



Liability

Lifeline



Make your office secure and stay a step ahead of burglars

The Dentists Insurance Company reports recent property claims in Northern California in which burglars exploited security weaknesses in dental offices and carried out well-planned break-ins.

TDIC claims representative Kelli Young said the cases are significant because the burglars used an identical strategy to gain access to the dental offices. Intruders in two separate

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instances broke into unalarmed utility closets on the outside of the buildings and, once inside the closets, broke through the drywall and entered the offices.

In one case, the burglars ransacked the office and made off with approximately \$38,000 worth of dental equipment, supplies, computers and two flat-screen televisions. In a separate, but seemingly related incident about a month before this break in, a brick was thrown through a window at the office in the early morning hours. Analysts believe the act was a “test” to monitor response time. In the second burglary, the loss was not significant as a motion sensor detected the intruders and tripped the alarm. In both cases, however, the burglars used the same technique to take advantage of security flaws.

While claims representatives said this type of sophisticated and planned burglary is not the norm, the cases underline the necessity for dental office security. TDIC reports about 80 to 100 office theft claims annually with computers, office equipment and digital cameras among the most common items stolen. Claims supervisor Kyle Broadhead said “unforced entry”

“When it comes to office security, sometimes the simplest things are overlooked,” said Randy Oxen, a TDIC senior claims representative. Basic measures such as an alarm, surveillance cameras, motion sensor lights and awareness of unmonitored and unlocked doors and windows.

robberies, where an unlocked backdoor or window allows easy entry into an office, are more typical and represent a majority of property claims.

“When it comes to office security, sometimes the simplest things are overlooked,” said Randy Oxen, a TDIC senior claims representative. Basic measures such as an alarm, surveillance cameras, motion sensor lights and awareness of unmonitored and unlocked doors and windows go a long way in preventing theft. Oxen noted that police response times to alarms can vary and emphasized that police receive a large number of “silent alarm” calls. “A very loud alarm, one that hurts the ears, can be a great deterrent,” he said.

“Thieves won’t stay around if their ears are splitting.” Also, consider motion sensors. “Alarms on doors and windows are a given,” he said, “but motion sensors are important and prevent excessive losses.”

Oxen added that an effective burglary prevention strategy requires active interest and concern. “We can make all kinds of suggestions, but it is up to the practice owner to identify areas of vulnerability and follow up with security measures.”

A simple walk around the office building is a good place to start, Oxen said. “Just look around for areas and entries that are not secure.”

Additional property security tips from risk management analysts, claims representatives and the Los Angeles Police Department include:

- Follow through on basic security measures, such as installing an alarm, surveillance cameras and motion sensor lights.
- Pay attention to exterior doors including utility closets and compressor rooms. Recommended exterior door construction is steel or aluminum alloy or solid core hardwood. The frame of the door must be as strong as the door.
- Lock exterior doors with a deadbolt lock.
- Think about lighting. Well-placed lighting deters burglars. Illuminate your entire property from dusk to dawn, including alleyways, rear and front entrances, rooftop and parking lot.
- Locate light fixtures at the appropriate height to maximize illumination, avoid blind spots and reduce shadows that provide hiding places.
- Keep track of office keys. Are office, safe and vehicle keys lying about? Keep a record of keys issued and lock up master keys and duplicates. Have all keys stamped with the words “do not duplicate.”

- Keep property clearly visible and trim shrubs and grass to deny burglars a hiding place.
- Limit roof and window access by keeping ladders, pallets, boxes and crates away from the building.
- Keep valuable items out of sight and away from windows.



An effective burglary prevention strategy requires active interest and concern. “We can make all kinds of suggestions, but it is up to the practice owner to identify areas of vulnerability and follow up with security measures.”

- Beware of leaving personal items such as wallets, purses or cameras in open areas.
- Provide a locked cabinet or lockers for staff belongings.
- Keep drugs in a locked cabinet.
- Take note of any unusual activity or property disruption such as unusual footprints, partially broken locks or pry marks.
- Always make a property management and police report of suspicious activity and theft. In forced entry situations, contact the police to secure the premises and minimize risk to you and your staff. ■

PROPERTY SECURITY TIPS

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- **Keep track of office keys.**
- **Install an alarm, surveillance cameras and motion sensor lights.**
- **Keep valuable items out of sight and away from windows.**
- **Keep drugs in a locked cabinet.**



EPL offers defense against employment claims

Employment-related lawsuits and insurance claims continue to increase according to recent statistics from The Dentists Insurance Company. TDIC records show a steep increase in employment claims with 53 closed in 2013 compared to six in 2000.

Indemnity payments also continue to rise. In 2013, 57 percent of employment claims filed paid compensation averaging \$16,193, in contrast to 2000, when 33 percent of claims resulted in paid indemnity averaging \$3,267.

Risk management analysts say the most prevalent employment-related claim is wrongful termination, and sexual harassment is the second most common. Analysts also say the increasing indemnity payments can be an indication that practice owners

are not current on employment laws and principles.

Employment practices liability insurance, often referred to as EPL, provides protection for dental practice owners against employment-related claims such as discrimination due to age, sex, race or disability, wrongful termination and sexual harassment. EPL covers defense costs, settlements and civil judgments in the event of such allegations.

Risk management analysts at The Dentists Insurance Company say it is common for policyholders to mistakenly think their professional and dental business liability insurance automatically covers employment-related lawsuits.

However, EPL is an optional coverage within TDIC's Professional and Dental Business Liability policy

and is available with combined single limits. TDIC currently offers a limit of \$50,000 or \$100,000 and can be used for either defense or indemnity payments.

EPL may be added at the beginning of a policy term or mid-term with a qualifying event, such as:

- At the time of original application for professional liability coverage
- At the expiration of an EPL policy through another carrier
- Within 30 days of hiring first employee

The Dentists Insurance Company began offering EPL coverage in 1998 as a response to the number of policyholders reporting employment-related claims.

For more information about Employment Practices Liability Insurance, call TDIC at 800.733.0634.

DISTRACTION ALERT:

A shift in mindset can help prevent accidents

Accidents happen in the dental office. But can they be avoided? Risk management and safety analysts say much can be done to reduce injuries and accidents, especially by increasing awareness of the distractions that cause a lack of focus on the job.

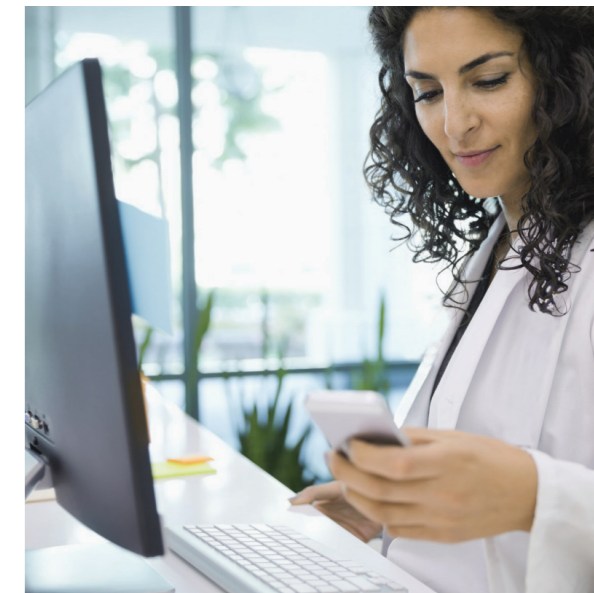
"I have come to the conclusion that distraction is the No. 1 cause of accidents in the workplace," said Bob Lapidus, a certified safety professional and safety consultant with more than 40 years of experience in both the public and private sector. Lapidus said accidents often happen when people fail to follow established procedures, rush to get a job done or lose focus because of internal thoughts or external situations. "Distractions literally cause people to take their minds off of the work they are doing."

When it comes to accidents in the dental office, "simple inattention

to the task at hand" is a key factor, according to Deborah Boyd, workers' compensation manager with The Dentists Insurance Company. Boyd said 44 percent of TDIC workers' compensation claims are due to needlestick injuries and noted, "Needlesticks occur when someone is distracted."

Dentists are familiar with situations that contribute to distractions in the office, including lack of sleep, production stress, scheduling pressure, demanding patients, personal problems and staff issues, to name just a few.

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EMPLOYMENT



Beyond the Science: Patient emotions in dentistry

It's estimated that **75% of U.S. adults** experience some degree of dental fear. But fear, as well as anxiety and worry, may not be easily identified by the dental practitioner which can cause big legal issues down the road. Learn to correctly handle patients who exhibit these emotions so you can keep your practice, and your patients, safe.

- Recognize when, and how, to dismiss patients without placing them at risk
- Establish trust in the doctor-patient relationship to encourage treatment compliance
- Create office protocols to instill confidence in the dentist and staff

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*Important information about your 5% Professional & Dental Business Liability premium discount.

TDIC policyholders who complete a seminar or eLearning option will receive a two-year, 5% Professional Dental & Business Liability premium discount effective their next policy renewal. To obtain the two-year, 5% Professional Dental & Business Liability premium discount, California dentists must successfully complete the seminar by April 24, 2015. Nonpolicyholders who complete a seminar or eLearning option, and are accepted for TDIC coverage will also be eligible for this discount.

Fall 2014 Risk Management Seminar Schedule

Wednesday, Sept. 3
4:00—7:00 p.m.

Thursday, Sept. 4
9:30 a.m.—12:30 p.m.
and 2:00—5:00 p.m.

Friday, Sept. 5
9:30 a.m.—12:30 p.m.

CDA Presents
San Francisco, CA

Friday, Sept. 26
9:00 a.m.—noon

Doubletree
Oakbrook, IL

Friday, Oct. 3
9 a.m.—noon

Hawaii Prince
Oahu, HI

Friday, Oct. 17
9 a.m.—noon

Irvine Marriott
Irvine, CA

Friday, Nov. 7
9 a.m.—noon

Doubletree Ontario
Ontario, CA

Friday, Dec. 5
9 a.m.—noon

Hyatt Mission Bay
San Diego, CA

Friday, Dec. 12
9 a.m.—noon

Sheraton Grand
Sacramento, CA


C.E. Details

- **3.0** AGD PACE hours
- **3.0** ADA CERP credits

To receive C.E. credit, registrants must be present for the entirety of the three-hour seminar. This seminar meets the Dental Board of California's requirements for 3.0 Core C.E. credits.

Special Needs

If you or someone in your group requires special assistance to fully participate in the seminar, please call TDIC at 800.733.0634 or email us at risk.management@cda.org.



The Dentists Insurance Company (TDIC) is designated as an Approved PACE Program Provider by the Academy of General Dentistry. The formal continuing education programs of this program provider are accepted by the AGD for Fellowship, Mastership, and membership maintenance credit. Approval does not imply acceptance by a state or provincial board of dentistry or AGD endorsement. The current term of approval extends from 4/1/2011 to 3/31/2015. Provider ID# 217955

ADA CERP® | Continuing Education Recognition Program

The California Dental Association is an ADA CERP Recognized Provider. ADA CERP is a service of the American Dental Association to assist dental professionals in identifying quality providers of continuing dental education. ADA CERP does not approve or endorse individual seminars or instructors, nor does it imply acceptance of credit hours by boards of dentistry. CDA designates this activity for 3.0 continuing education credits. This continuing education activity has been planned and implemented in accordance with the standards of the ADA Continuing Education Recognition Program (ADA CERP) through joint efforts between CDA and TDIC.

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Fees:

- Dentist/staff: **\$50**
- Part-time*: **\$25**
- New TDIC Policyholder: **Free** (within the first policy year)

*Must have a TDIC part-time Professional Liability policy to be eligible for this discount.

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The following examples demonstrate how easy it is to become distracted during routine procedures:

- A dentist administering an injection does not look to see where the RDA is with the tray. Still looking at the patient, the dentist places the syringe where he assumes the tray is and inadvertently sticks the RDA.
- A dentist administering a mandibular block uses a short-gauge needle instead of a long-gauge needle, and the needle breaks off in the mandible. When asked why he used the shorter needle instead of the recommended long-gauge needle, the dentist said he was behind schedule and in a hurry.
- A back office employee calls in sick. To remain on schedule, the dentist decides to reassign a front

“With internal distractions, we deliberately choose to think about something other than what we are doing.” Thinking about issues at home, bills or staff problems are examples of internal distractions. Another pervasive example is choosing to check phones for texts and messages instead of focusing on work.

office person to help in the back. This employee is not familiar with the sterilization process of bagging instruments. She punctures herself when she attempts to disassemble an aspirating syringe.

These examples illustrate circumstances that cause distraction and accidents: failing to follow established procedures, losing focus and rushing to get a job done.

Distractions on the job can also be more internal, according to Lapidus. “With internal distractions, we deliberately choose to think about something other than what we are doing.” Thinking about issues at home, bills or staff problems are examples of internal distractions. Another pervasive example is choosing to check phones for texts and messages instead of focusing on work. Risk management analysts recommend a clear, written policy regarding smart phone and cell phone use on the job. It’s equally important to make sure staff understands the policy.

Mobile phone use during work hours can give patients the impression that their dental care is not a priority, and phone use creates distractions that can increase liability by dividing concentration.

However, distraction is not always an entirely conscious decision. For instance, when a procedure is performed many times it becomes routine. “Our minds can be less active regarding the task, and this type of distraction is largely unconscious,” said Lapidus. However, we can “catch” ourselves when distracted and refocus.

A heightened awareness of all types of distractions can help prevent related injuries. A key step is recognizing distractions in the office. “Identify the

distractions,” said Lapidus. “Look at the reasons why we stop focusing on work.” Then work on the self-discipline and team building to avoid distractions.

Lapidus makes these recommendations:

- Make sure the entire team has the knowledge, skills and judgment for the work performed. This foundation along with continuing education grounds the dental team and facilitates concentration.
- Stay away from influences that prevent job focus. Keep nonjob related items away from the immediate work area.
- Have an immediate goal in mind each time you treat a patient. Concentrate on each step of the procedure as a goal unto itself.

Lapidus acknowledged that situations in life — a death in the family, a sick child or similar emotional strains — make it difficult to concentrate on work. While time off may be warranted, that is not always possible. “We have to look at practical solutions,” he said. Sometimes that may be talking to your team and letting them know you are facing personal challenges.

Likewise, keep an open-door policy for staff to talk to you about challenges they are dealing with. Consider whether duties or expectations can be adjusted for a short period. Issues between staff members can be distracting to everyone, and dentists must be prepared to address conflict and discuss the situation with all parties involved. Reiterate your expectations for employees to be professional and make work the priority.

“Beware of over commitment and remember that solutions can be practical and still allow us to make adjustments that can prevent distractions and accidents,” said Lapidus. ■

PRIVACY: Inadvertent sharing of patient information is problematic

The Health Insurance Portability and Accountability Act (HIPAA) privacy and security rules put patient privacy on everyone’s radar, from providers to patients to the media. However, dental practice owners still impermissibly release patients’ protected health information in a number of ways, many of them unintentional, according to risk management analysts at The Dentists Insurance Company.



Dentist can wrongly transfer private patient information through collection forms, photographs, rewards programs and other third parties with which dentists do business. “Many times it is avoidable,” said an analyst familiar with the situation. Sometimes there are treatment notes or a patient’s health history sent to a third-party collection agency. Or a vendor with access to a patient’s information shares or sells the contact information.

Privacy is a hot-button issue for many reasons, including federal HIPAA and state laws that cover the release of patient information. State laws can be particularly stringent. John Degnan, a Minneapolis attorney specializing in professional liability said Minnesota statute includes a chapter that is a “cause of action” for damages including attorney fees if patient records are released without authorization.

Degnan referenced a privacy case brought against a dentist who used “before and after” photos of a patient. The photo showed only the bottom portion of the patient’s face, but the invasion of privacy case was fought in court for a week. “It was just a mere picture,” Degnan said. “We prevailed, but it was a long and painful case for the dentist.”

In another case, according to Degnan, an oncologist appeared on television to talk about mammograms and used a radiograph for visual reference. The doctor did not realize the patient’s name was in the lower left-hand corner of the radiograph.

“It’s a good idea to think broadly about privacy,” said Degnan. It’s not just records that are protected, but also anything in the patient’s file including photographs and radiographs.

Privacy is not just a legal issue, added Degnan. “If there is a violation of privacy, the state licensing board can take up the issue as well. Licensing boards are very attuned to patient privacy. I have had cases where they look at this; it’s a point the board would scrutinize.”

Degnan advised dentists to always err on the side of caution concerning privacy. “Do not share information without an authorization signed by the patient. “A simple signed authorization offers protection.” A “Release of Patient Records” form is located under the recordkeeping link of the risk management section on the TDIC website at thedentists.com.

Concerning third-party vendors and sharing of patient information, Degnan said business associate agreements are

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required by HIPAA, but the agreement does not mean that you can share specific information about a patient. “It’s a bright line that unless you have patient approval, there is no sharing of information.”

Dentists are reminded that HIPAA has a “minimum necessary rule” that requires covered entities to use the minimum necessary patient information to complete the job or task. They should also know that if the use or disclosure of patient information is impermissible under state law, it may or may not be

impermissible under HIPAA. Dental practice privacy policies and procedures should include information on state law. If the use or disclosure is impermissible under HIPAA, the practice must comply with the breach notification rule. Compliance can include conducting a breach risk assessment to determine if patient notification of an impermissible use or disclosure is required.

To assist dentists and other health care professionals in protecting private patient information, the U.S. Department of Health and Human Services (HHS) recently released a

new security risk assessment tool to assist with compliance under HIPAA. “The tool is designed to help practices conduct and document a risk assessment in a thorough, organized fashion at their own pace by allowing them to assess the information security risks in their organizations under the HIPAA Security Rule,” said the HHS in a news release. The application is available for download at HealthIT.gov/security-risk-assessment and produces a report that can be provided to auditors. HHS also has a “Guidance on Risk Analysis” available at hhs.gov online. ■

Questions and Answers

Q: Our office had been seeing a patient for about a year. Two years ago, she called saying she was canceling all appointments and that she was going to go to another dentist. The staff person who spoke with the patient documented the conversation in the patient’s chart. Today, the patient called reporting pain and requested an appointment. My staff person made an appointment for three days from now. Am I obligated to see her?

A: Dentists do not have an obligation to see someone who is not a patient of record. However, this person already has scheduled an appointment. Canceling that appointment now could be very awkward. You could try to call the patient and tell her that when you read her file, you noticed she had already removed herself from the practice. You think it is best to continue care with her current treating dentist. This approach could become complicated if you cannot reach the patient or the patient

insists on keeping the appointment already made by your employee. An alternative strategy would be to deliver palliative care, get her out of pain then refer her back to her regularly treating dentist. Follow the appointment with a letter reiterating what you diagnosed, treatment provided and the recommendation to appoint with her regularly treating dentist. Include what could happen if she does not see her regular dentist to complete treatment and continue a sound dental program.

Q: I treat a woman who is continually complaining about her husband’s snoring. I offered to make him a snoring device. This device is similar to a sleep apnea device, but it is used for snoring. Can I do that for him?

A: Typically, patients undergo a sleep test to determine if they have sleep apnea. A snoring device sounds very similar to a sleep apnea device. As a dentist, how can you be certain the patient does not actually have sleep

apnea? Instead of putting yourself at risk of practicing outside the scope of your license by fabricating this device without a physician’s prescription, suggest the patient appoint with his physician for a sleep test. Then, if the physician believes a snoring device is necessary, he or she can write a prescription for one.

Q: A 17-year-old patient drives herself to her dental appointments. I have her original health history that her mom filled out when she first started coming to the office. Now that she drives herself, I rarely see either parent. Who should be filling out the health history?

A: The responsible parent or guardian should fill out a minor’s health history including any updates. In this situation, the parent can do this via email, mail or fax. Ensure it is the correct signature by comparing it to the signature you have on file. Make sure you have the update prior to treating the minor.

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