



## CNA HealthPro

### FAQs – Sale of Oral Hygiene Products

**Q.** I sell to my patients a variety of dental hygiene products that are not readily available in the stores in my community. Does this practice pose a legal risk?

**A.** Selling products may potentially create liability for dentists if a patient suffers an injury caused by a defect in the product. While the manufacturer should ultimately be considered liable, the dentist could – and likely would – be the target of a lawsuit as well. The financial viability and resources of the manufacturer are also a consideration, since a bankrupt manufacturer would generally be a poor target for a claim. These issues were brought to light many years ago when Vitek Inc. went bankrupt and left many oral surgeons standing alone in the path of angry patients with dysfunctional TM joints.

In some jurisdictions, the dentist may be exposed to product liability allegations even if the item is given rather than sold to the patient. This exposure is significant because product liability actions are governed by the legal theory of strict liability, meaning that the plaintiff is not required to allege any wrongdoing or negligence on the part of the defendant(s). The plaintiff need only prove that the defendants were involved in selling or dispensing the defective product.

Dentists can reduce their potential liability by carefully evaluating the quality, reliability, and therapeutic claims of any products offered to patients. All products should be researched, tested and approved by the appropriate professional associations, government agencies and/or product testing laboratories.

The only certain way to avoid product liability is, of course, to stop distributing products to your patients. It is somewhat less risky to recommend patients purchase one of several similar and acceptable choices, or even a particular product, rather than provide dental products directly to patients. If the product isn't easily obtainable in your community, ask a local pharmacist or other merchant to stock the item.

Product liability is a complex and highly specialized topic. For information about specific situations, consult a local attorney with expertise in the subject.

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