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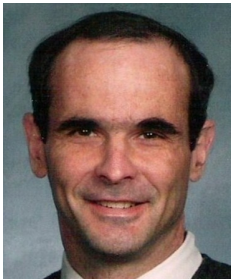
Dental Practice Legal Update

June, 2017

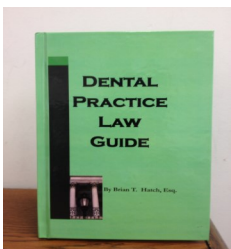
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Hatch Legal Group
8 North Main Street
Attleboro, MA 02703
Phone: (508)222-6400
hatchlegalgroup.com
brianhatch
@hatchlawoffices.com



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



A Business and Legal Cost-Benefit Analysis of Using a DSO

There are two trends in dentistry that have been rising for the last several years—corporate dentistry and Dental Support Organizations (DSOs). Both are related to a situation involving the significant time that is required to manage a dental practice which takes away from the clinical side of dentistry. The corporate model also attracts new dental school graduates who are deep in debt and need an immediate salary to help pay it off early. But what about the mixture of a private and a corporate model of a DSO that allows ownership for the dentist yet makes up for the lack of management experience many dentists have who seek to start up a or own a practice?

It is necessary when viewing this model to look at both the legal aspects as well as the business aspects, so it is important to start out by realizing that in many states, including Massachusetts, it is illegal for a non-dentist to actually own a dental practice. This gives a dentist who contracts with a DSO the peace of mind to know that they are the actual owner of the practice, and a DSO cannot interfere with clinical decisions. Many courts have held that the interference of profit making corporations in dental treatment decisions by using the money-making incentives of their shareholders harms patients enough so that states can restrict this kind of corporate structure.

Management agreements which allow for administrative and other costs to be handled by personnel more experienced

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Will You Be Liable for a Dental Implant Lawsuit?

The number of patients receiving dental implants is growing by 500,000 a year, according to the American Academy of Implant Dentistry, and so it is important for dentists to realize that doing a procedure which sometimes results in complications that can lead to a lawsuit by a dissatisfied patient. Here are some tips on how to avoid that liability.

A thorough examination, diagnosis and discussion with the patient is very important to avoid a patient being unhappy after treatment and claiming he or she was promised a different result. Review the patient's medical history to check for pre-existing conditions or problem areas and inform the patient honestly about his or her decision regarding alternative prostheses and dental work which might be better or cheaper than having an implant. Lack of proper informed consent is a separate cause of action nearly always alleged by lawyers in their malpractice suits, and having a thorough verbal consultation as well as an understandable but detailed informed consent form is crucial. That makes it much easier to defend a case where the patient says that he or she was not informed of the dangers of complications of the implant treatment.

Refer out implant cases which may present a more complex case than a general dentist is used to handling to an oral surgeon. Additional training by a reputable source such as the American Association of Implant Dentistry always has meaning when a case for negligence is alleged because a dentist didn't know how to handle complications such as

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post-operative infection, sinus involvement, non-restorable implants, etc. A good solution if a general dentist wants to take part in the implant procedure is to refer out the surgery phase where most complications occur, and then complete the prosthetic placement after the fixtures have been inserted.

Be choosy about treating difficult patients who you may foresee being dissatisfied with less than perfect results. Don't overpromise a perfect result as well. Stay within the financial means of the patient, for if the implant procedure is done just to make a buck instead of referring it out, the patient is going to complain that he or she was overcharged and will add that into dam-

A Business and Legal Cost-Benefit Analysis of Using a DSO (continued from page 1)

in running a dental practice and making it successful are legal, however, and the advantages of this model should be analyzed.

There is a cost benefit analysis that should be done taking into account the fees that a DSO charges, and it should be factored into any business plan of a startup practice. The cost of having a DSO manage your practice full-time can take out 25% or so of revenues off the top. The efficiencies of buying larger quantities of supplies and greater marketing power can reduce costs while promoting a business effectively. Allowing dentist to focus on clinical revenue producing time can help the bottom line as well. Look at a DSO contract to see if the end result will provide you with enough income to make it be a worthwhile investment. Perhaps negotiating a shorter term contract with a DSO can allow dentists to take over management responsibilities once they see how a practice is managed, and realize larger future profits. Also, using a practice management consultant on a part-time or temporary basis to assist in managing the practice and training your staff can

ages. This may also harm the reputation of a dentist who is being accused of malpractice. There are countless court cases of patients who come into an office with the possible need for an extraction and leave with expensive implants they later say they didn't need.

Complete documentation of all the steps in treatment planning, discussions with patients, informed consent forms and every part of the actual performance of the procedure is crucial to preventing eventual liability. Don't be afraid to note complications or mistakes during the treatment procedure. Be honest about those mistakes or unexpected complications soon after they occur, and note that the discussion was had about that in your written notes. The patients will be less inclined to file a suit if the dentist is honest with them about every step of the procedure, even if something goes wrong. Remember

cut down on costs, and may not involve a full-time long-term contract.

Marketing a practice is a factor to consider in developing a business plan. A DSO can lend a name that is well-known which can attract patients as well as provide resources and expertise to provide effective marketing. Of course, separating the name of the DSO from a practice when a dentist eventually decides to end the agreement can be somewhat difficult, but if individual goodwill is created by the dentist it will help the transition.

It may be easier for a DSO to recruit and hire staff employees for the practice, though state laws requiring dentists to hire employees who are involved in clinical decision making sometimes must be followed.

Can a DSO negotiate better terms on a lease than the individual dentist? Perhaps, but it is important to realize that a long-term lease with the DSO being the lessee indicates a long-term commitment beyond a shorter management agreement.

Overall the corporate-private mixture can be appealing to dentists looking to ease the management burdens that are entailed with owning a practice. It is important to realize the costs versus the benefits, as well as long-term goals in reaching a decision in this area.

that in Massachusetts a malpractice tribunal is required before a case can actually be submitted to a court or a jury, and showing a "mere error with an unfortunate result" is enough to get a case dismissed in front of a tribunal composed of at least some of your peers. If a patient decides to take a case to court even after the tribunal decides in your favor, that ruling will benefit you, but a skilled lawyer can highlight a cover up of an error to state a case for negligence. The humility, honesty, and lack of unjustified defensiveness of a dentist has great weight in front of a jury.

The implant option is being advertised increasingly to potential patients, and can be a lucrative part of your practice, but it must be handled correctly, since failure to meet a patient's expectations in such a costly procedure may easily result in liability harmful to you financially and to your reputation. To avoid that liability requires a plan that is not limited to preventing negligent treatment.

Legislation Passes in Washington Directly Allowing DSOs, While Wisconsin Weighs Restrictions

On May 16th the governor of Washington state signed legislation which directly allows Dental Support Organizations to work more closely with dental practices and own or lease their assets, while still ensuring that language was included which prohibits DSOs from directing dentist activities concerning the amount of time spent with patients, available treatments, and access to patient records. The Federal Trade Commission has come out in favor of a more competitive dental market featuring DSOs contributing to lower patient fees. Meanwhile the same subject is being debated in a Wisconsin bill that would allow state dental board supervision and regulation of DSOs, which might restrict their activities. The North Carolina legislature rejected this kind of provision and Texas is considering a law which would supposedly lower Medicaid fees with the use of DSOs.

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

73% of Mass. Voters Uncomfortable with Midlevel Practitioners Doing Dental Work

A new poll of registered voters commissioned by the Massachusetts Dental Society and conducted by MassInc Polling Group found that 73% of registered Massachusetts voters feel uncomfortable with midlevel non-dentists performing irreversible dental procedures such as drilling and extractions. There are two midlevel dental practitioner models now under consideration in the Massachusetts legislature which differ in the requirements for supervision by licensed dentists. One bill would allow midlevel practitioners with a two year associates degree and one year of training to perform irreversible dental procedures such as drilling and extraction of teeth with phone supervision from a licensed dentist. The second proposal, endorsed by the Massachusetts Dental Society, creates a new category called "Public Health Dental Practitioners," which requires a bachelor's degree and two additional

years of training to perform irreversible dental procedures while under direct supervision of a licensed dentist.

David Lustbader, DMD, President of the MDS, said that complex procedures need to be done by professionals with a high level of education, supervision and training. Numerous other states have recently enacted statutes allowing midlevel dental practitioners, dental therapists or hygienists to perform some dental procedures without direct supervision in order to help underserved and rural populations gain access to dental care they might not otherwise get.

DC Dentist Pleads Guilty to Assaulting 5 Male Patients, Two Employees

Bilal Ahmed, 44, a former Washington, DC dentist, pled guilty recently to sexually assaulting five male patients and two employees at his practice, Universal Smiles. The patients were under anesthesia at the time of the assault. He had been charged in 2016

with assaulting one patient, but prosecutors added the counts regarding the other patients and employees after he was arrested at JFK airport after a flight from Pakistan.

Hatch Legal Group is now working with South Shore Dental Advisors to provide dental practices with services within a variety of areas. The network includes representatives from such areas as law, banking, dental management, accounting, IT, and many more. 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

Body Found at Harvard Dental School Lab

A dead body was found at a dental lab at Harvard Dental School in Boston on May 26th which requires an investigation by police and an inquiry by the medical examiner as to cause of death. The only clue that police found was a bag of unknown chemicals lying next to the body. A hazardous material team was called in as well as the Boston Fire Department, but no airborne chemicals or chemical spills were found inside the building. Boston Fire Chief Operations Officer John Walsh said that the building was evacuated as a precaution. No further information was released pending the investigations of the authorities.

Worcester Dentist Found Not Guilty of Assaulting Patient

A jury deliberated 45 minutes to find Dr. Nikihilkumar Patel of Worcester not guilty of a charge by a

female patient with indecent assault and battery. The woman had complained that Dr. Patel had cupped her breast during a dental procedure on August 1, 2016 at his office at 130 Lincoln Street, Worcester. Evidence was introduced in the trial that the woman's boyfriend came to his office after the alleged incident occurred and punched him in the face. Dr. Patel has filed a case for assault and battery on the boyfriend, and that case is now pending. Additionally, there are two other women who filed complaints separate for indecent assault and battery, and those cases were severed from the litigated case and are still open.

Dental Assistant Accused of Advertising Dental Services on Instagram

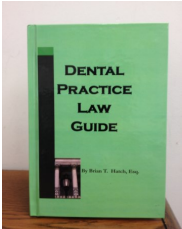
A Louisiana dental assistant, Brittany Bridges, has been arrested for practicing dentistry without a license and advertising on Instagram that she does orthodontic maintenance and teeth whitening. The Instagram site,

@bossysmiles had a heading entitled "\$1,000,000 smile, affordable price." The posting included pictures and videos of patients receiving services or offering testimonials. The ad featured statements about teeth whitening for \$130, braces maintenance and snap-on porcelain veneers. Bridges, 29, stated that she only does teeth whitening at her shop at 559 Holmes Blvd., Terrytown, Louisiana, and claims that she was only promoting that she could whiten teeth effectively around braces. She is fighting the case with the defense that state law does not prohibit her from offering teeth whitening services. The Attorney General's Office is also involved in the investigation. Bridges was released on \$5,000 bond.

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

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