CALIFORNIA DENTAL PRACTICE ACT 2016

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DENTAL BOARD

• Enforcement
  • Administrative Law System
    • Applies to both civil and criminal
  • Hearsay permitted
    • “He said, she said”
    • Designed to get facts but can easily be abused
  • Example
    • Guilty beyond a reasonable doubt
    • Liability established by preponderance of evidence
DENTISTRY: WHAT IS IT?

• Definition: Diagnosis or treatment of diseases or lesions and correction of malpositions of human teeth, gums, jaws or associated structures.

• You are deemed to practice dentistry if you do the following:
  • Represent you are a dentist
  • Act as a dentist
  • Manage (as an owner) a place where dental operations are performed

• Exceptions: federal/state employee, full

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MANAGEMENT SERVICES AGREEMENTS

• California allows DSO’s
• 15-20% of all practices nationwide are DSO-Run

• Structure of DSO’s
  • Management Company
  • Dentist
  • Management Agreement

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DSO’S: REQUIREMENTS TO BE LAWFUL

• Management company (“MC”) gets % of gross revenue
• MC owns equipment
• MC has lease or ownership of space
• MC fee is not too high
• MC does not manage
  • Assists dentist
• All dental decisions made by Dentist
• All hiring/firing of dental personnel performed by Dentist
PRESCRIBING DRUGS

• Only the **doctor** may prescribe a controlled substance.
  • Must be legitimate medical purpose
  • Must be done in the usual course of practice
  • Responsibility is **primarily** the dentist’s, but **corresponding liability** rests with pharmacist who fills prescription.
  • Examples: antibiotics, arthritis, cholesterol, pain, blood pressure medications, valium, etc.
ILLEGAL PRESCRIPTIONS

• Not issued in usual course of professional treatment
• Prescription made for addict and not part of professional treatment program, but used to keep patient comfortable
• Examples of illegal prescriptions
  • Pre-signed prescription pad
  • Adding a zero
  • Unusual quantity
PRACTICAL TIPS

- Must be for condition you are treating patient for
  - Examples
- Do a “good faith” examination
  - See the patient
  - Time line
- Quantity of drug must be reasonably necessary for treatment
  - Patient not yours
  - Rule: 72 hours
  - Don’t prescribe drugs for yourself
DIVERSION PROGRAM

• Dental Board tries to rehab dentist or dental auxiliary if drug/alcohol issues:
  • Patient or employee notifies Board
  • Board comes to office to drug test
  • 5th Amendment right against self-incrimination! "Fine, you’re suspended! License please."
  • No suspension of license if...
LICENSE RENEWAL

• CE requirements
  • Dentists
    • 50 hours every 2 years
    • Must take 2 hours of California Law (you can wake up now)
    • 2 hours of infection control
  • Inactive license?
    • Must prove at least 50 hours in last 2 years prior to activating license
LICENSE RENEWAL

• RDA’s, RDH’s
  • 25 hours every 2 years
  • 2 hours of California law (hey, at least you don’t have to do 50 hours)
  • 2 hours of infection control
LICENSE RENEWAL

• \(\frac{1}{2}\) of CE credit can be taken online or via correspondence
• Board has 30 days to process renewal
OUT OF STATE LICENSING

• Out of state licensee can become a dentist without taking examination if:
  • Has current license in another state
  • Has at least 1000 hours in 5 out of the last 7 years
    • As a dentist
    • As a teacher in a dental school
  • Agrees to practice dentistry full-time for two years at primary care clinic, hospital
  • Agrees to teach or practice dentistry full-time for two years at an accredited dental education program
FOREIGN DENTAL SCHOOLS

• IF Board finds foreign dental school adequately prepares students in a manner similar to U.S. schools:
  • School makes application to Board
  • Technical advisory group selected by Board approves
  • Student may then take California exam
USE OF DENTAL AUXILIARIES

• Dentist responsible for insuring that unlicensed dental assistant shall take 2 hour CA law and 8 hour infection control class. Also DA must take basic life support class by reputable organization.
USE OF DENTAL AUXILIARIES

- RDA – must do one of the following:
  - Graduate of dental assistant program approved by the Board and pass exam
  - 12 months as DA in U.S. and pass exam
USE OF DENTAL AUXILIARIES

• RDH:
  • Graduate of RDH program approved by the Board, accredited by Commission on Dental Accreditation and conducted by degree-granting post-secondary institution
  • Must pass the board exam
  • Must pass national written exam

• Scope of work:
  • Administer local anesthesia, oxygen or drug
  • Removing/scraping soft tissue
  • Common infractions
VIOLATIONS OF LAW

• Advertising
  • Must be “clear and precise”
  • “Free exam” must also state what additional charges apply
  • 50% off, must state the procedure and the regular price
  • Cannot claim professional superiority
  • Price Ads have to be exact

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VIOLATIONS OF LAW: Advertising

- “Before” and “after” photos must contain in bold type description of procedure, cannot be distorted, must contain statement that same results may not occur in all patients
- Cannot advertise as a specialist unless you have proper accreditation recognized by the ADA
  - Limited exception: Pass exam and state in ad the discipline is not recognized by the ADA
- Examples of violations:
  - Weight loss ads
  - Full mouth reconstruction photo
  - Specializing in “____________________”
  - Emphasizing “____________________”
VIOLATIONS OF LAW:
Address Changes

- Board protects the public
  - Lawsuits against you by the public
- 30 days to register address change
- 10 days to register name changes
- “Americanizing” name
- Legally changing your name
VIOLATIONS OF LAW: Disclosure of Name

• Patients must know who they are treated by
  • Wear a name tag in at least 18 point type

• Prominently display license in the office
VIOLATIONS OF LAW: Referral Fees

- NO Gifts or gift cards
- NO discounts for referring
- NO cash payments
- NO commissions

- Cannot pay staff for referrals
  - Even if they do marketing
  - Pay bonus based upon total production or monthly collection of all patients
VIOLATIONS OF LAW: Referral Organizations

• May pay a referral fee if:
  • Fee paid not based on number of referrals
  • Patients initiate contact from an ad
  • Service must register with the Board and provide copy of the contract
  • Service must follow advertising rules pertaining to dentists
  • Doctor cannot charge more than U.C.R.
VIOLATIONS OF LAW:
Unprofessional Conduct

• Unprofessional Conduct includes:
  • Fraudulent Billing
  • Employing Unlicensed Dentist(s)
  • Aiding or abetting unlicensed person to practice dentistry
  • Advertising Painless Dentistry
  • Excessive Diagnosing
CASE EXAMPLE

• Dental Board Case No. BBC 2004-02
• Dentist located in Anaheim, California
• Charge:
  • [i] Two criminal convictions for insurance fraud
  • [ii] Fraud in procuring license
• Disposition: license revoked

• Dental Board Case No. AGS 2002-52
• Dentist located in La Jolla, California
• Charge: Insurance fraud conviction
• Outcome: License revoked, stayed, five years probation
VIOLATIONS OF LAW:
Unprofessional Conduct

• Threats or harassment of another who turns you in for something
• Fining/Firing an employee for turning you in
• Altering Patient Records (Example)
• Failure to report to Board within 7 days that your patient died or was hospitalized (for more than 24 hours) during or as a result of your procedure
VIOLATIONS OF LAW: Unprofessional Conduct

- Failure to protect patients by following infection control guidelines
- Prescribing drugs to yourself or taking them without a prescription from a doctor
- Failure to identify yourself in patient record next to services performed, failure to date
- Failure to comply with Board requirements to turn over patient records within 15 days of request
VIOLATIONS OF LAW:
Unprofessional Conduct

• Denti -Cal Cases
• Santa Ana Pedo Case
• “Phantom” work
• Delta System For Comparing
• Protopappas Case
CASE EXAMPLE

• Dental Board Case No. 2003-63
• Dentist located in Portola, California
• Charge: Section 1670 – unprofessional conduct, incompetence, gross negligence, repeated acts of negligence in his profession.
• Facts: Dentist was incompetent when he failed to recognize the difficulty involved in the extraction of Tooth No. 17, failed to refer the patient to an oral and maxillofacial surgeon, and was grossly negligent in failing to obtain an informed consent. Dentist did not review with patient the risks, benefits and alternatives to the extraction and did not give him the option to be treated by an oral and maxillofacial surgeon.
• Outcome: license revoked, stayed, five years probation
STANDARD OF CARE

1. Duty of the professional to use such skill, prudence, and diligence as other members of his/her profession commonly possess and exercise

2. Breach of that duty

3. Proximate causal connection between the negligent conduct and the resulting injury

4. Actual loss or damage resulting from the professional’s negligence
BLACKWELL V. HURST
46 Cal. App. 4th 939, 1996

• Facts of the case
  • Plaintiff (Blackwell) had an appointment to continue her extensive restorative dental work
  • Several days earlier Defendant (Hurst) had cemented 26 crowns
  • Blackwell appeared “heavily sedated”
  • Hurst attempted to re-cement a crown
  • While removing the crown, Hurst dropped the crown and Blackwell aspirated the crown into her lung
  • Hurst took Blackwell to the hospital
  • Part of Blackwell’s lung was removed but she died several months later from complications from the surgery
The widower brought an action for negligence and res ipsa loquitur.

Expert witness for Hurst said that dropping crowns was “common” and therefore was not negligent.

However, the plaintiff’s expert faulted the lack of precautions taken by Hurst to prevent the aspiration and, as a result, Hurst’s actions fell below the standard of care.

Hurst knew of the patient’s heavy sedation and that the patient was a mouth breather, therefore Hurst could have used...
Positioned the patient or dental chair differently to minimize the risk

- Rubber dam
- Gauze bridge

BUT...the expert could not state definitely that not taking these precautions was negligent for this patient

- Thus, Hurst was able to beat the professional negligence claim
• But we know people don’t die because they are having a crown re-cemented so…
• The court found that evidence of “rarity” coupled with some other evidence indicating negligence may allow a jury to come up with inferred negligence through res ipsa loquitur
STANDARD OF CARE

• What is your requirement to meet the standard of care?
• Statewide Standard of Care
  • “A dentist has a duty to exercise the degree of care and skill ordinarily possessed and exercised by members of his or her profession under similar circumstances”
CASE EXAMPLE

- Dental Board Case No. DBC 2004 – 24
- Dentist located in Westwood, California.
- Charge: Dentist aided and abetted his associate dentist in a negligent case involving one patient.
- Facts: Associate at all times treated the patients in connection with bridge work. The bridge work failed on several occasions, was not delivered when promised, resulting in numerous reschedulings; and the bridge later to fell out. Another dentist completed the new bridge work.
- Outcome: Judge stated it was not established that the owner was put on actual or constructive notice that the associate was treating the patient negligently, nor does the associate’s negligence support a finding of personal responsibility on the part of the owner/dentist necessary to justify sanctions.
CASE EXAMPLE

- Dental Board Case No. DBC 2004-22
- Dentist located in Pasadena, California
- Facts: [i] Criminal conviction for obtaining Vicodin for himself on two separate occasions.
  [ii] Prescribing drugs outside the scope of dentistry (obtained 3,700 tablets of Vicodin between January 2000 and June 2001, obtained 8,000 tablets of Vicodin between January 2001 and March 2002, obtained 300 tablets of Vicodin between May 2002 and October 2002 – in all of the above cases, there are no records regarding the dispensing of these drugs through his office).
  [iii] Fraudulent prescribing of Vicodin – nine cases of dentist writing prescriptions for non-existent patients and then picking the drugs up himself.
  [iv] Failing to maintain proper records and inventory in dispensing drugs. Dentist spent considerable time in prison and in rehab, presented very strong evidence from medical professionals regarding his rehabilitation.
- Outcome: license revoked, stayed, 5 years probation – dentist not allowed to apply for DEA license. Dentist to be supervised by a California licensed dentist, to submit to random biological blood testing, to abstain from alcohol and controlled substances, and to continue with AA type meetings.
Most investigations start with a patient complaint
Board usually requests patient records
Some investigations take place unannounced
DISCIPLINARY SYSTEM: Citation Format

• Class “A”
  • Violation presents substantial probability death or serious physical harm to patient
  • Dentist has been issued 3 Class “B” violations within 24 months

• Possible Actions:
  • Fine - $1,000 - $2,500 for each violation
  • Loss of license
DISCIPLINARY SYSTEM: Citation Format

• Class “B”
  • No substantial probability of death or serious physical harm

• Possible Actions
  • Fine - $50 - $2,500 for each violation

• Office Visits, Reasons:
  • Request for specific records
  • Interview of employees
  • Substance control – drug log
DISCIPLINARY SYSTEM: Citation Format

• Factors Reducing or Increasing Fine
  • Was bad faith or willful misconduct evidenced
  • Nature and severity of the violation
  • Past history
  • How cooperative you have been
  • Attempted mitigation
DISCIPLINARY SYSTEM:
Citation Format

• Know the saying, “Flunked the Attitude Test”?  
• It applies to the amount of your fine or loss of license.
DISCIPLINARY SYSTEM: Citation Format

• Appeal process
  • 10 days to appeal decision
  • 30 days to hold a conference with the Board’s executive officer
FICTITIOUS BUSINESS NAMES ("DBA’s")

• If using name other than your own you must:
  • Apply for name with Board ($350 for two year permit)
  • Name must use your last name and "dental office" "dental practice" "dental group"
PATIENT ABANDONMENT

• Requirements:
  • No written notice treatment will be suspended/discontinued
  • You do not give patient enough time to find another dentist
  • Health of patient is jeopardized
PATIENT RECORDS

- Record Retention
  - NO STANDARD!

- Fees for Copying Records
  - 25 cents a page
  - Reasonable charge for clerical help
  - X-rays at actual cost
FAMILY TRUST AS OWNERS OF DENTAL PRACTICE

• Prior Law
  • Could not transfer ownership of your dental practice into a family trust if a co-trustee or successor trustee was a non-dentist
  • Problem – Practice value destroyed because probate court controlled operation of the dental practice and usually would take 3-6 months to render the ability to sell to the estate.
FAMILY TRUST AS OWNERS OF DENTAL PRACTICE

- Senate Bill 387 – Amends Dental Practice Act to allow certain “Trusts” to “own” a dental practice
  - Requirements – Trust or subtrust must be established solely for disposal of dental practice in the event of death/disability
  - Trustee/successor trustee must notify Dental Board upon death/disability and contract with licensed dentist to operate the dental practice
  - Must notify patients within 30 days, give time to pick up records
  - Trustee can only operate dental practice for 12 months
EMPLOYMENT LAW: Labor
Code Section 203

• Firing/Employee quits
  • If paid hourly, pay employee the day they leave if you fire them, if they quit, you have 72 hours
  • Salaried employees you must pay them on the earlier of: 30 days or the date which the contract stipulates
PROFESSIONAL REPORTING

• Reports to Board are confidential unless public record or license is suspended or revoked
• Board must disclose complaints to Dentist
• Dentist has full access except for identification of source, Dentist can file a rebuttal
• Judgments or settlements over $10,000 must be reported by malpractice carrier to Board
  • Insurance carrier cannot settle without your written consent
CASE EXAMPLE

- Dental Board Case No. DBC 2003-87
- Dentist located in Santa Fe, New Mexico and applying for dental license in California
- Issue: Dentist settled case for $4,715, settled another for $6,318, and dentist settled a case for $80,000. Board sought to deny issuance of license. Dentist took the position in all settlement documents that all damages were disputed and that she had no real liability and that settlement was made either to avoid the high cost of litigation or to avoid the uncertainty pertaining to the outcome.
- Outcome: “The evidence failed to establish the settlement of three civil actions constitutes unprofessional conduct or negligence”, and accordingly the license was issued.
CHILD SUPPORT PAYMENTS

• If you owe child support and do not pay, your license to practice dentistry will not be renewed until payments are current

• 1 time exception – 150 day temporary license

• What does this have to do with the practice of dentistry?
CHILD ABUSE
REPORTING: Penal Code
Section 11164 et. seq.

• Dentist must report if “reasonable suspicion” of abuse or neglect
• “Mandatory Reporter”
• Report by phone or using form
• Report to police, sheriff or County Welfare Department
• Fail to report - misdemeanor, 6 months jail, $1,000 fine, or both
• Immunity from civil suits

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ADULT ABUSE
REPORTING: Welfare and Institutions Code Section 15600 et. seq.

• Applies to Adult Victims 65 and older
• Applied to adult victims 18-64 who are physically or mentally dependent on others
ADULT ABUSE REPORTING CONTINUED

• Dentist must report if “reasonable suspicion” of abuse or neglect

• “Mandatory Reporter”

• Report by phone or using for Report to police, sheriff or County Welfare Department

• Fail to report - misdemeanor, 6 months jail, $1,000 fine, or both

• Immunity from civil suits
CHANGES TO DELTA PREMIER

• Start ups and purchasers of dental practices are now forced to take Delta PPO in exchange for getting Delta Premier

• Problem – 95% of Delta “Premier” patients are actually Delta PPO patients
QUESTIONS?

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