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## Vicarious liability- A storm in dentistry

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### Abstract

Vicarious liability is based on a relationship between the parties, irrespective of participation, either by act of omission, of the vicariously liable, under which it has been determined as a matter of policy that one person should be liable for the act of other. Its true basis is largely one of public or social policy under which it has been determined that, irrespective of fault, a party should be held to respond for the acts of another. Vicarious liability is an important concept in both risk management and patient management. Vicarious liability is justifiable act from which the patients will be benefited and saved by creating a higher level of responsibility on dentists even though his/her team members are working on patient.

**Keywords:** vicarious liability, Dentist patient relation, negligence, dentist, dental hygienist

### 1. Introduction

A master is one who engages another to perform services and who controls or has the right to control the person retained to perform act or services for the master. It is an elementary principle of the law that every person is personally liable for damages caused by the negligence of either master himself or the other person who helps master in his work. When the law imposes liability on the master for the negligent act of his helper the concept is known as vicarious liability.

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### Application of vicarious liability:

Vicarious liability is applicable in three situations mainly; they are (a) a dentist is liable for damages caused by a hygienist working under the dentist's supervision; (b) a dentist who is in partnership with another dentist is liable for the negligence of the dentist's partner; and (c) a professional corporation is the master of the dentists employed by the professional corporation.

a) Under the laws of 48 or 49 states, a dental hygienist may only practice under the supervision of a licensed dentist. Dentists not only have the right to control activities of the dental hygienist working under the dentist's supervision but also the duty to supervise the professional activities of the hygienists. While the negligence of the hygienist is imputed to the dentist, making the dentist liable in damages through the application of the vicarious liability concept, a dentist who fails to properly supervise the hygienist is liable to the patient for any damages to the patient that would have been avoided with proper supervision. Although the injured patient may sue both dentist and hygienist for the injuries caused by the negligence, the dentist suffers as the result of the hygienist's negligent act<sup>[2]</sup>.

b) A partnership is a form of mutual agency. Each partner is the agent of the other. Partners are jointly and severally liable for the negligent injury caused by the negligence of any partner. Each partner has unlimited liability for the negligent injuries associated with the practice of the partnership affairs. Between the partners themselves, the partner who was actually the wrongdoer may be held for indemnification of the partners who were held vicariously liable<sup>[2]</sup>.

c) One or more dentists may organize a professional corporation. The state will issue a charter to a professional corporation, one chartered to carry on a profession such as dentistry or medicine. The professional corporation then hires dentists and dental hygienists to work under the corporation charter. The fact that a dentist or dental hygienist is working for

Professional Corporation does not relieve the dentist or the hygienist of person liability resulting from the negligent practice. One may not hide behind a corporate charter to escape personal liability for injuries negligently caused to third parties. Of course the professional corporation may be held vicariously liable for the negligent injuries caused by a corporate employee<sup>[2]</sup>.

The dentist may be vicariously liable for the negligent acts of the nurse, hygienist, x-ray technician, office staff, and others over whom the dentist has right of control <sup>[3]</sup>. It is not unusual for a well-established dentist to hire another dentist to serve as an employee. The owner of a dental practice is liable for malpractice, torts by dentists that he or she employs even though the owner neither participated in nor controlled the diagnosis/ treatment offered <sup>[4]</sup>.

A dentist who is shareholder, officer, or employee of a professional dental corporation is not vicariously liable for the malpractice of another dentist employed by the corporation who may be an officer or director of the corporation. The corporate entity, not those who own corporation, is liable for acts of its employees. If dentist shares the office space with another dentist, the malpractice of treating dentist will not be imputed to the other dentist, although the latter dentist may actually be billed for the treatment <sup>[5]</sup>.

#### **Reducing Vicarious Liability Risks:**<sup>[6]</sup>

Vicarious liability can be a significant area of vulnerability for dentists. The techniques used to reduce vicarious liability risks also provide a higher quality of patient care.

#### **The following suggestions can help you minimize vicarious liability risks:**

- a) Thinking of employees' professional actions as extensions of dentist's own- and making sure that staffs also views their actions this way. The dentist must set the practice's tone, control work procedures and supervise all staff members.
- b) Foster a positive attitude and open communication in dental practice.
- c) Hire staff members with good communication, interpersonal, and technical skills.
- d) Establish written, well thought out policies and protocols that give direction to our staff.
- e) Clearly document in writing each job description's duties and responsibilities.
- f) Verify current licensure of all employees whose jobs require licensure.
- g) Review of state's dental practice act –dentist and his employees must practice within the limitations imposed by this statute. Do not assign to auxiliaries any duties that violate it.
- h) Be certain our professional liability insurance policy includes vicarious liability coverage.
- i) Examine the job and employment credentials of all staff members' –both salaried employees and independent contractors.
- j) Conduct performance reviews at least annually.
- k) Provide adequate training for staff members.
- l) Encourage and financially support staff attendance at continuing education courses that update their knowledge and skill.
- m) Certify staff in CPR (cardiopulmonary resuscitation).

- n) Supervise each employee from the outset of employment to assure the employee has adequate knowledge and skill to perform assigned duties.
- o) Hold regular staff meetings to strengthen office policy and improve staff communication.
- p) Respect and show confidence in your staff, especially when patients are present.

#### **Conclusion**

Vicarious liability is an important concept in both risk management and patient management. Even when the services provided by the dentist meet the standard of care, there is the possibility that an employee in the office will do or not do, say or not say something that will negligently cause a patient injury. This significantly expands the risk to both the patient and to the dentist. Advancement in research ethics not only gave importance for patient's decision but also punishment for the dentist and his team for negligent behavior. Vicarious liability is justifiable act from which the patients will be benefitted and saved by creating a higher level of responsibility on dentists even though his/her team members are working on patient. Being a professional it is important for a dentist to take all the necessary measures to protect patient, and his team.

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