



## CNA HealthPro

### When Working with Temporary Staffing Agencies, Sound Practices Mitigate Risk

Temporary staffing and *locum tenens* agencies have come to play an important role in dentistry. Temporary personnel provide an important measure of flexibility, allowing dental practices to adjust quickly to employee absences as well as longer leaves and departures. Dentists also benefit from the ability to fill critical openings and to evaluate candidates for possible permanent employment. Hired on a short-term basis, temporary workers can help a practice maintain adequate staffing levels, reduce its human resources burden and strengthen its bottom line.

Typically, temporary personnel are either employed directly by the staffing agency or are independent contractors affiliated with it. In both cases, the agency is responsible for overseeing payroll functions (including tax withholding), paying unemployment and workers' compensation insurance premiums, and providing other benefits, such as savings plans or health insurance. The staffing agency is responsible for screening, testing competencies, and training temporary employees in job-related skills. Many agencies offer classes aimed at helping healthcare professionals meet continuing education requirements and maintain their licenses in good standing.

While the use of temporary agencies helps alleviate some hiring risks, the practice also raises safety and liability concerns. This article will address some of the significant issues, and suggest practical risk management strategies.

#### **Major Liability Concerns**

A temporary employee who lacks a practice-specific orientation, proper credentials, training and/or professional liability insurance coverage leaves your organization legally vulnerable in the event of patient injury. Before bringing a temporary staff member into your organizational structure, consider the following critical exposures:

**Contracts.** If a contract fails to specify who is liable in the event of a claim, your practice may, by default, become the responsible party in a lawsuit. To protect yourself, legal counsel should review all staffing agency contracts to ensure the presence of protective hold harmless and indemnity provisions, including provisions adequately covering the key issues of confidentiality, terms, renewal and termination. The contract should delineate the agency's responsibilities with respect to employees' or subcontractors' competence level, as well as its duty to perform criminal background checks and other standard staff screening procedures. In addition, contracts should address the eligibility of temporary employees for benefits and other forms of compensation. Finally, contracts should protect your right to specify training and experience requirements, and also hold the agency responsible for replacing in a timely manner any staff members who do not meet your needs.

**Insurance requirements.** Insurance coverage is a critical risk management issue for temporary employees and must be periodically checked and documented. Contracts should specify the agency's insurance requirements, ensuring that temporary staff members have all necessary coverages, including professional liability (when appropriate) and workers' compensation insurance. Temporary personnel should have coverage limits equal to those of your fulltime employees, underwritten by carriers rated A- or better by A.M. Best.

*Credentialing.* Your agreement with the staffing agency should obligate it to: 1) perform personal interviews; 2) conduct federal, state and local criminal background checks; and 3) evaluate and periodically verify the licensure and competence of prospective candidates. The agency should require prospective temporary staff to submit a credentialing file containing licensure (when appropriate), certificate of insurance, physical examination results, inoculation records and proof of U.S. work eligibility, as well as education, training and certification documents. Finally, the agency should verify with the applicable licensing board that the temporary worker has no pending or prior investigations on record, and document this status in the credentialing file.

## **Working with Temporary Staff**

For the benefit of both patient safety and employee morale, temporary staff members should be held to the same professional standards as permanent staff, and treated with the same degree of respect and consideration. Here are some of the specific risk management issues to address when utilizing temporary staff:

*Initial assessment.* Always test and document basic competency before permitting temporary staff members to take on a new job responsibility in your practice. If a previously hired temporary worker returns to a similar position in your practice, explain any changes in policy and procedure that have occurred in the interim. In addition, verify that he or she has retained the necessary knowledge and skills to perform delegated tasks.

*Orientation.* The orientation program should communicate effectively your practice's expectations to temporary employees, answer any questions, provide introductions to colleagues and facilitate a smooth transition. During orientation, temporary staff members also should be required to review your practice's policies and procedures and sign a form indicating that they will comply with protocols. This form, and other personnel documents, should be maintained on file with the staffing agency.

*Training and supervision.* In addition to orientation, every new work assignment, skilled or unskilled, should be preceded by a thorough and well-documented training program. Appoint an experienced supervisor as a resource to assist newly-hired temporary staff with the transition and to provide initial monitoring. This close supervision should continue until staff members have demonstrated full proficiency.

*Confidentiality.* As with full-time employees, temporary personnel must understand the Health Insurance Portability and Accountability Act of 1996 (HIPAA) legislation, state confidentiality statutes, laws governing patient privacy requirements and relevant office practices. While HIPAA training generally occurs as part of the orientation process, responsibility for temporary staff knowledge and acceptance of privacy regulations should reside with the staffing agency. Require that the agency have temporary personnel sign binding, HIPAA-compliant confidentiality statements, and then place these executed documents in their personnel files.

## **Questions to Ask of Staffing Agencies**

It is a good practice to work with a small number of reputable, well-established agencies that have demonstrated their ability to provide competent staff and responsive service. With such relationships in place, both parties are more likely to have a mutual understanding of expectations and responsibilities.

Before executing any contract with a temporary staffing agency, ensure agency representatives can answer the following questions to your satisfaction:

- What services are covered by agency fees?
- What categories of healthcare providers are available, and what type and level of care are they qualified to deliver?

- Does the agency verify each prospective employee's work experience and educational background in writing and perform criminal background checks at least annually?
- Does the agency warrant in writing that candidates are properly licensed and credentialed?
- How thorough are the agency's skills assessment and competency testing procedures?
- How does the agency respond to a client who does not find the staff member to be a good "fit"?

For many dentists, temporary staffing agencies have become indispensable for managing staff shortages. However, it is necessary to be mindful of the risks associated with hiring temporary workers, notably exposure to allegations of negligent hiring, credentialing and/or supervision. To protect your patients and your practice assets, be sure to select temporary staffing agencies carefully, have legal counsel scrutinize all contracts and take measures to integrate temporary staff successfully into your workforce.

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