

Lifeline

UNHAPPY
PATIENT

ORAL
CANCER
DIAGNOSIS

POTENTIAL
DRUG-SEEKING
PATIENT

OFFICE
MANAGER
TROUBLE

CROWN AND
BRIDGE

CARELESS
EMPLOYEE

CALL AND RESPONSE:

**Hot topics and savvy
recommendations
from TDIC's Advice Line**

TDIC's Risk Management Advice Line received more than 16,000 calls between October 1, 2012 and September 30, 2013. This is a marked increase in the number of dental professionals consulting Advice Line analysts to discuss the best solutions for professional, employment and business property issues.

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Eighty-two percent of the calls related to professional liability matters with the hot topics being patient dismissal, record keeping, restorative issues, upset patients and informed consent. Employment-related questions were second in frequency at 17 percent, with management issues, workers' compensation, wage and hour, pregnancy leave and employee manual being top concerns. Down on the list, but still logging a number of calls, were business and property questions about embezzlement, theft and insurance coverage.

Professional analysts staff TDIC's Advice Line and have access to a vast array of resources and knowledge to assist policyholders in successfully navigating the complexities of everyday practice issues. Analysts referred only 8 percent of calls to the claims department in 2012; that number is down from 10 percent in 2011. Through discussion and strategy planning, analysts work with dentists to manage situations and avoid claims. Here are a few examples of calls to the Advice Line and the recommendations given by risk management analysts.

Call No. 1: Oral cancer diagnosis

A general dentist calls with an issue involving a longtime patient. For more than 20 years, the patient and dentist have had a good rapport. The patient missed some appointments during this time, but presented fairly regularly for cleanings and exams.

During a cleaning appointment in 2011, the patient reported one of his

Although the dentist does not feel like the patient blames him now, the risk management analyst advised that the situation could change. When faced with such a diagnosis and treatment plan, the patient could likely get upset with everyone who provided dental care.

wisdom teeth was bothering him. The radiograph showed an impacted tooth and the general dentist referred the patient to an oral and maxillofacial surgeon for evaluation. Weeks later, the general dentist received a letter from the oral surgeon's office saying he had extracted the tooth without incident. One month after receiving the letter, the patient called the general dentist reporting paresthesia. He referred the patient back to the oral surgeon for evaluation and mapping; however, the general dentist did not follow up with either the patient or the oral surgeon. The patient missed his regular cleaning and exam appointments in 2012.

In the beginning of 2013, the patient reported paresthesia again. The dentist examined the area and noted that the extraction site was bleeding. He referred the patient back to the oral surgeon for another evaluation. The oral surgeon sent the general dentist a letter stating after considering the patient's age and complexity of the extraction, he felt healing was within normal limits. Five months later, the patient returned to the general dentist's office with the same complaints about the extraction site. A deep ulceration was evident upon examination. The dentist referred the

patient to a head and neck surgeon. Soon after, the patient called saying tissue from the area was biopsied and it came back as cancerous. He said, "I am going to have my jaw removed and replaced with bone from another part of my body." The patient said he was just calling to let the dentist know.

The dentist did not think the patient was upset with him, but he really wanted to contact the oral surgeon and inform him of the situation. Can he do this?

TDIC recommendation

Although the dentist does not feel like the patient blames him now, the risk management analyst advised that the situation could change. When faced with such a diagnosis and treatment plan, the patient could likely get upset with everyone who provided dental care. Calling the oral surgeon at this point seems more like a warning rather than an effort to help the patient.

Considering the circumstances and what the patient reported, the analyst recommended turning the issue over to the claims department for informational purposes. If the general dentist does receive a letter from an attorney, TDIC will be versed on the case details.

Call No. 2: Dictating treatment/interfering spouse

A general dentist calls about a wife who is trying to dictate her husband's dental treatment.

At one time, both the husband and wife were patients of the practice. Everything was fine until he referred the wife to an orthodontist after she commented on her crooked teeth. For an unexplained reason, she had an issue at the orthodontist's office and ended up withdrawing from care at both offices.

The husband continues to receive care at the general dentist's practice. The patient and dentist have a good relationship. The first phase of the husband's treatment is complete, and he is about to start the next phase. For the past several months, the wife has sent emails attempting to direct her husband's treatment. The dentist has not responded other than to tell the wife he cannot talk about her husband's treatment without his consent. He did not tell the husband about the communication with his wife. In her last email, the wife said she was going to come in and be part of the treatment and it did not matter if the dentist approved. Since the second phase of treatment is scheduled to begin, the dentist called to review the situation with a risk management analyst.

TDIC recommendation

The analyst recommended calling and talking to the husband/patient directly. Describe the emails he is receiving and his discomfort level with how the patient's wife is attempting to drive the direction of his treatment. He should tell the patient he is happy to continue providing dental care,

however, the emails from his wife and her attempts to dictate care had to stop. He should explain he has decided not to allow her into the office because of her threatening manner. If this is OK with the patient, they can continue with their doctor/patient relationship. This allows the patient to determine the next step. The patient is not mid-treatment and can decide whether to continue in this practice or choose to go to another dental office.

Call No. 3: Unhappy patient/HMO network

A general dentist calls about a patient who in 2011 presented with a large radiographic lesion of the mandible. The dentist immediately referred the patient to an oral and maxillofacial surgeon. The dentist informed the patient that the oral surgeon may not be in his HMO network, but explained that she knew the oral surgeon and trusted his work. The dentist also told the patient he could certainly choose another oral surgeon if he preferred. The patient said he did not care which oral surgeon he saw and was only concerned with getting the issue taken care of.

The patient saw the oral surgeon the following day. The oral surgeon said the lesion was suspect and performed a biopsy. The pathology report came back as irregular. It noted the lesion was worrisome and looked like cancer, but the pathology findings were not conclusive. The oral surgeon recommended immediate removal. The patient followed through with the recommendation and had the lesion removed.

The patient continued care with the general dentist for the next two years.

At the last hygiene visit, the dentist diagnosed decay and recommended the patient have crowns placed on two teeth. The next day, the patient left a voice message demanding the dentist pay the \$1,400 patient portion of the fee from the oral surgeon and pay for the crowns because she referred him to an oral surgeon who was out of network. The message also included the patient saying: "I know you have the money because you work like a mule."

Stunned at this turn of events, the general dentist called the advice line to see if she could dismiss this patient.

TDIC recommendation

After a few questions, it was clear the dentist thoroughly documented every aspect of the patient interaction pertaining to the lesion and subsequent care. The analyst agreed this was an odd turn of events considering it was two years since the oral surgeon completed the lesion removal and had seen the patient several times since then. One approach would be to call the patient to discuss the voice message. The dentist was unwilling to do that, stating that she does not trust this person any longer. Given that, the analyst concurred with the dentist's decision to dismiss the patient, as he compromised the trust necessary for a successful doctor/patient relationship.

The analyst advised the dentist to send a withdrawal from care letter to the patient by certified mail, with a return receipt requested, and by regular first-class mail. In the dismissal letter, she should remind the patient of her recommendations for the crowns and the risks of not following through with the treatment. The dentist must also

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give the patient two viable referral sources (usually the local dental society and the patient's insurance company) and 30 days emergency care while he finds another dentist. If the patient continues to demand payment, then the dentist should consider turning over the matter to the claims department for assistance.

Top professional liability concerns

- 1. Patient dismissal
- 2. Record keeping
- 3. Restorative issues
- 4. Upset patient
- 5. Informed consent

Top employment concerns

- 1. Management issues
- 2. Workers' compensation
- 3. Wage and hour
- 4. Pregnancy
- 5. Employee manual

Call No. 4: Crown and bridge

A general dentist calls about a patient who said he was not going to pay for crowns after teeth Nos. 14 and 15 were prepped. The dentist confirmed he has a signed financial agreement on file and that the patient knew the cost of the crowns before the treatment began. Now the dentist is hesitant to continue treating this patient. What can he do?

TDIC recommendation

The analyst recommended the dentist complete the treatment he started. Talk to the patient about why he does not want to pay for the crowns, and ask if an arrangement such as a payment plan would help. As a health care provider, the dentist cannot withhold treatment for lack of payment. The analyst advised the dentist deliver the crowns and to make sure the patient approves of the esthetics prior to cementation. Have the patient sign an esthetic approval form, which is available on TDIC's website at thedentists.com under "Forms."

Once the crowns are delivered, then consider whether to continue as this patient's dentist of record. If the dentist decides to dismiss the patient, send a dismissal letter via certified mail and offer 30 days of emergency care. Withdrawing from care must be done in writing and only after the patient's treatment is complete to avoid claims of abandonment.

Call No. 5: Potential drug-seeking patient

A dentist calls the Advice Line to report suspicions that a new patient is a drug seeker. The dentist said the patient reported a painful tooth during

his initial appointment, rating the pain a 10 on a 1-to-10 scale. The patient said he left his former dentist because the dentist would not prescribe any pain medication for his tooth.

The dentist conducted an exam of the tooth and took a radiograph. The radiograph was inconclusive; however, the tooth tested positive to cold sensitivity. The dentist diagnosed root canal therapy. Given the pain the patient was in and an opening in his schedule, the dentist suggested the patient return in two hours to start a root canal. If he did not see anything conclusive once he opened the tooth, he explained he would likely want to observe the tooth for other potential symptoms.

The patient agreed to return for the procedure, and the dentist called in a prescription for pain medication and antibiotics. The pharmacist called the dentist back to notify him that this patient had filled several pain prescriptions in the past month. While he had not actually received a large amount of pain medication, he had been prescribed pain medication from several local dentists. The dentist called the Advice Line to ask if he had to treat the patient.

TDIC recommendation

The analyst confirmed two issues with this case. The first is that the patient reported being in pain. The second is that the dentist conducted an examination and determined an appointment later the same day was necessary. The dentist believed the patient was in pain during the exam. The information the pharmacist relayed may or may not be relevant. The dentist confirmed he did not inquire about treatment recommendations made by

the patient's former dentist. Had he done that during the appointment, the dentist could have received additional insight about the patient.

Dentists are in control of the type and dose of medication they prescribe to patients. The analyst recommended the dentist continue with the appointment, but have a frank conversation with the patient about the information from the pharmacist. The dentist should communicate that he is willing to provide dental treatment, but cannot prescribe more medication than necessary for pain control.

Call No. 6: Office manager trouble

A dentist calls about an issue with his office manager. He hired her two years ago to manage both of his Southern California practices. In this role, the office manager assumed autonomy and enjoyed several perks, including a credit card she could use to purchase items the practice needed. One day the dentist found a box of important mail in the storage room. When he asked the office manager about it, she said she placed it there to keep it away from the cleaning crew. The dentist was uncomfortable with her answer and decided to look through more office files and paperwork that weekend. He discovered the credit card she used had several questionable charges on it, including expensive lunches, dinners and bottles of alcohol. The dentist also suspected the office manager was embezzling money and altering patient ledgers to hide her misappropriation.

The dentist decided to call the employee to ask her about some of the inconsistencies he found. She became

The analyst recommended the dentist contact his accountant to review all deposits and insurance billings to see if the former office manager did misappropriate funds.



so defensive and refused to provide answers to his direct questions that the dentist fired her over the phone. The office manager sent a text message the next day begging for her job back. The dentist did not respond. The second day after he terminated her, she sent another text threatening to report him to OSHA for not performing spore testing. He called the Advice Line to see if he should do anything else.

TDIC recommendation

Prior to giving advice, the analyst asked the dentist if he had given the former employee her final paycheck. He had not. The dentist said he loaned the employee money, which she still owed, so he considered it even. The analyst advised that California law states the final paycheck is due at the time of termination. Given this information, terminating someone over the phone

is not wise. Payment for hours worked is considered a wage and must be kept separate from repayment of a personal loan. Lending employees money is generally not advisable.

The analyst recommended the dentist provide the final paycheck as soon as possible and include payment for all hours worked, any unused vacation and any paid time off, if applicable. Also, if the dentist offers health coverage, he should provide COBRA information as well. If the former employee turned him into the Department of Labor, he could be subject to fines and penalties for failure to provide the final check at the time of termination.

There is nothing the dentist can do to prevent the former employee from filing an OSHA complaint. That is out of his control. The best response is to provide proof of the spore testing if questioned.

The analyst recommended the dentist contact his accountant to review all deposits and insurance billings to see if the former office manager did misappropriate funds.

Once the dentist gathers proof of embezzlement, he could file criminal charges against the former employee.

Call No. 7: Careless employee

An office manager called to discuss an employee who started in the dental office as an intern. She was a good employee and everyone liked her. She obtained her X-ray permit and applied for a dental assistant position once her internship was complete. The dentist hired her to start the next day, but then no one in the office heard from the

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new employee for two weeks. During the third week, she called and said she had been sick, but now she was feeling better. Given her previous record as an intern, the office manager chose to accept her reason, but asked for a note from the employee's physician before she could return to work. When the employee arrived for work, she was limping and using a cane. Nobody asked her what happened. She did not have a note from her doctor, and there was no follow up with the employee to get the doctor's note.

A month went by, and the dentist and office manager realized the employee was not great at her job. She did not take good radiographs nor did she wash her hands or use gloves. The office manager also saw the employee climbing a ladder and using her cane to balance. Frustrated with the employee's behavior, the office manager called TDIC's Advice Line to determine the best way to handle this situation.

TDIC recommendation

The analyst began with two questions. No. 1: Was the office manager documenting all of the issues in the employee's file? The office manager said she knew the office should have employee files, but has been too busy to create them. No. 2: What happened to the follow-up regarding the clearance from the employee's doctor? The manager said the office is understaffed and following up about the doctor's note just slipped her mind.

The analyst advised that an employee file is just as important as a patient file, but for different reasons. Thorough documentation of employee situations,

especially if they include counseling or reprimands, is invaluable in the event of a lawsuit.

In this situation, the rest of the staff notices this employee's lack of skill, hygiene and good judgment. Not taking action implies acceptance of her work habits and allows the poor behavior to continue. The analyst noted the risk of the rest of the staff developing below-standard behavior. However, if the office manager thinks the employee's behavior and habits can be changed and is worth keeping, immediately start counseling the employee on what changes must be made to meet hygiene and safety standards. Further, the office manager must begin files for all employees and document this situation and all employment-related circumstances.

Call No. 8: Employee pay

A dentist reported an issue with two employees scheduled to arrive at the office at the same time. One employee is a front office staff member who has keys to the office. The other is a back office employee who does not have office keys. The back office employee says she arrives for work on time, but is unable to get into the office because the front office employee with the key is always late. The back office employee wants to be paid for waiting outside. The dentist asks if he has to pay the employee for waiting outside, even if she is not working.

TDIC recommendation

The analyst advised the dentist that the employee who is on time and waiting should be paid according to her original start time. The dentist should not penalize her for waiting on



The analyst advised the dentist that the employee who is on time and waiting should be paid according to her original start time. The dentist should not penalize her for waiting on the employee with the key.

the employee with the key. Assuming the front office staff is hourly, her pay commences when she walks through the door. The analyst emphasized the importance of having an employee manual documenting work hours, and reminding all employees of the time they are expected to be at work.

If the late arrival is a recurring situation, the dentist should document it in the employee's file along with any conversations about the issue.

■ Call TDIC's Risk Management Advice Line at 800.733.0634.

How much is your office content worth?

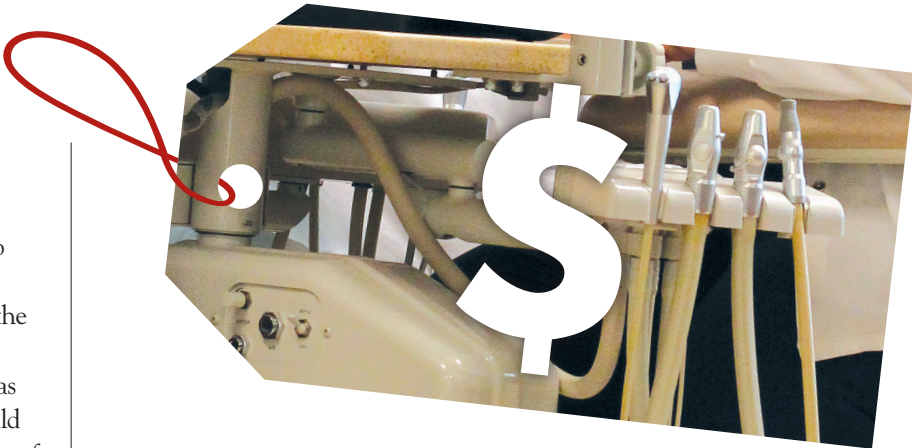
Know property and equipment value to assess insurance needs

When Dr. Jones arrived at her office on a Saturday morning, her focus was on treating the patient who needed emergency dental care. That focus was divided, however, when Dr. Jones discovered a water line in the restroom had leaked throughout the office overnight.

Luckily, the damage was only structural — drywall, paint, flooring and carpeting. There was no equipment damage. Dr. Jones had business property insurance through The Dentists Insurance Company and was able to arrange for the repairs to her office. However, she quickly realized once the repair costs were calculated, if there had been equipment damage, she was considerably underinsured. She would have had to cover those expenses out of her own pocket.

TDIC claims representatives say many dentists get basic business property coverage when they first start out, but do not think to have an insurance review when they buy new equipment or upgrade their offices. Just as important as having insurance is accurately assessing how much insurance you actually need.

Conducting an annual office inventory is a good way to begin the assessment process. Walk through your entire office and list equipment,



furniture, computers, supplies and other miscellaneous property. Take photos to document the location and condition of the items, and keep this documentation off-site along with receipts for all equipment, computers and software purchases.

Sheila Davis, assistant vice president of claims and risk management for TDIC, said it is a good practice for dentists to get together with their dental equipment suppliers and ask about the value of dental and office equipment. Knowing the value of your property and equipment is useful. This includes the

amount you paid for the equipment and what it would cost to replace it in the event of a loss such as water damage, fire or theft.

TDIC agents work with dentists to assess the value of office contents on almost an item-by-item basis. They put together coverage plans and make sure dentists are not under or over insured. TDIC agents can be reached at 800.733.0633. TDIC also offers an online tool at thedentists.com under the insurance link that helps dentists assess their insurance needs.

In California, if you terminate an employee while she has an open workers' compensation claim, the employee could file a 132A claim against you for retaliation.

Question and Answer

Q: I am a California dentist, and I have an employee who has been out on disability with an open workers' compensation claim for the past year and half. Her physician recently released her to return to work. I have not changed her employment status. I do not want her back and have hired a replacement due to the needs of the practice. Do I have to take her back?

A: This situation is tricky. There are risks to terminating and risks to not terminating.

If you do nothing to change the employment status while the employee is out on the workers' compensation claim, then the employee will expect to return to her position. In California, if you terminate an employee while she has an open workers' compensation claim, the employee could file a 132A claim against you for retaliation.

We have had some employers surprised that the employee expects to return to their position. The best course of action would be to have a written policy outlining expectations and what would happen if an employee goes out on an extended leave. There are several



factors that go into what type of advice an employment attorney would give when faced with this type of situation. These include but are not limited to:

- The size of the practice.
- As there are several risks involved, the attorney would likely want to know what do you consider an acceptable risk to keeping or terminating the employee?
- What the current manual states.
- What have you done with other employees who have been out for an extended period of time?

The take away is if no action is taken

when the employee is out for an extended period of time, then the employee will expect to return to work once she is released to do so. If you would rather the employee not return, contact an employment attorney to discuss your options as the advice will vary depending upon the individual situation.

Spring 2014 Risk Management Seminar Schedule

Friday, Feb. 7 9 a.m. — noon	Crowne Plaza Union City Union City, CA
Friday, Feb. 21 1:30 p.m. — 4:30 p.m.	149th Chicago Midwinter Meeting* Chicago Dental Society Chicago, IL <i>*Must register through the Chicago Midwinter Meeting to attend this seminar.</i>
Friday, Mar. 21 9 a.m. — noon	Hilton Santa Clara Santa Clara, CA
Thursday, May 15 9 a.m. — noon 1:30 p.m. — 4:30 p.m.	CDA Presents* Hilton Anaheim Anaheim, CA <i>*Must register through CDA Presents convention to attend this seminar.</i>
Friday, May 16 9 a.m. — noon 1:30 p.m. — 4:30 p.m.	
Saturday, May 17 9 a.m. — noon	

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- Dentist/staff: **\$50**
- Part-time*: **\$25**
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*Must have a TDIC part-time Professional Liability policy to be eligible for this discount.

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- **3.0** ADA CERP credits

Registrants are encouraged to arrive early to allow adequate time for check-in on site. 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 C.E. credits.



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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.

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