

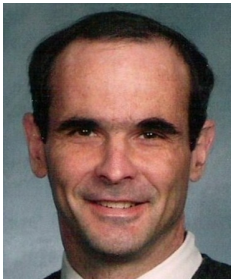
Dental Practice Legal Update

May, 2017

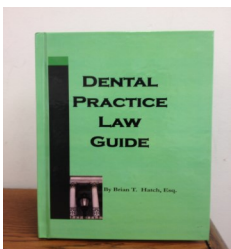
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Does the House Approved AHCA Affect Dentistry?

Now that the U.S. House of Representatives has approved a bill which would replace the Affordable Care Act (ACA) with the American Health Care Act (AHCA), it is time to analyze its potential effects on dentistry when weighing any revisions or counterproposals the Senate might add in its version to vote on and then submit back to the House for a final vote. First, the expansion of Medicaid under the ACA would be cut back so that the requirements for pediatric dental health insurance would be eliminated as an "essential benefit" if states decide to do so. The eligibility of children for Medicaid would be reduced from 138% of the federal poverty level under the ACA to 100% in 2020. The total federal spending on Medicaid would be decreased in the proposal to have block grants given to states so that over \$800 billion in federal money would be eliminated over ten years. The American Dental Association has already stated that the proposal may force state programs to "negatively impact access to and delivery of dental services." This includes programs for Early Periodic Screening, Diagnosis and Treatment Programs, including dental services coverage. In Massachusetts, the federal money allocated to MassHealth is almost half of the total money coming into the program, and that would cost the state over \$1 billion, according to Governor Charlie Baker. The ADA is already mobilizing lobbyists geared toward Senators to preserve dental provisions under any new law.

How to Make Your Practice More Valuable in a Sale

Dentists who are anticipating retirement within the next five years or so should start preparing the practice to sell at a price that will make it attractive for a dentist looking to buy a good investment and also will yield a good return for the seller. While it is generally a "sellers' market" for dental practices now, there are a number of ways to increase their value for a potential sale.

First, get started early. If a dentist is already tired of practicing dentistry and reduces practice hours it may reduce income stream over a period of years. Potential buyers use at least three years of prior profit and loss statements or tax returns to judge whether the practice is growing, or the number of patients seen is declining or doesn't have a good income in the last year before it is put on the market. Hiring part-time dentists to maintain or increase treatment hours is a possibility.

Get a good, honest appraisal from a reputable appraiser. If practice doesn't have a good appraisal available, including additional factors more than just gross revenue, then the price may be set too high or too low and negotiation of the price may be subject to a buyer's own appraisal.

If you have a lease, check the lease to make sure the assignment clause in the lease calls for a minimum requirement that the landlord not unreasonably withhold consent to an assignment. Get to know the landlord well enough so you can give a good assurance to a buyer that they can negotiate an extension or new lease for a good number of years at a fair

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How to Make Your Practice More Valuable in a Sale

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rate.

Have your accountant set up profit and loss statements so that it is clear that non-income related practice expenses are separated out and expenses can be adjusted to make sure they do not make expenses decrease a yearly profit figure. Items such as meals and entertainment, travel, payment to spouse for work and pension contributions can be specified as adjustments to decrease expense amounts and increase the profit figures.

Keep up with renovations and office updating to make the practice appear attractive both subjectively and on paper. Leasehold improvements as well as equipment purchase dates show up on tax re-

turns also in appraisal financial and subjective analyses.

Make sure the accounts receivable percentage and collections methods show less aging receivables than would make a prospective buyer think that collections may be a problem in the future. Sometimes the receivables are included in the sales price, so discounting them because of age should be avoided.

Maintain a quality staff who would be satisfied in transitioning to a new buyer. Don't tell the staff you are selling until the transaction is complete to ensure that good staff don't leave before the sale. Also try not to overpay staff, since this will add to an unnecessary expense of the practice that decreases profitability of the practice shown to a buyer and is hard to undo. Try to ensure that good hygienists will stay with the practice after the sale,

since they are often a key to retaining patients in any transition. Also, do enough cross training among employees so that loss of any employees during a transition will not hurt the effectiveness of office staff.

Maintaining room for expansion for a new owner increases the value for investment purposes for a potential buyer, so consider the possibility of adding new treatment rooms when making renovations or designing the office layout.

Legally, it is good to maintain provisions in contracts with associates that have good restrictive covenants to prevent loss of a patient base from associates who want to move on to better opportunities near the practice and take some of the patient base or employees with them. Don't have too much language requiring a new buyer to obey long-term employment contracts with associates.

Using these tips in the long-term may be important to ensuring that the practice sale reaps the reward of a long career.

Delta of Mass. Drops Referral Requirement

Delta Dental of Massachusetts, officially known as DSM Massachusetts Insurance Company, has informed the Massachusetts Dental Society in a May 1, 2017 letter that it will eliminate certain restrictions on referrals in its provider agreements signed before February 27th of this year. Referrals by network providers to specialists will no longer be required to be made to specialists that are in the new Delta network. The provider agreements contained a number of unpopular provisions that many dentists realized would lower reimbursement income and prevent them from challenging certain parts of the contract with the Division of Insurance. The MDS has advocated legislation to support dentists against lack of oversight over Delta and prevent it from requiring dentists to accept PPO patients if they accept Premier plan reimbursements. Delta has stated that they will also not let dentists who did not sign contracts by February 27th to sign into the network, although they could be put on a waiting list. However, those providers who signed up for the new contracts can drop out of the agreement with 60 days notice.

Trump's Trade Wars Will Raise the Price of Dentistry

President Trump has threatened to put tariffs on goods imported from countries with lower labor costs and less expenses than companies operating in the United States in order to create jobs in this country. In the \$8.5 billion market for dental restorations in the United States this would cause a major disruption, considering that almost 40% of the market for implants, crowns and bridges come from China and Mexico. U.S. dental lab companies say that restorations made in lower cost foreign labs will have to be taxed nearly 300 percent to allow their costs to be lower when selling to U.S. companies that now import. Many of the companies using the foreign restorations are large group practices, private equity backed networks or dental support organizations that now employ about 40% of American dentists. The search for lower costs and higher profits in those companies forces them to seek the lowest possible prices on dental materials available, which the foreign labs are able to supply, but if the U.S. labs are made competitive the prices for dental work involving those products will rise. It remains to be seen how patients who see increases in dentistry prices will react if these proposed import taxes are put into law.

Provide your employees required HIPAA training and present to them an employee manual customized for the dental industry and your office.
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Dentist Riding Hoverboard Doing An Extraction Says it Was a "New Standard of Care"

When prosecutors searched the Anchorage, Alaska dental office of Dr. Seth Lookhart they not only found enough evidence to charge him with 16 counts of Medicaid fraud for billing \$1.8 million last year for IV sedation he never performed, they found an interesting video. Apparently Lookhart was riding a hoverboard while doing an extraction on a sedated patient's tooth, and videotaped himself in the process! Lookhart then texted the video to the practice office manager, exclaiming that this was "a new standard of care." The sedated patient told the authorities that she had no idea Lookhart was on a hoverboard when she had the tooth extracted.

ADA Settles Discrimination Investigation by EEOC for \$1.95M

The American Dental Association will pay \$1.95 million to settle a case of retaliation for reporting discrimination initiated by two employees who were discharged after complaining to the board of directors about age, disability and other discrimination. The two employees terminated were Tamra Kempf, the ADA's former chief legal counsel, and the director of human resources, both of whom differed with other management officials about how the discrimination claims should be handled. Rather than risk a trial in a suit by them for retaliatory discharge, the ADA included in the settlement agreement provisions to fund staff training and other policies that will be initiated to prevent discrimination and retaliation from happening in the future.

Oral Surgeon's Case Involved 18 Ex-Patients, Unsanitary Procedures

A case which involved a

disagreement between the Maine Dental Board and the Attorney General's Office over lack of available attorneys to handle the complexity of the case has continued after a preliminary suspension. Dr. Jan Kippax, a Lewiston, Maine oral surgeon, was accused by 18 ex-patients of a variety of negligent dental treatments, including wrongly pulled teeth, leaving patients with uncontrolled bleeding, letting patients choke in their own blood, not using gloves during procedures, and refusing to give patients pain medication during oral surgery. The violations found by the Board also included improper infection control procedures, non-compliance with safety laws and use of expired medications. A preliminary finding by the Board said that Kippax had "put the health and safety of his patients and staff in immediate jeopardy" and that his patients could suffer "dire consequences" if he were allowed to continue "in his reckless and harmful ways." Kippax has denied all allegations and vows to sue to keep his license. The friction between

the Board and the Attorney General's Office allowed for a delay in the proceedings which let Kippax's suspension lapse until a further hearing.

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

Oregon Dental School Sued for Letting Man Bleed to Death

The Oregon Health and Science University (OHSU) is being sued in both federal and state court for a total of \$6.5 million for allowing one of its dental school oral surgery residents to extract 12 teeth and discharge him while he was still bleeding heavily, even though test results were available which showed his blood would have difficulty coagulating. The man, Larry Dean Black, died on October 22, 2015 after eventually being transported from his home to a hospital where he died from loss of blood. Black had Hepatitis C, a history of drug abuse and liver damage, but had been clean for several years before going to the dental school to have tooth decay treated. His family's attorneys filed a state malpractice suit for \$2.75 million and a separate federal lawsuit for a violation of civil rights for \$3.75 million. The dentist in charge of the resident, Dr. Pamela Hughes, accepted a consent order from

the Board of Dentistry which allowed her to pay a \$5,000 fine and be reprimanded. The oral surgery resident, Philip Kupfer, was not disciplined by the Board. Both Hughes and Kupfer were named in the federal lawsuit. The Oregon legislature is currently considering lifting a cap on malpractice damages, and damages in the case may be impacted by the result of the legislative action.

E-Mails With Litigation Threats to Yelp Reviewers Prompt Dentist's Settlement

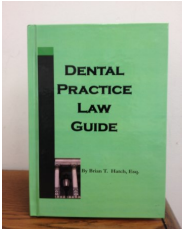
Kristin Brinner was unhappy enough with the dental treatment she received at Soft Touch Dental Group in Clairemont, California, that she posted a negative Yelp review. Soon after she received an e-mail threatening legal action if she did not take the review down. Other patients who posted negative reviews about the practice had similar experiences, and said that a person identifying himself as Alex Mendes, a consultant for Soft Touch Dental, sent the

e-mails informing them that they had signed non-disparagement agreements with the practice before their treatment that allowed for \$5,000 in liquidated damages if breached. The attorney representing Brinner, Mark Goldowitz, told her that the gag agreements were unenforceable. Another patient, Alvin Amar, who had posted negative Yelp posts about Soft Touch and received the threatening e-mail, appeared with Brinner on a media investigative story about the situation. About two weeks later, the dentist owner of Soft Touch Dental, contacted both of them, offered an apology and sent them \$2,500 checks. He denied any knowledge of anyone named Alex Mendes and said his computer had been breached recently.

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

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