



Dental Professional Liability | Clinical Treatment

Scope of Practice

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.

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Scope of Practice

Before deciding whether or not to perform a clinical procedure, a dentist must ensure that the procedure falls within the scope of practice of his or her dental license. The scope of dental practice is defined by the dental practice act and related positions or opinions of the state dental licensing board. If a dentist provides services to a patient outside the defined scope of practice, the dentist has violated the state dental practice act. To obtain a copy of your state dental practice act, contact your state board of dentistry. Many states post their practice acts online, making them easily accessible.

Violations of the dental practice act may result in disciplinary administrative penalties (loss of license, monetary fines), criminal penalties (assault or battery), and/or other civil sanctions (malpractice related to negligent or intentional acts or omissions).

In recent years, there has been an increasing focus on providing non-dental services as a means of easing patient fears, making dental visits more pleasant. The provision of these services by dental practices is generally categorized as "spa dentistry" and is characterized by amenities such as scented pillows, virtual reality glasses, hot paraffin hand treatments, manicures, aromatherapy, audio/video selections, and various teas, juices, and other beverages.

These comforts present a low risk exposure for the dentist, the most serious risks being a scald or burn from the hot wax or a respiratory reaction to certain scents. Some dentists have taken the spa concept further by expanding their practice to include services provided by other licensed personnel, such as massage therapists, estheticians, and nurses. The presence of other licensees, whether working as employees or independent contractors, increases the vicarious liability and apparent agency risks for the dentist. Consequently, dentists should thoroughly investigate the risks and verify insurance coverage for both the licensee and the practice before utilizing other non-dental licensed personnel. In some states, there may be specific regulatory requirements applying to these activities that should be reviewed for mandatory compliance as well: check and confirm with licensing boards.

Another evolving professional liability exposure regarding a dentist's scope of practice is the facial injection of botulinum toxin and dermal fillers, such as collagen and hyaluronic acid, for purely cosmetic purposes. Are such uses within the scope of a dentist's license? Each state board of dentistry issues its own determination on this issue. Some have affirmatively declared that botulinum toxin injections are within the scope of dental practice. Others have categorically determined that they are not. Some dental boards have limited cosmetic use to oral-maxillofacial surgeons, or have stated that any use of these products must have a direct relationship with a dental condition. Other licensing boards have issued vague, non-committal opinions or have not yet addressed the issue. Therefore, before engaging in the administration of these preparations, first check with your state dental board for a determination and/or guidance. Further, verify whether your professional liability insurance provides coverage for injuries arising from cosmetic procedures.

In the event of a professional liability claim against you arising from the cosmetic use of botulinum or hyaluronic acid, the plaintiff's expert witness will probably be a board certified plastic surgeon or dermatologist. His or her medical knowledge and expertise in facial cosmetic treatments and procedures will be presented to a jury in a manner that disparages your knowledge and experience. Therefore, the claim may be difficult to defend.

Managing the Risks Associated with Scope of Practice Claims

Recognizing risk factors

A dentist who performs the following is practicing outside the scope of dental practice:

- Procedures that are not authorized by your state dental practice act
- Procedures or prescribed medications without any therapeutic purpose in dentistry
- Procedures to which a reasonable patient would object

Controlling the risks

Certain treatment performed by dentists may fall outside the scope of dental practice as defined by a state dental practice act. Be cognizant of the practice parameters of the dental practice act in your state.

- Prescribe only those medications with a therapeutic purpose in dentistry and for which you hold a valid license.
 - Dentists are licensed only to prescribe medications related to the practice of dentistry. A dentist who is writing prescriptions for drugs unrelated to the practice of dentistry is practicing outside the scope of the dental license – whether the prescription is for a patient or a family member, or whether the dentist believes he or she is qualified to make the diagnosis and prescription. If a condition is not dental-related, prescribing drugs for such a condition is not within the practice of dentistry.
 - Do not practice medicine unless you are also licensed as a physician.
 - Amalgam removal – Dentists have been accused of practicing medicine when they remove dental amalgam as a purported method of curing medical conditions such as multiple sclerosis. The question in these administrative actions is not whether the treatment will cure the condition, but whether a dentist is licensed under the dental practice act to treat an underlying medical condition.
 - Sleep apnea diagnosis and treatment – The fabrication of a sleep apnea appliance based on the prescription of a qualified physician would generally be considered an acceptable activity for dentists. However, many states view the *diagnosing* of sleep apnea and prescription of treatment for this condition as transcending the scope of dental practice. There is no accredited dental specialty in this area. Nevertheless, some dental organizations focus on supporting the dentist's role in the treatment of sleep disordered breathing. One organization, the [American Academy of Dental Sleep Medicine \(AADSM\)](#), has developed clinical guidelines that apply to this growing practice. Dentists who wish to pursue patient care in this field should review, understand and comply with appropriate state statutes, rules or regulations. Also refer to information, treatment parameters or applicable guidelines, so that care provided is consistent with current professional standards. Clinical practice guidelines issued by AADSM support the use of custom titratable oral appliances over other types of appliances. Continuous positive airway pressure device therapy is superior to oral appliances and is remains the treatment "gold standard."
- However, oral appliances can be offered to patients with obstructive sleep apnea (OSA) who strongly prefer alternate therapies due to side effects or the inability to use CPAP. Oral appliances may be effective and they present little evidence of harm. See the bibliography for related resources (Evidence-Based Practice/Clinical Guideline section).
- Limit your examinations to structures of the head and neck. (An exception is the oral surgeon with hospital admitting privileges performing a history and physical on a surgical patient.)
 - Examinations by dentists should not involve axillary lymph node palpation, genito-urinary examinations, or the patient partially disrobing. Including such activity in a dental examination is objectionable to reasonable patients, typically unnecessary for dental examinations, and invites allegations of sexual assault.
 - Do not perform or facilitate piercings and tattoos.
 - A dentist who agrees to anesthetize the lips or tongue of a patient to receive permanent lipstick tattooing or a lip or tongue piercing creates additional potential liabilities. Although a dentist is both trained and qualified to administer local anesthesia, most states do not consider the practice of dentistry to include the tattooing of lips or piercing of orofacial structures. Therefore, a dentist who performs this service would be deemed to violate the dental practice act. Moreover, if the patient is dissatisfied with the piercing or lip tattoo, the dentist probably would be named in any subsequent malpractice action.
 - Do not permit auxiliaries to perform tasks not authorized by your state dental practice act.
 - Permitting – or more seriously, directing – an auxiliary to perform an unauthorized task can lead to disciplinary action by your state licensing agency. The action may be in the form of a fine, probation, suspension, or even revocation of your dental license. A plaintiff also may assert that permitting or directing unauthorized tasks constitutes evidence of negligence in a malpractice action.
- The distinction between dentistry and non-dental healthcare is not always clear. The dental practice act definitions provide some degree of latitude. However, dentists must understand the state-specific limitations of their license, recognize and evaluate the risk exposures and consult available resources before making decisions to offer new services. Resources available to assist in this decision-making process are the state department of professional regulations staff, representatives of the local, state and national dental associations, colleagues, and legal professionals.

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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Republished 12/25.