



Hiring Done Right: License Verification and Background Checks

By TDIC Risk Management Staff

As a dentist, you've made certain promises. You've promised to serve patients with compassion and integrity. You've promised to keep patients safe when they seek treatment within your walls. But what steps have you taken to ensure you are able to deliver on those promises?

For practice owners, hiring competent, qualified and properly licensed staff is a key responsibility. However, sometimes the requirements as an employer are murky, and tasks associated with hiring can get pushed to the back burner.

The Dentists Insurance Company reports several cases in which practice owners failed to conduct the proper background checks prior to bringing a new employee on board. This not only puts patients in danger, it also lays the groundwork for potential negligent hiring and employment-related claims.

In one case, a dentist discovered his dental assistant had been practicing without a license for several years. Though she had previously been licensed, her license was revoked due to nonpayment of taxes. It was only when the office manager happened to be checking CPR certifications that the deception was exposed.

When confronted, the assistant said the license was at home, but she finally admitted the truth when a representative from the dental board called her directly at the office. Needless to say, the employee was immediately terminated. The doctor acknowledged his obligation to report this issue to the dental board, and informed the board of the situation. However, although self-reported, the case still resulted in the requirement that the dentist retake his state's jurisprudence exam. While not considered a corrective action, it is public record.

This case could have been avoided if the dentist had simply verified the employee's license. The process is quick and easy, and in most states, it can be done online. In fact, practice owners are encouraged to keep copies of employee licenses on file and to check their validity at least once a year.

"The practice owner is responsible for ensuring all licensed staff have current licenses and permits," said Taiba Solaiman, TDIC risk management analyst. "We recommend designating a staff member to secure copies of all current licenses. Many dentists display current licenses in their offices, which eliminates any questions about license

status and gives patients confidence in the professionalism of the dental team. For staff whose job is dependent on a license, the individual should not be scheduled to work until an active license is provided."

TDIC also reports numerous calls about conducting employee background checks. Practice owners who intend to check references are encouraged to include a waiver for the applicant to sign authorizing the investigation of all submitted information. It is also essential to become familiar with what can and cannot be asked during these checks. TDIC has a sample Reference Check Form available for download at www.tdicinsurance.com/risk-management/sample-forms.

In one case, a dentist had hired a financial coordinator. During her 90-day introductory period, the employee informed the dentist that she was pregnant. Also during this time, the dentist delivered the employee's performance review, in which he identified needed areas of improvement. Shortly thereafter, several concerns arose regarding the financial coordinator's handling of insurance benefits. At that point, the dentist called her former employer, who divulged confidential details of the employee's job performance. Based on this information, the dentist fired the employee.

A few months later, the employee filed a claim alleging pregnancy disability discrimination and wrongful termination. The case resulted in the employee's favor, with the dentist at the losing end of a significant settlement.

In this case, the dentist could have avoided the situation had he called the employee's former employer prior to making a hiring decision. In fact, TDIC recommends that practice owners require applicants to provide their previous employers' contact information to research and assess the accuracy of their work history.

"The application, résumé, and notes from the interview should contain much of the same information as the applicant's work history, so it is important to check these resources for consistent representations of education, experience and references," Solaiman said.

Bernadette Bantly, an attorney with Bradley, Curley, Asiano, Barrabee, Abel & Kowalski in Larkspur, Calif., said in addition to verifying licenses, practice owners should call previous employers going back at least 5-10 years. However, it is important to limit

questions to the basics, in order to protect the confidentiality of personnel records. These questions could include the following:

- What was the employee's job title and dates of employment?
- Why did the employee leave your employment?
- Would you rehire the employee?

Bantly said more detailed background checks, which often include criminal records, credit checks and drug testing, must comply with state and federal laws, so it is important to consult an attorney before proceeding.

Should it be discovered that an employee is practicing without a license, there are serious repercussions for both the unlicensed employee and the practice owner. Not only is it a violation of law in most states, it puts patients in harm's way.

"If a patient suffers injury during or after treatment by an unlicensed employee, there is a rebuttable presumption of fault," Bantly said. "That means that for even routine complications, the burden will be on the dentist (and employee) to prove that the unlicensed employee was not the cause of the problem."

Curbing the unlicensed practice of dentistry is a priority for many state dental boards. In addition to civil and criminal penalties, allowing an employee to practice without a license can destroy a dentist's career. In California, for example, the Dental Board conducts periodic crackdowns on unlicensed dental practitioners.

"The board has recently indicated that they are concerned about both unlicensed employees and licensed employees working beyond the scope of their licenses," Bantly said. "We can expect more enforcement in this area. So there are potential adverse administrative consequences as well."

Dentists are subject to vicarious liability, meaning they are responsible for the actions of their employees during the course of employment. Keeping copies of active licenses on file, properly vetting potential staff members and ensuring employees work within their scope of practice are a few simple steps that can help keep patients safe and prevent potential negligent hiring and employment-related claims.

TDIC's Risk Management Advice Line can be reached at 800.733.0634.

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