Dental Legal Case Study

Infection Prevention Strategies
Dentists Required to Comply with Regulations as a Condition of Licensure

*Chadwick v. Board of Registration in Dentistry, 461 Mass. 77; 958 N.E.2d 500*

(Mass. Supreme Jud. Ct. 2011)

**Facts:**
Dr. Stephen Chadwick was cited by the Massachusetts Board of Registration in Dentistry for certain alleged deficiencies in his dental practice. These included that: (1) Dr. Chadwick failed to provide training for his employees prior to offering them the hepatitis B vaccination, failed to maintain records of the employees' receiving or declining the vaccination, and failed to complete the declination form mandated by the Occupational Safety and Health Administration (OSHA) for his own vaccination; (2) Dr. Chadwick's monthly office training on infection control did not comport with guidelines of the Centers for Disease Control and Prevention (CDC) or OSHA standards, and that Dr. Chadwick failed to conduct and document annual office training; (3) Dr. Chadwick did not develop or maintain an adequate “exposure control plan” accessible to his employees, contrary to an OSHA standard and CDC recommendations; (4) Dr. Chadwick failed to conduct and record weekly spore testing on instruments sterilized by autoclaving; (5) Dr. Chadwick removed rubber stoppers from glass carpules and sterilized glass carpules in an autoclave before disposing of them in the town trash; and (6) Dr. Chadwick soaked cotton balls and gauze dotted with blood in an unlabeled container of bleach before disposing of them.

The Board suspended Dr. Chadwick's license to practice dentistry in Massachusetts for six months and imposed a five-year probationary period to follow the suspension. Dr. Chadwick sought judicial review of the Board's final order before the Supreme Judicial Court of Massachusetts.
Issue:
May the Board use the standards promulgated by OSHA to discipline a dentist in Massachusetts? May the Board use the guidelines published by the CDC to discipline a dentist in Massachusetts?

Analysis:
It is important to note that Massachusetts has not opted to implement an approved state plan to regulate occupational safety and health. See OSHA, “State Occupational Safety and Health Plans” available at http://www.osha.gov. This means that federal OSHA has jurisdiction over occupational safety and health matters in Massachusetts. Twenty-seven states and territories have implemented state plans, and a decision on this subject might be different in one of those state or territories than it would be in Massachusetts.

The Supreme Judicial Court noted that the Supremacy Clause of the United States Constitution allows federal enforcement to pre-empt state enforcement in states that have not implemented an approved state plan. Accordingly, the court held that the Board was without authority to discipline Dr. Chadwick for anything that falls under OSHA’s jurisdiction. This would include items (1) – (3) and (5) – (6) of the list mentioned above. The court noted that the Board could discipline a dentist if OSHA found that the dentist had violated its standards, but the Board was without power to enforce OSHA standards itself.

The court noted that the CDC guidelines were a different matter because the CDC does not have its own regulatory authority. Since the CDC does not have its own, independent authority to compel organizations to meet its guidelines, the Board was free to enforce its guidelines without federal pre-emption. Accordingly, the court held that the Board had the authority to enforce the CDC guidelines under its power to protect the health and welfare of the public and that there was substantial evidence to uphold the Board’s action with respect to (4) above.

Consequently, the Board could not discipline Dr. Chadwick for alleged violations of the OSHA standards,
but could sanction him for failure to comply with the CDC guidelines.

**Risk Management Considerations:**
While this case is not binding on any other state, it is nonetheless an important case. Had the Board been in a state with an approved OSHA plan, its actions might have been upheld in their entirety. It is important for dentists to be aware that OSHA does visit dental offices and will cite the practitioner for violations.

From a professional liability perspective however, as well as to promote patient and personnel safety, this case serves as an important reminder of the need for every dental practice to have an effective infection prevention program. OSHA standards and CDC guidelines, as well as literature published by professional dental societies, represent the minimum standard of care within which dentists must practice. As a result, a dental practitioner may find it difficult, if not impossible, to successfully defend actions that are not in compliance with published recommendations, especially if a supporting rationale cannot be established.

One resource for establishing an infection prevention program is the CDC's “Guidelines for Infection Control in Dental Health-Care Settings --- 2003.”
This document provides guidance on a variety of operational practices which can negatively impact patient and staff safety if not addressed correctly (the reader will note that several of these practices were contributory to the case under discussion), including:

- Hand Hygiene and use of standard precautions and personal protective equipment
- Personnel issues related to work restrictions, vaccination needs, and management of staff exposure to infectious diseases (e.g., needlesticks)
- Prevention of sharps injury
- Cleaning, disinfection, and sterilization of instruments
- Safe injection practices
- Appropriate biohazardous waste disposal
In recent months, there has been media attention regarding the failure of healthcare providers to adhere to safe injection practices, resulting in the actual or potential transmission of disease. In addition, there have been numerous outbreaks related to unsafe injection practices in recent years. In some instances, hundreds of patients were potentially exposed to a bloodborne pathogen following a breach of injection technique, prompting mass notification to large numbers of individuals advising each to consider seeking testing and evaluation. One particularly disturbing aspect is that many of these occurrences were preventable. While these outbreaks did not occur in dental offices, they remind the healthcare industry that such instances could happen in any setting. Dental practices should review existing methods for handling needles, syringes, vials, and intravenous (IV) equipment (if applicable) to assure that they are being utilized in line with current best practices. In support of injection safety, CDC has released information to dental personnel regarding the following critical practice issues:

- Never administer medications from the same syringe to more than one patient, even if the needle is changed or if you are injecting through IV tubing.
- After a syringe or needle has been used to enter or connect to a patient’s IV, it is contaminated and should not be used on another patient or medication vial.
- Never enter a medication vial, bag, or bottle with a used syringe or needle.
- Never use medications packaged as single-dose or single-use for more than one patient—this includes ampoules, cartridges, and bags or bottles of IV fluids.
- Assign medications packaged as multi-dose vials to a single patient whenever possible.
- Never use bags or bottles of IV solution as a common source of supply for more than one patient.
- Follow proper infection control practices during the preparation and administration of injected medications.
- Never combine the leftover contents of a syringe or single-use vials for later use.

In summary, dentists should assure compliance with relevant safety practices associated with infection prevention. This includes not only the regulations for employee health, as discussed in this case study
(e.g., OSHA’s Bloodborne Pathogens standards) but also current infection prevention standards and recommendations for a variety of clinical and administrative aspects of patient care. From the employee safety perspective, failure to follow applicable laws and regulations could lead to a variety of undesirable consequences, including an unsafe workplace and resultant employee dissatisfaction, potential regulatory violations, and increased workers’ compensation costs. Similarly, from the patient safety perspective, failing to adhere to established standards and recommended best practices could lead to patient harm and resultant civil liability.

The safest course is scrupulous, and documented, adherence to all applicable regulations, as well as relevant standards and guidelines.

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**Note:**  
This series will generally only report on decisions that are precedent setting, as these decisions are seen as important risk management policies and rules to guide dentists in reducing risk in their practice. Some cases, while not precedent setting, may be included for illustrative purposes to prompt discussion on risk management or patient safety in the dental office.
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Risk Management Lessons for Dentist


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