



## Minimizing Vicarious Liability for Employee Actions

By TDIC Risk Management Staff

In conversations about dental practices, two commonly heard terms are “captain of the ship” and “vicarious liability.” Both terms relate to dentists’ responsibility for their staff.

Under the captain of the ship doctrine, the doctor is accountable for everything that happens while he or she is in charge, including the actions of staff under supervision.

The captain doctrine relates to the legal concept of vicarious liability that holds employers responsible for the acts and oversights of their employees.

Dentists, as employers, are vicariously liable for the negligent behavior of staff, including allied dental professionals and nonclinical team members who are acting within the scope of their employment.

For dentists to minimize this vicarious risk, analysts recommend giving sufficient time and attention to hiring, training, supervising and evaluating employees, and fostering open communication within the practice. “Dental offices are close-knit, and you have to be careful about who you are letting into your practice,” said Yasica Corum, a risk management analyst for The Dentists Insurance Company.

“We receive questions from dentists who are looking to hire an assistant or other staff,” said Corum, who fields calls for TDIC’s Risk Management Advice Line. “We always ask if the dentist has a job description that clearly defines the duties of the position.” A detailed job description is the first step in setting specific performance expectations for staff.

When interviewing potential staff, try not to rush the process. “Have a second interview if you need to, and talk to previous employers,” Corum said. Paid skills assessments allow dentists to observe a potential employee’s work, interactions with patients and communication style. “It’s a lot about personality,” she added. “Tasks can be taught, but kindness, empathy and concern cannot.”

For licensed dental staff, ask to see their active license, and keep a copy of the license on file. “Far too often,” Corum related, “I hear dentists say, ‘she told me her license was active, but it was not.’”

It’s also essential that employees stay within the scope of their license. Review your state dental practice act and do not assign duties that fail to comply with the dental practice act.

Through open communication with staff, dentists can reduce their vicarious risk and increase patient care. TDIC recommends that dentists maintain an open door policy for staff to discuss their concerns. Every office is busy, but it pays to schedule time to talk to staff and make adjustments when needed.

“Be aware of what’s going on in your practice, carefully review charts and make sure you are informed,” Corum said.

One common mistake is allowing staff to speak for the dentist. “In some cases, a staff member may seem like a family member after several years of employment and may be able to anticipate what the dentist will say,” Corum said. No matter what the circumstance, do not allow staff to speak for you regarding patient dental care.

Similarly, be cautious about delegating responsibility to staff, especially when it comes to difficult conversations or managing angry patients. “Dentists must address these situations directly,” Corum advised. “A complaint may start in the front office with billing, but if a patient is unhappy, the dissatisfaction can become treatment related. So dentists must be prepared to personally investigate complaints right away.”

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