Regulation and the Quality of Dental Care

Peter Milgrom

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To Linda, Daniel, and Molly...

Foreword

In 1954 I was the neophyte chairman of the Practice Plans Committee of the Seattle District Dental Society. Before the year was over the committee had established the first dental service corporation in the nation—an inauspicious start for today's Delta Dental Plans that provide hundreds of millions of dollars of dental care annually.

Our first contract was with the International Longshoremen's and Warehousemen's Union-Pacific Maritime Association (ILWU-PMA) to care for their children up to age 15. The late Goldie Krantz was the ILWU-PMA negotiator. I'll never forget the rude shock when Mrs. Krantz asked, "How are you going to police your members?" "Police," we answered, "what do you mean police?" "Look," said Mrs. Krantz, "we're agreeing to pay out good money for dental care for our kids. You're not naive enough to think we won't expect some strong measures for controlling quality?" We were.

Long before 1954 dental societies had taken measures to monitor the quality of services provided by their members. That was one of the strong selling points of organized dentistry. The Seattle District Society had a Grievance Committee to adjudicate individual patient differences (mostly dealing with fees, as I remember, and dentures that allegedly did not fit). But this timid wrist-slapping was not quite what the ILWU-PMA had in mind. They wanted a high level committee written into the contract—the best in the profession—to sit in judgment of their peers; and if the quality of a dentist's treatment was found wanting, he was to be dropped from the program. "We don't intend to haggle over fees," the union said, "so in turn, we expect quality care for our money." And quality they got,

though more than a few dentists were censured and/or dropped from the panel.

And thus was born, in my limited experience at least, the dental application of "those who pay the piper, to some extent, will call the tune." Today, quality assurance is part of every dental care program, institutionalized to be sure, but still carried out in the same way we agreed in 1954—record review, complaint processing, and spot check examinations.

All that experience was nearly a quarter of a century ago. In that time great progress has been made in the technology of dentistry, and a glimmer of hope in the prevention of dental disease is on the horizon. Progress in the socioeconomics of dentistry, however, has been less than spectacular. But changes are being made, and forecasts for the future are either thrilling or ominous—depending upon one's viewpoint.

In this book, Peter Milgrom has dispassionately evaluated the gradual changes taking place. Through his historical review, one is able to predict that change will continue and rather accurately determine the direction of that change—where have we been and where are we going.

Early on, Milgrom asks two questions: "Does regulation affect the quality of dental care?" and "Why worry about regulation?" The answer to the first question must be "yes," if one is to judge the actions of professional societies; third party financers; and local, state, and federal governments. They have all established regulations designed to impact on quality and safety, regulations most of us seldom think about as such—examples are codes of ethics, local building codes, radiation safety codes, state board licensing and policing activities, certificates of need, insurance company review, labor union review, Professional Standards Review Organizations, even local society peer review and the Councils of Dental Therapeutics and Dental Materials of the American Dental Association.

Milgrom has thought about all these factors (and many more) that could affect the quality and safety of care and has succinctly developed for us some surprising pathways the professions, consumers, and governments appear to be following.

In regard to the second question, "Why worry about regulation?" Milgrom poses the question from all points of the compass; from the consumer's aspect (mostly labor unions and insurance companies not wanting to be cheated); from the government's aspect of responsibility for the health, welfare, and safety of all the citizens; and from the profession's aspect, ethically bound to deliver humane quality

care but paranoid about having others "peering over our shoulders."

As far as the mechanisms of government regulation are concerned, Milgrom states two tenets, that laws regulating dental practice originate in the police powers of the state, and that the government's interest in regulating dental practice increases with its involvement in financing dental care. Both of these tenets are particularly onerous to certain segments of the profession.

Most of the police powers over the practicing dentist are at the local and state level, the chief progenitor of police powers being the state boards of dental examiners. Milgrom thoroughly pursues this controversial subject and objectively discusses alleged abuse by state boards against out-of-state, ethnic, and divergent life-style groups, as well as the failure of boards to censure submarginal dentists or demand reeducation of those who are marginal. The two sides of the reciprocity question and the impact of the Character Reference Program, described in part by Fennelly as "vicious, personal, and probing," are thoroughly discussed, as is state board interference in dental school academic freedom.

Milgrom holds out hope that many of the recognized abuses of the past are being corrected by boards themselves in some enlightened states, and by legislatures in others. Oregon's attempts to "improve the standard of practice" of that state's "marginal" dentists is particularly gratifying. Threats by the federal government to pass legislation overriding state dental practice acts could well become moot if states act on their own to correct inequities of the past.

The health care system as a possible public utility is well explored in this text. Priest has argued, states Milgrom, "that regulation of the health care industry has parallels with fixing utility rates... when a necessity of life is provided by a monopoly or quasi-monopoly, effective regulation of that enterprise is required to protect the public interest." With equal clarity the problems with this approach are explored.

The monopolistic status of the health professions is still to be argued, but the maldistribution of its members is not. Government attempts to equally redistribute health practitioners are a reality that must be faced by the profession, and dental license reciprocity is important in this regard. Modifications in state board reciprocity are slowly moving westward and toward the sunbelt. Restrictions in location, determined by certificate of need, are as imminent as tomorrow.

These are the devices being considered by government at various levels. But what has the profession attempted in regulation? Mil-

grom thoroughly reviews professional regulation, pointing out that dental societies have generally been forced into self-regulation by the attitude, "If we don't do it, the government will'—an anathema to most dentists.

Unfortunately, as Milgrom points out, self-regulation has often been "the fox guarding the hen house," that through a "conspiracy of silence" and "gentlemen's agreements" dental societies usually avoided censuring their members while making a great point with the public that the society is their guarantee of fair treatment.

Early in my career I learned the lessons of dental society apathy, procrastination, and inertia. As a member of the Grievance Committee of the Seattle District Dental Society and also its Executive Committee, I came to believe that grievance procedures, in those days at least, were virtually without value. Later, when I was an officer of the Los Angeles Dental Society, we formed one of the nation's first peer review committees. As studies will show, we spent virtually all our time settling arguments over fees between our members and the California Dental Service. In the meantime, cases were festering before the grievance (judicial) committee, with some dentists having multiple patient complaints filed against them. We moved rapidly, however, against a dentist with a lighted sign or an orthodontist listing his master's degree on his door.

After reviewing the duties of five society committees—grievance, peer review, professional relations, ethics, and political action—Milgrom holds out some hope for professional self-regulation by describing some sensible new programs now emerging. "If we don't do it, they will."

As this book notes, failure by the profession to adjudicate patient complaints equitably often leads to malpractice. Add to that the stubbornness of some members of the profession when they feel their professional integrity or ability has been challenged, and the stage is set for a court fight. "Don't let an ego trip take you into court," I was once sagely advised.

I also harken back to an incident in Seattle where the patient's major complaint was physical and emotional abuse by a dentist. How does one document such iatrogenic trauma and measure the injury that in all honesty should be compensated? Maybe if state boards of dentistry expended more effort in policing and overseeing the reeducation of marginal dentists, there would be less cause for malpractice. In any event, malpractice is a rising specter, and Milgrom deals with the subject thoroughly and objectively. He even holds out some hope.

As I started out this *Foreword* discussing my early role in the formation of a dental service corporation, so Milgrom concludes this book with a thorough and historic review of prepaid dental care. The entrance of the commercial insurance carriers and "the Blues" into the prepaid dental field attests to the potential of growth in prepaid dentistry.

By the same token, one can easily overlook the federal role in dental care—$100 million spent by the Veterans' Administration alone each year as an example. Through it all, the threat of government controlled quality hovers over the profession. A bill has been introduced in Congress, for example, to bring dentistry under PSRO (Professional Standards Review Organization) scrutiny. Dentists could end up with surveillance in their offices long before physicians, for that is where dentistry is mainly practiced, not in the hospital. Rewriting the Medicaid laws or passage of national health insurance will surely involve dentistry within a decade.

From the vantage point of mid-1977 Washington, D.C., however, I am pessimistic about a *near future* expansion of dental care to needy recipients. Twice, Congress has deleted dental involvement from bills where dentistry was formerly included (Health Maintenance Organizations and Early Periodic Screening, Diagnosis, and Treatment Program). A leading architect of national health insurance has scheduled dental inclusion as late as the sixth or eighth year after passage. The power elite in Washington, by their own admission, seldom think about dentistry. The American Dental Association holds its breath that dentistry might be included in national health insurance.

Despite these signs to the contrary, I predict that the middle class, accustomed to "free" medical and hospital care, will rebel against paying 85 percent of their dental bills out of pocket. Only then will enough pressure be placed on the government to include dental care in national health insurance. Along with this inclusion will come more federal involvement in quality assurance—"having a say in what we're paying for." If the profession (we) renege on our responsibilities in this area, surely "they" will do it for us.

This book is a first attempt to prepare the profession, the planners, and the politicians for what they need to know about quality assurance in dentistry, as well as a disclosure of the professional, business, and governmental meddling that has taken place in attempts to assure quality and safety of care. That we have all failed to some extent is not remarkable. What is remarkable is how much quality care is delivered. Milgrom points the way to several in-

novative methods of educating the profession and the public in quality assurance that might well improve our record.

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Preface

This volume, like most, is the result of a number of experiences. Its genesis can be traced first to the excitement and frustration of being a student in the late 1960s. Dental professional training, unlike college, was and largely remains rigid and dogmatic. One did not question. In a fit of desperation at this mania, I once asked a colleague if he would stack marbles if it were part of the curriculum? His reply? "How high?" During this period much attention began to be focused on problems that had existed for years. One state examining board failed candidates because it did not like their dental school dean, another because of racial discrimination. In an equally amazing episode, a large dental society sued a state health department to prevent a mandatory continuing dental education program associated with Medicaid. In this book I will document many of these episodes. A reader with an historical interest in these areas should pursue William Gies' *Dental Education in the U.S. and Canada*, published in 1926. On first reading I was personally astounded at how persistent are the problems identified in this work. That is the second reason for this volume.

There will be some who will say that this volume should never have been written, that public disclosure of the problems in ensuring quality dental care will only exacerbate the scrutiny now being focused on the dental profession. In reply, it is fair to say that much change has occurred as a result of these times, and more is coming. All this has occurred without making dentistry an unattractive profession to the public. In fact, the surveys of patients' attitudes toward peer review and quality assessment conducted as part of our research suggest that the image of the profession is enhanced when it engages in self-evaluation. A persistent problem in writing this volume, however, is determining whether *all* the change is in reac-

tion to external influences; or if, by careful introspection, change is occurring from within. This question the reader must answer alone, but it remains the salient issue. My personal bias is that the dental profession must be given incentives to assure quality care. Without the providers' cooperation, the system will not become more responsive. This is the final reason for writing a book on regulation and the quality of dental care.

I sincerely hope that the audience for this book will be as varied and extensive as are the people whose work impinges on the quality of care delivered—people associated with the many agencies and groups I shall discuss.

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A very special group also contributed heavily to the development of the ideas in the book. These were Ron Barbanell at the University of Southern California, Howard Bailit at the University of Connecticut, Hyman Schonfeld of Washington, D.C., Charles Jerge and Jon Nash at the University of Pennsylvania, Max Schoen and Jay Friedman at the University of California at Los Angeles, and Phil Weinstein at the University of Washington.

Last is the group that helped put pen to paper. Connie Pious helped research the government regulation chapters and edited the whole manuscript. Margaret McCullough Black researched and was the primary author of the chapter on dental prepayment. Mildred Berto and Anne Fields assisted in the earliest drafts. Jeanne Robertson typed the entire manuscript.

To all of these people I express my sincere thanks.

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Chapter 1

Introduction to Quality Assurance

> "PROBE REVEALS FRAUD, WASTE IN MEDICAID... A Senate investigation of the 10-year-old Medicaid program in eight major cities has found rampant abuses by both providers and recipients of health services, and has called for federal action to correct what it termed 'abysmal' administration of the program at all levels of government."

Headline and lead paragraph of lead article, *Seattle Post Intelligencer*, Monday, August 30, 1976, page 1.

> *"Dear Dr. Milgrom: Thank you for your reply to my inquiry concerning a way to check dental work about which a patient is uncertain.... I do not believe I would have any kind of relationship with my dentist if I asked for the name of a dentist to get a second opinion. He is a very emotional man and would, I'm sure, understand that what I really mean is that I no longer trust that he is doing what is best for my teeth and doing it in the best possible way. I wonder if you could consider adding to your community service the possibility of a person getting an independent, noninvolved appraisal of dental work...."*

Letter from a woman in Seattle who is concerned that her dentist's quality may be deteriorating. Received August 30, 1976.

> "MERCURY LEVEL STUDY SET... Representatives from two Health Sciences Schools are collaborating in a study of the mercury vapor levels in 100 dental offices in Seattle. The

> researchers also will measure the amounts of mercury in the bodies of the dental personnel in the offices.... 'Our goals,' Dr. Gordon said, 'are to raise the level of awareness... and to help develop methods for handling mercury that will reduce and limit the level of exposure.' "

Centerscope, Health Sciences Center, University of Washington, August 30, 1976, page 4.

WHAT ARE THE ISSUES?

What's happening? It is probably a coincidence that on a single morning the above three items of interest should cross my desk—but it is certainly not surprising that they are "in the air." Quality assurance of health care—and the many, varied means to achieve it—is a critically important topic for professionals *and* consumers. Whether the monitors of care that is delivered are the government at different levels, the professions themselves, consumers, or third party agents (such as insurance companies), this fact remains: such monitoring is increasing at a very fast pace and is already affecting the way we practice our professional skills.

The Larger Picture

The professional literature on quality regulation is growing almost as rapidly as the monitoring efforts themselves. This suggests a certain degree of self-examination, a good sign for any profession. But there is also a serious deficiency in the mass of new information about quality regulation: no concerted effort to relate these concerns and topics to dentistry. By far the most extensive discussions concern strictly medical issues, not those that are peculiar to dentistry. So it is with the hope of filling some of these information gaps that I have attempted to address the issues I think are important, and to look at the different kinds of quality regulation as they affect dentistry.

One caution, however. In this effort to fill an information gap, there is, necessarily, a dental orientation to my concerns. It is therefore important to bear in mind in any review of quality assurance issues that *dental care problems do not occur in isolation.* Rather, they are an integral part of the whole complex of problems related to health care in general. Dentistry must be viewed as part of a total health care *system*: whatever problems we identify in dental