

No Duty to Defend Dentist Accused of Sexual Assault

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A United States District Court in Kansas has held that an insurer did not owe a duty to defend or indemnify a dentist accused of sexually assaulting his assistant while purporting to be providing medical treatment. *Wisdom v. Saint Paul Fire & Marine Ins. Co.*, 2004 WL 290976 (D. Kan. Jan. 23, 2004).

The dentist hired an assistant and told her that he wanted to train her to aid him in treating Temporomandibular Joint (TMJ) Syndrome, a painful facial condition in the joints of the lower jaw. During the training, aware that the assistant herself suffered from TMJ, the dentist asked the assistant to sit in the dental chair so that he could demonstrate the TMJ treatment using electrodes and massage. While in the chair, the dentist asked the assistant to remove her clothes as part of the treatment, and then proceeded to sexually assault her.

The assistant sued the dentist alleging battery and outrage. The policy stated that the insurer will "defend any suit brought against any protected person for covered claims, even if the suit is groundless or fraudulent." The policy also provided that "[the insured] is protected against claims that result from: Professional services that you provided or should have provided." The insurer declined to defend and filed a declaratory judgment action, seeking a determination that it owed no duty to defend or indemnify under the policy.

The court granted the insurer's motion for summary judgment. The court concluded that, given the facts, a duty to defend could only be predicated on a finding that the dentist was providing treatment or related training for TMJ pain as a professional service. The court found, however, that a "good faith analysis" of the facts revealed that the assistant's allegations were based on the dentist's intentional plan to sexually arouse himself, rather than on negligent professional treatment. Accordingly, the principal allegations of the assistant's complaint did not involve the practice of dentistry or any other professional service.

For more information, please contact us at 202.719.7130.