

Claims Examples

Errors and Omissions Dental Hygienists

1. Dental Hygienist Injures Patient During Routine Cleaning

In December 2005, the insured dental hygienist treated, cleaned and scaled the teeth of a patient. In the spring of 2006, that same patient instituted a lawsuit against the insured, as well as against one of the dentists of the clinic, seeking \$8,000 in damages for pain and suffering. The plaintiff alleged that the insured dental hygienist had been negligent when performing the cleaning and scaling of her mouth, wherein the insured cut the gum and an infection developed in a tooth. Furthermore, the plaintiff alleged that as a result of the cut and infection, she had to take various medications and was unable to work for a period of four weeks.

When the claim was reported to ENCON, a lawyer was assigned to defend the insured's interests. A pre-trial took place in the fall of 2006, where the plaintiff admitted that she could not remember the location of the cut in her mouth. The case was dismissed without cost against the insured because the plaintiff did not obtain an expert opinion regarding the insured's standard of care. The judge told the plaintiff that she did not present well and was not credible as she could not recall where she had been cut. The insurers paid approximately \$10,000 in defense costs; however, no indemnity was paid to the plaintiff as a result of the dismissal. The insured's deductible was not triggered as no indemnity payments were made by the insurers.

2. The Disciplinary Complaint

The insured was a member of a dental hygiene association governed by her province. In this case, a patient sought dental treatment from the insured, but the hygienist refused to provide treatment on the grounds that the patient suffered from a previous medical condition which would likely be aggravated by dental work. The patient then filed a complaint with the insured's professional college, due to the insured's refusal to provide medical treatment.

The matter was referred to local counsel. Counsel assisted the insured by drafting a response to the complaint letter and meeting with a representative of the College to address the merits of the claim. After an initial inquiry, the matter was dropped by the College and the insured resumed her professional duties without issue.

3. Lip Injury

A patient sued the Insured dental hygienist for damages in the amount of \$100,000. According to the Statement of Claim, the dental hygienist had accidentally burned the Plaintiff's lip during a routine treatment. The allegations against the dental hygienist included negligence and breach of duty of care. While the Plaintiff had undeniably been injured, the extent of the injury was at issue. Also, there was a question with respect to whether the injury resulted from the Insured's negligence or the improper calibration of the instrument at the factory.

The Plaintiff underwent medical procedures to correct the damage; however, she was left with a small scar. After nearly two years, the parties were able to negotiate a settlement for a total of \$27,000. The defence and investigation fees were just over \$17,000 and the Insured contributed his deductible of \$2,500.

4. Eye Injury

The Insured dental hygienist was served with a Statement of Claim by a patient. The Plaintiff alleged that the Insured had been negligent in the performance of a routine procedure. During a recent visit, the hygienist accidentally spilled a solution in the Plaintiff's eye. The eye was immediately flushed out and the Plaintiff was referred to his family physician for examination. After a few days, only a minor redness of the eye remained and the Plaintiff was expected to make a full recovery. There were absolutely no anticipated side effects; nonetheless, the Plaintiff consulted a lawyer and sued the dental hygienist for \$35,000.

The investigation revealed that the dental hygienist's negligence was indisputable, so the only contentious issue was damages. The damages were relatively minor, since the eye was irritated for only a few days and there were no lasting effects. However, the Plaintiff would not be dissuaded of his view that he was entitled to substantial compensation. While his lawyer was more reasonable, he was unable to influence his client. The Plaintiff's position ultimately forced the parties to follow the usual course of litigation. Affidavits were filed; motions were heard; the Insured and the Plaintiff provided their evidence at Examinations for Discovery. Several years later, the matter went before a pre-trial judge, who frankly advised the Plaintiff that his position was unfounded. The Plaintiff was shocked at the judge's opinion, but ultimately agreed to discontinue the action prior to the trial, in exchange for a nominal payment of \$2,500. Nearly \$45,000 was spent on legal fees to defend the Insured.

These Claims Examples are for illustrative purposes only. Please remember that only the insurance policy can give actual terms, coverage, amounts, conditions, and exclusions.