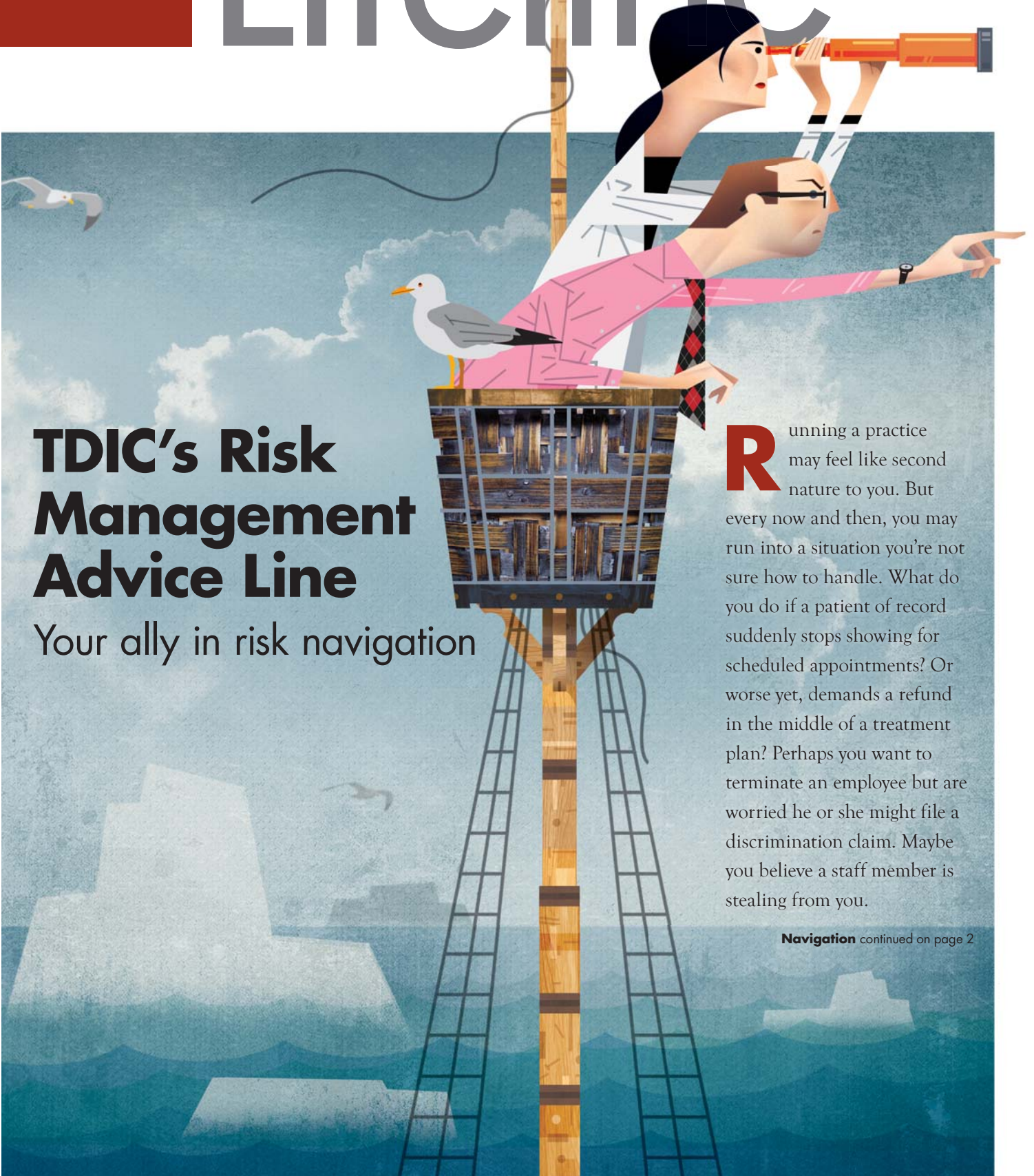
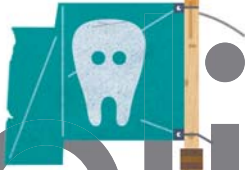




Liability

Lifeline



TDIC's Risk Management Advice Line

Your ally in risk navigation

Running a practice may feel like second nature to you. But every now and then, you may run into a situation you're not sure how to handle. What do you do if a patient of record suddenly stops showing for scheduled appointments? Or worse yet, demands a refund in the middle of a treatment plan? Perhaps you want to terminate an employee but are worried he or she might file a discrimination claim. Maybe you believe a staff member is stealing from you.

Navigation continued on page 2

Navigation from page 1

The good news is, you don't have to navigate difficult situations on your own. TDIC's Risk Management Advice Line is a confidential resource designed to help steer you to the best course of action when dealing with potential claims from patient or employee situations.

More dental professionals are turning to the Advice Line when faced with uncertainty. TDIC Risk Management analysts educate callers on best practices to use to prevent the risk from escalating further and steps to take to stop the risk from happening again.

The Advice Line received more than 17,625 calls between Sept. 1, 2016, and Sept. 30, 2017. Dental professionals called in with a range of concerns, including patient dismissal, managing noncompliant patients, record keeping, patient refund requests and hiring and firing employees. Risk Management analysts assisted 16,143 callers directly, referring the remaining calls to claims or other resources.

One way to prevent a potential claim from escalating is to call the Advice Line as soon as you encounter a complicated or unusual situation. Unfortunately, some dentists try handling matters on their own and may end up paying more – in stress, time and financial impact – in the long run.

The real-world calls detailed below illustrate how TDIC Risk Management analysts helped dental professionals navigate difficult situations.

Call No. 1: Politics are costly.

A general dentist called into the Risk Management Advice Line asking for some guidance about how to dismiss one of his long-standing patients. The dentist

According to a recent TDIC loss review, professional liability claims are most frequently associated with the following treatment types:

- Restorations
- Endodontic treatments
- Extractions
- Implants

explained that he had treated this patient and his wife for more than 20 years, and that he had always enjoyed having them in the practice. It all started when he was providing an examination for the wife. Somehow, a conversation ensued about voting, and the wife asked the dentist who he had voted for in the presidential election. He relayed his position and rationale regarding the candidate he selected, but explained that he was unable to cast his vote due to other competing obligations. The conversation seemed to end on a cordial note and the dentist didn't give it a second thought.

The next day, the office received a phone call from the wife, who explained that she and her husband would no longer be patients of the office, citing the dentist's political views as their concern. Coincidentally, the husband was also scheduled for a postop check for an implant that day. The husband kept his appointment and outwardly did not seem upset or angry. The dentist inquired about the phone call from the patient's wife and the husband stated that he agreed with his wife's decision. He explained they could not support a business with a "careless" political view.

The patient noted that there had never been a question about the treatment they received. He agreed to have the final implant-supported restoration delivered and after that, he and his wife would no longer return to the office. The dentist was stunned by the decision made by the husband and wife. He was shocked that they would end 20 years of a great relationship based upon a single conversation. He was concerned that if he delivered the implant-supported crown he would not be able to check the postplacement status. Should the patient's new dentist restore the implant?

TDIC recommendation

The Risk Management analyst confirmed what the dentist already knew. Discussing politics in the office should be avoided. There are very few topics of discussion that can immediately divide opinions like politics can and heated conversations may ensue. The patients elected to terminate the doctor/patient relationship. The analyst suggested that the dentist propose having the patient's new dentist restore the implant to provide continuity of care with checking on the postplacement status. He could explain to the patient that given their concerns, it would be an opportune time to move forward with the selection of a new dentist. In these situations, the dentist is not required to provide 30 days of emergency care due to the patients ending the relationship on their own accord. However, the patients should be informed about any unfinished treatment and the risks associated with failing to complete treatment.

Call No. 2: When a patient self-medicates.

A general dentist called into the Risk Management Advice Line to discuss a patient who was scheduled for an

appointment later that day. The dentist shared that the patient's history indicated that due to anxiety, she took Xanax prior to her visits with a prescription provided by her physician. The dentist informed the patient of their office policy requiring arranging for a driver when patients take anti-anxiety medications for dental treatment. The patient showed up to her appointment alone. When the office questioned her about a driver, she dismissed their concern and stated that she was fully capable of driving herself. The dentist repeated his concerns and offered to call her a taxi and cover the expense. The patient eventually called a relative who drove her home. The patient was to return for the second round of fillings and the dentist was concerned that she may show up to future appointments in the same condition. What is the best way to manage this case?

TDIC recommendation

The Risk Management analyst pointed out that an added concern would be that the dentist should not provide treatment to patients that they suspect are unable to provide consent due to being impaired. She also recommended that if they are not confident that the patient is capable of providing consent, the dentist should refuse treatment and reschedule the appointment. Arranging for the patient to be taken home avoids potential concerns with injury to the patient or another party if the patient is involved in an accident. Given the ongoing concerns with the patient refusing to appreciate the significance of her actions, and in an effort to minimize the potential impact of her operating a vehicle in an impaired state, the analyst advised the dentist to consider dismissing this patient from the practice. By not complying with the office's recommendations, the patient

The dentist informed the patient of their office policy requiring arranging for a driver when patients take anti-anxiety medications for dental treatment.

is putting herself, other parties and the practice at risk.

Call No. 3: Whose record is it anyway?

An office manager contacted the Risk Management Advice Line to receive guidance regarding a complex patient situation. The practice accepted a new patient who was accompanied by her roommate at her first appointment. The roommate stated that she was accepting financial responsibility for the patient's treatment. The patient requested that the roommate be present at every appointment. Throughout the course of treatment, the patient received a dental cleaning, several fillings and a crown. Everything proceeded without issue and the treatment fees were paid at the time of service with a credit card provided by the roommate.

At her hygiene visit six months later, the dentist advised the patient of an area that he had been monitoring required a two-surface filling now. She scheduled an appointment for the filling and stated that her roommate would be accompanying her at that visit. The patient later called and rescheduled her appointment but requested that the office

bill her roommate's credit card for the filling. The office manager explained that the cardholder must be present to complete the transaction. She also offered that the cardholder could come in at any time and prepay for the services. The patient agreed and said her roommate would stop by next week before the appointment.

The roommate came in a few days later and asked for a printout of the patient's completed treatment along with a copy of her chart. The office manager explained that this would require time to prepare. The roommate said she would return later to pick them up. She also informed the office that she would no longer be making payments on the account and requested a refund for the treatment previously provided because she and the patient were no longer together. The office manager called the patient to discuss this change in the financial arrangement. The patient confirmed that they were no longer together, however stated that the roommate agreed to continue to pay for her dental treatment. The patient instructed the office not to release a copy of her chart to the roommate nor to provide a refund of the monies paid.

The office manager informed the analyst that they were prepared to inform the roommate that they would not provide a refund because she previously consented to bill her credit card for the patient's treatment. The office had a receipt signed by the roommate, but only the patient's signature was on the financial agreement. Is the roommate entitled to receive a copy of the patient's chart?

TDIC recommendation

The Risk Management analyst explained that in situations where

Navigation continued on page 6



Caution + control: Reducing employment liability



Changing employment laws and a litigation-conscious public can intimidate the most confident dentists. Especially when practice employees are prepared to take legal action if they feel an employer breached their rights. With insights from Employment Practice Liability claims experience and calls to our Risk Management Advice Line, TDIC's seminar shows how to best handle employment concerns. Gain the caution and control to navigate past potential violations such as pregnancy discrimination, termination and sexual harassment.*

Get expert advice while earning **C.E. credits** and a **5% Professional Liability premium discount** for two years. Even better, **take the seminar online** at your convenience.

See more ways we reduce your risk at [tdicinsurance.com](https://www.tdicinsurance.com)

- Confidential guidance through our Risk Management Advice Line
- Publications dedicated to exploring timely dentistry liability issues
- Helpful guides, informed consent forms and sample manuals
- A variety of live and eLearning C.E.-eligible seminars

*Due to the sensitive nature of the issues being addressed and our employer-oriented approach, this course is available to dentists and their spouses only.

Protecting dentists. It's all we do.®

800.733.0633 | [tdicinsurance.com](https://www.tdicinsurance.com) | CA Insurance Lic. #0652783

Winter/Spring 2018 Risk Management Seminar Schedule

Caution + control: Reducing employment liability

Thursday, Jan. 18
9:00 a.m. – noon

The Hawaii Dental Convention 2018
Hawaiian Dental Association
Honolulu, HI
Visit hawaiidentalassociation.net for additional information.

Thursday, Feb. 22
1:30 p.m. – 4:30 p.m.

2018 Midwinter Convention & Expo*
Sacramento District Dental Society
Sacramento, CA
*Must register through SDDS at sdds.org.
Seminar fee set and collected by SDDS.

Saturday, Feb. 24
12:30 p.m. – 3:30 p.m.

153rd Midwinter Meeting*
Chicago Dental Society
Chicago, IL
*Must register through CDS at cds.org.
Seminar fee set and collected by CDS.

Friday, March 16
9:00 a.m. – noon

Hilton – Santa Clara
Santa Clara, CA
Call 408-330-0001 for guestroom reservations or visit
www3.hilton.com.

Friday, April 13
9:00 a.m. – noon

Crowne Plaza – Walnut Creek
Walnut Creek, CA
Call 925-825-7700 for guestroom reservation or visit
www.ihg.com/crowneplaza.

Thursday, May 17
9:00 a.m. – 12:00 p.m.
2:00 p.m. – 5:00 p.m.

Friday, May 18
9:00 a.m. – 12:00 p.m.
2:00 p.m. – 5:00 p.m.

Saturday, May 19
9:00 a.m. – 12:00 p.m.

CDA Presents – Hilton, Anaheim*
Anaheim, CA
*Must register through CDA Presents.
Visit www.cdapresents.com to register, reserve
guestrooms or for additional information.

C.E. Details

- 20% – 3.0 per session

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.

Special Needs

If you or someone in your group requires special assistance to fully participate in the seminar, please call TDIC at 800.733.0633 or email us at risk.management@cda.org.

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.

Endorsed by:

Alaska Dental Society
California Dental Association
Hawaii Dental Association
Illinois State Dental Society
Nevada Dental Association
New Jersey Dental Association
Pennsylvania Dental Association

Also selling in Arizona, North Dakota and Minnesota.

Reserve your space today at
tdicinsurance.com/seminars

or visit **tdicinsurance.com/eLearning**
to explore convenient eLearning options.

Fees

- Dentist: **\$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.

*TDIC policyholders who complete a seminar or eLearning option will receive a two-year, 5 percent Professional Liability premium discount effective their next policy renewal. To obtain the two-year, 5 percent Professional Liability premium discount, Alaska, Hawaii, Illinois, Minnesota, New Jersey, North Dakota and Pennsylvania dentists must successfully complete the seminar by December 31, 2017. Dentists who complete the seminar after October 27, 2017 will receive a revised invoice reflecting the discount. Arizona, California and Nevada dentists must successfully complete the seminar by June 30, 2018. Dentists who complete the seminar after April 27, 2018 will receive a revised invoice reflecting the discount. Any eLearning tests received after the deadline will not be eligible for the discount until the following policy renewal. Non-policyholders who complete a seminar or eLearning option and are accepted for TDIC coverage will also be eligible for this discount.

Generally, new patient forms will specify who will be financially responsible for the treatment. Accepting financial responsibility however does not give the individual a right to access the patient's private health information, unless the patient provides written authorization.



Navigation from page 3

the patient receiving the care is not a minor, it is imperative to not only get consent for treatment being rendered but a financial agreement signed by the patient and anyone who has agreed to be financially responsible. Generally, new patient forms will specify who will be financially responsible for the treatment. Accepting financial responsibility however does not give the individual a right to access the patient's private health information, unless the patient provides written authorization. It is important to note that the patient can withdraw this consent at any time.

Furthermore, the patient explicitly instructed the office not to release her chart. Therefore, the analyst advised the office not to provide the roommate with a copy. As to the roommate's request for a refund, if she agreed to be financially responsible, the practice was correct and she unilaterally cannot change this agreement after the fact. She can change the agreement as to future treatment and this change should be documented in writing. The office will also need to obtain a new financial agreement with the patient because the roommate

withdrew her agreement to be financially responsible. Some offices have policies that do not allow another person to be financially responsible if the patient is an adult. In those instances, it is up to the patient to work out the payment arrangements for treatment directly with the person providing the funds.

Call No. 4: Patient requesting refund.

A dentist called the Risk Management Advice Line regarding delivery of a crown for a patient who had been a regular of the practice for the past two years. The dentist had been watching an old amalgam filling on tooth No. 3 that showed some leakage. He had informed the patient six months prior that the tooth would eventually require a crown. The patient elected to wait on treatment, as she was not feeling any pain. The patient returned for a recall appointment six months later and the dentist again discussed the leakage present on the amalgam filling and noted that the decay was now close to the nerve. He explained that the tooth needed to have a crown and, depending on the extent of the decay, a root canal may also be necessary.

Unfortunately, he did not make a notation in the chart regarding his conversation with the patient. The patient eventually agreed to proceed with the crown. Upon removal of the decay, the dentist noted that while the decay approached the nerve, it did not appear to invade the pulpal tissue. A few days later, the patient contacted the office to report hot and cold sensitivity on the tooth with the provisional crown. The dentist asked her to come in so that he could evaluate the area. The patient did not follow through with scheduling an appointment. The office contacted her several times, but received no response.

Two weeks later, the patient contacted the office requesting a refund for the crown. She stated that she incurred additional charges for a root canal after the provisional crown was placed and blamed the dentist. The dentist called the patient and informed her that a root canal is considered to be a possible risk associated with the preparation of a tooth for a crown, especially in her situation where the decay was close to the nerve. The patient alleged that she was never informed of this potential risk; otherwise, she would not have delayed treatment. The dentist told the analyst that he was not confident about his documentation. He recalled discussing the risk of a root canal with the patient, but acknowledged that he failed to document it. He also believed that the patient signed an informed consent form, but it was not in the chart. He recognized that while these actions would not change the treatment that the patient needed, lacking critical documentation would be problematic. How should he handle the patient's request for a refund?

TDIC recommendation

The Risk Management analyst acknowledged the difficulty of this situation and told the dentist that lacking sufficient documentation was a concern. She presented several options to consider. One option was to decline her request for a refund. However, this action could push the patient toward escalating the matter further, such as writing negative reviews online, filing a small claims action or a dental board complaint or retaining an attorney. Another option was to consider offering the patient either a full or partial refund as a goodwill gesture. He understood that he would be obligated to also refund any insurance payments back to the carrier rather than the patient. Given the missing documentation, the

In doubt about how to handle a situation?

Call the confidential Advice Line and get one-on-one guidance. TDIC's dedicated Risk Management analysts can be reached at **800.733.0633**, Monday through Friday, 7:30 a.m. to 5 p.m. PST. Or visit **tdicinsurance.com/RMconsult** to schedule a call at a time that's convenient for you. Calling the Advice Line will not increase your policyholder premium.

dentist agreed that the best approach would be to refund the patient's money in exchange for a release form. The analyst provided the dentist with a release of liability form confirming the agreement and recommended acknowledging the patient's decision for transfer of her care with his office.

Call No. 5: Eye rolls and attitude.

A practice owner hired a new dental assistant who started out with stellar performance. She was doing a great job the first month and exceeded the practice owner's expectations. However, over the past two months she seemed to develop an attitude. The practice owner noticed that the assistant would roll her eyes when asked to do even simple tasks. Another employee asked the assistant if she could clean the last operatory of the day and she responded by throwing her sterilization gloves down on the

counter. The assistant proceeded to clean the room, but demonstrated her anger by slamming items around the room as she cleaned. She was cordial with patients, but her interaction with her co-workers and the practice owner had become increasingly strained. The dentist stated that her office manager planned to discuss these interactions with the assistant but became distracted with other tasks and never sat down with the assistant. The assistant has now informed the practice owner that she is pregnant. Is it too late to terminate her based on her bad attitude?

TDIC recommendation

Prior to offering advice, the Risk Management analyst asked the dentist if any of the performance issues were discussed with the employee before she announced her pregnancy. The dentist admitted that she did not feel the issues warranted a discussion because the employee is an adult and should know how to act. The analyst explained that it is crucial to address performance issues as they arise and provide examples so that the employee clearly understands the behavior in question and why it is unacceptable.

Terminating a pregnant employee will pose a greater risk of possible claims of discrimination given the employee's protected status. The analyst advised the dentist to have a discussion with the employee to address the behavior and document the discussion in her employee file. In the event the conversation demonstrates the employee is unwilling to change her behavior and the dentist decides to proceed with termination, the analyst recommended that they consult with an employment attorney beforehand.



Liability Lifeline

Liability Lifeline is published by:
The Dentists Insurance Company
1201 K Street, 17th Floor
Sacramento, California 95814

©2017, The Dentists Insurance Company

Endorsed by:

Alaska Dental
Society

California Dental
Association

Hawaii Dental
Association

Illinois State
Dental Society

Nevada Dental
Association

New Jersey
Dental Association

Pennsylvania
Dental Association

Also in:

Arizona,
North Dakota
and Minnesota

TDIC reports
information from
sources considered
reliable but cannot
guarantee its
accuracy.

Need one-on-one risk management guidance?

- Get answers to your critical questions through a confidential phone consultation with an experienced TDIC risk management analyst.
- Request a consultation at a time that's convenient for you at **tdicinsurance.com/RMconsult** or by calling **800.733.0633**.

Protecting dentists. It's all we do.®

Risk Management Advice Line | 800.733.0633 | tdicinsurance.com