

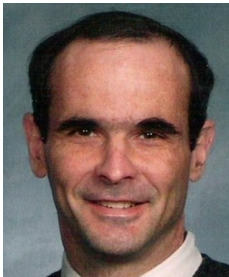
# Dental Practice Legal Update

January, 2018

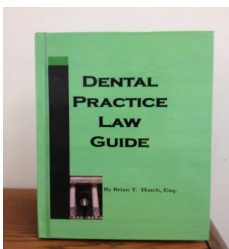
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## CHIP Dental Benefits Still Up in the Air

Federal funds from the Childrens Health Insurance Program (CHIP) have been a significant factor in providing oral health care for children for a number of years, but the CHIP program funding for the future has still not been authorized since it expired in October of 2017. A temporary spending bill passed by Congress in late December funds the plan temporarily through March, but arguments over cutting spending to ensure that a federal budget is approved before a government shutdown on January 19th leaves the future for the program uncertain. The American Dental Association has lobbied hard to maintain CHIP dental benefits, since it funds oral health care for 8.9 million children. Some states had been planning to shut down their programs as of January 31st, but additional funds will prevent that for now.

In Massachusetts, where federal funding, partially from CHIP, makes up about half of money supporting the MassHealth program, the state is scrambling to find funding mechanisms to make up for possible shortfalls. Governor Charlie Baker has made it known that funds will be available to continue CHIP funded programs until the middle of 2018, and the legislature and the governor are negotiating health care reforms to strengthen the financial base for MassHealth. Dental coverage for adults and children in Massachusetts is made available for the 1.9 million enrollees in MassHealth, so it remains to be seen what plan will allow dental coverage to continue, particularly if the CHIP program is not reinstated.

## The Effects on Dentists of the New Tax Law

Everyone has been a bit befuddled by the effects on them and their businesses of the tax law which was quickly put together and passed just before the New Year. Dentists are no exception, and it's a complex statute, even for accountants. But here's the gist of what research and discussion with accountants has revealed about the major effects of this new law particularly on the businesses owned by dentists.

First, will the biggest change in the law, the reduction in the corporate tax rate from 35% to 21%, benefit small businesses like dental practices? The answer is that in most circumstances, the new reduced corporate rate wouldn't justify switching entity status because of the double taxation that still exists for C Corps which doesn't for pass-through entities like S Corps or LLCs. Those entities will still be taxed at the individual rates of their owners, which would likely result in less tax than if they were C-Corps.

As a result of the greater benefit to C Corps. than small businesses like dental offices, provisions were added to the law to allow for a 20% "pass-through" deduction of "qualified business income" from a partnership, S Corp., LLC or sole proprietorship. What dentists need to be concerned with, according to Carolyn Carpenter, a CPA from Rosen & Associates dental accounting firm, is that it does not apply to service trades or businesses such as dentists with income above a certain threshold. The deduction is disallowed in this case if taxable income is above \$415,000 for married filing jointly taxpayers

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## **The Effects on Dentists of the New Tax Law** (from p.1)

and \$207,500 for single filers. It is phased out for joint filers with taxable income from \$315,000 for married filing jointly taxpayers to \$415,000 and from \$157,500 to \$207,500 for single filers. Dentists are advised to plan to keep income lower than those levels to take advantage of this deduction, perhaps through making capital expenditures.

Other changes in the bill which dentists should be aware of include changes in depreciation deductions. A bonus 100% deduction is allowed for new or used property placed in service after September 27, 2017. Section 179 depreciation, which is often used to carry forward depreciation to subsequent years has increased from \$510,000

to \$1,000,000 for new or used equipment.

Some deductions that dentists may take now have been eliminated, such as professional dues or business entertainment expenses. The net operating loss deduction has been limited to 80% of taxable income. A provision called a Sec. 199 domestic production activities deduction has been eliminated, and this used to apply to items like dental crowns that were manufactured on site at a dental practice. Meals provided for employees on site have been reduced from 100% deductible to 50%.

There are many changes which apply to individuals in general and not necessarily to dentists in business for themselves. The total deduction for state, local, and property taxes is limited to \$10,000 in total. The standard deduction was raised to \$24,000 for married filing jointly taxpayers, \$18,000 for heads of household, and \$12,000 for single filers.

Personal exemptions have been eliminated so that many more taxpayers will use the higher standard deduction amounts. The tax brackets and rates have changed with minor reductions for most rates. The taxable threshold on estates and gifts has increased to \$11.2 million or above. The health insurance mandate penalty has been eliminated. Mortgage interest deductions on qualified mortgage loans up to \$750,000 was changed from a threshold of \$1,000,000. The child tax credit was increased to \$2,000, with up to \$1,400 refundable.

The list of changes goes on and on, and almost all accountants and tax advisors agree that there will be constant revising of advice on specifics. Everyone has more than a year to figure it out for the 2018 tax return but it will be a rough year ahead planning to take advantage of the changes. Checking with your accountant on the developments is always a good idea.

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## **Two Children Die After Treatment at Same Kool Smiles Practice**

Within the span of approximately 20 months, two children, ages 2 and 4 years old, have died after undergoing treatment at the same Kool Smiles dental practice in Yuma, Arizona. 4 year old Lizeth Lares died soon after having a tooth extraction in February of 2016. Her mother took her back to the practice when she began showing signs of a fever, but the office told her that she would be fine. She died several days later. An attorney stated in court papers for a suit he filed against Kool Smiles for wrongful death that the practice had not met the necessary standard of care by not prescribing medication such as antibiotics. In December of 2017, the same Kool Smiles Yuma, Arizona practice was involved in a case where another child, this time 2 year old Zion Jay Gastelum, died when he stopped breathing while undergoing treatment for a crown and a filling. Although Kool Smiles denies there was any relationship between the two deaths, it will make it easier to show negligence if there another case not too long before that has the appearance that the staff was also at fault.

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## **Dentist Sues for Nonpayment of Services by Practice**

Dr. Sophie Doan has recently filed a suit against Sun Dental Group, P.A. of Deer Park, Texas for not paying her for nine months of services under a employment agreement to pay her on a per diem basis. Doan was hired on September 9, 2015 and worked for one year until September 9, 2016. She had an agreement to work for \$600 a day for the first 90 days, and then worked for six days a week at two branches of the practice until her one year contract finished in September of 2016. She claims that she was paid from September, 2015 through April, 2016, but that the practice refused to pay her for the remaining five months for her services. She also filed the breach of contract suit against owners of the practice, Dr. Davin Enoyoza Odia and Irene Odia.

## **Dentist Sells Cannabis Flavored Spirits With Science Background**

While Virginia does not have laws legalizing marijuana, Dr. Craig Stoner, has turned his background in science into the manufacture and sale of cannabis flavored whisky and vodka which he says is completely legal and has been approved by authorities. He mixes various types of herbs, including lavender, lemongrass, and coffee

leaf extract to distill liquor that simulates the aroma of cannabis. While the ingredients are not actually cannabis, the marketing strategy of the dentist, using the name "Dr. Stoner's Herb Flavored Spirits" seems to be working to attract sales. Sales have amounted to over \$300,000 since February of 2016. The publicity catch phrase he uses when describing his participation in the business to media is "Listen, I was born a Stoner, I will always be a Stoner."

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

## **Fluoridation of Water Becomes an Issue in Federal Court and Massachusetts**

About 75% of citizens in the United States have fluoridated water in their public water supply systems, but some communities, including areas in Massachusetts, are still weighing the pros and cons of fluoridating their water systems. In Martha's Vineyard the topic has become a local issue that has resulted in a public protest against the Edgartown Board of Health's decision in October of 2017 to add fluoride to the town's water supply. Residents objected to the decision, stating that there were health concerns that some studies had raised regarding the toxicity of fluoride ingested at certain levels. The American Dental Association has for years stated that fluoridation of water strengthens teeth and prevents decay. The EPA has also concluded that only in large concentrations does fluoride have negative effects on health. Edgartown residents have filed a successful petition for residents to be able to rescind the Board of Health decision in an April town vote.

One of the members of the Edgartown Board of Health that participated in the fall decision for fluoridation, Edgartown dentist Garrett Orazem, DMD said that there will be one or more public forums about the matter before the vote. He mentioned that a new ADA booklet, "Fluoridation Facts" last updated in 2005 but with a new version due to come out in about six weeks, may help educate the public that the benefits of fluoridation significantly outweigh the outlying negative studies that focus on high concentrations of fluoride. Public water systems are required cannot use higher concentrations than EPS maximum limits.

A California federal court on December 27, 2017 did not allow an EPA request to dismiss a fluoridation opponents' suit to regulate fluoride under the Toxic Substances Control Act. There is uncertainty about how the new EPA head in the Trump administration will react to more federal regulations on the environment and public safety. Previously the federal position was to let state and local authorities decide the issue. Massachusetts communities have been over-

whelmingly favorable to fluoridation of public water, with four million residents out of six million covered by fluoridation. Cape Cod and the Islands are an exception, though, with very few communities with fluoridated water. Oak Bluffs, another small community on Martha's Vineyard, voted 2 1/2 to one to keep fluoridation there in 2015.

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## **UConn Found Liable for Sexual Harassment of Dental Assistant**

The University of Connecticut Health System has been found liable for the sexual harassment of a dental-assistant by a dentist working with her for UConn Health at a juvenile correction facility from 2008-2011. The University had appealed a jury verdict against it for \$125,000 to the U.S. Second Circuit Court of Appeals, one step below the U.S. Supreme Court. Mindy MacCluskey said Dr. Michael Young had made comments about her personal life, appearance and invaded her personal space in 2008 when they were working together at the facility, and she reported the incidents at the time to a supervisor. Young continued the harassment, however and she complained about him again in 2011 when he allegedly blocked a doorway, grabbed her, and put his hand up her shirt. The UConn investigation of Young, who resigned in 2011 led to findings that he

had given "shoulder rubs" to other dental assistants and violated the school's sexual harassment policy. He had been given a "last chance" warning for inappropriate sexual behavior in 2000, but his supervisors were not made aware of the prior violations. A jury found that UConn Health had known about Young's behavior but did not take appropriate actions to prevent it from happening again. While UConn Health did not dispute the sexual harassment claims it enlisted the Connecticut Attorney General's Office to represent it in all the way to the Court of Appeals to defend its actions taken in supervising Young.

## **Mother Who Paid for Dental School Wins Judgment Against Son Who Didn't Repay Her**

A Taiwanese mother who had her son sign a contract to repay her for funding his dental school training was awarded some \$754,000 plus interest for the unpaid balance on the contract, which was originally \$1.7 million for his

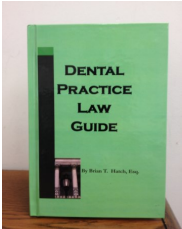
dental school training until he became a dentist in 2003 and afterwards. The contract stated that he would pay her 60% of his net profits until the amount was paid off. The Court ruled that the son must pay his mother \$967,000 for an "upbringing fee." Abandoning one's parents is against the law in Taiwan, but the contractual arrangement gave the mother additional leverage to get repaid.

## **Combining Dental and Sex Tourism**

Two industries in Costa Rica which attract tourists, legal prostitution and low cost dental care, apparently are now being combined to give foreign male tourists a chance to disguise their sexual flirtations with the numerous prostitutes in Costa Rica as visits to the country to dental treatment. One dentist said that their practice aims to make sure their patients have a beautiful smile when they leave. They don't ask any further questions about what else they are doing on their trip, since "...what they smile about

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