

What They Didn't Teach You in Dental School: Billing, Marketing, and Business Venture



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- Participants must always be aware of the hazards of using limited knowledge in integrating new techniques or procedures into their practice. Only sound evidence-based dentistry should be used in patient therapy.

Conflict of Interest Disclosure Statement

- Evan Sampson reports no conflicts of interest associated with this course, although he offers legal services to Dentists and Dental Practices.

Short Description

Federal and state laws significantly impact dental practices by ensuring accurate billing practices, ethical marketing efforts, and compliant business structures. Failure to abide by these laws can result in fines, disciplinary actions, civil lawsuits, and even criminal sanctions. This course will use real world case studies to offer dentists and their staffs tools to protect their practice, patients, and professional licenses from legal and financial risks associated with applicable fraud, waste, and abuse laws.

Overview

Federal and state laws significantly impact dental practices by ensuring accurate billing practices, ethical marketing efforts, and compliant business structures. Failure to abide by these laws can result in fines, disciplinary actions, civil lawsuits, and even criminal sanctions. This course will use real world case studies to offer dentists and their staffs tools to protect their practice, patients, and professional licenses from legal and financial risks associated with applicable fraud, waste, and abuse laws.

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Learning Objectives

Upon completion of this course, the dental professional should be able to:

- Understand some of the key laws and legal concepts that exist at the federal and state levels that govern billing and marketing laws, as well as unlawful business relationships.
- Recognize scenarios that place the dental professional at risk of violating the law.
- Implement practices that mitigate the dental professional’s risk from violating applicable laws.

Introduction

The Federal and State governments have adopted a variety of laws and regulations that govern billing practices and marketing efforts by health care entities that apply to dental practices and ancillary services. These laws and regulations were adopted to combat fraud, waste, and abuse within the healthcare system. Many of the laws and regulations carry penalties that could result in fines, disciplinary action, civil lawsuits, or criminal sanctions for licensed practitioners. Dental professionals should understand the requirements that these laws impose and

implement protective measures to ensure compliance.



Defining “Fraud,” “Waste,” and “Abuse”

1. “Fraud” means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person.¹ It includes any act that constitutes fraud under applicable Federal or State law.² Generally, mistakes, errors, or negligence do not constitute fraud; rather fraud includes reckless or intentional conduct.³

2. “Waste” is the overutilization of services, or other practices that, directly or indirectly, result in unnecessary costs to the health care system.⁴ Waste is generally not considered to be caused by criminally negligent actions but rather the misuse of resources.⁵

3. “Abuse” means provider practices that are inconsistent with sound fiscal, business, or healthcare practices, and result in an unnecessary costs to the healthcare system, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care.⁶ Abuse involves payment for items or services when there is no legal entitlement to that payment and the provider has not knowingly and/or intentionally misrepresented facts to obtain payment.⁷



Categories of Fraud, Waste, and Abuse Laws

1. In the United States, laws aimed at fraud, waste, and abuse are adopted at both the Federal and State level. Federal fraud, waste, and abuse laws often (but don't exclusively) concern governmentally sponsored health plans, such as Medicare, Medicaid, and Military Benefits. State fraud, waste, and abuse laws can apply to commercial insurance and individual consumers, but these can vary significantly between states. Private disputes between insurance carriers and dentists are also generally governed by state law.

2. Fraud, waste, and abuse laws generally apply to billing practices, marketing efforts, and the structures of business ventures/investments. Fraud, waste, and abuse laws are complex, and can often apply to one or all three of these categories simultaneously. For example, a "refer a friend" marketing effort, overseen by a dental marketing company, could potentially implicate a federal prohibition on kickbacks, a state fee-splitting prohibition, and run afoul of other state laws governing the corporate practice of dentistry.



Federal Fraud, Waste, and Abuse Laws

Introduction - The federal government has adopted several laws to prevent fraud, waste, and abuse within the healthcare system. Although there may be certain exceptions, generally federal healthcare laws apply to Medicare, Medicaid, and other government sponsored health insurance plans.⁸ Five of the most important federal fraud, waste, and abuse laws are the False Claims Act;⁹ the Anti-Kickback Statute;¹⁰ the Physician Self-Referral Law, also known as the Stark Law;¹¹ the Exclusion Statute;¹² and the Civil Monetary Penalties Law.¹³

1. False Claims Act ("FCA") - This is the law most often used to bring a case against a health care provider for the submission of false claims to a Federal health care program. The FCA prohibits knowingly presenting (or causing to be presented) to the Federal Government, or its agents, a false or fraudulent claim for payment or approval.¹⁴ This can include submitting claims to Medicare or Medicaid for procedures that were not medically necessary or for which the individual who performed the procedure was not properly licensed.¹⁵

a. Case Study: In 2021, a Connecticut Oral Surgeon settled a matter with the government for \$300,000 for violating the FCA, for billing Medicaid for dental restoration services that were not provided or were not medically necessary, and x-ray services that were performed by dental assistants who had not been certified to take x-rays.¹⁶

2. The Anti-Kickback Statute ("AKS") - The AKS is a law that prohibits the knowing and willful payment of "remuneration" to induce or reward patient referrals or the generation of business involving any item or service payable by the Federal health care programs (e.g., drugs, supplies, or health care services for Medicare or Medicaid patients). Remuneration includes anything of value and can take many forms besides cash, such as free rent, expensive hotel stays and meals, and excessive compensation for medical directorships or consultancies. In the context of Federal health care programs, paying for referrals is illegal. The AKS covers the payers of kickbacks-those who offer or pay remuneration - as well as the recipients of kickbacks - those who solicit or receive remuneration. However, certain safe harbors protect certain payment and business practices that could otherwise implicate the AKS.¹⁷

a. Case Study: In 2024, a Connecticut Dentist pleaded guilty to a violation of the AKS for billing Medicaid after paying kickbacks to patient-recruiters, who then passed on a portion of the kickbacks to the patients as an incentive to attend dental appointments.¹⁸

3. Physician Self-Referral Law (the “Stark Law”) - The Stark Law prohibits physicians (a term that includes dentists) from referring patients to receive “designated health services” payable by Medicare or Medicaid from entities with which the physician or an immediate family member has a financial relationship, unless an exception applies. Financial relationships include both ownership/ investment interests and compensation arrangements. Designated health services include clinical laboratories, certain prosthetics and durable medical equipment, and outpatient prescription drugs.¹⁹ Under the Stark Law, “clinical laboratory services” refer to entities furnishing biological, chemical, or pathological examination of materials derived from the human body, for the purpose of diagnosis, prevention or treatment information, rather than collecting or preparing specimens.²⁰ For example, oral appliances used to treat obstructive sleep apnea may be considered durable medical equipment under the Stark Law.²¹

4. Exclusion Statute - The Federal Government is legally required to exclude from participation in all Federal health care programs individuals and entities convicted of certain criminal offenses, including convictions for health-care-related fraud, theft, or other financial misconduct. The Government has discretion to exclude individuals and entities on other grounds. Dentists are responsible for ensuring that they do not employ or contract with excluded individuals or entities in any capacity or setting in which Federal health care programs may reimburse for the items or services furnished by those employees or contractors. This responsibility requires screening all current and prospective employees and contractors against the online U.S. Department of Health and Human Services, Office of Inspector General (“OIG”) “List of Excluded Individuals and Entities.” If a Dentist’s employs or contracts with an excluded individual or entity and Federal health care program payment is made for items or services that person or entity furnishes, whether directly or indirectly, the Dentist may be subject to a civil monetary penalty and/or an obligation to repay any

amounts attributable to the services of the excluded individual or entity.²²

a. Case Study: In 2014, a group of Montana dental practices agreed to pay the Federal Government \$24,579.93 for employing an individual that the practice knew or should have known was excluded from Federal health programs.²³

5. Civil Monetary Penalties Law – may seek civil monetary penalties and exclusion for a wide variety of conduct, including presenting a claim that a provider knows or should have known is for a service that was not provided as claimed or is false or fraudulent.²⁴

a. Case Study: An Indiana dental practice agreed to pay \$125,446 for violations of the Civil Monetary Penalties Law for submitting claims to Indiana Medicaid for dental services provided by non-credentialed dentists under the names of credentialed dentists.²⁵



State Laws

Introduction - Although federal laws are generally aimed at curbing fraud, waste, and abuse with regard to government sponsored insurance plans, states have adopted similar laws that apply more generally to private payment and commercial insurance situations. Like the federal fraud, waste, and abuse, these laws restrict a dentist’s ability to offer consideration for referrals or enter into particular business arrangements. Applicable laws can vary widely from state to state – what may be permissible in one state, may be unlawful across the border. Accordingly, it is important for a dentist to understand what laws may apply to his or her particular practice.

1. State FCA, AKS, and Self-Referral Laws - Many states have adopted their own versions

of the FCA, the AKS, and Stark Law that apply to a broader set of scenarios. For example, some states have adopted laws based on the FCA that prohibit the submission of fraudulent claims to commercial insurance carriers.²⁶ Other states have adopted statutes that prohibit the payments of kickbacks in contexts outside of Medicare and Medicaid.²⁷ Similarly, some states have adopted laws that regulate a dentist's ability to invest in ancillary services that fall outside of the designated health services identified by the Federal Stark Law – accordingly, it is important a dentist understand the requirements before investing in, or agreeing to compensation from, an ancillary health service like a licensed facility or dental laboratory.²⁸

a. Case Study: An Oklahoma dentist agreed to pay more than \$500,000 to the State of Oklahoma following an investigation under the State False Claims Act, in which it was revealed that the dentist was double-billing and upcoding patient encounters, billing excess units of general anesthesia and billing for tobacco cessation counseling for non-tobacco users.²⁹

2. Fee-Splitting - Many states have also adopted rules that prevent dentists from accepting or tendering rebates or splitting fees with other dentists and healthcare professionals.³⁰ Specifically, the American Dental Association considers fee-splitting to be unethical.³¹ Fee-Splitting can occur in a variety of contexts including paying referral fees to unlicensed individuals, joint ventures with unlicensed entities, leasing office space and equipment tied to patient referrals, and shared revenue arrangements with other healthcare providers. Similarly, advertising services paid on a commission, rather than flat fee, basis could potentially violate fee-splitting prohibitions.³²

a. Case Study: In 1988, a New York Court held that a dentist engaged in prohibited fee-splitting by paying a percentage of his gross revenue to lease a fully equipped dental office.³³

3. Corporate Practice of Dentistry - States have adopted rules that restrict the ability of non-licensed individuals and business entities from owning or operating dental practices. Depending on state law, a corporate entity owned by unlicensed individuals that provides dental or other dental services and employs licensed professionals may be engaged in the unlawful corporate practice of dentistry.⁵ Alternatively, a business arrangement in which a business entity does not own a dental practice outright, or employ dentists, may result in such an entanglement of affairs that the business entity may be engaged in the de facto unlawful practice of dentistry.³⁵ The policy underlying the doctrine of the corporate practice of dentistry is based on personal responsibility: anyone who practices a profession is responsible directly to his patient rather than to commercial interests.³⁶ While not all business arrangements may violate the corporate practice of dentistry, it is incumbent on the dentist to ensure compliance with state laws.

a. Case Study: In 2015, the Office of the Attorney General of the State of New York entered in a settlement with a large, national dental support organization, that concluded that the support organization exhibited “extensive control” over affiliated dental practices. The investigation determined that the support organization: (1) had direct and exclusive control over practice bank accounts; (2) hired and oversaw clinical staff, including associate dentists and hygienists; (3) incentivized and pressed staff to increase sales of dental services and products; (4) trained non-clinical staff to discuss treatment plans and assist in decision making about treatment alternatives; (5) took a pre-set percentage of each dental office's monthly gross profit, violating the state fee-splitting prohibition; and (6) subjected the dental practices to non-competition and non-solicitation agreements that prevented the practices from competing with other organization-affiliated practices, regardless of location.³⁷

4. Credit Balances – Patient credit balances represent a debt owed to each patient, but additional requirements apply. Generally, if a credit has remained on a patient account for a period of time prescribed at law, it is deemed “unclaimed property” under state law and must be escheated to the State. For example, a dormancy period may be three years – if a credit remains on a patient’s account for more than three years, it must be returned to the state.³⁸ Failure to properly address patient credit balances may result in penalties.³⁹ Given the foregoing, it is important that a dental practice regularly track all patient credit balances, refund balances within a reasonable time, and report any dormant credit balances to the state.



Common Types of Dental Fraud

Introduction - Dental fraud can take many forms. As discussed earlier, billing for non-medically necessary services or for services rendered by unlicensed individuals may be deemed fraud. Other common examples of fraud concern coding issues, the waiver of copayments and deductibles, and failing to bill insurance for covered services.

1. Common Coding Issues - The American Dental Association Code on Dental Procedures and Nomenclature (the “CDT Code”) is complex and can be deceptively manipulated to result in higher reimbursement for a dentist. Two of the most common coding-abuse practices are known as “upcoding” and “unbundling.” Upcoding is billing for a more expensive service than the one actually performed.⁴⁰ Unbundling is the practice of a doctor billing for multiple components of a service that must be included in a single fee.⁴¹ Upcoding and unbundling, as well as other forms of deceptive coding, may be deemed fraudulent under federal or state law.

a. Case Study: A West Virginia dentist was sentenced to prison after he admitted that

he upcoded billings for tooth extractions by submitting claims to Medicaid that he performed complex procedures, such as extractions of impacted teeth, when he had actually performed simple extractions.⁴²

2. Waiving of Copayments and Deductibles - A dentist who accepts payment from a commercial insurance carrier under a copayment plan as payment in full without disclosing to the carrier that the patient’s payment portion will not be collected, is engaged in overbilling.⁴³ The essence of this impropriety is deception and misrepresentation; an overbilling dentist makes it appear to the commercial insurance carrier that the charge to the patient for services rendered is higher than it actually is.⁴⁴ Routine waiver of coinsurance, copayments or deductibles, where such waiver would affect the amount the insurance carrier would be pay, may be unlawful.⁴⁵ If a carrier discovers the practice, it may jeopardize reimbursement from the carrier.⁴⁶ Reasonable, good faith attempts at collection of coinsurance, copayments or deductibles should be made and documented.

a. Case Study: A New Jersey Court concluded that a dentist that submitted claims for his full fee, even though he intended to waive the copayment, constituted fraud against the insurance company.⁴⁷

3. Failing to Bill Insurance For Covered Services - As a general rule, it is the patient’s choice as to how to use their insurance benefits, but will often look to their dentist for information related to coverage and reimbursement issues. Unfortunately, some dentists use their patients’ unfamiliarity with their dental benefits to deceive the patients to pay higher out of pocket costs for covered treatments. Deceiving patients in this manner, or otherwise failing to obtain an informed waiver from each patient could constitute a violation of the law.⁴⁸

a. Case Study: In 2007, a Pennsylvania Dentist’s license was revoked by the State Board of Dentistry for deceiving a patient to issue the Dentist a personal check in the amount of \$10,000 for dental services, in violation of the practice’s billing protocols.⁴⁹



Marketing Issues

1. Discount Programs - As previously described, offering any sort of consideration to another person to increase patient volume may constitute unlawful fee-splitting or offering of kickbacks. “Discount” and “refer a friend” programs may also be considered unlawful under these applicable laws. The use of discount programs may be subject to additional legal restrictions,⁵⁰ or violate the terms of an agreement with an insurance company that a dentist is participating with.⁵¹ Dentists should ensure that any discount or “refer a friend” program that they are using to promote their practice complies with federal and state law, as well their participating insurance company contracts.

2. Marketing Calls, Texts and E-Mails

a. There are a variety of new technologies available to dental practice to help reach current and new patients. However, there are a number of laws designed to protect consumers from abusive marketing tactics.

b. Companies that contact consumers via telephone, text, or fax must comply with the Telephone Consumer Protection Act of 1991 (the “TCPA”),⁵² or risk regulatory scrutiny and the threat of class action lawsuits. Generally, a practice that uses telephone calls, text messages, or faxes for marketing purposes should only do so in compliance with the TCPA’s consent, disclosure, identification, abandonment, and opt-out requirements. Any dental practice utilizing calls, texts, and faxes for marketing should: (1) Provide clear and conspicuous TCPA consent disclosures, including the right to opt-out; (2) Obtain consent in writing or electronically; (3) Retain all documentation of consent; (4) Ensure that any calls made are closely related to the purpose for which the consent was provided; and (5) Track and

document all opt-outs, no matter how such opt-out was communicated.⁵³ If the dental practice uses a third party service⁵³ to contact consumers on its behalf, the service company should represent that it complies with the TCPA (and similar legal requirements) and will indemnify the dentist for violations of the law.

i. Case Study: A dentist was adjudicated to be liable for treble damages by the Ohio Supreme Court for two violations of the TCPA. First, the dentist initiated an automated call to an individual with a prerecorded message soliciting business for the dentist’s practice without the individual’s prior express consent. After the call, the dentist failed to respond to a request by the individual for a copy of the dentist’s “Do Not Call Policy,” constituting another violation of the TCPA.⁵⁴

c. E-Mails are governed by another law, the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the “CAN-SPAM Act”). The CAN-SPAM Act applies to emails that have a primary purpose of commercial advertisement or promotion of a commercial product or service.⁵⁵ Commercial e-mail messages must generally comply with the following requirements: (1) No false or misleading header information; (2) No deceptive subject lines; (3) Include an opt-out mechanism; (4) Include the sender’s valid physical postal address ; and (5) Identify the message as an advertisement or solicitation.⁵⁶

d. Many states have adopted their own telemarketing regulations, so it is important that any dentist familiarize themselves with any law that applies to their own practice.⁵⁷

3. Deceptive Advertising - Many state boards of dentistry have adopted regulations that prohibit misleading or deceptive advertising.⁵⁸ Other state and federal laws may apply to deceptive advertising practices.⁵⁹

a. Case Study: In January 2015, the Massachusetts Attorney General’s Office finalized a \$3.5 million settlement with a large, national dental organization after alleging that the dental organization engaged in deceptive advertising and marketing practices, including

charging patients for services it advertised as “free,” as well as advertising that it worked with “all” insurance carriers when it did not accept Medicaid.⁶⁰

4. Announcing an Unrecognized Specialty -

Many state boards of dentistry have adopted regulations that prohibit the announcement of an unrecognized specialty.⁶¹ Announcement of an unrecognized specialty could subject a dentist to penalties or be deemed to be unprofessional conduct.

a. Case Study: In 2008, the New Jersey State Board of Dentistry penalized a general dentist after stating in business cards and a newspaper advertisement that he was a “Board Certified Implant Dentist”, a dental specialty not recognized by the Board’s regulations.⁶²

Risk Mitigation Strategies

1. Introduction - With the knowledge of the common areas of fraud, waste, and abuse risk, there are other ways to implement controls to reduce risk of lawsuits and regulatory investigations. Implement a Compliance Program - The primary goal of any compliance program is to provide a tool to strengthen the efforts to prevent and reduce improper conduct.⁶³ However, these programs can also benefit practices by helping to streamline business operations.⁶⁴ Federal guidelines have recommended seven components that provide a solid basis upon which a practice can create a compliance program⁶⁵

a. Oversight - Appointing a Compliance Officer to handle the day-to-day operations of the compliance program;

b. Written Policies and Procedures - Adopting written policies and procedures, so that all practice staff has clear direction on permissible conduct;

c. Training and Education - Utilizing effective training and education to ensure that all practice staff is aware of risk areas and improper conduct, as well as legally mandated obligations⁶⁶

d. Enforcement - Enforcing disciplinary standards through clearly understood guidelines to dis-incentivize improper conduct;

e. Auditing and Monitoring - Conducting internal monitoring and auditing to proactively identify issues and patterns, especially with regard to coding, documentation, and billing issues;

f. Open Lines of Communication - Ensuring open lines of communication, to allow staff to report improper conduct to the Compliance Officer or Leadership confidentially and free from retaliation; and

g. Investigation and Response - Responding appropriately to detected offenses and developing corrective action.

3. Investigate Helpful Insurance Products

- Regulatory investigations and lawsuits can occur, even if a dentist’s practice takes proactive approaches to reducing risk. Many insurance companies offer insurance products that may protect a dentist from actions related to fraud, waste, and abuse, such as regulatory riders to malpractice policies. Other policies, such as cyber insurance policies, may insure against enforcement actions under TCPA and CAN-SPAM. Speak to an insurance broker about coverage for regulatory investigations and lawsuits for issues relating to the billing and marketing conduct discussed in this course.

References / Additional Resources

1. 42 C.F.R. § 455.2 (2025).
2. Id.
3. 65 Fed. Reg. 59434 (October 5, 2000) at 59436.
4. CTRS. FOR MEDICARE & MEDICAID SERVS., U.S. DEPT. OF HEALTH AND HUMAN SERVS., MEDICARE MANAGED CARE MANUAL, Pub. No. 100-16, ch. 21 (2013)
5. Id.
6. 42 C.F.R. § 455.2 (2025)
7. CTRS. FOR MEDICARE & MEDICAID SERVS., U.S. DEPT. OF HEALTH AND HUMAN SERVS., MEDICARE MANAGED CARE MANUAL, Pub. No. 100-16, ch. 21 (2013)
8. U.S. DEPT. OF HEALTH AND HUMAN SERVS., OFF. OF INSPECTOR GENERAL, A Roadmap

for New Physicians: Avoiding Medicare and Medicaid Fraud and Abuse

9. U.S.C. §§ 3729–3733 (2025).
10. 42 U.S.C. § 1320a-7b(b) (2025).
11. 42 U.S.C. § 1395nn (2025).
12. 2 U.S.C. § 1320a-7 (2025).
13. 42 U.S.C. § 1320a-7a (2025).
14. 65 Fed. Reg. 59434 (October 5, 2000) at 59449.
15. United States ex rel. Kramer v. Doyle, No. 1:18-cv-373, at *3-4 (S.D. Ohio Apr. 21, 2022).
16. PRESS RELEASE, U.S. ATTORNEY’S OFFICE, DISTRICT OF CONNECTICUT, Manchester Dentist, Dental Clinics and Dental Imaging Facility Pay \$300K to Settle False Claims Allegations (Updated August 13, 2021)
17. U.S. DEPT. OF HEALTH AND HUMAN SERVS., OFF. OF INSPECTOR GENERAL, A Roadmap for New Physicians: Avoiding Medicare and Medicaid Fraud and Abuse
18. PRESS RELEASE, U.S. ATTORNEY’S OFFICE, DISTRICT OF CONNECTICUT, Connecticut Dentist Pleads Guilty to Violating Federal Anti-Kickback Law (September 5, 2024)
19. See 66 Fed. Reg. 856 (January 4, 2001).
20. 42 C.F.R. § 411.351 (2025).
21. CTRS. FOR MEDICARE & MEDICAID SERVS., Article: Oral Appliances for Obstructive Sleep Apnea - Policy Article, A52512 (most recently updated May 9, 2014)
23. U.S. DEPT. OF HEALTH AND HUMAN SERVS., OFF. OF INSPECTOR GENERAL, Remington Family Dental and Associates Agreed to Pay \$24,000 for Allegedly Violating the Civil Monetary Penalties Law by Employing an Excluded Individual (May 28, 2014)
24. U.S. DEPT. OF HEALTH AND HUMAN SERVS., OFF. OF INSPECTOR GENERAL, Atlanta Dental Agreed to Pay \$125,000 for Allegedly Violating the Civil Monetary Penalties Law by Submitting Claims for Dental Services Provided by Non-Credentialed Dentists (February 9, 2018)
25. 42 U.S.C. § 1320a-7a(a)(1)(B) (2025).
26. U.S. DEPT. OF HEALTH AND HUMAN SERVS., OFF. OF INSPECTOR GENERAL, Atlanta Dental Agreed to Pay \$125,000 for Allegedly Violating the Civil Monetary Penalties Law by Submitting Claims for Dental Services Provided by Non-Credentialed Dentists (February 9, 2018)
27. See e.g., N.J. Stat. § 17:33A-1 (2025), et seq.; Cal. Penal Code § 550(a)(1) (2025); N.Y. Penal Law § 177.00 (2025), et seq.
28. See e.g., Fla. Stat. Ann. § 456.054 (2025); Fla. Stat. Ann. § 817.505 (2025); Mass. Ann. Laws ch. 175H, § 3 (2025).
29. See e.g., N.J. Stat. § 45:9-22.4 (2025).
30. PRESS RELEASE, OKLAHOMA ATTORNEY GENERAL’S OFFICE, Broken Arrow dentist to pay more than \$500,000 after False Claims Act allegations (July 31, 2025)
31. See e.g., Mo. Rev. Stat. § 332.321(18) (2025); 22 Tex. Admin. Code § 108.53(b) (2025)
32. AMERICAN DENTAL ASSOCIATION, Principles of Ethics & Code of Professional Conduct (Oct. 2024), Sec. 4.E
33. Nev. State Bd. of Dental Examiners v. Lajevic, No. A-14-704250-C (Dist. Ct. Clark Co., N.V. Sept. 17, 2014).
34. Sachs v. Saloshin, 526 N.Y.S.2d 168, 169-70 (App. Div. 1988).
35. OCA, Inc. v. Hassel, 389 B.R. 469, 476 (E.D. La. 2008).
36. Id.
37. State v. Boren, 36 Wash. 2d 522, 528, 219 P.2d 566, 570 (1950).
38. PRESS RELEASE, NEW YORK STATE ATTORNEY GENERAL, A.G. Schneiderman Announces Settlement With Aspen Dental Management That Bars Company From Making Decisions About Patient Care In New York Clinics (June 18, 2015)
39. N.J. Stat. § 46:30B-42 (2025).
40. See e.g., N.J. Stat. § 46:30B-42 (2025), et seq.
41. 65 Fed. Reg. 59434 (October 5, 2000) at 59439.
42. Id.
43. PRESS RELEASE, U.S. ATTORNEY’S OFFICE, DISTRICT OF SOUTHERN DISTRICT OF WEST VIRGINIA, Charleston dentist sentenced to five years in federal prison for health care fraud (December 7, 2017)
44. AMERICAN DENTAL ASSOCIATION, Principles of Ethics & Code of Professional Conduct (Oct. 2024), Sec. 5.B.1
45. Id.
46. Feiler v. N.J. Dental Asso., 191 N.J. Super. 426, 467 A.2d 276 (Super. Ct. 1983); Oxford Health Ins., Inc. v. Josephson, 2010 NY Slip Op 32014(U), ¶ 14 (Sup. Ct. 2010).
47. See Am. Fedn. of State v. Bristol-Myers Squibb Co., 948 F.Supp.2d 338, 350 (S.D.N.Y.2013).
48. See 42 U.S.C. § 17935(a)(2) (2025).

49. N.J.A.C. 13:30-6.2(n) (2025).
50. Commonw. Of Pa, Bureau of Prof'l and Occup. Aff. v. Valik, Docket No. 0917-46-01, File No. 01-46-00150 (Dec. 4, 2007).
51. N.J.A.C. 13:30-6.2(n) (2025).
52. AMERICAN DENTAL ASSOCIATION, Relationships with Third-Party Payers
53. 47 U.S.C. § 227 (2025)
54. See 47 C.F.R. § 64.1200(f)(9) (2025).
55. Charvat v. Ryan, 116 Ohio St. 3d 394 (2007).
56. 15 U.S.C. § 7702(2)(A) (2025).
57. See 15 U.S.C. § 7704 (2025).
58. See e.g., Conn. Gen. Stat. § 42-288a (2025); N.J. Stat. § 2A:65D-2 (2025).
59. See e.g., D.C. Code Mun. Regs. tit. 17 4216.2 (2025); N.H.Rev.Stat. Ann. 317-A:17(II)(h) (2025); Md. Code Regs. 10.44.06.02 (2025).
60. PRESS RELEASE, FEDERAL TRADE COMMISSION, Dental Practice Software Provider Settles FTC Charges It Misled Customers About Encryption of Patient Data (January 5, 2016)
61. PRESS RELEASE, OFFICE OF THE MASSACHUSETTS ATTORNEY GENERAL, Attorney General's Office Reaches \$3.5 Million Settlement With Aspen Dental Over Claims of Deceptive Advertising (January 5, 2013)
62. See e.g., Md. Code Regs. 10.44.06.02(11) (2025).
63. In Re: Dr. Gary R. Dornfeld, Uniform Penalty Letter In Lieu of Formal Disciplinary Complaint, Advertising Complaint No. 51632, New Jersey State Board of Dentistry (May 12, 2008).
- 64, 65 Fed. Reg. 59434 (October 5, 2000) at 59435.
65. Id.
66. Id.
67. See e.g., 45 CFR 164.530(b) (mandating workforce training on the Health Insurance Portability and Accountability Act of 1996); 29 CFR 1910.1030(g)(2) (mandating employee training regarding bloodborne pathogen requirements under Occupational Safety and Health Act of 1970); Cal. Gov. Code § 12950.1(a) (requiring covered employers to provide sexual harassment and abusive conduct training to supervisory and nonsupervisory employees).

Course Test Preview

To receive Continuing Education credit for this course, you must complete the online test. Please go to: www.dentalcare.com/en-us/ce-courses/ce720/start-test

- 1. You are an Oral Surgeon. An ophthalmologist friend of yours comes to you with a business proposition. He says that he is planning on investing in an ambulatory surgery center and a pharmacy, and wants you to invest in the businesses too. He says that you can drive all of your patients to the surgery center and the pharmacy, and receive the profits from these new business ventures. However, the ophthalmologist wants to keep your ownership in the surgery center a secret, so no other oral surgeons can steal the idea. This business arrangement could potentially implicate:**

 - A. Self-Referral Laws
 - B. The Corporate Practice of Dentistry Doctrine
 - C. The TCPA
 - D. The CAN-SPAM Act
- 2. You are a Pediatric Dentist, and work in an office with several other specialists. Your office treats a lot of patients who are Medicaid beneficiaries. One day, you overhear a hygienist who tells a dental assistant that she believes that an Endodontist in the office is performing root canals on healthy teeth because the reimbursement on the root canals is so high. The Endodontist's treatment of health teeth could potentially implicate:**

 - A. The Stark Law
 - B. The CAN-SPAM Act
 - C. The False Claims Act
 - D. Unclaimed Property Laws
- 3. Dr. Smith just hired you as an associate dentist to work in her practice. One day, Dr. Smith's husband walks into the office, and introduces himself as Mr. Smith. Mr. Smith tells you that he is not a dentist, but that he co-owns the practice with Dr. Smith. Mr. Smith says that he wants to increase the practice's revenue by implementing quotas for all associate dentists. You will be required to record a specific number of crowns and root canals each month, or you will be fired. Mr. Smith said that he came up with these quotas himself after reviewing the practice's financial history. Mr. Smith's conduct could potentially implicate:**

 - A. The TCPA
 - B. The Corporate Practice of Dentistry Doctrine
 - C. The CAN-SPAM Act
 - D. Unclaimed Property Laws
- 4. You are an associate orthodontist in an orthodontic practice. One day, you overhear a conversation that a newly hired associate orthodontist is having with the front desk staff. The other associate tells the front desk staff that his sister works as a hygienist for a general dental practice across town and has given him a list of cell phone numbers of patients. The other associate wants the front desk staff to input the cell phone numbers into the new automated texting software that the practice just purchased, so that the orthodontic practice can send a "blast" text message announcing the hiring of the new associate orthodontist. This action could potentially implicate:**

 - A. The Stark Law.

- B. The TCPA
- C. Fee-Splitting Prohibitions
- D. The AKS

5. You are an Orthodontist who owns your own practice. Typically, you charge your patients in increments every month during the treatment plan, and you also treat a number of Medicaid beneficiaries. One day, your Office Manager comes to you and tells you that a growing number of patients are failing to keep up with their payments. To help reduce the number of defaulting patients, she wants to offer new patients a “Prompt Pay Discount” – patients who opt to make a lump sum payment before the first appointment will pay 10% less than patients who pay over time. This plan could potentially violate:

- A. The AKS, rules on waiving co-payments and deductibles, and your practice’s contracts with commercial insurance carriers
- B. The TCPA and CAN-SPAM Act.
- C. Unclaimed Property Laws
- D. Laws that prohibit upcoding and unbundling

6. You are a General Practitioner, and work in an office with several other specialists. One day, the practice owner asks you to review some charts as part of the practice’s compliance program. You review some charts of an Oral Surgeon who works at the office, but you notice that procedures that should have been documented as simple extractions, were all billed as surgical extractions (and were reimbursed at higher rates). You tell the practice owner, who confronts the Oral Surgeon. The Oral Surgeon responds with “I’m a Surgeon – all extractions I do are surgical extractions!” The Oral Surgeon was:

- A. Unbundling
- B. Upcoding
- C. Fee-Splitting
- D. Engaging in the Corporate Practice of Dentistry

7. You work as an Office Manager in a General Practitioner’s Practice, and handle all of the patient billing. One day, the practice owner comes into the office and pulls you aside. She says that he is planning on selling the office and that he wants you to wipe all of the patient credit balances out of the practice management system. He shouts “Zero them out!” because he doesn’t want the practice management system to show any debts before he sells the practice. Deleting all of the credit balances could violate:

- A. The TCPA
- B. The CAN-SPAM Act
- C. The Corporate Practice of Dentistry Doctrine
- D. Unclaimed Property Laws

8. You own a dental practice, and just settled a case with a large dental insurance carrier that alleged that you were submitting fraudulent claims due to upcoding. The matter was settled out of court, and most of your staff is unaware of the matter. To build an effective compliance program at your office, you should:

- A. Draft a written policy on coding and documentation issues and ensure your staff is trained

- on the requirements of the policy
- B. Keep the settlement a secret and forget it ever happened
- C. Fire every employee you suspect of prohibited conduct without an investigation
- D. Instruct all of your staff to rely only on generative artificial intelligence to write progress notes, to remove any trace of the human element in documentation

9. You are a general practitioner associate at a dental office. The owner of the practice comes to you, as she wants to put in an advertisement on social media platforms announcing you as an “Oral Wellness Specialist”. This advertisement could potentially violate:

- A. Fee-Splitting Prohibitions
- B. Rules prohibiting announcing the practice in an unrecognized specialty
- C. Unclaimed Property Laws
- D. The CAN-SPAM Act

10. You are a Pediatric Dentist, and you own a practice next door to a General Practitioner. One day, the General Practitioner comes to you and says that he is tired of treating kids. He is going to refer all of his pediatric patients to you, as long as you give him 25% of what you collect from the patient. He tells that this arrangement is legal, because he doesn’t treat Medicaid beneficiaries. The General Practitioner’s actions could potentially violate:

- A. Fee Splitting Laws
- B. The Corporate Practice of Dentistry Doctrine
- C. The Stark Law
- D. Unclaimed Property Laws

About the Authors

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Evan Sampson is Counsel with Post & Schell, P.C. in the firm's Health Care Practice Group, where he advises dentists and dental organizations on a broad range of regulatory, transactional, and litigation matters. Mr. Sampson brings over a decade of experience in both in-house and outside counsel roles, counseling clients on complex regulatory frameworks, including the Stark Law, the Anti-Kickback Statute, the False Claims Act, corporate practice of dentistry rules, HIPAA privacy issues, Medicare and Medicaid compliance issues, overpayment resolutions, and voluntary self-disclosures under OIG and CMS protocols. In the transactional space, Mr. Sampson has provided diligence and structured agreements for mergers, acquisitions, private equity investments, and management service arrangements. Mr. Sampson's experience includes serving as the General Counsel to the largest dental support organization in New Jersey and a Senior Privacy/Compliance Officer for the largest municipal hospital system in the country. Mr. Sampson currently serves on the Board of Directors and as a Member of the Regulatory Committee of the Health Law Section of the New Jersey State Bar Association.

