

California Dental Practice Act

UCSF Seniors 2017



Michael Kowalski, D.D.S., J.D.

- Bradley, Curley, Barrabee, & Kowalski PC
 - Larkspur



Health Care Law Firm

- Malpractice Defense
- Licensure Issues
- Practice Sale/Purchase
- Incorporation
- Employment Issues
- Estate Planning

COURT SYSTEMS

CRIMINAL

CIVIL

ADMINISTRATIVE

License is limited property right

DENTAL BOARD OF CALIFORNIA

- “Our mission is to protect the health and safety of consumers.”

SUBJECTS

- RENEWAL OF LICENSE
- SCOPE OF PRACTICE
- DENTAL AUXILIARIES
- PRESCRIPTION OF DRUGS



When does the DBC Investigate?

- Patient Complaint in Writing
- Report from Insurance Co. Post-Settlement
- Report from PD of Arrest, Criminal Conviction
- Report of Patient's Insurance Provider (Audit)
- Report of Staff or Former Staff Person

ELEMENTS OF NEGLIGENCE

- Duty
- Breach of applicable standard of care
- Injury
- Causation
- Damages

STANDARDS OF CARE: DYNAMIC

“Laws should be like clothes. They should be made to fit the people they serve.”

Clarence Darrow

STANDARDS OF CARE: OPINION

- REASONABLE AND PRUDENT (BAJI 6.00.1)
- EXPERT WITNESSES ONLY (BAJI 6.30)
- EXPERTISE REGARDING ISSUES: DDS, MD, RDH, RDA, PhD
- NEGLIGENT (B&P 1685)

STANDARDS OF CARE: WRITTEN

- SOCIETY GUIDELINES (ASA, AAOMS, ADA)
- SOCIETY MEMBERSHIP
- EXPERT WITNESSES (BAJI 6.30)
- RECOGNIZED AUTHORITATIVE TEXT

STANDARDS OF CARE: STATUTE

- PRESUMPTION OF NEGLIGENCE (EV CODE 669)
- DENTAL PRACTICE ACT
- PENAL CODE
- HEALTH AND SAFETY CODE
- INSURANCE CODE
- OSHA

Standards of Care

- BP and Pulse
- All Patients for Treatment
 - Local
 - Operative
 - Surgery
 - Consults
- Updated History Forms
- Medical Consults
- In Office Testing

STANDARDS OF CARE: INFORMED CONSENT

- KNOWN RISK, SERIOUS INJURY (BAJI 6.11)
- ALTERNATIVE TREATMENTS (BAJI 6.03)
- REASONABLE PERSON STANDARD
- Cobbs v. Grant, 1972, Cal. Supreme Court
- STATUTES; WRITTEN FOR GA OR
CONSCIOUS SEDATION (B&P 1682)

STANDARDS OF CARE: INFORMED CONSENT

- Does not require discussion of:
 - Every conceivable risk no matter how minor or remote.

Standards of Care: *Informed Consent*

- Warn of Known Risk, Serious Injury or Death
- Discuss Alternative Treatments
- Statutes; Must be Written For GA or Conscious Sedation (B&P §1682)
- Reasonable Person Standard as to What to Tell
- DDS must Explain at Some Point.
- Document, Document, Document

INFORMED REFUSAL

- Definition CACI 534:
A dentist must explain the risks of refusing a procedure in language that the patient can understand and give the patient as much information as [he/she] needs to make an informed decision, including any risk that a reasonable person would consider important in deciding . . .

RISK OF NONTREATMENT-CACL

535

- ESSENTIAL FACTUAL ELEMENTS

Plaintiff claims that defendant was negligent because [he/she] did not fully inform plaintiff about the risks of refusing the [procedure]. To establish this claim, plaintiff must prove all of the following:

RISK OF NONTREATMENT-CACL 535

- That defendant did not perform the procedure on plaintiff;
- That defendant did not fully inform plaintiff about the risks of refusing the procedure;
- That a reasonable person in plaintiff's position would have agreed to the procedure if he or she had been fully informed about these risks; and
- That plaintiff was harmed by the failure to have the procedure performed.

INFORMED CONSENT

- SHIELD NOT DOME

Duty of Referral

1) Predict Complication Potential

2) Recognize and Diagnose Complication

3a) React and Treat Complication

Or

3b) Timely Referral

Or

3c) Informed Refusal

Failure = Below Standard of Care

Sample Documentation

- Patient advised to _____
- _____
- Patient declines/refuses
- Risk, Benefits & Alternatives Reviewed
- Including _[Worst Risk]_____
- Patient declines/refuses
- [date]_____ [patient signature]_____

Photos

- Charting Without Notes
- Easy To Do
- Easy Storage
- Powerful Tool
- Your Side Of The Story
- Hard To Dispute

Statutory Obligations

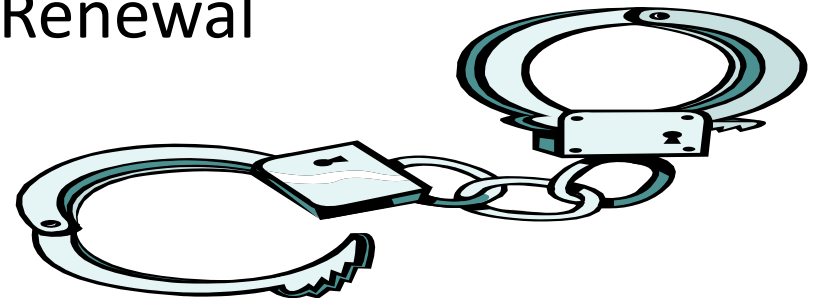


RENEWAL OF LICENSE

- CE EVERY TWO YEARS (CCR 1015-17)
- FEES (B&P 1725)
- 30 DAY GRACE PERIOD (B&P 1718)

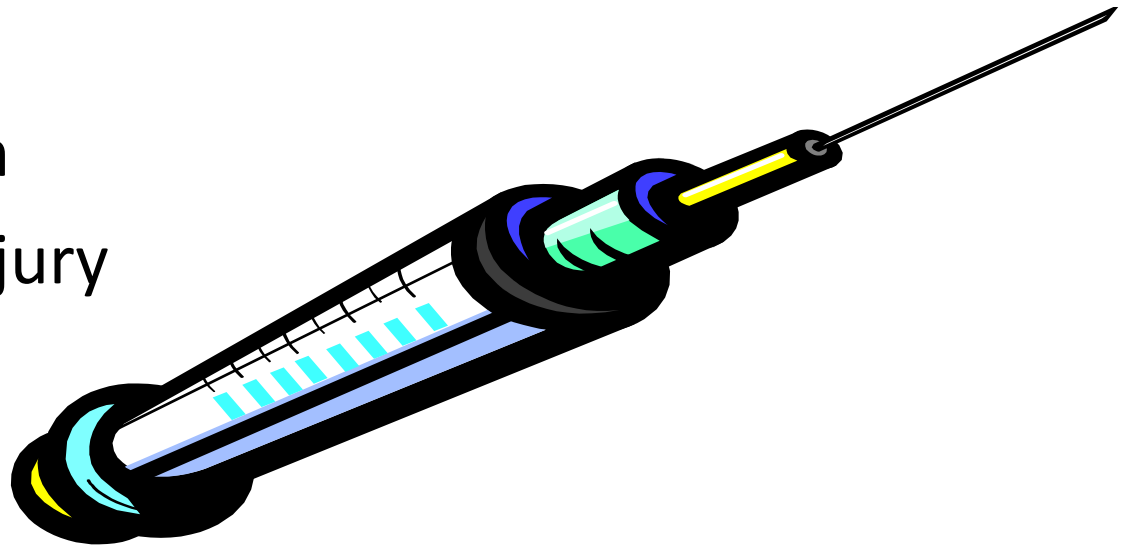
Revocation (B&P §1670)

- Unprofessional Conduct (B&P §1680-5)
- Repeated Acts of Negligence
- Gross Negligence
- Incompetence
- Conviction of A Crime (B&P §1670.1)
 - Felony, Misdemeanor (Moral Turpitude)
 - Mandatory Reporting at Renewal



Substance Abuse/Sales

- Abuse of Controlled Substance
- Forging Rx
- Criminal Conviction Regard Drugs
 - Selling
 - Distribution
 - DUI with Injury



DENTAL BOARD OF CALIFORNIA **DIVERSION PROGRAM**

*A confidential program for the
rehabilitation of dental professionals
impaired due to chemical dependency.*



Rehabilitation-Diversion (B&P §1695-9)

- Reporting Immunity
- Registration – License Status
- Confidential Mandate
- Completion: Records Destroyed; Can't Subpoena
 - (B&P §1698)
- Termination Due To Failure To Comply
 - (B&P §1697)

SETTLEMENT/JUDGMENT (B&P 800-809)

- CONSENT OF DENTIST (801)
- CONVICTION OF A CRIME - UNPROFESSIONAL CONDUCT
- PAYMENT IN EXCESS OF \$10,000 BY CARRIER (801)
- PAYMENT IN EXCESS OF \$3,000 BY DOCTOR (802)
- PAYMENT IN EXCESS OF \$10,000 BY CLINIC
- JUDGMENTS IN EXCESS OF \$30,000 (803)

NATIONAL PRACTITIONERS DATA BANK (45 CFR 60)

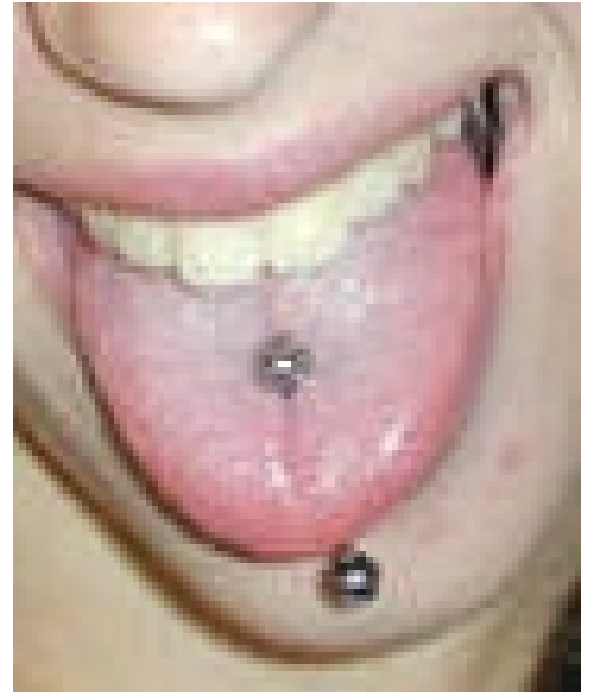
- ALL LICENSED HEALTH CARE PROVIDERS
- WRITTEN COMPLAINTS
- ANY PAYMENT BY INSURANCE CARRIER
- SUSPENSION OF PRIVILEGES
- PEER REVIEW SANCTIONS
- COPY REPORT TO LICENSING BOARD
- NO COPY ATTORNEY OR CARRIER
- OK COPY TO HEALTH CARE PROVIDER

SCOPE OF PRACTICE

- DENTISTRY DEFINED (B&P 1625)
- HUMAN; TEETH, GUMS, JAWS & ASSOCIATED STRUCTURES

SCOPE OF PRACTICE

- DENTAL BUSINESS MANAGER
- PROHIBITIONS: Posts and *Gore*
- MEDICATIONS (B&P 1681)



ACUPUNCTURE

- AUTHORIZED BY LAW (B&P 4947, 1064, 730.5)

BOTOX

- Within scope of practice B&P 1625
- Pathological clenching & bruxism
- Mandibular spasm
- Trigeminal neuralgia
- Nerve injury
 - Dysesthesia
 - Allodynia

BOTOX

- Cosmetic to enhance facial esthetics
- Elective Facial Cosmetic Surgery Permit
- B&P 1638.1
- OMFS accredited residency program
- OMFS board eligible

SEDATION

- CONTINUUM
- KNOWN RISKS
 - AIRWAY
 - ANAPHYLAXIS
 - EMESIS
- FIX WHAT YOU START

INFORMED CONSENT

Unprofessional conduct for:

“Any dentist to fail to obtain written informed consent . . . prior to administering general anesthesia or conscious sedation.”

B & P Section 1682(e)

Exceptions

- N20
- ORAL MEDS (B&P 1647.1).

ORAL MEDICATIONS

- MINIMALLY DEPRESSED LEVEL OF CONSCIOUSNESS
 - INDEPENDENT AIRWAY
 - RESPOND TO PHYSICAL STIMULATION & VERBAL COMMAND
- CERTIFICATE FOR USE IN MINORS (13y/o)
 - LAW SINCE 1/6/00 [B&P 1647.11]

DPA REPORTING

- REPORT TO BOARD WITHIN 7 DAYS
 - DEATH DURING DENTAL PROCEDURE
 - DISCOVERY DEATH RELATED TO PROCEDURE BY D.D.S.
 - HOSPITALIZATION OVER 24 HRS
 - UNLESS SCHEDULED

ABUSE REPORTING

- SUSPICION OF CHILD ABUSE
- SUSPICION OF ABUSE OF THE DISABLED
- SUSPICION OF ELDER ABUSE
- REPORTING METHODS
 - CPS
 - PD
- IMMUNITIES

FAILURE TO REPORT ABUSE

- CRIMINAL PENALTIES
- IMMUNITIES
- UNPROFESSIONAL CONDUCT
- CIVIL SUITS
- CODES
 - W&I 1560Aa Seniors
 - W&I 1561b1 Disabled
 - CPC 11165 Children
- Neglect, Physical, Sexual, Mental

Criminal History

- CCR: §1007, Must Respond to BD request for Criminal History w/n 30 days. Provide Docs
- At Renewal : Must Disclose
 - Any Conviction, no-contest plea or expungement, of any Violation of Law
 - Anywhere
 - Except Traffic Less than \$1,000
 - Include Traffic Involving ETOH, Dangerous Drug, or Controlled Rx
 - Any Disciplinary Action Against Any License
 - Any Investigation of any License
 - Another State? *Maybe*

FAILURE TO USE INFECTION CONTROL

- OSHA SETS STANDARD OF CARE
- FEAR OF DISEASE
- OSHA VIOLATION

CONFIDENTIAL (CC 56) & HIPAA

- EDUCATE STAFF
- TELEPHONE
- RECEPTION
- PLACEMENT
- OFFICE SYSTEMS
- FAX
- COMPUTERS

PATIENT HIV STATUS (H&S 120985)

- WRITTEN CONSENT TO RELEASE
- EXCEPTIONS (Prop. 98)
- SURVIVES DEATH
- EACH RELEASE



Social Media

- Not Private
- Not Secure
- Never Assume Otherwise
- Violation of Duty of Confidentiality CC §56
- Facebook, My Space, Twitter, etc.
 - Avoid “Friending” patients.
 - Bright Line Between Personal and Professional

RECORDS

- STATUTORY REQUIREMENTS
- DEFINED; Hx, Cx, Dx, Tx (H&S 123105)
- DATE & SIGNATURE (B&P 1683)
- PRESERVATION
- MEDICATIONS, 3 YEARS (H&S 11191)
- MEDI-CAL, 3 YEARS (W&I 14124.1)
- RECOMMENDATION: AT LEAST 10 YEARS

COPIES TO PATIENT

- SUMMARY IF VOLUMINOUS
- DENTURE ID (B&P 1706)
- ELECTRONIC RECORDS
- CAN'T LIMIT DUE TO \$ OWED

ENFORCEMENT OF B&P 1684.1

- Board will uniformly cite and fine licensees who fail or refuse to comply with the Board's request for dental records.
- 15 days
- \$250/day
- Maximum \$5,000
- Unless unable for good cause

OWNERSHIP

- BUSINESS RECORDS
- DATA TO PATIENT
- X-Rays

TUTOR: Ray Adkins, Tx Plan Ongoing treatment (in progress)

Hard tissue Soft tissue Prog Notes Tx Plan Attached images Capture Layout Activities About...

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 Pck Rec AttG Func

17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 Pck Rec AttG Func

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2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 Pck Rec AttG Func

2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 Pck Rec AttG Func

2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 Pck Rec AttG Func

2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 Pck Rec AttG Func

2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 Pck Rec AttG Func

2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 Pck Rec AttG Func

2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 Pck Rec AttG Func

2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 Pck Rec AttG Func

2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 Pck Rec AttG Func

2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 Pck Rec AttG Func

2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 Pck Rec AttG Func

2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 Pck Rec AttG Func

2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 Pck Rec AttG Func

2329 2

Electronic Records (H&S §123149)

- Back-up, Off Site Storage
- No Alteration
- Electronic Signature
- Confidential; Internet



MEDICATIONS

- SCHEDULE 2; NAME, ADDRESS, DATE
- CHARACTER, QUANTITY, PATHOLOGY
- AND PURPOSE (H&S 11190)

ALTERATION OF RECORDS (B&P 1680s)

- SPOILIATION
- EVIDENCE
- SANCTIONS
- COVERAGE ISSUES



PRACTICAL REQUIREMENTS

- STANDARDS OF CARE
- STYLE: SOAP
- CONTENT
- LEGIBILITY
- FORMS
- EDUCATIONAL MATERIAL
- ELECTRONIC FUTURE

DENTAL AUXILIARIES

- Selection
- Management



DENTAL AUXILIARY (B&P 1741e)

- *Perform dental supportive procedures*

GENERAL SUPERVISION (B&P 1741d)

- Instructions by DDS not requiring presence



DIRECT SUPERVISION (B&P 1741c)

- Instructions by DDS - must be present



Unlicensed DDS as RDA or RDH

- Suspended License (B&P§1680 b)
- Foreign License (B&P§1680 c)
- Absolutely Prohibited
- Strict Liability
- Defense: Documentation Mandate
 - Diploma, Certificate, License, CE



INSURANCE ISSUES

- EXCESSIVE TREATMENT (B&P 1685)
- DISCOURAGING TREATMENT (B&P 1685)
- ANTI-GAG RULE PROHIBITION (B&P 2056)
- CONTRACTING LIABILITY
- APPEAL PROCESS
- MANAGED CARE – TREAT PATHOLOGY NOT PLAN

ABANDONMENT WITHOUT NOTICE (B&P 1680u)

- WRITTEN 30 DAYS
- EMERGENCY ONLY
- NEED FOR CARE ELSEWHERE
- MANAGED CARE ISSUES
- FINANCIAL LIMITATIONS

UNPROFESSIONAL CONDUCT (B&P 1680-5)

- POTPOURRI
- GROSS IMMORALITY
- RECEIVING A COMMISSION
- DECEPTIVE ADVERTISING
- USING SOLICITORS
- ADVERTISING GUARANTEE PAINLESS

Unprofessional Conduct Con't

- X-RAYS W/O LICENSE
- EXCESSIVE MEDICATION
- EXCESSIVE DIAGNOSIS PROCEDURES
- THREAT AGAINST COMPLAINING PATIENT TO CDB
- FAILURE TO REPORT DEATH, 7 DAYS
- NO N2O FAIL SAFE DEVICE

INTIMACY

- PROHIBITED UNLESS MARRIED (B&P 726)
- OK DOMESTIC RELATIONS
- MD-Psych, JD

ADVERTISING

- Political Free Speech
- Commercial Free Speech

ADVERTISING –DPA REQUIREMENTS

- Truthful & Not Misleading
- Specialist CCR 1054
- Websites
- Membership & Credentials CCR 1054
- Superior Services B&P 1680(i)
Painless B&P 1680(l)
- Patience and wisdom