

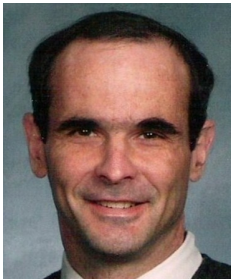
# Dental Practice Legal Update

**March, 2017**

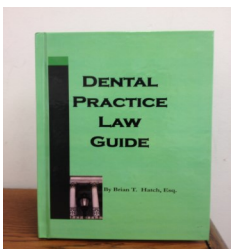
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Dental Practice Legal Update is published as a courtesy to the dental practices industry by:

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## **The Movement to Prevent Regulatory Overreach in Dentistry**

After the United States Supreme Court ruled in 2015 that the North Carolina Board of Dental Examiners couldn't regulate teeth whitening services because of trade monopolization reasons, a number of states and lawsuits have sought to further restrict dental boards' power to regulate the dental industry. Since one of the key factors in that case was the Court's determination that the Board was more of a private agency than a state agency because of its makeup of individuals within the industry, now executive and legislative branches are deciding which branch should have the final say in reviewing board decisions. In Mississippi a bill presently before the legislature would give the Governor's office final decision-making power, but the legislature decided to retain that power for itself for now. This month the American Legislative Exchange Council released a report entitled "Overregulation Threatens Market Driven Solutions in Dentistry" which promoted Dental Support Organizations as a way for dentists to deliver quality care while providing non-dentists with non-clinical support functions. Some in the industry say the profit driven model can impact the quality of care if dentists are forced to base their treatment decision on how much money they can create for the entity they work for. In Washington state, the legislature is considering bills which would not allow corporate ownership of dentistry, support DSOs for support functions, and require that dentists do the hiring of dentists and hygienists.

## **What to Include in a Letter of Intent**

When purchasing a dental practice it is important for the buyer to show the seller he or she is planning on purchasing a specific practice by submitting a proper letter of intent (LOI). This should be written by the buyer's attorney to include major points that the parties are in agreement with so that the purchase and sale with the final documents can be prepared without major disagreements on subjects the parties had not discussed.

The buyer should confirm what is the purchase price that is proposed, based on a previous analysis of three years of profit and loss statements and a formal valuation done by a third party. The seller may have a specific price in mind, and the buyer will have to back up any counterproposal with facts which justify it.

An important subject to have an agreement on is whether the accounts receivables are purchased by the buyer as part of the purchase price, or collected after the sale by the buyer for the benefit of the seller. The parties may agree in writing that accounts receivables are included in the sale, and are to be calculated during the due diligence part of the purchase and sale period, or that the seller will pay a fee to the buyer, often about 5%, to collect accounts receivables that are paid after closing. The number for accounts receivables may be calculated before the LOI is issued as well.

How payment will be made is a consideration that must be detailed in the LOI. If the buyer is to be obtaining financing, the LOI may make the sale contingent on the buyer

(continued on page 2)

## What to Include in a Letter of Intent (cont. from p. 1)

getting the necessary funding to pay the purchase price in cash. A bank may require that certain criteria are met which are not satisfied during the purchase and sale period, so the buyer should have approval for a certain amount prior to submitting a LOI so that this contingency does not prevent the sale from closing. There should be an allowance in the LOI for a due diligence period allowing detailed examination of accounting and business practices of the seller

The LOI should state what are assets included in the sale, and what is excluded. If the buyer wants the seller to keep certain equipment or personal items the LOI should state that.

A deposit should be made by the buyer to be held in escrow by a third party (often the seller's attorney) until it makes up part of the purchase price. This is usually refundable if the sale does not happen but is considered an earnest money deposit to hold the offer and acceptance to be binding in regards to other potential buyers during the purchase document preparation period. The seller may wish to create contingencies that may allow the practice to be placed on the market again if they are not met. A period less than sixty days is usually long enough to prepare for the closing date, and that date should be specified in the LOI, although it can be changed by mutual agreement.

There should be an agreement as to whether there will be post-closing employment of the seller to facilitate the transition, and the terms should be

included in the LOI. The buyer often wants the seller to remain accessible during the transition process, and if there is treatment to be done by the seller during that time the LOI should state the terms of payment for treatment and any other post-closing work at the practice. Works in progress should be covered in the LOI, including how the payments on that treatment will be apportioned.

It is important that the LOI state that it is a non-binding document so that the attorneys who participate in determining the final language of the purchase and sale agreement can have some freedom to work out particular details during the period before the closing. A confidentiality provision regarding the terms and negotiations should also be inserted.

A good LOI can get the parties on the same page before the preparation of documents, and in this way the period before closing can go smoothly and the closing date agreed to can be met,

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## Judge Throws out \$3.7M Verdict Against Practice Which Employed Molester

An Atlanta Georgia dental practice which had found by a jury to in part be responsible for a nurse anesthetist who sexually assaulted the woman who filed the suit and other victims has now been cleared of wrongdoing by the Georgia Supreme Court. The victim, who was 18 at the time of the assault, won the \$3.7 M verdict in 2011 against the practice. The nurse anesthetist, Paul Serdula, pleaded guilty to the charges that he assaulted 19 females, the youngest of whom was 12, was dismissed from the civil case and is now serving a life sentence. Chief Justice Harris Hines wrote in his opinion that Goldstein, Garber & Salama had no reasonable grounds to anticipate that Serdula would commit the offenses. "Prior to the crimes committed by Serdula against the plaintiff, (Goldstein, Garber & Salama) had no knowledge of anything in Perdula's record that indicated that he might sexually molest or otherwise harm a patient." Perdula was employed at the practice as an independent contractor through a nurse anesthetist staffing agency.

## Celebrity Dentist Barred for Fraud, Negligence

Sherri Worth, a celebrity dentist who appeared on the plastic surgery makeover program "The Swan," has had her license suspended by the California Dental Board because she was deemed an immediate danger to patients. She had treated celebrities such as drummer Tommy Lee and actress Anna Kendrick, and had also appeared on "Access Hollywood," "Dr. Phil," and "Tyra," among others. The Dental Board has accused her of multiple acts of negligence, fraud, incompetence, overdiagnosis and overtreatment. Among the actions she is accused of include billing over \$11,000 for two patients for laser treatment that was never performed, falsifying dental records, and photoshopping a digital x-ray to conceal two defective crowns. The Dental Board has claimed that Worth overtreated on many occasions "perfectly healthy teeth" and caused damages to teeth which necessitating over \$30,000 to correct.

One patient sued Worth and collected \$641,441 in a settlement with an insurance company.

## ADA Mobilizes to Preserve Parts of Obamacare

The American Dental Association has begun its lobbying efforts to preserve

are beneficial to dentists and the dental industry. The ADA is particularly concerned that the progress toward increasing availability of children's dental care in the ACA, particularly to low income families on Medicaid may be halted. The ADA combined with 16 other dental groups wrote in letters to the chairmen and ranking members of the House Ways and Means Committee detailing some of the important benefits of the ACA that should not be eliminated. The letters noted that since 2000 the number of children without dental insurance has been cut half and the progress should not be stopped. Some of the other points the ADA and the other dental groups made include

- Maintaining the dental coverage and affordability protections
- Requiring insurance benefit packages to include dental benefits and preventive care
- Keeping a comprehensive dental benefit in Medicaid, and continuing the state-managed Children's Health Insurance Program (CHIP)
- Encouraging greater transparency by private insurance plans into dental benefits and enrollment, integrating dental plans into insurance plans that reduce costs and limit high deductibles,

## Dental Hygienists Seeking to Perform Botox Treatments

A Nevada bill that would explicitly bar hygienists from administering botox treatment has met with vociferous protests by hygienists who say they have the training to do the treatment. A meeting was held before the Nevada Senate Health and Human Services Committee and both proponents and those opposing the bill were heard. Dr. Goesel Anson, a Las Vegas plastic surgeon commented that "We are not talking about nurses, we are talking about the people who are hired in medical offices to take blood pressure and charts." She said that the medical professionals covered by the bill are not trained sufficiently in treating infections. Hygienist Syd McKenzie, a hygienist who is a member of the Truckee Meadows Community College Dental Hygiene Advisory Board, said that the legislation should not combine dental hygienists with less educated medical providers. She said that hygienists have extensive training around the head and neck area. No other state permits dental hygienists to perform botox treatments.

## Dentist in Litigation with City Over Relocation

Virginia Beach dentist Dr. Allan Bergano was informed by the city in 2015 that he would have to relocate his dental practice to allow the widening of Witchduck Road. It gave him one year to find a new location. However, one month before the end of that period, the city told him it had changed its plans and would no longer require him to move. They said that the city was keeping the office complex for a location for an office of the Department of Human Services. Bergano's practice would now be located where inmates in handcuffs often were brought into the building. Bergano was upset about the hostile environment that would create, and also the lack of parking spaces. He said he was not offered sufficient compensation to relocate, even though other relocated dentists received compensation. Bergano, who signed a lease for a new location in 2015 is now bringing suit in federal court to recover \$475,000, which is what he says it will cost him to relocate the office. The city stated that it is Bergano's decision whether or not to move to a new location

**Hatch Legal Group is now working with South Shore Dental Advisors to provide dental practices with services within a variety of areas. South Shore Dental Advisors will be holding a seminar entitled "How to Build a Successful Dental Practice From A-Z on May 2, 2017 at 234 Copeland Street , Suite 310, Quincy, Massachusetts. Registration Fee is \$29. 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**

## Dental Implant Company Accused of Flouting Zoning Laws in Forest Hills

In what began as an effort to have a Forest Hills, Massachusetts historic house saved from destruction by Bicon Dental, a dental implant company, now has evolved into a neighborhood association's attempt to revoke Bicon's occupancy permit in Suffolk Superior Court. Now the Yale Terrace Neighborhood Association is suing the Zoning Board of Appeals (ZBA) and Bicon's property owning branch, Debbie, LLC, saying they do not have the proper permits to operate a dental lab and professional school on the premises. The controversy began when a former owner of 21 Yale Terrace. Berriz, said that she didn't want to sell the house to Bicon and that she was told falsely that the purchaser was a family-minded local grandmother. The house was eventually demolished but the Neighborhood Association has tried to go to the Inspectional Services Department

which has oversight over the ZBA, to force the city to take the permit away through an action in Suffolk Superior Court. The suit accuses the ZBA of an arbitrary and capricious action, gross negligence, and bad faith or malice in allowing the permit. The Court denied the defendants' Motion to Dismiss and case will continue.

## Death of 14 Month Old May Have Been Part of Medicaid Fraud Scheme

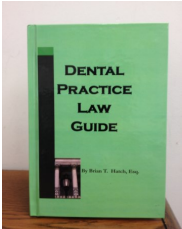
14 month old Daisy Lynn Torres died last year after she was put under anesthesia while undergoing treatment for multiple root canals and crowns on four of her teeth. Now her parents, Elizandro Torres and Betty Squier have filed a lawsuit that alleges not only negligence but also Medicaid fraud for obtaining monies for unnecessary treatment. Dr. Michael Melanson of Austin Children's Dentistry allegedly told Daisy's parents that the procedures were normal and necessary. Torres and Squier

believe, however, that the treatment was not only unnecessary but part of a broader scheme to gain corporate profits out of the Medicaid system. Dr. David Williams was present at the time as the mobile anesthesiologist, and neither he nor Dr. Melanson have been disciplined by the Texas Board of Dental Examiners although an investigation is underway. Melanson has been suspended by Austin Children's Dentistry until that investigation is complete. Torres and Squier have been trying to use the tragedy as a way to make parents aware of the need to get second opinions when dentists recommend complex procedures.

**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**

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