



## Dental Professional Liability

# Dental Claims: Information, Experience and Management

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### **Upon completion of this section, you should be able to:**

- List the primary reasons why dental professional liability claims are alleged.
- Understand claim-related terminology and the claim/lawsuit process described in this section.
- Describe the steps involved in reporting a dental professional liability claim and/or how to proceed in the event of dental licensing board complaint/investigation.
- Understand the purpose and guidelines of the National Practitioner Data Bank and how to conduct a self-query.

## 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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## Dental Claim Experience and Reporting

Dental education involves didactic, experiential and social/observational learning. Learning by doing (experiential) is at the core of a dental student's clinical education. However, there is no need to "experience" a professional liability claim or patient adverse outcome for effective learning! Seek knowledge and understanding from educational courses (didactic learning) and learning from others' experiences (social/observational learning). Experiencing a professional liability claim or adverse patient outcome is not a prerequisite to effective learning.

The combination of collective claim data and the individual claim experiences of dentists facilitates the assessment and management of risk exposures in dentistry today. A study of dental malpractice claim data provides an understanding of claim types, frequency and monetary value. In addition to this risk management content, CNA periodically publishes dental claim reports, case studies and other resources to help dentists identify and mitigate professional liability risks. Note that the most recent dental claim report may be accessed on the [Dentist's Advantage website](#).

Apart from monetary value, patient complaints, dissatisfaction and claims also may affect the psychological well-being of the dentist and dental team members. Not all complaints lead to a "claim," as defined in this context, yet these issues remain important to address and understand. Non-claim issues, therefore, are also addressed in this and various other risk management resources. When claims arise, dentists must know the steps to take, and this important information is covered later in this section.

## Definitions

A few definitions will help to better understand claim terminology and information presented in this section of the manual.

**Allegation.** An assertion that the healthcare professional or organization has done something wrong or illegal

**Average total incurred.** The costs or financial obligations, including indemnity and expenses, resulting from the resolution of a claim, divided by the total number of closed claims.

**Claim.** The receipt of a demand for money or services, naming the insured and alleging a dental incident, which also includes covered dental licensing board complaints.

**Dental procedure.** The dental procedure that contributed to the patient's alleged injury.

**Distribution.** The percentage of closed claims with a common attribute, such as a specific allegation or injury.

**Paid expense.** Monies paid in the investigation, management and/or defense of a claim.

**Total paid indemnity.** Monies paid on behalf of an insured dentist in the settlement or judgment of a claim.

**Total incurred.** Monies paid on behalf of an insured in the investigation, management or defense and the settlement or judgment of a claim.

Apart from monetary value, **patient complaints, dissatisfaction and claims** also may **affect** the psychological well-being of the dentist and dental **team members**.

## Additional Perspective on Claims

Dental professional liability insurance policies generally define a claim as “the receipt of a demand for money or services which names you and alleges a dental incident.”

- A demand may be made in writing, in person, or by telephone, facsimile or email. It may be made informally in the form of a letter or telephone call (often from the patient directly), or formally entered as a filed legal action. Claims may be asserted by the patient, the patient’s guardian, a patient advocate, such as a spouse, sibling or attorney, or emanate from a court or peer review committee.
- “Money or services” may mean a refund, a payment in excess of a refund, providing free care, or paying for the care of another healthcare provider.
- “You” is generally defined as you personally, as the named insured in the policy, anyone who works for you, or anyone the patient believes may be employed by you, or acts as your agent.
- A “dental incident” relates to what “you” did or failed to do with respect to your professional dental services in the course of patient care.

In addition, most professional liability insurance policies also will provide defense coverage related to state licensing board investigations or for injuries or damages allegedly resulting from a dental incident otherwise covered under the policy. Defense coverage may include attorney fees and related expenses. The dentist is typically responsible for any fines, restitution, continuing education costs or other expenses related to disciplinary actions. Moreover, the highest expenditures involving a licensing board complaint involve the legal costs associated with its defense.

A dental licensing board complaint represents a simple and inexpensive means for a patient to seek a remedy from, or retribution against, the dentist. In many states, the number of dental licensing board complaints far exceeds the number of professional liability (civil negligence) lawsuits against dentists. The dental board (or in some states, the Board of Health or other agency) is authorized and/or mandated to investigate all complaints.

Whether or not a claim arises is determined by the allegations in the patient complaint, rather than by what you believe may or may not have occurred. For example, a patient sends you a letter demanding a refund for an implant supported restoration you made for her. Your records show that she never paid the balance of related professional fees. Therefore, you believe that she cannot demand money or services, since you cannot refund what you were never paid. The patient also may claim other damages such as lost wages, pain and suffering. Nevertheless, the patient has made a claim as defined by the professional liability insurance policy.

While virtually all professional liability policies impose a duty on the insured to report claims, dentists sometimes opt to address minor patient demands on their own, without engaging their professional liability insurer. Although dentists may be successful in addressing the patient’s concerns and/or demands, consult with your professional liability agent, claim professional, or risk management professional to discuss the matter before proceeding. You also may wish to consult with your own attorney on these matters. Employed/associate dentists and those who work as independent contractors should also notify the practice owner, legal department or other individual(s) responsible for the management and reporting of claims for the organization where services were provided. Other dentists and/or the business/corporation may also be named in a claim or civil lawsuit. While certain situations may be managed effectively by the dentist, others may become more complex and difficult to defend. Moreover, failure to report a claim may affect your coverage. Your insurance representative will assist you in determining how best to proceed.

## Why Claims Are Alleged

Many dental professionals believe that a patient's pursuit of a malpractice claim should be permitted only when the practitioner has made an error or omission that constitutes malpractice as judged through the eyes of the dental professional. In the civil justice system, however, malpractice allegations are pursued in accordance with recognized principles of state tort law.

Claim data indicates that clinically unacceptable dental treatment is not the major reason why patients allege malpractice. If it were, then a far greater percentage of the claims we receive would involve a compensatory payment to the patient, either in the form of a settlement or a jury verdict. So if it's not substandard dentistry, then why are the majority of claims being instituted?

Money may be the primary reason that claims are asserted. Monies may encompass fees the patient paid to you or fees the patient owes and doesn't want to pay you. Monies also may involve an outstanding balance that was referred to a collection agency. The patient may need money to fix a dental problem, money for which the insured dental professional is named in a lawsuit. It is also possible that the money is "needed" for some purpose other than dental care.

A malpractice claim cannot turn back the clock to prevent the alleged injury from occurring. Nor can it ensure that any corrective treatment for the alleged injury will return the patient to his or her former condition. So, the law permits the award of monetary damages to compensate for the inability to be made "whole" again, or otherwise returned to one's former condition.

Although money may be a driver, many claimants may simply want answers to their questions about the adverse outcome and injuries suffered. Or, they may wish to prevent future similar events from occurring.

Dental professionals provide a healthcare service for a fee. Therefore, it is inevitable that financial disputes will arise. How you handle those disputes is one of the most significant factors in the likelihood of encountering a malpractice allegation. In one state, for example, our claim professionals estimate that malpractice claims alleged in retaliation for a dentist's collection action comprise approximately 20 percent of the total claim volume. While other states may reflect a lower percentage of retaliatory claims, the volume remains significant. Clearly, claims often arise from circumstances other than dental malpractice, and dentists should thus consider the implications of office financial policies upon the dentist/patient relationships.

In addition to monetary disputes, we have identified the following issues as underlying patient motivations for malpractice allegations. Many relate to various aspects of patient dissatisfaction. Recognize that whether biased, erroneous, or unfounded, patients will rely upon their own perspectives and criteria when determining their level of satisfaction with the dental care and your practice.

### Poor Communication

Good communication is the foundation for constructive dentist-patient relationships. A patient who believes issues may be discussed openly with a dentist and his or her staff will be less likely to pursue a malpractice claim in the event of a dispute or less than ideal outcome.

Some individuals are naturally good communicators who easily develop relationships. Others must work diligently to improve and maintain their communication skills. Although staff communication with patients may be impeccable, their abilities can never fully overcome the inadequacy of a dentist's communication. Dentists have been characterized by some claimants as lacking compassion and concern for their needs. These characterizations may be accurate, but it is also possible that a dentist who is perceived to lack compassion may instead possess poor communication skills.

In addition, communication issues between staff members and patients also may lead to claims. Just as some dentists are poor communicators, so too are some dental staff. Moreover, dental team members are often delegated difficult communication tasks, such as collections and rescheduling of patient appointments at the doctor's request.

Poor communication also may arise from language barriers, especially when the dentist and patient speak different native languages. Other communication barriers confronting the dental profession include limited oral health literacy, a lack of understanding of oral health, oral disease, and the terminology used to describe those conditions.

Every dental practice has experienced a communication breakdown at one time or another. Such breakdowns may irreparably damage the dentist-patient relationship such that either the patient leaves the practice, or the patient is asked to leave the practice.

## Unmet Expectations

Patients have certain expectations when they present for treatment. These expectations may be related to cost, time, function, appearance, comfort, courtesy, or convenience, to name a few. Patients lack the clinical knowledge of how to assess the treatment you provide, so they use other criteria to judge you, your staff, and their dental experience based upon how well you fulfill their expectations.

## Revenge or Spite

Some patients insist on retribution for their alleged injuries, while others pursue retaliation for trivial offenses. The mere perception of having been slighted, disadvantaged or harmed may lead some patients to institute a malpractice claim or dental board complaint. Collection actions thus become a frequent source of these claims.

## Treatment Errors

Treatment errors, including clinically unacceptable results, are usually preventable events. Every dentist must be knowledgeable and exercise skill and due care when performing treatment. Increasing one's skills and knowledge base may be achieved through personal commitment and continuing education. Moreover, dentists must honestly and critically evaluate their own decisions and clinical results in order to recognize errors or omissions and take appropriate corrective action. A team approach to corrective action development is important to help eliminate bias in the process and to maximize effectiveness and buy-in for new or modified policies or procedures. Encouraging and developing a culture based upon open communication and being receptive to constructive feedback and recommendations from team members, other providers and patients are critical to realizing procedural and patient safety improvements.

## Accidents

Accidents can and do occur. While it would be ideal if they were completely preventable, it would be an unreasonable expectation to assume that inadvertent errors may never happen. Accidents such as a laceration to the lip or tongue from the handpiece when the patient moves unexpectedly, and other similar occurrences, typically are not the most costly dental claims, but these and other accidents may lead to severe losses and liability.

## Other

Other situations should be considered in the context of why claims are alleged. No dentist intends to overlook disease signs or symptoms during an examination. Yet, "failure to diagnose" is often asserted in dental claims. Similarly, patients also may assert that the dentist or other office personnel failed to take adequate safety precautions, causing injury. Do these incidents represent "accidents", a "treatment error", or something else? Do dentists intend to injure patients? No, the dentist always intends to prevent patient injuries.

Irrespective of the claim category, oversights related to clinical care, processes and procedures are commonly the source of alleged claims. Developing a practice philosophy focused on patient safety represents an important strategy to help prevent such errors. Moreover, implementation of an incident or "near miss" review and corrective action process, safety procedures and protocols, training, and comprehensive documentation practices will support a dentist's intent to prevent harm. These actions will also help to reinforce an effective defense in the event of a claim or lawsuit.

**Treatment errors**, including clinically unacceptable results, are usually **preventable events**. ...dentists must honestly and critically **evaluate** their own **decisions and clinical results** to recognize errors or omissions and take appropriate corrective action.

## Factors in Claim Assessment, Outcome, and Valuation

At any given time, the claims on file in computer databases represent a compilation of recently reported claims of which all facts are not well known, claims which have been pending for some time where more is known, and claims which are closed, for which the most information is known. In all three categories, some of the claims have required or will require monetary payment to the claimant, and some will be closed without payment. The value of a pending claim can change (up or down) as more information becomes available.

### Estimated Value

When a claim is first reported, a monetary value is placed on the claim as a case estimate, and the information is entered into a database. The case estimate is intended to be an accurate evaluation of claim value, considering all of the facts known at that time. As more facts become known, the estimate is adjusted up or down to reflect the claim professional's evaluation of potential liability.

Ultimately, when the claim is paid, not pursued by the claimant, or otherwise resolved, the true value of the claim becomes clear. The case estimate is then adjusted to the actual amount paid, or to "zero dollars" if no amount is paid, but the claim has been closed.

When a dental incident is reported, a minimal case value estimate may be established. If no demand is made upon the insured within a reasonable timeframe, the claim is considered dropped, and the case estimate is adjusted to zero.

Once a demand has been made and/or suit has been filed, a comprehensive investigation of the case is undertaken. If a lawsuit has been filed, this investigation will include a more formal process, including the exchange of "written discovery" (questions which will be answered by both parties to the litigation, under oath). Of course, a review of all pertinent dental and medical records will be necessary. Eventually, if the lawsuit continues, oral depositions will be taken of all parties and witnesses.

As the investigation continues, the claim will be evaluated based upon numerous factors: the purported misconduct of the practitioner, the nature and extent of the damages alleged and confirmed, the jurisdiction in which the suit has been filed, the sympathetic (or unsympathetic) nature of the claimant, as well as the demeanor and veracity of witnesses. Each of these elements will play a role in determining the reasonable case value.

### Expert Opinion

Of the many factors to be considered in evaluating a claim, expert opinion (both supportive and not supportive) can play a major role. While jurisdictions may vary in terms of the procedures involved in maintaining a lawsuit, almost all require expert input before the case can be presented to a judge or jury. Generally, a layperson may not sustain a claim against a healthcare professional without expert opinion. Indeed, the valuation of the claim will include considerations of the expert's qualifications, training and background, knowledge of the procedure or treatment at issue, understanding of the standards of practice, credibility, prior experience as an expert, whether or not the expert is impartial, and the rationale for the expert's opinions. In fact, the strength of a claimant's lawsuit often can be measured, in part, by the credibility of his or her expert(s).

Similarly, the assessment of the claim will include the opinions of defense experts. Are the defense expert opinions understandable? Will the opinions be understandable and acceptable to a lay juror? Does the defense expert support, or have difficulty in supporting some or all of the care provided by the insured?

### Dental Records

The dental healthcare information record also will play a major role in the evaluation. In some instances, textbook care may have been provided, but the records lack the documentation to support defense of the claim. Post-procedure complications and their treatment must not only be acted upon but also documented. Most claimants do not have a series of malpractice claims pending or a host of substandard results. Consequently, it is natural to assume (and the plaintiff's attorney will argue) that the claimant will have a much clearer recollection of the events than will the practitioner, who sees multiple patients each day. It is difficult for a jury to believe a practitioner's rendition of events which are not documented.

### Other Factors

As suggested previously, the evaluation itself may consider elements of the claim which do not bear directly upon the clinical practice of dentistry. Is the claimant likeable and credible? What about the insured? Would the average juror wish to have the insured as his or her dentist? Although it may not be sound from an academic perspective, will the plaintiff's claim appeal to the jury? What are the damages? Are they so devastating that they will overwhelm any type of liability defense?

## Analysis of Claim Data

How can we gain meaningful information from claim data? First, we can collectively assess claims with similar allegations, such as “failure to diagnose.” Second, we can evaluate the cumulative monetary value placed upon claims in similar categories. For example, since we know the distribution of claims for a specific dental procedure or a type of injury, as well as the total incurred of all claims associated with the procedure or injury, we are able to study an individual claim in relation to all reported claims in the same category. Available data, however, does not identify details such as how many of our insured dentists perform a procedure, including endodontic or root canal procedures, nor how many root canal procedures each dentist performs during a month or a year.

### Importance of Claim Data to Risk Management

To maximize the potential benefit of risk management techniques, the factors most susceptible to a claim must be identified, as well as the risk management techniques applied to those areas of risk. A review of claim data is an important part of risk management so that priorities can be established for implementation of new prevention and control methods. Neither the distribution nor the severity of each type of loss should be overlooked when evaluating the relative value of various risk management techniques.

Every claim, even if later closed without a payment made to the claimant, will require significant time from the dentist. At best, the time spent will involve reviewing a chart and reporting the incident to the professional liability insurer. But the amount of time spent could be considerably greater. For example, if an incident leads to a lawsuit that is successfully defended in court, the dentist will have spent many hours in consultation with the claim professional, with defense counsel and in court. Most claims fall somewhere between these two extremes. Some risk management techniques are directed at minimizing the number of claims made, which, in turn, reduces the time for response.

## Claim Data

Dental professional liability claim data can be sorted, classified and evaluated in many ways. The most useful risk management aspects are derived from studying the injuries that patients allege, the probable cause of the alleged injury, and the dental procedure that resulted in the injury. Moreover, considering those claims with higher paid indemnity and/or paid expense – total incurred – will help to assess the associated financial and human costs. Claims with high costs are also referred to as “high severity” claims.

CNA's *Dental Professional Liability Claim Reports* analyze injuries, allegations, procedures severity and more. The reports typically focus on those claims with paid indemnity of \$10,000 or more. Don't wait for a claim or lawsuit to learn the risk management lessons available via the analysis of other dentists' claims.

The next page provides the Top Ten Key Findings of the CNA *Dental Professional Claim Report: 2nd Edition* for the reader's convenience. Access and download the full report on the [CNA](#) or [Dentist's Advantage](#) website.

## Top Ten Key Findings of the Dental Professional Liability Claim Report



The average total incurred for **dental closed claims** with paid indemnity from \$10,000 to \$1,000,000 **increased 24.1 percent** in the 2020 claim dataset (\$134,497) from the 2016 claim dataset (\$108,398).



The percentage of **claims with paid indemnity** from \$250,000 to \$750,000 has **almost doubled** since the 2016 claim dataset.



The average total incurred for claims asserted against **general practitioners** has increased by 30.5 percent since the 2016 claim dataset and by 26.6 percent for all other specialists, excluding oral surgeons.



The percentage of claims associated with an allegation of **inadequate precautions to prevent injury (inadequate precautions)** has increased to 20.5 percent of claims from 11.7 percent in the 2016 claim dataset.



Claims associated with **nerve injury** have increased as a percentage of all claims and the average total incurred has risen by 43.6 percent to \$210,568.



The average total incurred for claims associated with **infection** have increased significantly by 70.9 percent.



Each of the top three injuries associated with **surgical extraction** resulted in an average total incurred greater than \$200,000.



Incidents of **swallowed-aspirated object** and **wrong tooth** treatment – considered to be two of dentistry's “never events” – have increased in frequency and continue to be an important patient safety concern.



The total paid expense for **license protection** matters increased by 18.7 percent.



License protection matters associated with **documentation error or omission** resulted in board action in 59.7 percent of complaints. Allegations of **medication administration/prescribing** resulted in board action in 50.9 percent of the complaints, and **professional conduct** in 32.8 percent.

## Reporting and Managing Claims

Effective implementation of risk management techniques help to reduce the likelihood and severity of dental professional liability claims. Analyzing claim data helps you to weigh the relative value of potential risk management techniques. An overarching consideration includes “patient safety” and “risk management” as preventive concepts through implementation of processes, procedures, staff training, patient education and other approaches before issues or injuries occur. Such proactive strategies are always preferable to a reactive response. When necessary, however, the actions you take after you become aware of a claim situation can have a significant effect on the final outcome of that claim.

If a professional liability claim is asserted against you, consider following the steps outlined below. You may not be able to follow each step in every claim situation, but this reporting approach will help your claim professional provide prompt, efficient claims service, including timely legal defense, if necessary. If you are insured for professional liability insurance with a company other than Dentist’s Advantage/CNA, we recommend that you contact your agent or insurer for further direction.

### Role of the Dentist

In the event you receive a dental professional liability claim, you are advised to:

1. Immediately report to your insurance agent any information you have. In some cases, you may be asked to contact dental risk management personnel. Depending upon the circumstances, risk control efforts may help to mitigate the possibility of a claim or lawsuit. If you are an employee or associate dentist, your practice or organization may follow specific internal steps before reporting to your agent or insurer. Speak with the practice manager, owner, legal department or other designated person, according to the internal procedure.
2. When appropriate, the information provided by you will be reported to the designated CNA claim office. A CNA professional liability claim professional will be assigned to discuss the claim with you. Information included in the incident report will be provided to the claim professional. This information typically will include: date of the incident, name of the patient, circumstances of the occurrence (procedure performed, injury incurred by patient, etc.), and copies of any correspondence received relating to the incident.
3. Don’t discuss the circumstances or merits of the claim with anyone other than your claim professional or appointed legal counsel. In addition, consult your CNA claim professional or appointed legal counsel before you agree to attend any conferences arranged for the specific purpose of discussing the claim.
4. Obtain approval from your CNA claim professional before you accept a release from any party, or present a release to any party.
5. Document in writing, at the request of your CNA claim professional or defense counsel, the circumstances surrounding the claim. This documentation should be completed as soon as possible, because time may affect your memory and obscure details. Since this narrative will become an important part of your defense, be prepared to spend the necessary time to prepare a complete and concise report. *Do not place this narrative in the patient healthcare information record.*
6. Assemble, in chronological order, all pertinent dental records, consent forms, radiographs and other diagnostics, lab reports, correspondence, memoranda, and other information related to treatment offered and given to the patient in question.
7. Maintain all original dental records. *Do not make any alterations, deletions, or additions to the dental healthcare information record.*
8. Accept all letters, memoranda, lawsuit papers, and related documents without comments or arguments. Do not admit liability and do not attempt to place blame.
9. Be prepared to spend time to aid in the investigation, defense, or settlement of the claim.

Similar steps apply if you become the subject of a state regulatory (licensing board) complaint and investigation. Specific recommendations related to licensing board complaints appear later in this section.

## Role of the Insurer

In the event of a dental professional liability claim, CNA will:

1. Evaluate the facts provided to determine if a claim file should be established.
2. Contact the insured dentist to begin investigation of the claim. A CNA claim professional will coordinate and manage the defense of the claim.
3. Assign an attorney experienced in the defense of dental professionals whenever a lawsuit is filed, or in other circumstances, where necessary, to serve as the dentist's legal counsel.
4. Direct, monitor, and assess the course of the investigation.
5. Keep the insured dentist advised of the status of the claim, as necessary. A dentist who has questions about the claim is encouraged to contact his or her CNA claim professional or appointed legal counsel.
6. Evaluate the dentist's potential liability to determine the courses of action available. CNA will then make a recommendation to the insured dentist on the defense or settlement of the claim.

It is very important for a dentist to *report his or her claim promptly and accurately*. The sooner the dentist's insurance agent or broker and the insurer have the necessary information, the easier it will be to manage and defend the claim.

## Assessing and Controlling Claim Costs

As already described, an initial monetary value, or case estimate, is determined when a claim is first reported to CNA. The case estimate is the best evaluation of claim value, considering all of the facts known at the time. As more facts become known, the estimate will be adjusted up or down to reflect the claim professional's evaluation of changes in potential liability. The actual value of the claim is clear only when the claim is paid, withdrawn by the claimant, or otherwise resolved.

It is important for both insurer and dentist to keep claim costs to a minimum. CNA rigorously defends non-meritorious claims. Claims where liability is evident, or where a successful defense is unlikely, will be quickly evaluated and recommended for settlement. This approach helps CNA to maintain premiums at competitive levels, but never at the expense of claim service—a dentist's paramount need and concern.

## National Practitioner Data Bank

The National Practitioner Data Bank (NPDB) or “the Data Bank” was created through the *Health Care Quality Improvement Act of 1986* (HCQIA) and is operated under the auspices of the U.S. Department of Health and Human Services (HHS). It was created to serve as a flagging system to facilitate a comprehensive review of healthcare practitioners’ professional credentials. The information contained in the NPDB is used by healthcare entities, state licensing boards, and professional societies in conjunction with information from other sources for decisions involving clinical privileges and credentialing, employment, affiliation, or licensure. This section provides a brief summary of the NPDB. Dentists should review the Data Bank website and *NPDB Guidebook* for complete information at: [www.npdb.hrsa.gov](http://www.npdb.hrsa.gov).

Regarding dental and medical malpractice, HHS recognizes that not all paid claims are meritorious. This view is reflected in the October 2018 version of the *NPDB Guidebook*, where it states:

“Settlement of a medical malpractice claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the physician, dentist, or other health care practitioner. **Thus, as specifically indicated in title IV, a payment made in settlement of a medical malpractice action or claim should not be construed as a presumption that medical malpractice has occurred.**”

The following three types of reports are submitted to the NPDB:

- Medical Malpractice Payment Reports
- Judgment or Conviction Reports
- Adverse Action Reports

## Medical Malpractice Payment Reports

Each insurance company or other entity that makes a malpractice payment for the benefit of a dentist must submit a report when the payment meets the following criteria:

- There is an exchange of *money*.
- The payment is the result of a *written* complaint or claim demanding monetary payment for damages, based on a dentist’s provision of, or failure to provide, dental services. Payments made in response to *oral* complaints are not reportable.
- The payment is made as a result of a demand against an individual dentist. Since entity reporting is not required, payments made solely upon behalf of an incorporated group practice or clinic are not reportable.

NPDB defines a “malpractice payer” as an “entity that makes a medical malpractice payment through an insurance policy or otherwise for the benefit of a health care practitioner in settlement of, or in satisfaction in whole or in part of, a written claim or judgment against that practitioner.”

Examples of a “malpractice payer” as defined above include:

- CNA and other professional liability insurers
- Dental professional services corporations, including those comprised of a solo practitioner (e.g., John Q. Smith, D.D.S., Inc. or John Q. Smith, D.D.S., P.C.)

Therefore, a professional corporation of any size that makes a payment for the benefit of a named dentist (including an incorporated solo practitioner) must report that payment to the NPDB.

A payment made by an individual dentist from personal funds on his or her own behalf is *not* reportable, whether or not the dentist does business as a professional corporation. The *NPDB Guidebook* clarifies that “A payment made as a result of a suit or claim solely against an entity (for example, a hospital, clinic, or group practice) and that does not identify an individual practitioner should not be reported to the NPDB.”

## Judgment or Conviction Reports

Judgment or conviction reports must be submitted to document “health care-related criminal convictions and civil judgments in federal or state court. Reports include convictions, injunctions and “no contest” pleas involving the delivery of healthcare items or services. Federal, state or local prosecutors are required to file such reports, whether or not there is a pending appeal.

## Adverse Action Reports

Adverse action reports originate from three sources. Hospitals and other healthcare entities, such as dental preferred provider organizations and other managed care entities, must report professional review actions related to professional competence or conduct that meet certain criteria.

State licensing boards are required to report disciplinary actions such as revocation, suspension, censure, reprimand, probation, and surrender of license. Revisions, such as reinstatement of a license, also must be reported.

Professional societies must report professional review actions that adversely affect professional association memberships and revisions to such actions. (Peer review committee decisions do not affect a dentist's professional association membership, and, therefore, are not reportable.)

## Other Points

A fee refund for services rendered is not uncommon in dental practice. The NPDB also addresses the fee refund situations. The *NPDB Guidebook* states that if a refund is made by an entity (including solo incorporated practitioners), a report must be filed. However, no report is required if a refund is made by an individual. The *Guidebook* also goes on to state that a refund is reportable if it “results from a written complaint or claim demanding monetary payment for damages” that is based on a dentist’s “provision of or failure to provide, health care services.”

It is also important to note that for certain types of actions, including medical malpractice payments on behalf of a healthcare provider, a copy of the Data Bank report must be sent to state licensing boards. Moreover, many state licensing boards routinely query the NPDB to identify practitioners who may potentially pose a threat to the public. Many professional licensing boards will initiate their own investigation based upon information regarding a malpractice payment, an adverse licensure action in another jurisdiction, or an adverse clinical privileges action.

The public is not authorized to obtain information about healthcare professionals from the NPDB. However, many state dental licensing boards disclose their disciplinary actions to the public either through online postings or publication.

Although the NPDB reflects a self-reporting requirement for malpractice payers, the occasions on which an insured dentist has contacted CNA for information or assistance to self-report have been rare. Moreover, we are unaware of any instances in which the U.S. Department of Health and Human Services (HHS) has pursued an action against a dentist for failing to self-report.

For most dentists, a report to the NPDB has no adverse consequences to their income or their ability to practice dentistry. Unless a dentist is planning to move to another jurisdiction and obtain licensure, seek hospital medical staff privileges, or enroll in a credentialed provider organization, the impact of an NPDB report has been negligible. Nevertheless, the report of a dental malpractice payment to a federal regulatory agency understandably has an emotional impact on the healthcare professional who is the subject of the report.

## Self-query of the NPDB

Dentists may query the NPDB at any time to determine what information, if any, is maintained about them. For additional information, dentists may select the “For Healthcare Professional” menu option on the NPDB website home page, or contact the Data Bank Customer Service Center by using the “Contact Us” menu hyperlink.

## Dental Licensure Complaints

Dental licensure complaints (also referred to as “license protection matters”) may result when a patient’s concerns with treatment are not addressed. A complaint may result from a simple misunderstanding or miscommunication. Patients also may seek to pursue a licensing board complaint when they are unable to obtain legal counsel to represent them in a malpractice suit.

Licensing board complaints also may be submitted by non-patient third parties, such as other healthcare providers, including dentists and dental insurance companies. States also may allow anonymous complaint submissions. Although states may have some flexibility regarding the investigation of license complaints, many state legislatures have enacted statutes that require the state dental board to investigate every complaint filed against a dental licensee.

Irrespective of the source, a licensing board complaint begins when a complaint is received by the dental licensing board about a licensed dentist or other licensee within the board’s purview. State law or administrative rules provide the details of the process, which may vary significantly by state. Dentists should, therefore, review and understand both the standards to which they will be held and the process their state board will follow in the event that a complaint is filed.

Another important issue that dentists often overlook is a state requirement for self-reporting. Self-report requirements may apply to criminal convictions and other legal actions not directly related to the delivery of healthcare services. Self-reporting also may be required for patient care scenarios, such as a patient death or hospitalization, whether directly related to dental care or not. Again, understand and comply with your state requirements.

If a complaint concerns patient care, the dental board will typically request a copy of the dental healthcare information record as a first step. Dental or other professional license complaint investigations may be the responsibility of a state agency other than the professional licensing board. Closely review any communication from a state agency and ensure that dental team members understand when to inform you about important communications.

## The Need for Representation

Irrespective of the investigating agency or investigation process in your state, the next step is the same. As soon as you receive a request for records from a state agency or other notice of investigation, immediately contact your insurance agent and report it as a claim under your policy. Most dental professional liability policies provide coverage for attorney fees and costs associated with defending a licensure complaint if it arises out of injury or damage from a dental incident. Typically, the highest expenditures involving a licensing complaint are the legal costs associated with its defense. Note that most dental professional liability policies exclude reimbursement for any fines, restitution, costs of continuing education, or other disciplinary measures that may be imposed.

### License Protection vs. Professional Liability. What is the difference?

#### License Protection

**Inquiry by the State Board of Dentistry,** arising from a complaint.

**Allegations can be directly related to a dentist’s clinical responsibilities,** and they can be of a nonclinical nature, such as physical abuse, unprofessional behavior, or fraud.

**The State Board of Dentistry can suspend or revoke a license.**

Its primary mission is to protect the public from unsafe practice.

#### Professional Liability

**Civil lawsuit** arising from a patient’s malpractice claim.

**Allegations are related to clinical practice** and professional responsibilities.

**The civil justice system cannot suspend or revoke your license to practice.**

Professional liability lawsuits serve to fairly compensate patients who assert that they have suffered injury or damage as the result of professional negligence.

**A professional liability claim with or without a civil lawsuit** may result in a license protection inquiry.

## Response and Process

Pay close attention to the required response date in the notice. The deadline is often very short, requiring swift action and in many cases, a request to extend the deadline may be appropriate. You should begin to compile the requested information, but it is best to discuss the investigation and response with your assigned claim professional and/or attorney before proceeding.

You also should be aware that many dental licensing boards may require you to submit original radiographs and/or other records and will not accept copies. If originals are required, duplicate the records and maintain copies. Do not send any original records without first creating acceptable copies.

When the investigating agency receives the requested records and/or other documents, it will determine whether or not additional steps are necessary, in accordance with the process in your state. If the response effectively substantiates that no violation of the dental practice act or other health code occurred, then the case may be closed. However, further investigation activities may be pursued depending upon state protocols (typically as set forth in the dental practice act). Examples of requirements may include: (i) requests for further documentation; (ii) narrative reports from the dentist; (iii) patient and/or dentist interviews; (iv) on-site assessment of the dental practice; and/or (v) a hearing.

Unless participation is required by state law, a dentist should never submit to an interview with the state licensing board or state investigator without first consulting with legal counsel. If the dental licensing board suggests an interview, settlement conference or other type of conference or hearing, a dentist should be accompanied by an attorney. There are numerous examples of dentist interviews and written statements submitted without advice of counsel that have severely compromised or defeated any viable defense, resulting in serious disciplinary consequences.

If a violation is found, a number of different sanctions may be imposed. These sanctions may include: (i) a fine; (ii) completion of prescribed continuing education or academic training; (iii) dental license/dental practice restrictions or probation; (iv) license suspension/revocation; or (v) restitution (repayment to a patient or third-party payer). While license revocation is rare, dental licensing complaints are a serious matter. Unfortunately, many dentists erroneously believe that such complaints represent an "informal" process which they can handle themselves. In some cases, a dentist may try to settle a complaint without advice of legal counsel in an attempt to complete investigation rapidly as possible.

Even a simple board matter may take many months or years to conclude, resulting in anxiety for the dentist. Nevertheless, the best advice is to report any investigation upon notification and work closely with your insurer and attorney to resolve the matter.

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



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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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