

## The Risks of Unsupervised Care



Written by:  
**Paul Sauchelli,**  
**DMD, JD**  
DentistCare  
Practice Management  
Consultant

The manner in which you conduct yourself during day-to-day office operations can place you in as much risk as the efficacy of the procedures you perform.

With the rise of the *#MeToo* movement, it seems like almost every day someone is accused of sexual assault, harassment, or other unprofessional behavior. Now more than ever, it is important to review your basic practice guidelines to help prevent an allegation of sexual misconduct.

One area of concern is treating patients without anyone else present in the office. An after-hours emergency visit creates a high-risk situation. Ask yourself how many times you have seen a patient of the opposite sex alone for an after-hours emergency. If an allegation arose, the narrative of that visit would be their word against yours—not the best situation for defending your reputation. (Keep in mind that treating a same-sex patient in this scenario can also result in an allegation.)

In an after-hours situation, the ideal scenario is to treat a patient in the presence of a staff member or anyone who can serve as a witness—including someone who could accompany the patient. If a witness cannot join you in the office, consider creating a video recording or audio recording of the encounter with the patient's knowledge and consent.

Before recording any video or audio, confirm the law in your state with your local counsel to be certain it is legally permissible. Ensure any recordings are properly protected to avoid any potential HIPAA violations. If the patient refuses to allow you to videotape or record the encounter (and no witnesses can be present), consider not treating that patient. Instead, advise them to seek care elsewhere; you could also refer the patient to the emergency room if it is an after-hours or acute emergency.

Create a written protocol detailing under which circumstances an audio or video recording may be done.

- Indicate how the digital recording will be stored, where it will be retained and by whom, and for how long it will be kept.
- Reference how the digital document will be destroyed, consistent with federal and state privacy laws.
- Advise patients in advance that a recording is being considered and have them sign a written release which explains the reasons for the recording. As with all consent forms, place a copy in their chart as part of the permanent record.
- Ensure policies are being followed and that a responsible administrator conducts a periodic review of the protocol's effectiveness. This helps protect the practice or facility in the event of a subsequent inquiry as to the validity and completeness of the patient's chart.

Complaints of unprofessional conduct to State Boards of Dentistry, such as inappropriate contact with a patient, are very serious; they can be difficult to refute if there are no other witnesses. Even worse, a complaint to law enforcement can bring immediate consequences. Don't delay in reviewing your practice guidelines and revising them to address the risks inherent in unsupervised patient care.

Please call us at 844.223.9648 to discuss this or any other risk management concerns. This service is provided at no extra charge.

ProAssurance underwrites the DentistCare® professional liability insurance program and is committed to treating you fairly.

**DentistCare®**  
PROASSURANCE  
*Treated Fairly*

Professional Liability Insurance & Risk Resource Services

ProAssurance Group is rated A+ (Superior) by A.M. Best.

ProAssuranceDentistCare.com • 800.282.6242

ProAssurance Corporation © 2018

This Bulletin is not intended to provide legal advice, and no attempt is made to suggest more or less appropriate medical conduct.

