



## Supervising New Dental Providers

The COVID-19 pandemic has taken a toll on dental education with a concerning result: Dentists and dental hygienists are graduating with significantly fewer hours of hands-on clinical experience than current practitioners had upon their own graduation.

Although lectures and demonstrations were delivered online via platforms such as Zoom and Microsoft Teams, the opportunities to practice hands-on skills on real patients (not mannequins in a simulation environment) have been limited. In addition, Chen and colleagues reported that dental students said their learning had “significantly worsened” (26%) or “somewhat worsened” (44%) since moving to virtual learning.

Dentists need to consider these learning challenges and lack of clinical experience when mentoring and supervising new clinicians. Failing to supervise properly can lead to vicarious liability and subsequent legal action against the dentist should the new dentists or dental hygienists make an error that results in patient harm.

### Vicarious liability

Vicarious liability refers to holding someone responsible for harm caused by another person. Every licensed dentist or hygienist is primarily responsible for the care they provide to patients, whether an employee, independent contractor or a practice owner. However, as employers, dentists can be named in a lawsuit through vicarious liability as a result of action taken by their employees. For example, under certain circumstances, a dentist who employs a recently graduated dentist who fails to detect a dental abscess may be held liable for the damage the patient incurs.

Factors contributing to vicarious liability include an employer who knowingly hired an unqualified employee; knew an employee was unfit for a position but allowed them to keep working; did not provide sufficient supervision; did not have adequate policies and procedures; and failed to provide proper training.

An event that could result in vicarious liability must have taken place within the course and scope of employment. For example, a dentist would not be liable if a new dentist, on the way home from work, hurt another person in an automobile accident.

Fortunately, dentists can take steps to reduce their risk of vicarious liability, including understanding their role as a supervisor, supporting employees, and documenting properly.

### The supervisor's role

Experienced dentists who are supervising new-to-practice providers should understand their role. That begins with ensuring that dental providers know the expectation of the job. New dental providers should be provided an employment contract, which includes a detailed job description and establishes the rights, requirements, and policies that both the employer and employee are expected to uphold. Dentists should also provide orientation to policies, procedures, processes, and equipment. The dentist should take time to discuss the materials with the provider and answer any questions.

The dentist should verify the license of new providers (most states have websites where this can be done) and ensure that they have

professional liability insurance. The supervising dentist should have professional liability insurance coverage as well.

To gain perspective about the new provider's skills, dentists should talk with them about their clinical experience in school. Information such as length of time spent with patients and types of patients, settings, and procedures encountered will help the supervising dentist anticipate areas of need. For example, if most of the dentist's practice consists of geriatric patients and the new dental hygienist's school experience focused more on pediatric and young adult patients, additional continuing education and closer supervision may be needed.

Patient assignments should be based on the provider's abilities, with direct supervision as needed. When the dentist directly supervises the new provider, it is helpful to have a prearranged signal that the dentist can give so the new dentist or dental hygienist knows to immediately stop what they are doing to avoid patient harm. To avoid alarming the patient, the signal could be a hand motion or a verbal statement such as, “Yes, I see that.”

Dentists also should ensure that experienced staff feel comfortable speaking up if they see that a new provider may be on the cusp of making an error. Often staff can intervene quietly and quickly to avert potential harm.

### Providing support

New dental providers will start their careers wanting to succeed but may lack some of the necessary skills or confidence to do so. Collaborate with them to determine an action plan. In some cases, a continuing education course, or course series, may be necessary. Promote or require study club participation, or pursuit of a development goal, such as a fellowship, to build clinical skills and increase professional mentoring opportunities. Dentists can also provide online resources, including those available from the Academy of General Dentistry (AGD) and American Dental Association (ADA). For example, AGD members have access to a catalog of live and on-demand [continuing education courses](#). The American Dental Hygienists Association (ADHA) also offers CE courses for both member and non-member dental hygienists.

Dentists should work with new providers on setting SMART (Specific, Measureable, Achievable, Realistic, Time-based) goals to promote progress. For example, the dentist will “complete five composite fillings under supervision by [insert date].” Dentists need to give effective feedback as new providers strive to meet those goals. Feedback, both positive and negative, should be specific and given often and promptly. Set up daily meetings at first to discuss progress and answer questions. Regular feedback does more than protect dentists from liability; it promotes employee engagement. According to Clifton and Harter, employees who receive daily feedback from their manager are three times more likely to be engaged than those who receive feedback once a year or less.

After delivering negative feedback, allow the provider an opportunity to respond so a complete picture is obtained. The

dentist and provider should then focus on solutions that include a specific time frame for implementation and follow-up evaluation (see *Having difficult conversations*). If the undesirable behavior persists, develop a performance improvement plan that the new provider signs and is kept in the employee's record.

Although crossing professional boundaries is more frequently discussed in terms of the dentist-patient relationship, it also applies to the relationship between dentists and those they supervise. Dentists should keep interactions professional. Avoid personal remarks or humor that could be misunderstood and abstain from unnecessary touching, which could make the provider uncomfortable.

Above all, dentists should be patient. Starting one's professional career during and immediately after a pandemic is difficult. A study by García and colleagues that surveyed dental and dental hygiene students found that as a result of the COVID-19 pandemic, students at all levels of training were concerned about limited employment opportunities, long-term stability of the dental profession, and interruptions to clinical education. At the same time that students and, subsequently, new providers are experiencing stress, practicing dentists are also facing stress due to changes required by the pandemic. It will take time for new providers to adapt to a world vastly different to what they were exposed to in school.

### Documentation

As is often the case, dentists need to document thoroughly to protect themselves from vicarious liability related to new dentists and dental hygienists. Documentation should include verification of the new provider's qualifications, signed job description, record of procedures performed, feedback provided, and any additional education completed. Date and time each entry. Dentists also should audit the new provider's documentation in patient dental records for accuracy and completeness.

### A difficult decision

In some cases, the new dental provider may simply not be up to the task. The dental provider's employment contract should address potential employment problems and employee termination. However, before pursuing termination, dentists should ensure they have documented in detail what led up to the termination, including written warnings and performance improvement plans: Employees should not be surprised by the termination. A human resources professional or attorney should be consulted before the employee is terminated.

Share the news with the provider in private; a human resources representative should be present as a

witness. If that is not possible, a trusted employee could be enlisted. Having a witness ensures that the provider cannot later misrepresent the encounter. Keep the meeting short and be direct, for example, "I've decided that I need to let you go." Do not over-explain and engage in prolonged back and forth. Be prepared with details such as when the former employee will receive their final paycheck. Dentists also should change computer passwords when an employee leaves and consider having door locks changed, depending on the situation.

### Supporting a new generation

New dentists and dental hygienists who are starting their careers with less experience than those already in practice deserve the support of experienced dentists. However, to reduce the risk of liability, dentists should fulfill their supervision responsibilities, including providing orientation and feedback, and document their efforts.

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### Having difficult conversations

Giving feedback is pleasurable when it is positive but can be challenging when it is not. It may be helpful to use the classic DESC method, developed by Sharon and Gordon Bower, to frame the conversation.

- **Describe** the specific behavior or situation. Be objective and provide data. For instance, "You didn't check the security of the burr after you inserted it and before you started to use the drill," is better than "You didn't prepare the drill properly."
- **Express** how the situation makes you feel as well as your concerns. Use "I" statements when possible. "You" can put people on the defensive. For example, "I do not think you are suctioning off enough saliva when you are working. Failing to suction off excess saliva makes it difficult to see the area, and I am concerned this increases the risk of making a mistake and harming the patient."
- **Suggest** other alternatives and seek agreement. Consider what you want to occur and the other person's perspective. Keep in mind that patient safety comes first.
- **Consequences.** Explain what the consequences will be if the behavior persists. Examples of consequences include additional training, returning to an earlier stage of training, and job loss.

Source: Agency for Healthcare Research and Quality. TeamSTEPS 2.0 Essential Course. Instructor Guide. [www.ahrq.gov/teamsteps/instructor/essentials/index.html](http://www.ahrq.gov/teamsteps/instructor/essentials/index.html)

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#### RESOURCES

- Agency for Healthcare Research and Quality. TeamSTEPS 2.0 Essential Course. Instructor Guide. [www.ahrq.gov/teamsteps/instructor/essentials/index.html](http://www.ahrq.gov/teamsteps/instructor/essentials/index.html).
- American Dental Association. Dentist employment agreements: a guide to key legal provisions. 2020. [www.ada.org/~media/CPS/Files/COVID/Dentist\\_Employment\\_Agreements.pdf](http://www.ada.org/~media/CPS/Files/COVID/Dentist_Employment_Agreements.pdf).
- Chen E, Kaczmarek K, Ohyama H. Student perceptions of distance learning strategies during COVID-19. *J Dent Educ.* 2020;10.1002/jdd.12339.
- Clifton J, Harter J. *It's the Manager: Gallup Finds the Quality of Managers and Team Leaders is the Single Biggest Factor in Your Organization's Long-term Success.* Washington, DC: Gallup Press; 2019.
- García DT, Akinkugbe AA, Mosavel M, Smith CS, Brickhouse TH. COVID-19 and dental and dental hygiene students' career plans. *JDR Clin Trans Res.* 2021;2380084420984772.
- Peterson J. Firing with compassion. *Harvard Business Review.* 2020. <https://hbr.org/2020/03/firing-with-compassion>.
- Vicarious liability. *Legal Dictionary.* 2016. <https://legaldictionary.net/vicarious-liability>.
- Wishnia J. What is vicarious liability in employment law. *LegalMatch.* 2019. [www.legalmatch.com/law-library/article/employment-vicarious-liability.html](http://www.legalmatch.com/law-library/article/employment-vicarious-liability.html)

# Dental Expressions® – From the CNA Claim Files

## Implant Surgery Leads to Infection and Sepsis

Localized infection may be associated with dental conditions, such as severe dental caries and periodontal disease. Infection is also a possible post-operative adverse event following tooth extraction, dental implant placement and other surgical procedures.

Although a dental patient's immune system may effectively isolate and eliminate infection without medical intervention, this is not always the case. [The Dental Professional Liability Claim Report: 2nd edition](#) found that the average total incurred<sup>1</sup> for professional liability claims associated with infection have increased 70.9 percent to more than \$213,000, which is even higher than the average incurred for claims associated with nerve injuries (\$210,568).

### CLAIM CASE STUDY

#### Practitioners:

Two general dentists

#### Claimant:

Male, aged 70, history of hypertension, uncontrolled diabetes, and right carotid endarterectomy

#### Risk management topics:

Medical history; patient assessment; post-operative management; systemic infection

#### Facts:

The claimant had been a patient of the dental office for more than 10 years, primarily receiving treatment from the senior dentist and practice owner. The patient sought care related to his longstanding dissatisfaction with the function and stability of his maxillary complete denture, which opposed mandibular natural dentition.

The associate dentist at the office examined the patient. After discussing options that might address the patient's needs with the senior dentist, they agreed that a maxillary implant supported fixed prosthesis may be the preferred treatment approach. The associate scheduled the patient for a more complete evaluation, including cone beam CT imaging, to be followed by development of a treatment plan to meet the patient's needs and expectations.

The patient agreed with the proposed plan for the senior dentist to place implants, with the associate to provide restorative services to design and deliver the implant-supported fixed bridge. The patient received prescriptions for pain medications and penicillin. Antibiotic instructions required starting the medication the night before surgery, continuing for three days following the procedure. Surgery proceeded as planned, with seven maxillary implants being placed. The surgery included bilateral sinus lift and bone graft procedures for posterior implants.

During the post-operative telephone call the day following surgery, the patient indicated he was doing well. He was scheduled to return to the office in 2 weeks. But three days later, the patient contacted the office with complaints of left-sided facial pain and difficulty opening his mouth. The senior general dentist recommended warm compresses and to continue the pain medication prescribed. The patient was instructed to call if the symptoms did not improve.

Three days later, the patient's spouse called and spoke with the associate dentist, as the senior dentist was away from the practice on vacation. The spouse stated that the patient was having trouble sleeping due to discomfort on the left side. She thought he might have a fever due to complaints of chills and sweating during the night, though he felt a little better at the time of the call. The associate dentist did not prescribe an additional antibiotic, but advised that if the patient's symptoms worsened, he should call and request an emergency visit at the office, and he would be seen immediately.

The patient's condition deteriorated during the night, as he developed dyspnea and eventually became unresponsive. He was transported to the local emergency department where he was intubated and admitted to the intensive care unit. Evaluation led to a diagnosis of sepsis and IV antibiotics were administered. The patient was discharged with no long-term medical sequelae after an extended hospital stay.

#### Key Allegations:

Failure to seek consultation/refer regarding medical risk; poor surgical care resulting in infection; improper patient follow-up; failure to examine and diagnose infection

#### Alleged Injury/Damages:

Severe infection; medical/dental expenses; pain and suffering; loss of consortium

#### Analysis:

The allegations noted are among those most commonly associated with infection claims. Claim analysis also revealed inadequate documentation. The defense expert was unable to support the view that the standard of care was met for a number of reasons, including:

- Although the diabetic patient had been with the practice for many years and his disease had been controlled and stable, during his dental recall visit prior to surgery, he reported that his A1c and blood sugar were both well above normal at his recent annual physical examination. This information was not documented by the hygienist and not communicated to the associate dentist.

- The associate dentist and the senior dentist failed to discover the patient's uncontrolled diabetic condition prior to implant surgery. Although the records indicate that the medical history was reviewed, no findings were documented.
- Prophylactic antibiotics for implant surgery continue to be controversial. In this case, due to the patient's overall medical history and the type of implant surgery (sinus lift with bone grafting), the expert supported the use of antibiotics. However, he believed that the standard of care required a longer course of treatment of at least 5 to 7 days.
- Although there may not have been a breach of the standard of care on post-op day 4 when the senior dentist recommended pain medication and warm compresses for the patient's pain and trismus, the expert was unable to support the associate dentist's inaction when the patient's spouse called 3 days later. The information relayed by the spouse should have prompted a more aggressive management approach, including determining the patient's temperature, prescribing an antibiotic, offering to examine the patient, or referring the patient for medical evaluation.

This case underscores the importance of a comprehensive medical history review and associated documentation. Although the patient had been with the practice for many years, a patient's health may change significantly at any time. Unfortunately, changes in health status may not become apparent until the patient's system is stressed by surgery or other procedures. Each patient visit thus requires a "clean slate" when it comes to medical history review and patient assessment.

#### Outcome:

Given the defense challenges and lack of expert support, the dentists agreed to settle the case. The claim was closed with total incurred costs of more than \$600,000.

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<sup>1</sup>The costs or financial obligations, including indemnity and expenses, resulting from the resolution of a claim, divided by the total number of closed claims.



## New Dental Claim Report Released!

You have invested your life in your career, all of which can be threatened by a single malpractice lawsuit or state licensing board complaint. Dentist's Advantage, in collaboration with CNA, has released their newly updated claim report: Dental Professional Liability Claim Report: 2nd Edition. Included within the report are in-depth analysis and risk management recommendations designed to help dental professionals avoid claims and improve patient outcomes.

### Key findings from the 5-year study include:

- **\$134,497:** Average cost of a malpractice lawsuit against a dental professional, including legal defense costs
- **30.5%:** The increase in the average cost for a malpractice claim against a general practitioner since the 2016 claim report
- **Inadequate precautions to prevent injury:** Most common malpractice allegation against dental professionals
- **Corrective Treatment:** Procedure resulting in the highest percentage of injury claims (25.5%)
- **\$4,428:** Average legal cost to defend a dental professional from a licensing board complaint – an increase of 18.7% from the previous dataset

[Click here](#) to get your free copy of the report.

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