

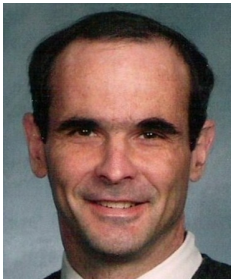
# Dental Practice Legal Update

February, 2017

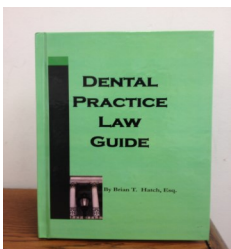
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## **Dr. Dental Involved in Paying \$475K to MassHealth for Over Billing**

Dr. Julia Faigel, the Newton Massachusetts based owner of Dr. Dental and numerous other Massachusetts dental practices has settled a suit by the Massachusetts Attorney General's office for over billing on MassHealth dental claims for \$475,000. MassHealth regulations and the American Dental Association's code on billing dental procedures prohibit billing for palliative procedures, or dental pain relief, along with other dental procedures. Faigel's 21 offices, including 8 Dr. Dental offices, billed for palliative as well as extraction procedures on the same day in billing from May 2010 through December of 2016, resulting in the overbilling of MassHealth, the state's Medicaid provider. Faigel's brother, Alexander Faigel, who was managing director of the practices during the time period of the violations was also involved in the investigation and allegations by Attorney General Maura Healey's office. Healey commented on the case by stating "This problematic billing cost MassHealth thousands of dollars and violated state regulations. This settlement will provide restitution to MassHealth and will ensure that these funds are properly used to benefit its members. " Healey's office announced on January 11th that it recovered over \$80 Million for MassHealth during 2016, the second highest amount for a single year. The settlement against Faigel also resolves allegations that she was listed as the providing dentist in billings actually performed by other dentists.

## **The Effects of Delta's Switch to a Profit- Making Network**

Delta Dental, formerly one of the largest non-profit dental insurance providers in Massachusetts, has now given dentists in Massachusetts until February 27, 2017 to sign new contracts with its new profit-making company, DSM Massachusetts Insurance Company, Inc., which is referred to in this article as "New Delta." With this move, Delta is avoiding oversight under the Division of Insurance governing of, among other things, fee-setting, the availability of hearings, and negative effects on the dentist-patient relationship

Dentists in Massachusetts have become understandably concerned, since they may be dropped from Delta's network if they refuse to sign the new contracts offered by February 27<sup>th</sup>. The Massachusetts Dental Society has become a key player in the transition of the "Old Delta" to the "New Delta" by informing its members of the changes and by introducing legislation designed to counteract any negative impact on dentists in Massachusetts. The MDS succeeded in getting legislators to file legislation during the 2017 session called "An Act Concerning Dental Service Corporations" which would require companies like Delta to be under the oversight of the Division of Insurance and to prohibit them from doing anything which would interfere with the dentist-patient relationship or restrict dentists' actions on diagnosis, treatment or referrals (the New Delta contract would require referrals to be made only to in-network specialists). Also, proposed legislation would prevent a New Delta rule requiring dentists to accept PPO patients if they accept higher reimburse-

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**THE ONLY DENTAL PRACTICE SPECIALTY LAW FIRM IN MASSACHUSETTS**

## The Effects of Profit-Making Dental Insurance

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ment from Premier Plan patients. This legislation will not advance in time for dentists to be required to sign New Delta contracts, though, so dentists are given the choice of joining New Delta or phasing out their participation in Delta as the company adjusts its PPO network with marketing new plans to patients.

Dentists forecast that the move by Delta would force them to accept rates as much as 30% lower than current Delta reimbursements. Delta itself says that the reimbursements will be lowered by about 20%. They fear they may lose many patients who may change

dentists, since as many as one third or one half of a dental practice have Delta plans. More than 2,500 dentists out of the 5,000 dentists in Massachusetts have already signed on to the new plan, though many others are still considering what to do by the deadline.

One of the main things Delta can do now is amend its contracts freely without oversight and have new dentists be subject to the amendments unless they give a 60 day termination notice. If dentists sign the New Delta contract they must obey a 1 year waiting period before they can terminate the contract. The Division of Insurance will have a chance to review the new agreements before February 28th .

The MDS under federal and state anti-trust laws cannot conduct an advocacy campaign to represent the

efforts of dentists to oppose or boycott Delta Dental's new contracts, and so must focus on either legislative efforts, court action or using a request to the Attorney General to review the new company's actions. It is important to note that dentists themselves cannot discuss such coordination efforts either, or they risk severe penalties which have been imposed by the courts for violating anti-trust laws. The only thing dentists can do is review the new contract or have their attorneys review it with them to determine whether to sign the new agreements by February 27<sup>th</sup>. Contracting with new profit-making insurance companies who maintain preferred provider networks with a large share of the dental insurance market, but without oversight by the Division of Insurance, may be something dentists have to get used to. They will not be able to exercise as much control over unfair or negative provisions of their agreements by appealing to government agencies as a result.

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### Bills Compete On Non-Dentists' Treatment to Provide Access to Care

A new bill has been introduced in the Massachusetts state legislature by Sen. Michael Moore (D-Millbury) and Peter Kocot (D-Northampton) which provides differing dentist oversight rules for access to minor dental procedures than the bill previously introduced by Harriet Chandler (D-Worcester). The new bill, which is backed by the Massachusetts Dental Society, would provide for mandatory oral health screenings of children entering kindergarten and requires Department of Public Health training for dental health practitioners who would work on a the same level as nurse practitioners and physicians assistants and would work under the direct supervision of licensed dentists. The bill previously introduced by Chandler allows midlevel providers such as dental hygienists to perform tooth extractions and other procedures in order to increase access to dental care to portions of the population vulnerable to poor dental health because of lack of access to a dentist. Last year the state Senate approved a budget rider which would

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have approved the creation of a new category of advanced hygienist practitioners to perform such procedures, but the bill was dropped by a joint House-Senate committee in the final budget bill. A spokesman for the MDS stated that the new bill it endorsed, while it doesn't create the new category "is designed to bring care to where it is most needed and provide(s) a more comprehensive approach to serving populations in need." A number of other states in the United States have passed legislation approving the new category of midlevel dental providers, sometimes called dental therapists, to provide care for rural and underserved populations.

### The Problem of Street Dentists in Pakistan

Due to the lack of inexpensive dentistry in Pakistan, many poor people are turning to street dentists, or vendors who set up on mats with substandard equipment offering cheap dental care to passersby. They offer so-called treatment for scaling, fillings, crowns, and poor quality implants. They often advertise their services on signboards with dentures and phrases designed to attract people from the street. Nearby public hospitals only provide minimal services, and any further dental care costs significantly more than the average resident

can afford. Apparently, local health officials do sometimes visit the stalls but do nothing to prevent the illegal business, mostly because of cash payoffs by the vendors. A local District Health Authority Chief Executive Officer, Dr. Fayyaz Butt, who was appointed recently to his post, said he is now requesting is staff to make greater efforts to find the street dentists and prosecute them, and that they would be referred to the Punjab Healthcare Commission in Lahore to charge them with the illegal actions.

### Baltimore School Program Extracts Teeth Without Permission

9 year old Michael Fleming was expecting a checkup and a cleaning when he went to his elementary school in Baltimore, Maryland and received treatment from a dental program which comes into schools to provide preventive care. Instead the provider who treated him extracted three of his teeth without permission and then left him with no medication to alleviate the pain and swollen gums he experienced afterwards. His mother, Shanda Fleming said that had he been called to ask for permission to perform the procedure she would have told those in charge that Michael had an appointment with a dentist scheduled for the following Monday. Shanda is seeking some explanation from the local school board regarding the program's policies.

## **White House Memo Causes EPA Rescission of Mercury Regulation**

On January 20, 2017, almost immediately after the inauguration of Donald Trump as President, a White House memo resulted in the action by the Environmental Protection Agency to rescind the Mercury Effluent Rule, which reduced the amount of mercury in wastewater discharged by dental offices which makes its way into wastewater treatment plants. The rule had gone into effect on December 15, 2016. The National Resources Defense Council announced that it would file suit against the EPA for rescinding the rule without public notice or an opportunity for public comment. The American Dental Association had contributed its opinion regarding the rule issued in December, asking for dentists to use its recommended "best management" regarding the disposal of any substances which may contain mercury. It is estimated that compliance with the old rule would have cost dentists about \$800 per year.

## **European Regulators State that Tooth Whitening Should Only Be Supervised by Dentists**

After numerous new stories appeared in Great Britain about the dangers of tooth whitening done by non-dentists and the fake tooth whitening companies appearing to provide services which may have harmed individuals, the Federation of European Dental Competent Authorities and Regulators (FEDCAR) has stated that tooth-whitening should be done under the supervision of licensed dentists. The statement supports the opinion of the national regulatory agency in the United Kingdom, the General Dental Council that "tooth whitening is a complicated and potentially risky procedure and as such can only be undertaken by a qualified dental professional." In the United States this position is at odds with a U.S. Supreme Court ruling in 2015 stating that because of anti trust laws dental boards could not regulate the tooth whitening industry. Some U.S. states such as Alabama have nonetheless passed laws restricting tooth whitening to licensed dentists, except for home whitening kits.

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## **Pediatric Dentist Sues Son for Defamatory Remarks On-Line**

A Wylie, Texas pediatric dentist has filed suit against his 19 year old son for making defamatory remarks on-line about his father's criminal charges of child indecency. Dr. Allen Pearson filed suit against his son, Ethan Pearson, for posting comments on-line about his father being an "abusive pedophile" who was facing allegations of molestation of an underage relative. A district court judge had ruled in October that the father could continue working with children as long as he was supervised until a hearing came up on the criminal charges against him. The Texas State Board of Dental Examiners met in January and suspended Pearson's license to practice dentistry saying that continuing his practice "would constitute a clear, imminent or continuing threat to a person's physical health and well-being." Ethan Pearson, who lives in California, was sued by his father for libel and slander, and the

judge in that case issued an injunction on January 10th mandating that he stop making any defamatory remarks in any public forum or contacting any existing or potential patients for his practice, Wylie Children's Dentistry. The original post which prompted the suit has been deleted.

## **Fake Dentist Learned Dentistry From YouTube Videos**

Mohamed Irwan Mohd Sudi, a 25 year old Malaysian man, decided to learn how to become a dentist by watching YouTube videos and reading magazines about dentistry. He began posing as a dentist and set up a dental clinic performing treatment such as tooth extractions, teeth scaling, and orthodonture. He realized, apparently, that his "training" was not sufficient to allow him to treat patients, so he had planned to close his clinic in December. However, a patient revealed the scam in November and the authorities filed charges against him for impersonating a dentist. He appeared in court and pleaded guilty, and now faces a significant fine.

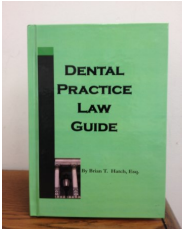
## **Dental Supply Company Wants to Be Released from Schein, Benco, Patterson Case**

A dental supply company comprising an estimated 3 percent of the dental supply market in the United States has filed pleadings to allow it to be dismissed from the nationwide suit against Henry Schein Inc., Patterson Co.s Inc., and Benco Supply Co. for alleged price-fixing. Burkhardt Dental Supply Company says that it is too small to be included in the suit against the other three companies, who dentists allege make up 80-90% of the dental supply market. They also say they were added too late as a defendant.

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

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