

A Very Expensive VACATION



Dentist pays ultimate price for failing to make adequate arrangements for covering his office while away.

Lance R. Plunkett, J.D., LL.M., NYSDA General Counsel

DENTIST A, a solo practitioner, has been planning to take a vacation for quite some time, though he has never pinned down any dates. The opportunity arises for a great vacation deal, and he decides to take advantage of it and spend two weeks in Europe. Times are tough and he does not want to close his office down and lose two weeks' worth of income. But he has not arranged for another dentist to cover his office in his absence, so he decides to keep the office open for the very limited purpose of allowing his two dental hygienists to do routine prophylaxes on previously scheduled patients.

He leaves the telephone number where he can be reached and tells his hygienists that he will call in every day to consult with them. He advises them that if a patient calls with an emergency, they are to refer that patient to Dentist B, who has an office several blocks away. Dentist A also advises the hygienists to immediately call both him and Dentist B if there is an emergency in the office of any kind.

Satisfied that he has thought of everything, Dentist A leaves for Europe. Little did he suspect that as his friends waved goodbye to him at the airport, he had just waved goodbye to his dental license.

A Call for Help

Eight days into his vacation, Dentist A received an urgent message from his dental office to call immediately. He wasted no time in doing so and was told by one of his hygienists that a 56-year-old male patient had collapsed during a routine

cleaning, was unconscious and could not be revived. The patient had always appeared to be healthy and had no unusual medical history. The second hygienist was calling Dentist B, and was also going to call for an ambulance.

Dentist A told his hygienist to check the patient's vital signs and to make sure an ambulance was called at once. He asked if the patient appeared to be breathing normally, but the panic-stricken hygienist answered she could not tell, that the patient was very pale and that she did not know cardiopulmonary resuscitation. Dentist A stayed on the phone until the ambulance arrived.

Dentist B finally returned the phone call made to him only to find that Dentist A's office had been closed in the meantime. Dentist B had no idea from the message left for him as to what had actually transpired at Dentist A's office other than that an emergency was occurring and would he please call as soon as possible. Meanwhile, the patient was taken to the hospital, where he was revived from what was ultimately determined to be an ischemic heart episode.

Dentist A was conscientious in following up with the patient's condition right through the patient's discharge from the hospital. The patient was equally conscientious in filing a complaint with the Office of Professional Discipline (OPD), claiming that he had been treated by inadequately supervised dental hygienists and that his dentist had not even been in the country to take care of his emergency distress.

Fifth in a continuing series depicting unfortunate scenarios in which NYSDA members have been cast.



The concept of supervision of a dental hygienist cannot be reduced to a phantom notion when a vacationing dentist finds it economically convenient to do so.

Self-Incrimination

Dentist A outlined for OPD all the steps he had taken throughout the whole incident. Nevertheless, his dental license was revoked on charges of gross negligence and failure to adequately supervise his hygienists. OPD determined that the dentist's explanation of his actions was the equivalent of a self-indictment and confession to failing to be readily, physically available to deal with any emergency that arose in his office.

That failure to be readily, physically available to deal with the emergency was determined to be a gross, egregious departure from the correct standard of dental practice and a grave violation of the rules of professional conduct. Moreover, Dentist A's mentioning that Dentist B had been available was dismissed as irrelevant, since Dentist B was not covering Dentist A's office in such a way as to be readily, physically available either, and Dentist B did not even know that Dentist A was away from his office, much less out of the country.

Finally, Dentist A's assertion that nothing would have been any different had he been physically present in the office was also dismissed as irrelevant because Dentist A had prevented anyone from ever testing that hypothesis by the very fact that he had made himself physically unavailable. It was also pointed out that it was not rational to argue that the normal standard of dental practice should be changed to a lesser standard just because following the normal standard might not have guaranteed a different patient outcome.

A Rose By Any Other Name

Many dentists who express outrage at the mere thought of a dental hygienist ever being allowed to have an independent practice behave exactly as Dentist A did. But it is really the flip side of the same coin. The failure of the dentist to be readily, physically available to super-

vise his hygienists was identical to allowing the hygienists to practice independently. The illusion of supervision from afar does not fool the New York State Legislature. If this scenario were to be deemed acceptable, then independent dental hygiene practice would also be acceptable.

The concept of supervision of a dental hygienist cannot be reduced to a phantom notion when a vacationing dentist finds it economically convenient to do so. Otherwise, the need for supervising dental hygienists would not be sustainable as real under other circumstances either, and the Legislature would realize this rather quickly. But, as it stands, the law does not permit Dentist A to do what he did. The need for him to supervise his dental hygienists is real.

How could Dentist A have avoided his predicament? First, he should have made a more formal arrangement with Dentist B, or another dentist, to cover his dental office for him. This would mean getting Dentist B to give an assurance that he would be readily, physically available to Dentist A's office during the times when it remained open. As it was, Dentist B was never really advised by anyone that he was covering Dentist A's office, and Dentist B was not responsible for the ensuing lack of supervision and the problems it caused.

If Dentist A really was unable to get another dentist to physically cover his office for him, then the only sensible alternative was to close the office and reschedule the patients. The risk of keeping the office open for so-called "routine" cleanings by the dental hygienists is simply unacceptable. Dentist A did not earn enough in those eight days to be able to afford the loss of his license.

Nothing these days is ever so routine that you can just throw caution to the winds.