



Dental Professional Liability | Clinical Treatment

Prescriptions and Medications

Please Note

A number of sample risk management forms and letters are available electronically in association with this manual, including written informed consent templates, patient termination letters, records release authorization forms and others. Dentist's Advantage-insured dentists may access these sample documents on the [Dentist's Advantage website](#).

Each PDF sample permits customization: copy and paste the sample text from the PDF template document to a text editing file (MS Word, Apple Pages, etc.); edit text and add your dental practice information where appropriate; save the file to create a blank form for ongoing use. If necessary, customize the text of the form template for specific patient needs. You may wish to include components from various sources if the templates provided do not meet the needs of your practice.

While a number of form templates are available, documents are not available for every dental procedure. We encourage you to create consent forms for those dental procedures you perform frequently. You may wish to use the sample consent forms as an outline and review the manual section on informed consent. Consider consulting your attorney to ensure that your forms comply with state informed consent statutes.

Risk management content and resources are provided for illustrative purposes only. The information is intended to provide only a general overview of the matters discussed and is not intended to establish any standards of care.

The information, examples and suggestions presented in this material have been developed from sources believed to be reliable, but they should not be construed as legal or other professional advice regarding any particular situation.

CNA accepts no responsibility for the accuracy or completeness of this material and recommends the consultation with competent legal counsel and/or other professional advisors before applying this material in any particular factual situations.

Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. All products and services may not be available in all states and may be subject to change without notice. All references to dental claim data refer to CNA claim data.

Any references to non-CNA Web sites are provided solely for convenience, and CNA disclaims any responsibility with respect to such Web sites.

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Prescriptions and Medications

The most significant and common risk associated with prescriptions and medications involves an injury to a patient arising from an error or omission on the part of the dentist or dental staff.

Patients seeking controlled substances may threaten you with legal action if you refuse to prescribe for them. However, our claim experience indicates that patients rarely follow through with such threats. Those who persist carry the burden of proving the four elements of professional negligence discussed in this workbook, which is substantial. Moreover, engaging with the legal system may expose the patient's drug-seeking behavior – a risk that the patient may not wish to take.

The following allegations have been reported for professional liability claims involving medications.

- Failure to prescribe
- Failure to obtain and document the patient's current medications and steps taken to ensure there is no contraindication or known adverse interaction between the patient's regular drugs and the drug(s) you are prescribing. Contact the patient's primary care practitioner and/or a pharmacist if questions of possible contraindication and/or interaction persist.
- Prescribing the wrong medication
 - Drug produced an adverse response, such as allergy, side effect, drug-to-drug interaction with another medication, or death.
 - Drug was contraindicated for the patient's condition.
 - Drug lacked efficacy
- Creating or fostering an addiction
- Failure to inform of side effects, such as driving impairment
- Failure to document drug prescriptions or dispensing of drugs

An additional risk of prescriptions and medications is the intentional acquisition of drugs through theft or fraud. While these illegal actions rarely result in a professional liability claim, they must be addressed by the practice. For situations involving dental practitioners, be aware that your state may have adopted mandatory reporting requirements in state law or regulations. Understand requirements of your state.

The theft of property, including drug inventory, is clearly a crime, as are the theft of prescription pads and distribution of false/forged prescriptions. E-prescribing and other controls are significantly reducing the risks associated with paper prescriptions. Nevertheless, there is still a possibility of diversion. Whether perpetrated by a patient, employee, or a dental practitioner, an individual commits a crime by fraudulently using a DEA or dental license number to obtain prescription medication.

It would be unlikely that a professional liability action would be instituted against you, your dental license, or your DEA permit as a result of a patient's fraudulent actions. However, actions against you or your license may occur for failing to report some types of drug diversion or substance use that involve another licensed practitioner.

Managing the Risks of Prescriptions and Other Medications

Recognizing risk factors

Many factors contribute to the risk of injury due to medications. These factors include:

- Patient medical histories with significant findings
- Similar or confusing drug names that lead to the patient being prescribed an incorrect drug
- Poor handwriting on paper prescriptions or patient records
- Errors in prescribing (dosage, frequency of administration, etc.)
- Errors related to the use or interpretation of acronyms, Latin or other prescription abbreviations
- Lack of knowledge about a drug you prescribe
- Inadequate documentation in the patient healthcare information record
- Lack of diligence in investigating information presented by individuals suspected of substance use

Controlling the risks

Clinical

- Comprehensively review the patient's medical history, including current medications and dietary supplements prior to prescribing.
- Prescribe only when you have a sound clinical reason for doing so based upon your assessment of the patient and his or her condition.
- Prescribe only drugs with a therapeutic purpose in dentistry.
- Prescribe only the quantity needed, as appropriate, for the treatment. Follow appropriate prescribing guidelines. For example, many states have adopted limitations and/or other specific requirements related to controlled substance prescriptions. Additional guidance or requirements for minor patients may also exist for individual states.
- Review, understand and comply with state and federal controlled substance prescribing, storage and dispensing requirements.
- Register with, and consult, your state prescription monitoring system. Some states mandate registration and checking the system prior to prescribing a controlled substance.
- Exercise caution in prescribing drugs with addictive potential.
- Review pain management guidelines and requirements in your state often. In the midst of the national opioid crisis, clinical information and regulations are evolving at a rapid pace. As of this writing, the combination of ibuprofen and acetaminophen are first-line treatment for management of acute pain in dental practice. See the bibliography for selected resources on this topic.

Communication

- Check with a pharmacist or current pharmacologic references if you have questions regarding contraindications and potential drug interactions.
- Advise patients regarding the reasons for prescribing medication, how long to take it, when to take it, and any precautions that should be taken (e.g., avoid alcohol, refrain from driving). Although pharmacists commonly provide drug information to patients when prescriptions are filled, practitioners are responsible for ensuring that patients receive and understand important information about the medications they administer or prescribe. The prescriber has the *duty to inform*.
- Require patients to have another individual drive them to and from the appointment whenever you prescribe a drug that could impair the ability to drive. Document their acknowledgment in the patient healthcare information record and also ask for a signature on the note.

- Consult prescribing aids, package inserts and drug reference information often and as needed. Both dentists and patients have free access to a plethora of high quality drug and pharmacology resources via the Internet today.
- Communicate often with one or more local pharmacists. Invite them or your local DEA agent to study club meetings to brief you on concerns and local drug diversion challenges.

Documentation

- Document your clinical rationale for prescribing, including patient complaints, examination results, and diagnoses.
- Document all prescriptions in the patient healthcare information record. Your verbal recommendation that a patient take an over-the-counter medication also should be documented, even if you simply advise a widely used drug such as acetaminophen, aspirin, or ibuprofen.
- The chart documentation should indicate:
 - the name of the drug (such as Penicillin V)
 - drug strength (500mg)
 - number of doses (28 tablets)
 - dosage level and time interval (2 tabs right away, then 1 tab every six (6) hours until gone), and
 - number of refills, if any
- Maintain appropriate licensing for the drugs you prescribe.
- Maintain appropriate office drug logs as required by your state dental practice act, or the state/federal controlled substances act. You also may be subject to pharmacy practice act requirements if you dispense medication from your office for the patient to take home. Administration of medication (where the patient is given medication in your office) would not typically be subject to pharmacy law. However, storage of medication in your office is subject to pharmacy and controlled substances act requirements. Furthermore, dispensing medication to a patient for later use may be subject to pharmacy practice act requirements.

Substance use

- Individuals with a substance use disorder are typically knowledgeable, manipulative, and persistent.
- Understand state and federal laws that apply to controlled substances (and all medications), including e-prescribing requirements. Check with your state licensing board or other reputable sources for current e-prescribing laws and requirements.
- Do not agree to a patient demand that would violate law and expose you to criminal allegations or license sanctions.
- Verify the information presented by suspected substance users.
 - Verify their identity, address, and telephone number. Photocopy their picture identification or driver's license.
 - Assess the validity of their reported symptoms.
 - Contact their physician and/or usual pharmacy for their prescription history. As a co-treating clinician, you are permitted to share and receive protected health information (PHI) with other co-treaters.
 - Be aware of, understand and use your state's prescription drug monitoring program/system. This may be required by law in your state.
- Do not prescribe if the patient is reluctant or unwilling to provide reference information.
- Do not prescribe if the patient is reluctant or unwilling to undergo diagnostic tests or treatment.
- Exercise caution with patients who report that only a specific controlled drug works for their pain, or that they are allergic to non-narcotic analgesics.
- Write prescriptions for appropriate/limited quantities and follow clinical guidelines and/or state law related to dose, quantity or other requirements.
- Use common sense and caution when prescribing addictive drugs to a patient who states that the original prescription or the medication was stolen, misplaced or destroyed.

Drug theft

- Keep all drug inventories in a locked cabinet at all times. Give access only to a limited number of employees. Confirm compliance with state or federal law for controlled substance storage.
- Take regular inventory of your drug cabinet and reconcile current stock with both purchases and distribution to patients, as documented in your drug log.
- If you discover a theft, contact your local police department and/or the local DEA office and file a complaint. Obtain a copy of the police report. Report loss or theft of controlled substances on the [DEA Diversion website](#).

Fraudulent misuse of license

- With the transition to e-prescribing of controlled substances and other medications in the United States, the use of paper prescription pads is rapidly decreasing. If they may be used legally in your state, do not have your DEA license number pre-printed on prescription pads.
- Keep extra prescription pads under lock and key.
- Whether electronic or paper, indicate on the prescription if refills are authorized. Paper prescriptions with no authorized refills should state "zero refills" on the script to help prevent prescription fraud. Likewise, write the number of doses numerically and in text: For example, "dispense 10 (ten) tablets."

In the event of a fraudulent prescription under your name or license, it is recommended that you take the following steps. Regardless of whether the individual is charged or punished, taking these actions will assist you in demonstrating and documenting that you did not assist in the commission of the crime or violate any statutes or administrative codes with respect to prescribing drugs.

- Be sure that a copy of all legally prescribed medications is maintained in patient healthcare information records. If electronic systems are used, ensure that the prescription function is secure and that changes or additions can be made only after secure login by those with designated clearance.
- Comprehensively document the individual's actions in order to establish a defensible position in anticipation of any potential investigation.
- Contact your local police department and file a complaint outlining the fraud and misrepresentation. Obtain a copy of the police report.
- Ask the pharmacy involved to send you a written copy of any investigative findings that may pertain to you.
- Formally terminate your dentist-patient relationship (or employer-employee relationship, if perpetrated by an employee) by sending a written notification of the termination.

For more information call Dentist's Advantage
at 888-778-3981, or navigate to the
Dentist's Advantage website Risk Management section.



In addition to this publication, CNA and Dentist's Advantage have produced additional risk control resources on topics relevant to dental professionals, including: newsletters; articles; forms; letters; and claim scenarios.

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