

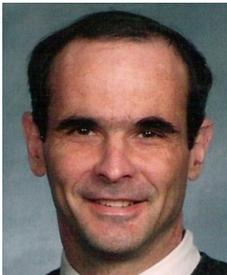
# Dental Practice Legal Update

**August, 2017**

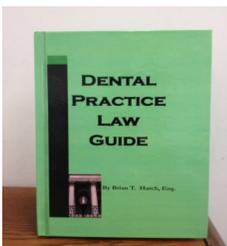
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## **How Will the Debate on Immigration Affect Dentistry?**

As of August 2<sup>nd</sup>, when two Republican Senators, Thomas Cotton of Arkansas and David Perdue of Georgia, and President Trump introduced the proposed Reforming American Immigration for Strong Employment (RAISE) Act, the great debate on legal immigration is on. How will dentists, who currently aren't treated as favorably as doctors when it comes to being able to gain temporary or permanent residence, fare under the new proposal as compared to current laws in place?

The new proposal attempts to reduce overall legal immigration over ten years from approximately 1.1 million to 500, 000 by changing to a merit based system for weighing who can obtain temporary visas to live in this country. An employer preference based system currently exists, with employers submitting applications on behalf of professionals like dentists, or others with a bachelors degree or higher, for an H1-B temporary visa lasting for three years, with a possibility of a three year extension (and longer if an LPR application has been applied for). The government would take over the current primary role of an employer by prioritizing who may be considered for entry according to whether they are young, are proficient in English, can financially support themselves, are well educated, and can contribute to the U.S. economy.

A main change in current laws in

(continued on page 2)

## **Can You Terminate the Patient Relationship?**

Can you terminate a patient relationship during a course of treatment without being accused of patient abandonment? The standard guide for health care professionals of "do no harm" may be a general philosophy to go by which guides ethical behavior in making this decision. Still, there are circumstances where difficult decisions must be made to discontinue treatment when there are extenuating reasons to end the patient relationship.

What if the patient is not paying for treatment as agreed? Perhaps there is a long term treatment plan where there is a payment plan, as for example with an orthodontics patient. Patient abandonment is legally defined as the unilateral severance by the dentist of the professional relationship between himself or herself without reasonable notice at a time when there still is the necessity of continuing attention. If a patient can go a long period of time without suffering ill effects and he or she is properly notified, then it is possible to discontinue treatment, particularly if there are other dentists available to take over treatment.

A good way to handle necessary long term treatment of a patient who refuses to pay for it is to start collection procedures before treatment is finished, and then complete the essential parts of the plan before discharging the patient. Most regulations and courts consider payment of bills for treatment and obligations to treat as separate issues. It must be remembered that regardless of how the dentist patient relationship ends, patient records cannot be withheld because of any dispute.

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## Can You Terminate the Patient Relationship?

(from p. 1)

There are a number of other patient actions which may justify termination. The patient may fail to keep appointments, not cooperate with the dentist, or not follow advice and directions by the dentist. In that case, the dentist may very well be justified in terminating the relationship before treatment is completed, since the quality of the result may be affected adversely if the directions are not followed. It is advisable to have the directions given to the patient in writing in case the patient insists that he or she was not told accurately how to perform necessary patient actions to complete a successful treatment plan.

The obligation of the den-

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## Effects of the Immigration on Dentistry (cont. from p. 1)

in the new proposal is to significantly decrease family preference visas for family members of current residents such as spouses, children, and adult family members like parents and siblings. This accounts for nearly two thirds of all legal immigrants who come into this country now, but in the new bill would be limited to spouses and minor children. Will foreign dentists be less inclined to emigrate here if they know their families won't be able to join them? This aspect may not be as important as long as other family members are already self-sufficient abroad or come from countries with stable economies and political systems.

Under the new proposal, which may of course not result in final legislation but is only a starting point, there is a continuing direction to favoring more skilled professionals with higher education such as dentists. The English proficiency emphasis may be much better for those in the dental field who very often have to take courses overseas in English, or who come from countries like India, where English is a primary spoken language.

tist to continue treatment can often be limited by completion of the immediate treatment that is agreed to, such as a filled tooth. Then the patient can't dispute that the doctor didn't complete treatment if the "contract" for what the patient and dentist agreed to beforehand is finished. If there are immediate post-operative complications related to the treatment, however, refusal to treat may lead to a valid cause of action based on the theory of abandonment or negligence.

A dentist has no duty to complete treatment which is determined to be beyond his or her capacity or requires a specialist. The direction to go to a specialist is necessary to prevent standard of care violations if the treatment is not within his or her normal expertise. This is the case even if the patients don't want to see a specialist or say they cannot afford one.

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The ability to support oneself financially is much easier in a well-paying profession such as dentistry, where there are significant numbers of open positions for young dentists. A dentist doesn't need an employer to practice, which makes the employer preference system not as meaningful. But, of course, state licensure requirements often don't grant reciprocity for foreign trained dentists, so it may be some time before the degree from a U.S. dental school is obtained that is a prerequisite to practice in a state such as Massachusetts. In the meantime, a foreign trained dentist can work or teach at a dental school and be put on a fast track to gaining a degree from a U.S. dental school. National Interest Waivers or Outstanding Researcher petitions, which essentially qualify professionals for temporary or permanent residency who have outstanding records of research, publication, or other needed skills will continue to be available to dentists.

Who knows what the wavering winds of the current Washington political wars has in store when proposals based on merit are presented to politicians who have voters to accommodate for the next election? But, if the first detailed legislative proposal is an indication that the merit system, such as is in effect in countries like Canada and Australia, for legal immigration may gain influence, then the trend towards

If the patient is unruly to the extent that it is difficult to complete treatment, then a dentist is justified in discontinuing the relationship. It should be noted that there are causes of action against a dentist possible by employees for patient sexual or other harassment, so there must be a thorough investigation and resolution of such complaints before the patient is allowed to continue to be treated by the complaining employee.

In order to justify a lawsuit by a patient for abandonment the discharge of the patient must have been at a critical time and was the proximate cause of the harm alleged. Damages may include any injury harm or discomfort, and if willful, punitive damages are possible. Disciplinary proceedings are always a possibility if the patient complains to the board of dentistry. Overall, the standard of reasonableness is what is followed by the courts and peer review panels, particularly if the patient is the primary cause of the discharge.

easier immigration for dentists from outside the U.S. seems promising.

## Suit Against UPenn For Refusing to Prescribe Percocet for Tooth Infection is Dismissed

Charles Talbert recently came to the University of Pennsylvania Hospital and requested to be treated for pain supposedly related to a two year old tooth infection he said that started after dentists at the Philadelphia Prison System were filling a tooth cavity. He showed personnel at the hospital some of the medical records from that institution and another dental practice which he said showed that he was still suffering significant pain from that treatment result and needed a prescription for the painkiller Percocet. When his request was denied and he was given only the over the counter medication Motrin, he sued the hospital for negligence and \$1,000,000, but the court dismissed the suit soon after the filing.

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## Could Dentists and Labs Be Required to Disclose Country of Origin of Prosthetics?

Issues in the dental community have arisen about a particular way to cut costs in dental treatment using prosthetics: use cheaper products manufactured in China. While this may seem like a benefit to the consumer who may be able to receive less expensive dental treatment as a result of lower costs to the dentists performing procedures, some investigations have concluded that inferior and perhaps toxic products made in China are being put in patients' mouths. A New York legislator has introduced a bill in Erie County to require dental labs to disclose the country of origin of custom crowns, bridges, dentures and veneers to dentists, and dentists must also disclose that information to patients. Joseph Lorigo, who submitted the bill in July to the County legislature's Health and Human Services Committee, hopes that the measure receives bipartisan support and that it may be copied by other legislatures and at other levels of government.

## Texas Dentist Sues Nancy Grace for Slander Over Reporting his Role in Toddler's Death

Dr. Mark Melanson, whose patient 14 month old Daisy Lynn Torres died after dental treatment at his office in March of 2016, is now suing Nancy Grace and a number of other broadcasters and media entities for falsely reporting facts of the case. Melanson, who operates Austin Children's Dentistry in Austin, Texas, claims that Grace and other broadcasters intentionally used misleading evidence provided in an inaccurate report by forensic dental examiner Dr. Robert Williams to claim that no procedure or treatment was necessary in the child's case and that a "baby died tragically and unnecessarily as a direct result of Dr. Melanson's egregious and outrageous conduct." Williams' report found that the operation was potentially unnecessary, but a report by the practice found otherwise, and the Texas Board of Dental Examiners dismissed its investigation of Melanson in the matter and concluded that there was insufficient evidence to

continue disciplinary proceedings. Melanson also claims that Grace misstated that the child died at his office, when she was actually pronounced dead at the North Austin Medical Center. Two other pending lawsuits, one against Melanson by the girl's parents, and one by them against Williams for not clarifying his findings are still being resolved.

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## FDA Sets Limits on Pain Medication Young Dental Patients Can Receive

Perhaps as a result of the continuing bad news about opioid addiction and the role that dentists have played in initiating dependence on opioid based painkillers, the FDA is now restricting the prescription of certain painkillers to children younger than 12 years old. The American Academy of Pediatrics concluded that in 2013 two million children under the age of 12 years old either abused or were dependent on opioid painkillers. The new regulations target that specific population, and prohibit prescribing to children under 12 tramadol, codeine, and Tylenol 3 (a mixture of Tylenol and codeine). Other restrictions state that Tylenol 3 can be prescribed as a painkiller after dental treatment only after the age of 12 and hydrocodone only after the age of 14.

## Arizona Dentist Drives Americans to Mexico for Less Costly Dental Treatment

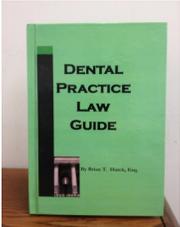
The phenomenon of tourist dentistry has reached new levels with a retired Arizona dentist's new business of taking Americans across the Mexican border each day to seek less expensive dental treatment with Mexican dentists. Dr. Mark McMahon, who used to practice in Tucson, now takes six to eight people per day to Mexican dentists in his van, under the business name "Coyote Dental," to get what he says is high quality dentistry for much less cost than in the United States. The Arizona Dental Association is now warning patients that they could be facing the consequences of being treated in a location where training requirements are inconsistent and licensing boards do not regulate industry standards of care. The Association says that there are problems with water quality standards and substandard materials. McMahon says that

the equipment used in the Mexican dental clinics is of very high quality compared to what appears in offices across the border, and that the presence of specialists in the same office as general dentists functions as a cost saver as well as is convenient for patients. McMahon advertises his services shuttling patients to dentists on his van with picture of a smiling coyote advertising dental services at 70% off. He sells the service for \$50 a drive and receives a commission from the Nogales, Mexico dentists he refers patients to. When he relocated to Mexico after practicing for many years in Tucson, he said he realized he couldn't make much money as a dentist in Mexico, but he saw that promoting dentistry there through his current business would be a success.

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

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