



Whodunit? Subrogation determines responsibility in property claims

By TDIC Risk Management Staff

From electrical fires to leaky roofs to failed equipment — suffering property damage can be an unfortunate part of dental practice ownership. As any dentist who has experienced a loss can attest, the goal is to minimize downtime and get back to work as soon as possible. After all, patients depend on dentists to keep their oral health in good order, and a disruption in practice operations can prevent them from receiving the care they need.

The process

Let's say you've been away for a long weekend and return to work early Monday morning to find your office flooded with water. Or the back window broken. Or the compressor nonfunctional. First things first: notify your commercial property insurer (and the police, in criminal incidents), who will walk you through the process of filing a claim. On the outside, the process seems relatively straightforward: you file a claim, your case is evaluated, a determination is made, a check is sent for your covered damages and the case is closed. But there's much more that goes on behind the scenes than you may realize.

Determining responsibility

At the heart of any claim is the determination of the cause of the damage and who, exactly, is responsible for causing it. Sometimes this is simple: a staff member fails to turn off a faucet in a sink when watering the office plants and closes up for the night, allowing the sink to overflow and flood the office. But oftentimes, the problem is far less cut-and-dried: a water supply line to the cavitron springs a leak. The loss raises questions about whether the tubing or connections are defective or whether the unit was properly assembled and installed. Or, the failure of the water line may be the result of a broken water pressure regulator managed by the building.

The same questions can be asked of many common property claims. For example, in the case of a fire, was any recent electrical work done? Any new equipment installed?

Or was it caused by a careless employee? And in the case of vehicle claims, investigators must find out who was driving the vehicle, whether the driver was possibly impaired, or whether there was an issue with the overall operation of the vehicle or parts that caused the accident.

What is subrogation?

Technically speaking, subrogation is the legal right of one party to recover monies from a responsible party, usually between two insurance companies. According to attorney Daniel Watkins, in cases of property damage, subrogation involves the insurance company stepping in the shoes of the dentist and seeking recovery from the responsible party for the money paid by their insurer to repair the dental suite after the loss. It should be noted that an insurance provider like The Dentists Insurance Company (TDIC) does not subrogate against the dentist if the dentist is responsible for the loss. Subrogation results in recovery of the dentist's deductible and potentially lower premiums.

Policyholders can play an important role in maximizing recovery in subrogation claims. There are steps they can take to prevent the loss or destruction of critical evidence that may conclusively show who is the responsible party.

Preservation of property

One of the most important steps a practice owner can take to ensure the claim and/or subrogation process goes smoothly is to keep any damaged or defective items until they have been instructed to dispose of them by their claims representative. Occasionally, dentists — desperate to get their practice up and running again — dispose of the failed or damaged equipment or they allow a vendor or contractor to take it off their hands when they replace it.

However, it is important that the practice owner retains the equipment in question so that it can be evaluated for potential subrogation recovery. Failure to retain the equipment can result in a delay in payment or even worse, denial of the claim. TDIC Claims Representative James Dunham says evaluating a loss and inspecting damaged property or failed equipment is a standard procedure in the insurance industry.

“It is critical to determine the cause of the loss to a reasonable degree of certainty from both a coverage and subrogation standpoint,” Dunham said. “From a subrogation standpoint, that information is invaluable in determining the viability and the percentages of recovering our paid claims.”

In addition to retaining failed or damaged equipment after a loss, dentists have certain responsibilities to fulfill. For TDIC policyholders, that means notifying the company immediately. It also means reporting any injuries, obtaining names of witnesses, and refraining from offering to cover losses suffered by a neighboring tenant or other parties. The practice owner should never admit fault, nor speculate to others over why the loss occurred. Other duties for the policyholder include the following:

- Take reasonable steps to prevent potential safety risks or further damage.
- Secure property such as windows, doors and roofs as necessary.
- Notify the police if a crime has been committed.
- Alert banks and credit card companies about any missing debit or credit cards.
- Photograph damaged property prior to repairs.
- Keep accurate records and receipts for what you spend on securing or repairing your property.
- Separate items that may be restored through cleaning or repair.

Your patients depend on you to maintain their oral health, and you depend on the smooth operation of your practice to keep them healthy. Any disruption in operation trickles down to patients, so when faced with a loss, the goal is to get back to work as quickly as possible. The negative impact of property loss can be minimized by taking a few prudent steps and fulfilling your responsibilities as a policyholder.

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