This Risk Control Bulletin provides dental office examples and further information related to temporary dental staff and professional liability issues that may arise. When regular staff members are absent due to illness or other reasons, temporary dental staff may be called upon to help the dental office maintain treatment quality and office efficiency. Recently, dentists insured by Professional Protector Plan® for Dentists (PPP) have requested information about this topic. While this Bulletin is intended to clarify various issues, please note that specific questions about professional liability coverage and claims must be discussed with your PPP agent and/or Claim Professional or with your professional liability carrier, if you are insured by another company.

Scenarios to Consider

Consider the following real-world examples:

- A colleague’s hygienist fills in when your employee hygienist calls in sick. During the course of a routine cleaning, a crown becomes dislodged and is aspirated into the patient’s respiratory system. After transportation to the hospital emergency room, the patient is admitted and the crown is surgically removed. The patient files a malpractice claim against you and the hygienist. Your PPP policy will defend you and indemnify on your behalf in this scenario but not on behalf of the temporary hygienist. The hygienist in this case would only be covered under his/her own professional liability insurance policy, if such policy is in force.

- If you contract with a staffing agency for the services of a temporary hygienist, the same terms apply. The staffing agency will typically provide professional liability insurance for the individual it places. Therefore, the hygienist may not need to have his/her own professional liability policy.

The Professional Protector Plan® for Dentists Policy: Employee Coverage

The PPP policy, underwritten by CNA, provides professional liability coverage for “you”. “You” or “Your” is defined in the Professional Liability Coverage Part as follows:

- “You or Your” means:
  - any named insured;
  - any named insured’s employees other than a dentist, but only while acting within the scope of their duties as such; or
  - any independent contractor dental hygienist of a named insured, but only while acting within the scope of such independent contractor’s duties on behalf of a named insured and while under sole direction or supervision of such named insured.

Such individuals are insureds, and subject to all other terms and conditions of coverage. They are covered for their liability arising out of their own acts or omissions in the supplying of or failure to supply professional services.

In addition, the PPP Policy also provides you with vicarious liability coverage for acts or omissions committed by other individuals for which you are legally liable. This may include coverage for your liability for a dental incident arising out of the acts of your employee, as well as your liability for a dental incident arising out of the acts of someone who is not in your employment but is acting under your direction. (Please see the next section for more information on vicarious liability.)

The policy provides as follows: “We will pay all amounts up to the limit of liability, which you become legally obligated to pay as a result of injury or damage. We will also pay claim expenses. The injury or damage must be caused by a dental incident arising out of the supplying of or failure to supply professional services by you or anyone for whose professional acts or omissions you are legally responsible.”

However, even if you, (a named insured dentist), are afforded coverage under the policy for your liability for the professional acts or omissions of someone other than an employee, such as temporary staff for example, the direct liability of such temporary staff is not covered by the policy. Therefore, you should require proof of professional liability insurance if the temporary staff person is a healthcare provider. Check with your professional liability insurance agent or broker regarding the specifics of your policy if you are with another carrier.

Vicarious Liability Primer

It is important to review and understand the legal theory of vicarious liability as part of this bulletin, since this theory holds employers responsible for the acts and omissions of their employees. Vicarious liability is based upon the legal concept of respondeat superior, which holds the “master” (employer) responsible for the acts or omissions of its “servant” (employee). Vicarious liability can represent a significant area of vulnerability for dentists. Whether for
your own staff person/employee or a temporary staff person, consider the following suggestions to help reduce vicarious liability risks while improving overall patient care.

- Consider the professional conduct of your employees as extensions of your own conduct — and ensure that your staff also view the actions in this manner.
- Foster a positive attitude and open communication in your practice. Do not encourage staff members to obstruct patient access to you.
- Hire qualified staff members with strong communication, interpersonal, and technical skills who can project the desired image of the practice.
- Establish thorough, written policies and protocols that give direction to your staff.
- Clearly document in writing the duties and responsibilities of each job description.
- Examine the job and employment credentials of all applicants, including salaried employees, hourly employees and independent contractors. Check with the references listed on resumes.
- When evaluating prospective job applicants, keep in mind that tasks can be taught, but kindness, empathy, and concern are qualities that typically cannot be learned.
- Verify current licensure of all employees whose jobs require licensure.
- Establish clear, written performance expectations for staff.
  - For example, instead of informing your receptionist that a job function is answering the telephone, direct her to answer the telephone in three rings or less, stating the words or script you desire, using a pleasant tone of voice.
- Review your state dental practice act — you and your employees must practice within the limitations imposed by this statute.
  - Do not assign duties to auxiliaries who fail to comply with the dental practice act in your state.
- Conduct performance reviews at least annually.
- Provide adequate training for staff members.
- Encourage and financially support staff attendance at continuing education courses that update their knowledge and skill.
- Certify your staff in CPR (cardiopulmonary resuscitation).
- Supervise each employee from the outset of employment to ensure that the employee has adequate knowledge and skill to perform assigned duties.
- Hold regular staff meetings to strengthen office policy and improve staff communication.
  - Use staff meetings to discuss office successes and/or shortcomings, resolve problems or other office practice situations that need improvement, and educate staff.
- Respect and show confidence in your staff, especially when patients are present.
- Through the use of surveys and evaluations, ask patients for feedback about your practice and include your staff as an evaluation subject. This tool will assist in gaining insight into patients’ perceptions of your staff and the quality of staff-patient interactions.
- Require a certificate of insurance from all independent contractor dentists. Confirm that you are listed as an additional insured on each of the other dentists’ policies.
- Ask independent contractors or other dentists sharing your space to sign a hold harmless/indemnity clause, which transfers back any losses originating from them. (As these clauses are varied and complex, consult with your personal attorney before signing any contracts containing a hold harmless provision.)
- Ensure that the other dentists’ insurance policies cover contractually assumed liability.

Vicarious liability is an important concept in both risk management and patient management. Even when the services provided by the dentist meet the standard of care, an employee in the office may do or not do, say or not say something that will negligently cause a patient injury. Employee conduct thus significantly expands the risk to both the patient and to the dentist. Appropriate protocols that are diligently implemented will help to reduce the risk of professional liability exposure associated with the employment of temporary staff.