

did the best I could.” Ignorance is absolutely no excuse. You need to understand that there are repercussions and they can be very severe in the event that you’re doing anything inappropriately in the office. It depends on the agency and what their intent is.

The consequences are dire if you choose to ignore that things are being done incorrectly. My recommendation is that you pay very close attention to what is going on.

Dr. Ayers: *What are some common actions you see that are fraudulent? For example, Is it illegal to bill under one dentist’s name when another dentist actually did the treatment?*

Dr. Shelburne: It is absolutely – that’s a material misrepresentation of the facts. That claim is a legal document. You do stipulate that everything on that claim is correct to the best of your knowledge, and if the provider of the service is not listed correctly. Anytime you do that on a legal document, it is fraud.

Another example is if you forgive a copayment or a deductible, on the column that indicates the amount charged for that procedure. Let’s say your fee is \$100 for a service, and the patient has a \$20 copayment. For whatever reason you waived the copay, the amount you actually charged was \$80.

Additionally, with the economic downturn, there are a lot more dentists who are signing up for PPO plans

than there were in years past. For all intents and purposes, in dentistry you have situations where if it’s very painful or it’s aesthetically ugly to the patient, it’s viewed as elective.

When people stop buying, dentistry is one of the luxuries a lot of people choose to postpone. There’s a terrific amount of pressure on a dentist to be paid for the amount of work they are providing. Creative billing comes into play – my encouragement would be for offices to try to arrange reasonable financing for patients without having the temptation to code creatively.

Dr. Ayers: *Do you have any final thoughts on how a dentist should approach the topic of billing accuracy?*

Dr. Shelburne: There’s a huge disconnect between the training that’s necessary to operate a dental office. Most dentists just want to focus on treatment.

Dentists tend to be penny-wise and pound foolish – hire someone with less experience and lose out. They don’t understand the amount of money they’ll lose in the interim trying to get that person trained appropriately. You need to weigh the return on investment.

The main takeaway here is that dentists need to take responsibility and ownership of every aspect of their practice.

Dr. Shelburne is available to help your dental practices review and repair any potential vulnerabilities for fraud. You can contact him directly, or ask your Professional Service Specialist to help.

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Dental Fraud is No Joke

**An Interview with
Roy Shelburne, DDS**

By Stanley E. Ayers DDS,
Director of Dental Services and Compliance
for Dental Health Services

Most dentists are unaware that their office may be committing fraud, but after being indicted, convicted, sentenced, jailed and fined for dental fraud violations, Roy Shelburne, DDS now dedicates his time to educating dentists on common areas of fraud. Dental fraud can be as simple as a few missed details or turning a blind eye to rough documentation.

The potential fallout can be severe. Read on to hear about Dr. Shelburne’s experience and what you can do to protect your practice in this up-close interview with Dr. Ayers.

Dr. Ayers: *How aware would you say most dentists are of their office’s billing practices?*

Dr. Shelburne: Some are involved, some are completely oblivious. So I guess like anything else, you run the gamut. You have a lot of people who are very hands-on and want to be in touch with everything. The polar opposite is what I’ve found to be typically the case.

Most dentists are focused on the clinical aspect of office and how that runs, and are more than happy to delegate the responsibility for the business systems to someone else.

Dr. Ayers: *Do you find that most dentists regularly check their “day sheet” or activity sheet?*

Dr. Shelburne: My experience has been of the offices that I’ve been in, none do. They are probably aware of the money that came in, they either are made aware of a deposit or they have an idea of how much money

they have generated that day, but in terms of going through a day sheet, it’s hard enough for them to get their charts filled out and everything else that needs to be done from a clinical aspect to go back and review what happened in the business area.

There are some dentists that probably do, but my experience is that no one does. I recommend at least once a week to go through what’s there, so that what they expect to see is what they actually see. It’s always good to have a second set of eyes on those charts. I recommend that you have an individual that at random will go through 15-20 charts to make sure what is happening in the clinical area is what is billed and coded.

For example, there can be a very basic disconnect in communication in the clinical area. The doctor will ask that the assistant take an X-ray of a tooth. The X-ray is taken, the dentist reviews it, and it doesn’t have the angle and it’s not diagnostic for him to make the determination from what he’s been given. So he’ll ask for another one, and perhaps it’s better, but maybe he needs a third. If the assistant does the charting and

there's not a notation made at the time that two of those were non-diagnostic, more than likely, three X-rays are billed, and two of those were probably worthless and if billed for were fraudulent.

Dr. Ayers: *How aware do you think most dentists are about their vulnerability to the same kind of criminal actions, civil actions, fines, and loss of license to which you were subjected?*

Dr. Shelburne: In the groups that I speak to, they are shocked – not just surprised – they are shocked. I was. They have no idea the extent and the seriousness of what we do. My thinking is, okay if I've made errors, if I've made mistakes, if I was been paid something I was not appropriately entitled to, worst case scenario, they'll ask for the money back and perhaps a fine and some type of penalty as a result. Any of the groups that I speak to, individual doctors have never thought that this would be possible.

That's one of the reasons why I've chosen to sort of air my dirty laundry in public. I wish I had the opportunity to listen to someone honestly explain the dangers that exist if you aren't very diligent or mindful of what can happen. I didn't understand by legal definition "intent" means you meant to do it purposely. It goes to the point where the definition of intent is either knew or reasonably should have known that what was being done was being done incorrectly.

So there is a reasonable expectation that the practitioner, the office, and his staff should know what is being done, what is being charted, what is being coded, what is being paid, what is being applied to an account is being done appropriately.

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Dr. Ayers: *What differences in criminal and civil penalties can key staff face compared to the dentist?*

Dr. Shelburne: Key staff members can face racketeering, money laundering and any of those issues; the civil penalties can be applied to anyone who is a part of a group that is found guilty of any infraction. There was

a recent case, one in Texas that I'm aware of, that not only was the doctor indicted, but two key office staff members. For those office staff members, the indictment was taken away, but they also testified against the doctor. So I'm not aware to what extent they used that as a club to encourage them to testify against the doctor. In that particular case, it was an oral surgeon who didn't practice out of an office of his own. He travelled to area dental offices to be able to provide oral surgery

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services in their offices. He took his staff with him and performed oral surgery in those offices. In that particular case, those doctors who referred patients to him and he used their offices were also indicted. So they can get anybody.

Dr. Ayers: *Is there any requirement for any and all staff to report fraud, and if so, what are the consequences of inaction if someone is aware of fraud and does nothing?*

Dr. Shelburne: That would probably vary from state to state as far as statutes go, so it would be inappropriate to address that. I do know, however, that if an individual chooses to identify and make a complaint to a government agency, there is a whistleblower statute in which that individual choosing to make that admission is protected. They will also be entitled to up to 30% of the amount of the money regained as a result of the action that was taken.

Dr. Ayers: *What should a dentist do if he suspects fraud in his office from an employee?*

Dr. Shelburne: I would confront the employee. There are fraud investigators in the event that they are aware of that. Typically what you're going to find is most practitioners will identify the fraud, confront the person committing it, they resign, and the dentist does not take action. In many cases the individuals who have committed fraud in one location, will seek and be employed by another office and do the same thing over again.

Dr. Ayers: *What kind of an office policy should be in place to prevent and/or contain fraud?*

Dr. Shelburne: Number one: due diligence – the doctor needs to take responsibility for what is going on in that office, and either educate himself so he is able to do audits on a staff member or two, or if you're unwilling or unable, I think it's appropriate to hire someone from the outside to come in and review those periodically just to be able to, number one identify any areas where there are being mistakes made. From my position, I think there are very few doctors who are actively committing fraud. An argument can be made that a lot of dentists kind of ignore what's going on. Like I said, they can be criminally liable for that.

You need to be able to put systems together where you review the charts for complete record keeping and documentation. You need to periodic reviews of the billing and coding issues. You need to do periodic reviews of the EOBs to make sure they are being paid and applied appropriately. And those can be done internally if the doctor is willing and able to do it. If that's not the case – if you have a neighboring office that you have a relationship with that has a person that does the billing and coding, hire them on a Friday afternoon to come in and review your billing and coding system. That's an independent eye that comes in and has no agenda other than to make sure it's being done correctly.

If you don't want to do that, you can hire people who can come in and do those reviews for you. Just to make sure that it's being done correctly, and if someone comes knocking at your door asking what you did to make sure it was being done correctly. You can produce

information that you were in fact were concerned that it was being done correctly. You weren't blindly walking down the path not paying any attention to it. You actually hired an expert to make sure you were acting right.

If there is an expectation that there is going to be some review. In most cases where there is some embezzlement going on, there is a key employee who is very, very proprietary – comes to the office early, stays late. It'll be the most devoted employee you have – anybody who is that married to their position, it tends to be a red flag that they are protecting some information from anybody else who might have access to it.

Dr. Ayers: *Dental offices have a high incidence of embezzlement compared to other medical offices. How can this behavior exacerbate fraud in a dental office? Some doctors will pay their front office a bonus based on collections. Does that contribute to the potential for fraudulent activity?*

Dr. Shelburne: Been there, done that. Actually my front desk person was on a bonus and was paid on collection. So in the event she was paid something inappropriate, there was certainly less incentive to return a mistaken payment than to keep it.

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In my case, when the person was asked on the witness stand, "Did you ever alert Dr. Shelburne of anything for which you were overpaid?" Her answer was, "No."

Dr. Ayers: *What general advice or guidelines can you offer to another dentist after your experience?*

Dr. Shelburne: Pay very close attention – do not believe that there is an excuse of "I didn't know" or "I