



Liability

Lifeline

Insurance 101: Understanding Your TDIC Policy

ONE OF THE MOST IMPORTANT DECISIONS you make as a dentist is selecting the right insurance policy to protect your patients, your practice and yourself. But choosing the right coverage can be tricky.

Insurance 101 continued on page 2

IN THIS ISSUE

Patient Selection **6**

Question and
Answer **7**

Most dental professionals, especially new graduates, aren't aware of the types of policies they need or the conditions and exclusions they contain. After all, you should be an expert at crowns and caries, not claims and coverage terms.

The Dentist Insurance Company is here to help policyholders like you be comfortable and confident when it comes to your coverage. The insurance basics that follow are intended to aid you in reading and understanding your policy as well as speaking with experts about what's right for you.

Understanding types of professional insurance

As dental professionals, there are several types of insurance policies to consider. While the needs of each dentist and practice depending on practice size, type and location, the following are the main categories of coverage.

Professional liability: Also known as malpractice insurance, this insurance offers protection for legal obligations arising from claims of wrongful or neglectful practices for licensed dentists. Claims stemming from dental-related injuries are common and these lawsuits can wreak havoc on your business, regardless of the outcome of the case.

General liability: This type of policy is considered essential for the financial well-being of your dental practice as a business. It offers protection from claims of nondental-related injuries such as slip-and-fall injuries, third-party property damage, advertising injury, hired and non-owned auto, and fire and water legal liability. While not required by law, many commercial leases require tenants to carry general liability coverage.

Commercial property: This type of coverage protects your dental office and its contents, whether you own your business, your building or both. Lessor's risk and business owner's policies are two different types of commercial property insurance.

Business owner's: This type of insurance covers the contents of your dental practice, including equipment and tenant improvements, should they be damaged or destroyed by events such as fire, water or theft. Cyber Suite Liability protection can be added to protect you from a wide range of data breach and cyber incidents and related litigation.

Lessor's risk: This covers dental or professional buildings you own, regardless of whether you practice there, including loss of rental income.

Workers' compensation: This policy covers workplace-related injuries to employees, providing medical care and compensation to employees hurt in workplace incidents. It is required by law in most states.

Employment practices liability: This policy covers any civil damages, defense costs or settlements resulting from certain violations of labor laws brought against an employer by an employee, including discrimination, harassment or wrongful termination.

Understanding required and recommended policies

There are three factors to consider when determining which policies to purchase: whether you are a practice owner, a practice owner with employees or an independent contractor.

Practice owners need both general liability and professional liability policies. While not required by law,

general liability insurance is typically mandated in lease agreements to protect the building in the event of a loss. If you own your building as well as your business, you also need commercial property coverage.

In most states, including California, dental practice owners who are employers are required to carry workers' compensation insurance, regardless of the number of staff members. Some states allow exceptions based on the type and number of employees and hours worked. A Workers' Compensation Law – State by State Comparison can be accessed via the National Federation of Independent Business legal resource library at nfib.com/content/legal-compliance.

For independent contractors or those who work as associates in a practice owned by someone else, both general liability and professional liability policies are recommended. Independent contractors can also purchase an optional workers' compensation policy for themselves, but it is not required. Note that the independent contractor classification is largely dependent on federal and state tests. In California, the Employment Development Department (EDD) provides a comprehensive Employment Determination Guide (DE 38) that contains a worksheet to help make a lawful status determination. Download the guide and other forms and publications for California employers at edd.ca.gov.

Understanding how coverage differs among insurers

Claims-made coverage

When it comes to your professional liability insurance, it's important to know under what terms and timelines

your insurer must respond to claims. TDIC offers claims-made and reported coverage, which means that your policy provides coverage for claims when both the alleged incident and the resulting claim happen during the period your policy is in force. Your coverage remains in force so long as you continue to pay premiums for your initial policy and any subsequent renewals. Each succeeding year the policy is continuously renewed, your coverage period is extended.

Extended reporting periods

Tail coverage is an extended reporting period endorsement offered by insurance carriers to provide protection for claims made after your claims-made policy is canceled or expires. This coverage is important because there is often a delay between when dental incidents occur and when the alleged injuries appear and the subsequent claim filed. Although claims can be made after the policy expires, the incident must have occurred within the coverage period. Tail coverage ensures continuity of coverage for dentists who are moving to a new dental group or facility or moving to a new state where insurance requirements may differ.

Consent to settle

A consent-to-settle clause in a professional liability insurance policy requires the carrier to obtain approval from the insured prior to settling a claim. TDIC will never settle without your written consent. Some policyholders weigh the option of pursuing a case through litigation versus the time and expense of being away from their practice. In some instances, the settlement demand is within a range that is considered acceptable to the policyholder and TDIC, given all of the variables in a particular case. Standard release

language also contains wording that states that the settlement is not an admission of liability. Know that settling does not equal an admission of liability; rather, it may be the easiest and most cost-effective solution as it avoids lengthy and expensive litigation.

Please call a helpful TDIC representative if you need assistance understanding any aspect of your policy.

TDIC will never settle without your written consent.

Glossary

A.M. Best rating: The Alfred M. Best Company provides authoritative ratings on insurance carriers. The ratings are the industry's standard measure of insurer financial performance. TDIC has earned consecutive "A" ratings for the past 24 years.

Claim: The filing of a lawsuit or legal proceedings with a demand for money or services due to alleged injuries or damages.

Conditions: The conditions of a policy identify the requirements of both insured and insurer on procedure, rights, provisions, exclusions, cancellations and changes in coverage.

Declarations: Typically, the front page or pages of a policy that outlines the insured's name, address, policy number, limits and other key information.

Deductible: The amount the insurer will deduct from the loss before

payout. The insured is responsible for this amount.

Endorsements: Modifications or additions to an existing policy's agreements, definitions, exclusions or conditions.

Exclusions: Provisions in a policy that preclude coverage under certain conditions or circumstances.

Indemnity: Compensation for loss or injuries that have already occurred or a guarantee to repay another party for loss or damage that might occur in the future.

Losses: Damages incurred. These include liability loss, income loss and property loss.

Policy number: Identifying number assigned to the written contract between insurer and insured.

Premium: The actual cost of an insurance policy.

Quote: The estimated cost of an insurance policy.

Endorsements: A supplemental provision that adds or amends coverage terms.

Subrogation: After payment for a claim, the process of recovering the loss amount from the legally responsible parties.

Not all policies are right for all dentists or all practices and it pays to understand exactly what you're getting when choosing coverage. The intricacies of insurance can be difficult to navigate, but with a basic understanding of your policy it is possible to avert potential risk.

Questions about your coverage? A TDIC sales associate can help make sure you have the right types of coverage and the protection you need. Please call 800-733-0633 for assistance.



PAIN & PERCEPTION:

Reducing nerve injury risks



Unsure how to handle patients who are experiencing prolonged numbness following dental procedures? The Dentists Insurance Company's new Risk Management seminar is designed to build your confidence in these interactions.

TDIC identifies nerve injury claims resulting from extraction, endodontic treatment, implant placement and other invasive procedures as rating among the most severe and frequent. However, a complaint of paresthesia does not by itself indicate negligent treatment. Miscommunication, unexpected outcomes, insufficient documentation and failure to fully inform can all lead to unfavorable situations.

Participate in the Pain & Perception seminar and learn how to:

- Improve continuity of care by instituting communication protocols when multiple dentists are involved in treatment.
- Recognize the importance of complete and appropriate documentation.
- Communicate unexpected treatment outcomes to patients and know when to refer.
- Understand that informed consent is a process, not a form.

Get expert advice while earning **C.E. credits** and a **5% Professional Liability premium discount** for two years.

Protecting dentists. It's all we do.®

800.733.0633 | tdicinsurance.com | CA Insurance Lic. #0652783

2018–2019 Risk Management Seminar Schedule

PAIN & PERCEPTION:

Reducing nerve injury risks

Friday, Dec. 14
9:00 a.m. – 12 noon

Marriott Mission Valley
San Diego, CA

Friday, March 15
9:00 a.m. – 12 noon

Hilton Santa Clara
Santa Clara, CA

Thursday, May 16
9:00 a.m. – 12 noon
and 2:00 p.m. – 5:00 p.m.

CDA Presents, Anaheim
Hilton Anaheim
Anaheim, CA

Friday, May 17
9:00 a.m. – 12 noon
and 2:00 p.m. – 5:00 p.m.

Saturday, May 18
9:00 a.m. – 12 noon

Fees

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

Save your spot today at tdicinsurance.com/seminars
or explore convenient eLearning options.

Unable to attend a live seminar?

We offer a library of risk management seminars via eLearning options, including Online Reader with audio. Take the current seminar from the comfort of your home or office or choose from a variety of past seminars that are also C.E. eligible.

*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, Arizona, California and Nevada dentists must successfully complete the seminar by April 26, 2019. Alaska, Hawaii, Illinois, Minnesota, New Jersey, North Dakota and Pennsylvania dentists must successfully complete the seminar by October 26, 2018. Any eLearning tests received after the deadline will not be eligible for the discount. Non-policyholders who complete a seminar or eLearning option and are accepted for TDIC coverage will also be eligible for this discount.

C.E. Details

- **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 800.733.0633 or email 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.

Patient Selection

TDIC addressed nearly 3,500 professional liability claims between 2012–17, many of which could have been avoided or mitigated had the dentist been more cautious about choosing which patients to accept into care.

“No matter the coverage, prevention is the best strategy to avoid risk,” says Taiba Solaiman, senior TDIC Risk Management analyst. “Being selective in the patients you see goes a long way in avoiding trouble down the road.”

New patients

Dentists are not obligated to accept all patients into their practice (barring discrimination). Those you select to make up your patient base should be those with whom you can form a productive, healthy doctor-patient relationship.

Some signs to look out for when meeting a new patient include the following:

- Patients who arrive for the initial exam complaining about the past several dentists they’ve seen, especially if it’s within a short timeframe. This may indicate the patient is hard to please, so there’s a high likelihood they won’t be satisfied with your treatment either.
- Patients who attempt to dictate treatment or who do not follow treatment recommendations. You are required to follow a standard of care and failing to do so can set you up for a liability claim.
- Patients who refuse to disclose the name of their former dentist(s).

It is standard practice to contact previous dentists for a complete treatment history. Treating patients without knowing their complete treatment history can put you at risk. Investigation into the patient’s treatment history can provide invaluable insights on the patient whom you are considering accepting into your practice.

Emergency patients

For patients who present for emergency treatment, it is recommended to discuss the limitations of the relationship prior to treatment. The patient should understand that you are not establishing a doctor-patient relationship beyond the emergency care. The ethical standard for emergency services for patients who are not patients of record is to make “reasonable arrangements for their emergency care.” It is a good idea to have a list of phone numbers of clinics and dental societies at the ready.

After the completion of emergency care, document the treatment and refer the patient back to his or her original dentist. It is certainly acceptable to accept the patient into your practice as a patient of record, but only do so at your discretion. Once the patient becomes a patient of record, there is a duty to provide care until one of the parties officially terminates the relationship.

Second-opinion patients

Patients often present to dental offices seeking a second opinion on a recommended treatment from another dentist. Some patients simply want to compare prices. Some want to confirm that a treatment is truly needed. Others are trying to build a case against another dentist. If you are unsure about a patient’s motives, it is acceptable to ask questions. For every patient who

presents for a second opinion, raise questions such as:

- What brings you here today?
- Who was your previous dentist?
- How did you find my office?
- When was your last dental visit?
- Why were you unable to complete treatment?

If a patient refuses to answer these questions, consider ending the examination and declining further treatment. Avoiding these questions can be a red flag. Let the patient know that refusing to answer these simple questions prevents you from providing a thorough opinion. Respectfully request that they seek a second opinion elsewhere.

If you choose to proceed with the exam and notice questionable dentistry, refrain from making commentary or making disparaging comments. A patient could have omitted facts or withheld information. Let the patient know that it is difficult to make an accurate assessment based on limited information.

“Failing to use caution with second-opinion patients could put you in the middle of a refund battle or a professional liability claim,” Solaiman warns. “Only state the facts and refrain from making subjective comments.”

Noncompliant patients

Patients have a right to refuse to follow treatment plans. But dentists also have a right to refuse to treat these patients in the future. If you allow patients to remain in your practice despite their failure to follow a recommended treatment plan, you could be at risk for allegations of supervised neglect. Let patients know that you cannot practice dentistry below the standard of care. If they

Question and Answer

TDIC's Risk Management Advice Line helps dental professionals navigate difficult situations when dealing with potential claims from patient or employee situations. The real-world calls detailed below illustrate how analysts have helped callers this year.

Q. A new patient recently presented to my office for a comprehensive examination. The radiographs revealed a radiolucency at the apex of one of his teeth. I suggested that he see an endodontist to evaluate the area. I provided him with a referral to an endodontist who I routinely work with. The patient decided not to go to the endodontist I referred him to and instead found an endodontist who was closer to his home. When he presented to that endodontist's office, they asked him for a referral slip from his general dentist. The patient is asking me to provide him a referral slip. I do not feel comfortable providing a referral slip to a specialist who I am not familiar with. Am I obligated to provide him the referral slip?

A. While a referral is a critical part of patient care, patients are not obligated to follow up with a particular referral. Let the patient know you are not comfortable with this arrangement and why. Explain to him that it is important for general dentists and specialists to have a working relationship in order to achieve favorable treatment outcomes and ensure continuity of care. Let the patient know you cannot comply with his request to provide

You may be held liable for the actions of those to whom you refer.

him a referral slip to a specialist who you are unfamiliar with. As a goodwill gesture, you can offer to provide a refund for your examination fee so that he can get a new examination done

by the general dentist who that office normally works with. Another option is to offer the patient a complete copy of his dental records so that the group practice can make their diagnosis based on the information in his chart. In either case, it might be best to end the doctor-patient relationship due to compromised trust and signs of the patient's unwillingness to comply with your treatment recommendations.

Often, the general dentist is the one initiating the treatment plan and coordinating referrals. TDIC encourages dentists to document their findings, along with the rationale for each referral and the outcome in the patient's chart. Dentists should establish a method for following up on all referrals and regularly engage with their specialists to ensure continuity of care. You may be held liable for the actions of those to whom you refer; therefore, work with the specialists who you are familiar with and whose philosophy of care you are comfortable with.

Patient Selection from page 6

insist you do so, dismiss them from your care following a formal dismissal protocol. Should dismissed patients want to return to your practice, it is not advisable to accept them back. Rather, refer them to your local dental society or their insurance company, which can supply them with a provider directory. "Old habits can be hard to break and it is not worth exposing yourself to the same liability risks that caused dismissal

in the first place," Solaiman said.

Treating friends and relatives

Dentists often want to help friends or relatives by providing affordable dental care. But dentists often feel obligated to take on these patients despite their better judgement. Uncomfortable scenarios can turn into high-risk scenarios, so keep in mind that you have the same responsibilities regarding

documentation, care and treatment of family members as you would with any other patient.

One of the most critical aspects of a growing and thriving practice is patient and case selection. Trust your instincts and have the courage to walk away from a patient or treatment plan. If you find yourself facing an uncomfortable or uncertain situation, please call TDIC's Risk Management Advice Line at 800.733.0633.



Liability Lifeline

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

©2018, 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.

Regulatory Compliance Alert



If you are a licensed dentist with DEA registration and you have not registered with or used CURES 2.0 as required, know that you are now out of compliance with California law.

Mandatory CURES 2.0 consultation is required as of Oct. 2, 2018. Prescribers must now check a patient's prescription history in the system before prescribing a Schedule II–IV substance to a patient for the first time, with some exceptions such as treatment for a surgical procedure not exceeding a nonrefillable five-day supply of the controlled substance.

Register today.

- Application to access CURES 2.0 is easy and fully automated.
- Visit oag.ca.gov/cures to apply now and achieve compliance.

Learn more.

For CURES guidance and opioid pain management resources, visit cda.org/opioid.

Manage your risk with online tools.

- Visit tdicinsurance.com/RM to access a resource library, including a sample employee manual and informed consent forms.

Protecting dentists. It's all we do.®

Risk Management Advice Line | 800.733.0633 | tdicinsurance.com