with

no measurable benefit. As stated Ethical Rule27A (a) of the HPCSA requires that practitioners always act in the best interest of the patients. I argue therefore that where avoidable permanent damage is done, to otherwise healthy teeth, with no measurable benefit, the practitioners might not be acting in the best interests of the patients. Now, it is expected of practitioners to always avoid causing 'foreseeable' harm to patient. This is a fiduciary duty of healthcare practitioners that needs to be upheld at all times. Therefore, I argue that where avoidable harm results as a consequence of cosmetic dentistry, the dental practitioner might arguably be in breach of this primary duty.

Conclusion

I argue therefore that in circumstances where the decision is taken to provide invasive, irreversible cosmetic procedures, on healthy teeth with minor aberrations, the practitioners are arguably in violation of their fiduciary duty.

Legal consequences and lessons to be learned

The legal consequences related to the provision of cosmetic dental procedures can lead to litigation on the basis of malpractice, as I presented in the paragraphs that follow. Malpractice is defined as form of negligence, which is a type of tort (Jerrold, 2015). Negligence, is defined as an unintentional failure to adhere to a standard of clinical care (Croke, 2003, p54). Professional negligence, is a result of failure by health practitioners to apply the level of skill and care, expected of a reasonably skilled practitioner (McQuoid-Mason, 2011). Tort is defined as a civil wrong based on a special relationship, or as defined by law (Jerrold, 2015). This special relationship is the doctor-patient relationship in healthcare. At the core of this relationship is informed consent, which has over the

years morphed from the intentional tort of battery to the unintentional tort of professional negligence (Jerrold, 2015).

In providing evidence to explore the legal consequences, I consider texts presented in the literature. According to Kelleher, in all the records of claims of negligence related to the provision of cosmetic dentistry, that were examined, the claims were found to have been instigated by dissatisfied patients against their dentists in relation to unsatisfactory cosmetic outcomes (Kelleher, 2012)

There are dento-legal risks which are more often than not overlooked, when a decision is made to electively provide invasive cosmetic procedures on teeth that are healthy.

The legal consequences are illustrated further by a report in 2012, which indicates a doubling of claims against dentists involving provision of porcelain veneers, between the years 2005 and 2010 (Daily Mail, United Kingdom, 2015).

In the case involving Cobbs v Grant, the following notes were made by the court,

> When the patient consents to certain treatment but an undisclosed inherent complication occurs, no intentional deviation from the consent given appears; rather, the doctor in obtaining consent may have failed to meet his due care duty to disclose pertinent information. In that situation, the action should be pleaded in negligence (Jerrold, 2015).

According to literature, many of these cases have had to be settled by indemnity organizations, often at vast expense, on the basis of breach of duty or the patient's apparent 'lack of consent' (Kelleher, 2012). Indemnity is defined as a security against on an exemption from legal liability for one's actions. Data with regards to malpractice claims based on dental cosmetic procedures is scant to the best of my knowledge.

From the arguments presented in the paragraphs above, to minimize risks of litigation associated with provision of cosmetic dental procedures, dental practitioners need to understand and appreciate the associated legal ramifications. The risks involved can be short-term or long-term, and it is necessary to be mindful of the fact that initial gratification can still result in unhappy patients in the long-term. Although adverse outcomes do not necessarily equate to negligence, it is important for dental practitioners to appreciate the fact that when patients are not happy with outcomes, due to their nebulous expectations, this can sometimes result in time-consuming litigation process. Practitioners do not only have a positive obligation to not cause intentional harm, but also a negative obligation to minimize the adverse unintended outcomes, due to their actions.

From the above paragraphs, I have presented the legal consequences that are associated with the provision of cosmetic dental procedures. Proponents of cosmetic dentistry argue for the provision of cosmetic dental procedures based on the doctrine of volenti non fit injuria. The maxim of volenti holds that, harm cannot be done to someone who has consented to an act. According to this maxim, the plaintiff foregoes, in advance, a claim for negligence, which might otherwise, in normal circumstances, accrue to the plaintiff (Jaffey, 1985). Therefore, the argument is that due to the consent provided, the consenter cannot be harmed intentionally or unintentionally, and therefore cosmetic dentistry is justifiable.

I argue however that as per the regulations of the HPCSA, the practitioner is expected to always act in the best interest of the patient. It is the responsibility of the practitioner to refuse treatment where the risk is disproportionate, with resultant irreversible harm.

Conclusion

In the preceding paragraphs I presented arguments which display that informed consent is not enough justification to carry out avoidable harmful cosmetic procedures. Informed consent is no protection when litigation is instituted in instances where cosmetic dental procedures go wrong.

Dental practitioners have a legal obligation as per the HPCSA regulations to avoid provision of harmful procedures. This serves to strengthen the case against cosmetic dentistry.

It is imperative for South African dental practitioners to be more aware of the legal consequences associated, and be able to apply more consideration, when decisions are made to provide cosmetic dentistry, and for the profession to develop more extensive best practice guidelines, for the provision of cosmetic dentistry.

In presenting my final arguments to this report, I consider in the following paragraphs, the circumstances under which cosmetic dentistry can be considered to be an overtreatment.

3.2 Arguments on overtreatment

In the above paragraphs I have considered the legal consequences associated with the provision of cosmetic dentistry.

In the following paragraphs, I present circumstances when the provision of these procedures can be considered an overtreatment.

In the case where cosmetic dental procedures are to be provided, an ethical approach to the treatment would be the choice of those alternatives that will preserve the health of the teeth, in terms of vitality, as well as periodontal health (Kelleher, 2012). According to literature, dentistry as a profession, is also susceptible to unnecessary or over-treatment

Overtreatment: defined

I commence the discussion by presenting the following definition of overtreatment: “putting a patient through some medical or surgical procedure when there is little or no evidence that such procedures will improve the patient’s health outcome” (Kazemian et al, 2015). This means that the procedures provided have questionable benefits, and where the harms arguably outweigh the presumed benefits.

Over-treatment may not always be intentional, due to other factors involving the patients and the professionals. However, over-treatment has the potential to breach the integrity of the profession, in addition to being unethical (Hartshorne & Hasegawa, 2003, pp364-9). Another factor that could lead to over-treatment, is when the demand for cosmetic rehabilitation by patients lead to dental practitioners, exploiting the vanity of patients, and their ignorance of dentistry, and less costly, and more biologically acceptable alternatives (Hartshorne & Hasegawa, 2003). Additionally, Elderton, argued that many dentists continue to be powered by an aggressive restorative approach which may result in unnecessary treatment, which should be considered to be inappropriate (Elderton, 1993, pp17-24).

Kelleher argued that the less done to teeth for cosmetic reasons, the less the risks are for dissatisfaction, and the possibility of litigation (Kelleher, 2012).

Professional Guidelines v/s overtreatment

The HPCSA provides guidelines to the profession on the conduct and standards that need to be attained. Ethical Rule 7 of the Professional Guidelines provides definition on overtreatment in booklet 11 that states, ‘healthcare practitioners shall not provide a service or perform or direct certain procedures to be performed on a patient that are

neither indicated nor scientific or have been shown to be ineffective, harmful or inappropriate through evidence-based review' (HPCSA, Booklet 11, 2016).

In the following paragraphs I present arguments for circumstances when the provision of the cosmetic dental procedures can lead to over-treatment, and in possible violation of the regulations as stated above.

In commencing the arguments, I present that dental practitioners should prioritize the avoidance of harm, and must always act in the best interest of the patients.

Having established this understanding, I describe in the next paragraphs circumstances under which the provision of cosmetic dentistry can be considered overtreatment.

In attempting to answer these questions, I consider the procedures as discussed before. These procedures were presented as the provision of laminate porcelain veneers, with the aim of providing 'perfect smiles', in the absence of any disease process. The nature of the irreversibility of the procedures and their extensive nature, as well as the morbidities associated with these procedures, means that the procedures in the strictest terms can be deemed to be unnecessary treatment. In addition, it was shown as argued by Kelleher that these procedures at large are not permanent, and on average will last between 5 and 10 years (Kelleher, 2012). This in essence means that the procedures are unpredictable and will start the teeth on life-cycle of treatment, which progressively become more invasive, until the teeth become morbid. This situation could have been avoided with the provision of more conservative treatments or no treatment at all.

A decision should therefore be taken with more consideration, when such procedures are considered, due to the absence of any health benefits per se.

Literature describes instances where the cosmetic dental work resulted in ‘a wave of dental catastrophes’, as noted by dental practitioners who had to repair the botched work (Efrati, 2004). To compound the issue the procedures are carried out on healthy, sound teeth.

These procedures, more often than not, undertaken to improve the color and shape of teeth, carry with them risks, and often cause permanent damage to teeth, roots and gums, if not undertaken correctly. In the preceding scenario, a more appropriate course of intervention would be orthodontics, which would achieve the results with no permanent destruction of healthy teeth. The question is whether dental professionals providing these procedures are acting professionally? It is arguable that the provision of the treatments could be considered to be opportunistic avarice, with potentially long-term problems. The expected responsibility of dental practitioners is providing treatments that are minimally invasive, with minimum future complications. I argue that the provision of extensive procedures on healthy teeth, in the absence of pathology, is a violation of the professional responsibility, and arguably constitutes overtreatment.

The common adage is that, ‘nothing is permanent in dentistry’. This statement could not be more apt in cosmetic dentistry, where healthy tooth structure gets ‘mutilated’, in order to satisfy some subjective aesthetic preference. It is this subjective nature of the cosmetic procedures that renders them as overtreatment in the circumstances described above.

In concluding the arguments, in a study conducted on a sample of dentists in Switzerland, it was found that they considered provision of unnecessary dental procedures, as in ‘smile makeovers’, as ethically problematic, due to the questionable benefits associated with these procedures (Kazemian et al, 2015). I propose that adopting some standards and

guidelines in treatment planning would be highly important in preventing overtreatment (Frey, 2008, pp260-3).

Conclusion

In the above paragraphs I have presented the circumstance when the provision of cosmetic dental procedures can result in overtreatment. The procedures result in permanent and avoidable harms, and the dental practitioners ought to avoid them in the circumstances described.

In the next chapter I will be considering recommendations and conclusions from the arguments presented before, on providing some guidelines for South African dental professionals faced with an ethical dilemma, when providing cosmetic dental procedures.

Chapter 4

4.1 Recommendations

In the following paragraphs I present recommendations that arise from the arguments presented in the previous chapters.

Literature review has shown that there is an increase in the provision of cosmetic dentistry. There is however, considerable controversy related to cosmetic dentistry, both from an ethical and a legal perspective. The caveat however, as argued by Holden, is that the professional conduct of dental professionals should always remain resilient to what are arguably commercial practices, that are not compatible with professional obligations (Holden, 2017, pp79-83).

As argued in preceding chapters, the provision of cosmetic dentistry can result in some avoidable physical harms caused to patients, especially on healthy tooth structures, with uncertain benefits.

It is for the reasons above that the provision of cosmetic dental procedures necessitates some form of ethical conduct from the dental practitioners that surpasses that in a normal dentist-patient relationship resulting from therapeutic treatments. This is compounded by the fact that new procedures in healthcare, will result in more complex ethical and moral issues developing. With the provision of cosmetic dental procedures, the argument is that there seems to be less emphasis on the overarching professional duty to do no harm, and engagement skewed towards the exercise of informed consent (Lebuis et al, 2008, pp631-5).

Recommendations based on ethical arguments

From the preceding chapters, the following were established:

- There are circumstances when the provision of cosmetic dental procedures is ethically unjustifiable
- Some of the procedures provided, in certain circumstances, can result in overtreatment
- There are legal consequences related to the provision of cosmetic dental procedures, which dental practitioners need to be aware of.

There is also a need for statutory bodies to properly and effectively manage the demand/supply of cosmetic dental procedures, as well as maintaining safe standards of practice. It is also necessary to ensure public awareness and empowerment, to ascertain patients assume greater responsibility for their choices, in as far as the decision to undergo cosmetic dental treatments go.

It is incumbent on dental practitioners to increase the threshold to agreeing to carry out cosmetic dental procedures significantly, based on the risk/benefit analysis, as there are no direct measurable health benefits. The important factor to consider here is whether the procedures present significant harm or potential for harm, and long-term risks. As I have argued before, and due to the significant long-term risks posed by the provision of cosmetic dental procedures, the threshold at which a dental practitioner may agree to provide the treatment is raised significantly. The deciding factor will be whether there is a harm or risk of a harm posed by the procedures.

From the preceding paragraphs, there is a clear need for an ethical framework for responding to the challenges alluded to.

I argue then that more specific ethical guidelines need to be established, that will give guidance to the dental practitioners who choose to undertake cosmetic dental procedures. The current guidelines are not specific, with regards to guiding dental practitioners, to make ethical decisions when providing cosmetic dentistry.

Recommendations based on legal consequences

In the previous chapter I presented arguments on the legal pitfalls that are related to the provision of cosmetic dental procedures. It is clear from the arguments presented that significant information will need to be provided to patients in order to obtain proper informed consent. In other words, the informed consent process is significantly stringent, the more elective the procedures are, as in the case of multiple porcelain veneers provided on sound, healthy teeth, just to improve the smile. It is arguable that competent adults ought to be able to consent to any surgery, including cosmetic procedures. However, I argue that where cosmetic procedures have been proven to be medically unnecessary, and carry high risks of unnecessary harm, consent cannot suffice as a defense.

The argument I propose here is that, the inherent risks in the provision of cosmetic dentistry, are due to the procedures themselves, without which the risks would not exist. There is also a need for the regulatory body, in this case the HPCSA, to manage the maintenance of safe practice standards, as well as the demand-supply side of cosmetic service, with more specific regulations, as from the arguments presented before, it would seem like self-regulation has not achieved that purpose. As presented by Hancocks, the General Dental Council (GDC), in the United Kingdom, does not regard activities related to cosmetic dental procedures as dentistry, and therefore the HPCSA should consider

adopting a similar position, and with clear criteria, under certain circumstances (Hancocks, 2008, p59).

Practical implications

I propose that where the procedures proposed pose significant risk of harm, with no health-related benefit, and with the significant litigation minefield associated, the dentist may not ethically perform the procedures. I propose formulation of more specific ethical guidelines for South African dental professionals faced with an ethical dilemma, when providing cosmetic dental procedures. This should provide guidance in the decision-making process. I further argue that this ethical approach could underpin regulation in the future and provide a common purpose in this network of partial regulatory measures.

4.2 Conclusions

In conclusion, literature has shown that over the past couple of years, there has been an increasing demand for cosmetic dentistry. These procedures are elective and to a large extend the demand is patient-driven rather than practitioner-directed. This has as a result, brought with it some complex ethical dilemmas, with resultant legal consequences for the dental profession. The promotion of cosmetic dental procedures deserve more detailed ethical considerations.

Applying the framework of principlism, I presented arguments for and against the provision of cosmetic dentistry. Although the principle of autonomy is the core of modern healthcare practice, it is not the overriding principle, as beneficence has not been proven to be sufficient reason, and non-maleficence requires that no avoidable harm is caused to the patient.

Ethical dental care requires a high benefit to risk ratio and should be free of unnecessary risks. As I presented with arguments above, when the provision of cosmetic dentistry results in harm or risk of harm, the principle of non-maleficence will triumph over the principle of autonomy. In such circumstances, dental practitioners are obliged to refuse treatment.

I also presented arguments on the legal consequences associated with the provision of cosmetic dentistry and when some of the treatments, may under certain circumstances result in overtreatment. In these circumstances, it is imperative on the dental practitioners to refuse treatment, where the risk of harm is avoidable.

Although information on the status of cosmetic dentistry in South Africa is scant, but anecdotal data indicates an increase in demand, focus should be on making the provision of cosmetic dentistry safer. To this end better data on the use of procedures, and more research to improve the evidence base, are both urgently needed in order to improve practice. Lessons from the international arena, as presented in previous chapters can be taken on board by South African dental practitioners in developing safe guidelines.

Dental professionals have both a moral and legal duty to always act in the best interests of their patients, and must strive to always exercise reasonable care when treating their patients. The central tenet of this report, is whether the existing regulations are sufficient to address the complex issues that arise from the provision of cosmetic dentistry.

It is imperative that a framework for ethical guidance on how to resolve moral conflicts that arise from the provision of cosmetic dental procedures is provided for South African dental professionals. There is a need for the regulatory bodies to take a more proactive and stewardship role, in order to govern the safe provision of cosmetic dental procedures.

In concluding this report, the wise words of Jerrold resonate, “whatever it is we do, should not be undertaken because it advances our professional or personal needs. Rather, what we choose to do should only be undertaken because it further advances the needs of the public we serve” (Jerrold, 2015)

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