

VALID LICENSES: *How much more important can it get?* BY TIM TWIGG AND REBECCA CRANE

Do you have employees who are required to have certain licenses and/or certifications? If yes, are those licenses and/or certifications current? When was the last time you checked?

Recently, a dentist checked the website of the State Board of Dentistry and discovered his full-time hygienist's license had not been renewed for two years! The other part-time hygienist's license had expired several months before.

Another dentist had a temp fill in during his hygienist's three week vacation. When the full-time hygienist returned, she noticed her license was missing from the wall and a fake one placed in the frame. The practice investigated and found the temp was in fact a clinical assistant from another state posing as a hygienist. The doctor had to call back all 73 patients seen by this woman for another visit and exam, explaining to them what happened. Thankfully, none of them followed up with legal action against him.

Who would have thought of these potential problems? In today's litigious society and amid the ever growing problems of identity theft and high unemployment, dentists need to be particularly vigilant. Don't make the mistake of assuming applicants and employees are certified or licensed. Insist on documentation. Nothing is more important than maintaining the license to practice dentistry. It is also important to maintain the licensure of the practice's licensed or certified staff members. There are a myriad of reasons, some intentional, some unintentional, that a license might not be valid, including: a name change, incorrect proper legal name, or a change of address. Employers must be vigilant in ensuring that employees do indeed have the necessary credentials to perform as expected.

The good news is most states now have the ability to verify licenses online. Check with your dental association, board of dental examiners, or state health department for the appropriate website.

Practicing without a valid license can be considered a felony and can result in legal proceedings as well as disciplinary actions, not only against the clinical staff person, but also the employing dentist for negligence or failure to safeguard patients. While it is the responsibility of the licensee to make sure the license/registration is current and valid, be aware the State Board of Dentistry can hold the doctor accountable for having an unlicensed clinical staff member and can apply the same penalties to the doctor as to the offending employee,

meaning it could cost the dentist a license along with fines and/or other potential legal consequences.

Don't make the mistake of thinking your liability insurance will cover or protect you. According to a representative for leading dental liability insurance companies: "Board action against a dentist or hygienist is not considered a 'malpractice' claim. Consequently, there is typically no coverage for a dentist/hygienist under the Professional Liability Insurance policy unless a patient is bringing the action, in which case the insurance company may investigate the action, and with a 'Reservation of Rights' letter, pay the claim of the patient if it constitutes neglect of the patient."

If you discover you are employing an unlicensed hygienist or an expanded duty dental assistant, whether they forgot to renew their license or failed to procure a license initially, immediately relieve the person of duty.

To prevent this from happening, you should have an effective protocol requiring your licensed clinical staff (regular and temporary) to produce their current license, and, more importantly, to verify the credentials on an annual basis.

This protocol begins with an up-to-date Personnel Policy Manual. A comprehensive manual will stipulate that, when applicable, a current and valid license and/or certification is a requirement for continued employment. This policy would also describe the expectations for ongoing confirmation of validation and would state that any continuing education (CE) required for the maintenance of licensure/certification can be the responsibility of the licensee. Here is an example:

"Positions within the practice may require licensure or certification. In such cases, maintaining valid and current licensure or certification is a condition of employment and is your responsibility."

For the purposes of recertification, any continuing education requirement must be managed (planned and scheduled) by you. If possible, please arrange to attend courses during hours you are not scheduled to work. Provide at least two



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weeks notice of courses you wish to attend during your regularly scheduled working hours so arrangements can be made for substitute personnel.

Since licensure or certification is a condition of the job, compensation is not required and will generally not be paid for hours spent traveling or attending continuing education courses. However, the employer maintains the discretion to make alternative financial arrangements deemed appropriate at the time your courses are taken.

In addition, reimbursement for any expenses incurred (tuition, gas, hotel, etc.) during such continuing education events are at the employer's discretion.

Prior to attending a continuing education event, the Continuing Education for Recertification Agreement must be completed and signed.

Upon completion of recertification, please provide us with a copy of the renewed license. The employer assumes no responsibility for employees who become delinquent in the number of units needed for recertification and who, consequently, lose their license. Failure to maintain a required license or certification may lead to termination of employment."

By having a good Personnel Policy Manual in place, you will have, in writing, policies critical to the management of staff and be a guide for the administration of a consistent and fair personnel program. This manual will assure uniformity and fairness throughout the practice and communicate to everyone the rights and responsibilities of all. A signed "Acknowledgment Notice" should be maintained within each employee's personnel file. (Contact our office for a complimentary copy of form #203).

A second key aspect of an effective protocol is having well written job descriptions—ones that clearly outline the job requirements, including the need for specific and valid licenses and certifications. These requirements should be clearly stated in each employee's job description.

A dentist may choose to pay for license renewal or the CE required to maintain an employee's license or certification, which are a requirement of the job. The dentist also has the prerogative to make the costs (fees, travel, tuition, etc.) for license renewal or the CE required to maintain licensure/certification, which are requirements of the job, the sole responsibility of the employee. Whichever option is chosen, the policy should be in writing and acknowledged by all employees.

Choosing to pay (or not) for license renewal and/or CE does not affect the "at-will" prerogative or create any unique type of liability or contractual relationship. Paying is simply a benefit,

typically viewed positively by employees, and can help ensure employees follow through, since someone else is paying! Obviously, whatever choice is made should be applied consistently for all similar employees to avoid the risk of discrimination claims or a violation or breach of covenant of good faith and fair dealing claim.

In conclusion, for the health and wellbeing of your practice, as well as the health and wellbeing of your patients, every dentist should check on the status of the licensure of every employee who requires a license or certificate. You should, as part of the annual performance review, obtain a copy of the hygienist's or clinical assistant's license/certification and verify its validity.

A new team member should never be hired without the dentist first confirming current and valid licensure, typically through the use of a professional background check. The dentist should record the expiration date of that license and require the hygienist or clinical assistant to provide a copy of a renewal license PRIOR to the expiration date, maintaining a signed copy in the personnel file, and having all required employees' licenses posted in plain view.

As the leader of the practice, you are the one to determine what is necessary for the safe, efficient, and economic operation of the business. Make an informed decision. **"NO LICENSE - NO RENEWAL LICENSE - NO JOB!"**



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