

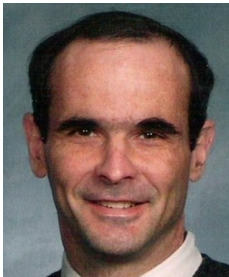
Dental Practice Legal Update

July, 2017

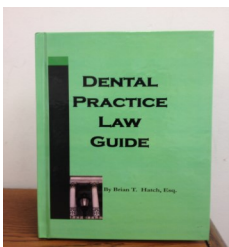
Volume 14 Issue 7

Dental Practice Legal Update is published as a courtesy to the dental practices industry by:

Hatch Legal Group
8 North Main Street
Attleboro, MA 02703
Phone: (508)222-6400
hatchlegalgroup.com
brianhatch
@hatchlawoffices.com



Attorney Brian Hatch, publisher of Dental Practice Legal Update, has represented dental practices in business, employment, complex litigation and other legal matters. His latest book is "Dental Practice Law Guide" hatchlegalgroup.com



140,000 to Lose Dental Coverage Under Baker Plan?

The budget proposal that Massachusetts Governor Charlie Baker submitted to the Massachusetts legislature may force approximately 140,000 residents who currently have dental coverage through MassHealth to purchase at their own expense separate dental plans through their employer or the Health Connector to maintain coverage. In that proposal, there is also a possibility that those residents who formerly had dental coverage through MassHealth would be able to get dental care at community centers, and would be reimbursed for that treatment. Currently, under the Affordable Care Act, dental coverage for children is required to be offered under all health insurance plans, but plans do not have to offer adults dental coverage.

The Baker proposal is an attempt to ensure that costs of MassHealth in general, which take up almost 40% of the state budget, do not become impossible for the Commonwealth to maintain. This particularly is true considering that almost half of funds provided to the program are in jeopardy of being eliminated at the federal level under attempts to reduce Medicaid costs by Congress and the Trump administration. There is certainly concern in the dental community in Massachusetts that this type of proposal will increase the number of patients who are unable to get adequate dental care because of their inability to get a reasonably priced separate dental insurance plan. Legislators must now weigh the Baker proposal or another option which would bring down the cost of providing free dental care to all those on MassHealth.

To Catch a Thief for Dental Embezzlement

Over 60% of dental practices report that they have had issues with embezzlement within the practice. How can a practice monitor and control situations that can allow creative staff members to unlawfully drain a practice financially and tarnish its reputation with patients, employees, insurers, and even the Attorney General's fraud examiners? Does Hitchcock's "To Catch a Thief" require a dental practice to evolve-Robert Wagner style- to "It Takes a Thief?" No, since all that is necessary is some legitimate strategy that shows prospective embezzlers that your practice will not be swindled.

The most important way to deter a potential thief as well as catch one in the act is for the owner dentist to take a visible role in monitoring the finances. Not everything should be in the hands of one person-a long tenured office manager for instance-since very often the seemingly trusted veteran employees are the ones who take the most money and don't get caught. Owners should keep track of the finances of the practice regularly by checking the deposits daily or making the deposits themselves.

Taking cash as a form of payment is an invitation to embezzlement, since skimming cash off the top of receipts is so much easier to do than altering checks or insurance payments for services.

Creative thieves have mastered ways of taking money through altering insurance billing procedures, but there are controls that can prevent fraud or embezzlement. Have two employees be involved in the insurance

(continued on page 2)

To Catch a Thief for Dental Embezzlement (from p. 1)

billing process, one to bill the insurers and the other to record and accept the incoming checks, so that they can serve as a check on each other. That way one employee can't bill the insurance company for larger amounts than are actually being charged for treatment, and then pocket the difference between the higher insurance payouts and the services received.

Checking account access should be limited to one person, with owner review of the account if the office manager has access. Stamped signatures for outgoing checks should be avoided to prevent forgeries.

Awareness of employee practices can go a long way to re-

vealing whether a thief lurks amongst the office staff. Are employees consistently coming in early or staying late? Are they hesitant to take vacations (in case someone might double check their work in their absence)? Are they uncomfortable with changes in accounting practices? Do some employees seem to live extravagant lifestyles going beyond the means provided by their pay? Have sufficient background checks been done before hiring or has an employee been deceptive on his or her employment application?

Taking care in handling financial records is important to recognizing that suspicious activity is taking place. Don't let financial records leave the premises unless it is with a CPA, who should be used on a regular basis. Dental and financial software should be closed on a timely basis, with passwords employed which are changed from time to time. Use an audit trail

function if available on your dental practice software.

Catching thieves requires thorough investigations when out of the ordinary activity is detected involving practice receipts or finances. The investigation should include an analysis of who has access to financial data, billing information, deposits and checking accounts. A CPA should be consulted immediately, and using a computer data retrieval specialist is worthwhile to analyze a situation which is complex. Don't make false accusations of embezzlement prematurely, since it can be grounds for a defamation lawsuit, so the investigation should be complete before alarming the staff (and perhaps alerting the thief to cover up the deception).

Remember that the old English proverb "It takes a thief to catch a thief" that inspired both Hitchcock and the TV show is not necessary to protect against embezzlement. Just use a little more wisdom regarding best practices to gain the upper hand over a criminal.

California Dentists Get Increased Medicaid Reimbursement Rates

Dentists in California finally received a long awaited increase in their reimbursement rates under Denti-Cal, the California Medicaid dental program, in legislation signed on June 27th by Governor Jerry Brown. Denti-Cal reimbursements were some of the lowest in the country, about 35% of the national average, and had been cut in 2013. Before the legislation, most dentists who treated Medicaid patients made ends meet by relying on revenue from donated sources, grants and individual donations. The source for the new reimbursements will be coming from an additional \$1.4 billion in revenue generated in the next fiscal year from a new \$2/pack increase in the tobacco tax passed by votes last November. The California Dental Association (CDA) credited its member advocacy efforts resulting in convincing lawmakers to direct the new tax revenue to California's Medicaid programs instead of going to general state funds. The CDA announced that its members had sent over 12,000 e-mails to legislators and other key decision-makers, and noted that this lobbying was a big part in emphasizing the need for more funds to be allocated to dental care.

The new budget also provides for \$30 million for the state dental director's office, and will restore full benefits for the state's adult Denti-Cal program, which were cut in 2009, and partially reinstated in 2014.

Dentist Settles With CT AG Over Long-Term Care Facility Medicaid Fraud

Georgy Betser, a dentist working out of Stamford, Connecticut has settled a false claims submissions case with the Connecticut Attorney General's Office with an agreement to not renew his expired license, and to not participate in the state's Medicaid dental program for ten years. Betser had supposedly provided dental care services from 2009-2014 to patients in long term care facilities participating in the Connecticut Medical Assistance Program (CMAP). The services he billed CMAP for included fillings that were never performed and dentures that were defective and unusable. The Connecticut Attorney General's Office started their investigation into the case in 2013 and eventually filed a civil lawsuit against Betser and his wife, Irina, under the state False Claims Act. Under the settlement agreement, which was announced by Attorney General George Jepsen and state Department of Social Services Commissioner, Roderick L. Bremby, the Betsers will forfeit \$755,956.30 in payments made to them under CMAP.

Dental Supply Company Not Allowed to Make Payoff to Prevent Class Action in Junk Fax Lawsuit

A federal appeals court in Illinois has ruled that Bisco, Inc., an Illinois based dental supply company accused of sending junk faxes to multiple dental practices, including lead plaintiff Fulton Dental, could not prevent Fulton from expanding its suit to a class action by merely depositing the maximum amount the individual plaintiff could be awarded with the court, or \$3,600. While case was ongoing, the U.S. Supreme Court issued a ruling stating that defendants could not escape a class action by offering the representative plaintiff a smaller amount to satisfy statutory damages. Bisco had tried to deposit a payment to the court and have the court issue a judgment in favor of the Plaintiff for just that amount to take advantage of a loophole in the decision language, but the appeals court would not allow the maneuver.

Provide your employees required HIPAA training and present to them an employee manual customized for the dental industry and your office.
brianhatch
@hatchlawoffices.com
508-222-6400

Dentist Accused of Stealing Patient Information to Help Divorce Case

A Florida dentist, Dr. Lauren Kravitz has been accused of researching a patient's medical information and giving it to the patient's husband for his use during their divorce proceeding. Dr. Kravitz, who worked at the dental clinic Kravitz Dental with her husband, Gene Kravitz, was supposedly having an affair with Philip Howland, a car restoration dealer, before the divorce trial between Howland and his wife, Broward County attorney Stacy Wein. Howland's attorney asked the court during that trial to admit evidence of prescription drugs used by Wein. Howland was asked by the court how he came into possession of the prescription history, and he admitted that he received it from Lauren Kravitz. Dr. Kravitz had apparently gained access to a patient database through the dental clinic to find Wein's prescription history. Wein said she was not a patient of Kravitz however. Wein now has filed an invasion of privacy and negligence lawsuit against Lauren Kravitz, who

now has left work at her husband's clinic. Wein claims that the prescription information wrongfully obtained is now being used against her in the resolution of an issue over alimony.

Other information adds to the intrigue in this case and history of the relationship between the two women. Apparently, the Kravitzes and Wein and Howland, as husband and wife, had at one time been close friends and had stayed at the Kravitzes' Aspen, Colorado lodge together. At some point the dealings between the women soured and Lauren Kravitz and Wein filed complaints against each other for stalking. It is uncertain how Kravitz obtained Wein's patient information if Wein's claim that she was never a patient at the clinic is true.

EPA Reinstates Amalgam Separator Rule

In a move which reversed a Trump administration decision which would have rescinded the EPA's Final Rule on amalgam

separators issued in December of 2016, the EPA has announced it will reinstate the Rule, which regulates the discharge of dental amalgam waste. The National Resources Defense Council had filed suit against the EPA to force it to allow the Rule, which had been worked on by the EPA and American Dental Association for several years, to go into effect.

Hatch Legal Group works with South Shore Dental Advisors to provide dental practices with services within a variety of areas, including law, IT, banking, accounting, and practice management. See SSDentaladvisors.com

Looking to Buy or Sell a Dental Practice? Hatch Legal Group can provide legal work and also match up prospective buyers and sellers. 508-222-6400 brianhatch@hatchlawoffices.com

Issues about Supervisory Duties Raised Regarding Ohio Teledentistry Legislation

A proposed Ohio law would allow the newly developing field of teledentistry to be authorized under certain circumstances to allow for more quality dental treatment to be provided in rural areas of the state which are underserved by dentists. Under current Ohio law a licensed dentist is allowed to supervise up to two Expanded Function Dental Auxiliaries (EFDAs) at one time. One speaker during a recent hearing before the Health Committee of the Ohio House of Representatives, Ohio Dental Hygienists' Association Past President Nichole Oocumma, stated that the teledentistry law would potentially allow a participating licensed dentist to be able to supervise up to 15 people at the same time. This situation would occur if the maximum number

of hygienists and dental auxiliaries were supervised both in office and through teledentistry. She questioned whether the new supervisory burdens would be expecting too much of dentists. The proposed bill, HB 184 also contains provisions expanding the dental student loan repayment program through a surcharge on dental licensure fees. Dentists would be allowed loan repayment incentives based on their relocation to underserved areas.

Forging Credit Slips Added to Accusations Against Dentist

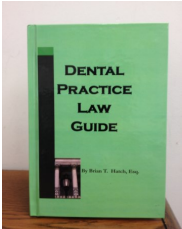
After an initial arrest earlier this year for dental fraud committed against three of his patients, Hagaman NY dentist Dr. Martin A. Sorbero has now been charged with counts of larceny, forgery and falsifying business records involving twenty additional patients. The twenty separate accounts of second degree forgery resulted from his submissions of

forged credit card slips in patients' names exceeding \$100,000. In one of the patient's cases, he allegedly forged a Care Credit application, and then reported untruthfully that he had completed \$11,000 worth of dental work to collect reimbursement from Care Credit. Sorbero, who has an office in Canojoharie, NY was originally suspected of having committed the crimes against only three of the patients, but when police searched his home and office and invited other victims to come forward the additional counts were added on June 8th. Sorbero has also been accused, in a lawsuit filed in 2016, of performing unnecessary dentistry on a patient who claims her six root canals were on teeth that did not have symptoms requiring that kind of treatment.

Attorney Brian Hatch has been practicing law for over 32 years and has focused on the dental industry since 1995.

Hatch Legal Group
8 North Main Street
Suite 403
Attleboro, MA 02703

Available Now at
hatchlegalgroup.com



Dental Practice Legal Update



HATCH
LEGAL
GROUP [*A Dental
Practice
Specialty
Law Firm*